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February 5, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Darlene Shedlock v. Pennsylvania Electric Company
Docket No. C-2018-3001414

Dear Secretary Chiavetta:

Enclosed please find the Motion to Strike the Entirety of Darlene Shedlock's Main Brief and Attachment of FirstEnergy Pennsylvania Electric Company (Penelec Rate District) regarding the above-referenced matter. This document has been served as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Tori L. Giesler

mlr
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darlene Shedlock,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3001414
	:	
Pennsylvania Electric Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE ON OR BEFORE FEBRUARY 12, 2024. YOUR ANSWERS SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Counsel for FirstEnergy Pennsylvania Electric
Company (Penelec Rate District)

Dated: February 5, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darlene Shedlock,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3001414
	:	
Pennsylvania Electric Company,	:	
	:	
Respondent.	:	

**MOTION OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY TO
STRIKE THE ENTIRETY OF THE COMPLAINANT’S MAIN BRIEF AND
ATTACHMENT THERETO OR, IN THE ALTERNATIVE, STRIKE PORTIONS OF
THE COMPLAINANT’S MAIN BRIEF AND ATTACHMENT THERETO**

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

AND NOW, comes FirstEnergy Pennsylvania Electric Company (“Company”), on behalf of its Penelec Rate District,¹ by and through its attorneys, and files pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103, and Administrative Law Judge Jeffrey A. Watson’s (the “ALJ”) Interim Order Setting Deadline to Object to Complainant’s Main Brief and Attachment to Main Brief dated January 17, 2024, this Motion to Strike the Entirety of Darlene Shedlock’s (“Complainant”) Main Brief and Attachment Thereto or, in the Alternative, Strike Portions of the Complainant’s Main Brief and Attachment Thereto.

¹ On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Pennsylvania Electric Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

As explained herein, the Company respectfully submits that the ALJ should strike the entirety of the Complainant's Main Brief because it fails to conform to the Commission's governing regulations at 52 Pa. Code § 5.501(a) and the directive of the ALJ's November 27, 2023 Interim Order. In the alternative, the Company submits that the ALJ should strike portions of the Complainant's Main Brief and attachment thereto for several reasons, including: (1) portions of the Complainant's Main Brief and attachment thereto rely on or introduce extra-record evidence; (2) the attachment to the Complainant's Main Brief is inadmissible hearsay; (3) portions of the attachment to the Complainant's Main Brief constitute inadmissible hearsay within hearsay; and (4) the attachment to the Complainant's Main Brief – to the extent it is considered – lacks authentication and foundation.

In support thereof, the Company states as follows:

I. BACKGROUND

1. The procedural history for this matter was set forth in its entirety in the Company's Main Brief submitted on January 17, 2024, is incorporated by reference herein, and will not be restated in full here.

2. On November 27, 2023, the ALJ issued an Interim Order Setting Briefing Schedule, dictating that Main Briefs, if any, were due on or before January 17, 2023, among other things.

3. On January 16, 2024, the Complainant sent, via email, the ALJ's legal assistant a one-page letter and two-page attachment. Hereinafter, the letter and associated attachment will be referred to as the "Complainant's Main Brief." The Complainant's Main Brief was not served on the Company by the Complainant.

4. On January 17, 2024, the Company timely filed its Main Brief.

5. Also on January 17, 2024, the ALJ issued an Interim Order Setting Deadline to Object to Complainant's Main Brief and Attachment to Main Brief, which permitted, among other things, the filing of motions and/or objections to the Complainant's Main Brief on or before February 5, 2024, with a response, if any, due no later than February 12, 2024.

6. Pursuant to the January 17, 2024 Interim Order, the Company hereby submits this Motion to Strike the entirety of the Complainant's Main Brief or, in the alternative, strike the various extra-record, hearsay, hearsay within hearsay, and unauthenticated and unfounded allegations and materials contained within the Complainant's Main Brief and attachment thereto.

II. MOTION TO STRIKE

A. THE ENTIRETY OF THE COMPLAINANT'S MAIN BRIEF SHOULD BE STRICKEN AS IT DOES NOT CONFORM TO THE COMMISSION'S REGULATIONS OR THE DIRECTIVE OF THE NOVEMBER 27, 2023 INTERIM ORDER.

7. The Complainant's Main Brief fails to conform to the Commission's regulations at Pa. Code § 5.501.

8. Pa. Code § 5.501(a) requires briefs to contain the following:

- (1) A concise statement or counter-statement of the case.
- (2) References to the pages of the record or exhibits where the evidence relied upon by the filing party appears.
- (3) An argument section preceded by a summary. The party with the burden of proof shall, in its main brief or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.
- (4) A conclusion with requested relief.

9. Here, the Complainant's Main Brief does not contain a concise statement of the case. *See* Complainant's MB, p. 1.

10. Moreover, the Complainant's Main Brief does not cite a single provision of law, including but not limited to the Public Utility Code ("Code") or the Commission's regulations, or the record in support of the Complainant's position. *See* Complainant's MB, p. 1.

11. Further, the Complainant's Main Brief does not include an argument section, nor a summary of the same preceding the argument section.

12. The November 27, 2023 Interim Order also directed the parties that briefs should include "specific references to the testimony or exhibits from the evidentiary hearing. The briefs may include a discussion of the legal argument of the parties as well as any legal authority and citations to support such argument or discussion." *November 27, 2023 Interim Order, Ordering ¶ 3* (issued Nov. 27, 2023).

13. The Complainant's Main Brief does not specifically reference any provision of law, any regulation, nor any record-evidence in this proceeding.

14. As such, the Company respectfully submits that it is appropriate to strike the entirety of the Complainant's Main Brief.

B. THE EXTRA-RECORD STATEMENTS IN THE COMPLAINANT'S MAIN BRIEF AND ATTACHMENT THERETO SHOULD BE STRICKEN.

15. In the alternative, the Company respectfully submits that the various extra-record statements throughout the Complainant's Main Brief and attachment thereto should be stricken.

16. Specifically, the Complainant makes a number of factual allegations in her Main Brief that are not in the record in this proceeding, including:

- (1) The alleged removal of various appliances in the Complainant's home (Complainant's MB, p. 1); and
- (2) Alleged circumstances - and measures taken - at the Complainant's workplace (Complainant's MB, p. 1);

17. Furthermore, the entirety of the attachment to the Complainant's Main Brief is extra-record evidence and should be excluded from consideration.

18. The Complainant had ample opportunity to attempt to introduce the attachment to her Main Brief at the Evidentiary Hearing held on September 4, 2020, but did not do so.

19. The Company respectfully submits that such extra record evidence would be inappropriate to consider here, as consideration of the same deprives the Company the opportunity to critically examine the same and cross-examine the Complainant on the purported evidence's authenticity and substance, as the Company is entitled to by law. *See* 66 Pa.C.S. § 332(c).

C. THE ATTACHMENT TO THE COMPLAINANT'S MAIN BRIEF IS INADMISSIBLE HEARSAY AND SHOULD BE STRICKEN.

20. The Complainant attaches an apparent article titled "EMF – the Invisible Hazard" to her Main Brief.

21. The entirety of the attachment to the Complainant's Main Brief is inadmissible hearsay.

22. The contents of the article are out-of-court statements that are being offered to prove the truth of the matters asserted.²

² Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers' Compensation Appeal Board (Bertolini's)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exceptions apply. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the "Walker Rule" to apply to the use of hearsay evidence during administrative proceedings: (1) Hearsay evidence, properly objected to, is not competent evidence to support a finding; (2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The "Walker Rule" has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

23. The author of article reflected in the attachment to the Complainant's Main Brief was not presented as a witness in this proceeding.

24. Consequently, the article and its contents cannot simply be sponsored by the Complainant, as the Complainant has denied the Company the ability to cross-examine the actual declarants of the statements. The Company has an unquestionable right to cross-examine the author of the attachment – hearsay or otherwise – before it be admitted into the record in this proceeding. *See* 66 Pa.C.S. § 332(c).

25. Based on the foregoing, the attachment to the Complainant's Main Brief is inadmissible hearsay should be stricken from the Complainant's Main Brief.

D. THE HEARSAY WITHIN HEARSAY STATEMENTS IN THE COMPLAINANT'S ATTACHMENT TO THE MAIN BRIEF SHOULD BE STRICKEN.

26. In the alternative, if the entirety of the attachment to the Complainant's Main Brief is not stricken on other grounds, the Company submits that portions of it should be stricken as inadmissible hearsay within hearsay statements.

27. The attachment to the Complainant's Main Brief includes numerous hearsay within hearsay statements that should be stricken.

28. For example, the following portions of the attachment to the Complainant's Main Brief are entirely hearsay within hearsay statements:

- i. Attachment to Complainant's Main Brief, p. 1: "She didn't look well and she said that she was headachy, dizzy, buzzy. Those are not words that she has ever used to go describe how she's been feeling before,' Ms. Gilandi said."
- ii. Attachment to Complainant's Main Brief, p. 2: "Professor Martin Pall from Washington State University.... summarized the biological effects of [EMF] as follows: ..."
- iii. Attachment to Complainant's Main Brief, p. 2: "the Bioinitiative Report, co-authored by Dr. David Carpenter..."

- iv. Attachment to Complainant's Main Brief, p. 2: "If you have one of these kinds of diseases, you're much more likely to have others,' Dr. Carpenter said."

29. All of these averments are out-of-court statements that are being offered to prove the truth of the matters asserted.³

30. None of the actual declarants of these statements and/or quoted sources were presented as witnesses in this proceeding.

31. Consequently, these allegations, sources, and statements cannot simply be sponsored by the Complainant, as the Complainant has denied the Company the ability to cross-examine the actual declarants of the statements. The Company has an unquestionable right to cross-examine these individuals should their testimony – hearsay, hearsay within hearsay, or otherwise – be admitted into the record in this proceeding. *See* 66 Pa.C.S. § 332(c).

32. Based on the foregoing, these inadmissible hearsay within hearsay statements should be stricken from the attachment to the Complainant's Main Brief

E. THE ATTACHMENT TO THE COMPLAINANT'S MAIN BRIEF LACKS AUTHENTICATION AND FOUNDATION AND, THEREFORE, SHOULD BE STRICKEN.

33. In the alternative, the attachment to the Complainant's Main Brief should be stricken because it lacks authentication and foundation, to the extent that it is considered an exhibit of the Complainant's.

34. The Complainant attempts to introduce an attachment titled "EMF – the Invisible Hazard" to her Main Brief for the first time.

35. Rule 901 of the Pennsylvania Rules of Evidence governs the required procedures to properly authenticate and identify evidence.⁴

³ *See* fn. 2, *supra*.

36. Rule 901 dictates that:

(a) In General. Unless stipulated, to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.⁵

37. Additionally, “it is axiomatic that a foundation must be laid for the admission of any evidence.”⁶

38. The Commission has struck otherwise relevant evidence in the past for lack of proper foundation and lack of authentication.⁷

39. Here, the Complainant attempts to introduce the attachment to her Main Brief which was not properly authenticated, nor provided with a proper foundation.

40. At the very least, the attachment to the Complainant’s Main Brief should be stricken, as there is no testimony, from the Complainant or through cross-examination of the Company’s witness(es) to authenticate and lay the foundation for the attachment.

41. As such, and consistent with the above, the Complainant’s attachment to her Main Brief – to the extent it is considered a late-filed exhibit - lacks authentication and foundation and should be stricken.

III. CONCLUSION

WHEREFORE, the Company respectfully requests that Administrative Law Judge Jeffrey A. Watson strike the entirety of the Complainant’s Main Brief and attachment thereto or,

⁴ 225 Pa. Code § 901.

⁵ 225 Pa. Code § 901(a).

⁶ *Turek v. Hardy*, 458 A.2d 562, 565 (Pa. Super. 1983).

⁷ *See Pa. PUC v. Fawn Lake Forest Water Co.*, Docket Nos. R-912117, *et al.*, 1992 Pa. PUC LEXIS 100 (Opinion and Order entered August 31, 1992); *See also App. of LP Water & Sewer Co. for approval to begin to offer, render, furnish or supply water service to the public in portions of Middle Smithfield Twp., Monroe Cty. and Lehman Twp., Pike Cty. App. of LP Water & Sewer Co. for the approval to begin to offer, render, furnish or supply sewer service to the public in portions of Middle Smithfield Twp., Monroe Cty. and Lehman Twp., Pike Cty. Affiliated Interest Agreement between LP Water & Sewer Company and Lehman Pike Development Corporation. Falls Community Assoc., Inc. LP Water & Sewer Co. Petition of LP Water and Sewer Co. For The Establishment Of Temporary Rates*, Docket Nos. A-211770, *et al.*, 1993 Pa. PUC LEXIS 117 (Opinion and Order entered July 7, 1993).

in the alternative, strike certain portions of the Complainant's Main Brief and attachment thereto as described above.

Respectfully submitted,



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Counsel for FirstEnergy Pennsylvania Electric
Company (Penelec Rate District)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Strike the Entirety of Darlene Shedlock’s Main Brief and Attachment of FirstEnergy Pennsylvania Electric Company (Penelec Rate District) upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail and electronic mail as follows:

Darlene Shedlock
226 Krayn Road
Windber, PA 15963
darshedlock@gmail.com

Administrative Law Judge Jeffrey A. Watson
jeffwatson@pa.gov

Dated: February 5, 2024



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