

February 12, 2024

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

Re: Judith D. Hendin vs. Metropolitan Edison Company

Dear Secretary Chiavetta,

Attached please find the Petition for Reconsideration submitted by Judith Hendin regarding the below-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Respectfully submitted,
/s/ Judith D. Hendin
Judith D. Hendin
Represented Pro Se

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I. INTRODUCTION

1. Standards for Reconsideration of a Commission Order: The Pennsylvania Public Utility Code (“Code”) provides that a party may seek reconsideration of a Commission order within 15 days after it is entered. See 52 Pa. Code§ 5.572. A Petition for Reconsideration is proper where the party raises “new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.” *Duick v. Penn. Gas & Water Co.*, 56 Pa. PUC 553,559 (1982).
2. This Petition presents “new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”
3. For these reasons, the PUC should grant this Petition of Reconsideration, following the *Duick v. Penn. Gas* criteria.
4. The interim between Exceptions and the Commission’s Opinion and Order is usually a matter of months. However, a stay was placed on this case as of November 4, 2020, to allow other related cases to make their way through the appellate courts. It has now been over three (3) years since the stay. Much has happened during this time, in both state and federal courts, that represent “new or novel arguments” in this case. In presenting these new or novel arguments, Complainant has made every effort to be succinct and concise.
5. Because of the number of arguments, for ease of reading, the section of New or Novel Arguments is divided into three groups: (1) Smart Meters, (2) Met-Ed, and (3) Pennsylvania Public Utility Commission and its Administrative Law Courts.
6. This Petition for Reconsideration cites several federal statutes and cases which guide state courts.

Article VI, Clause 3 of the United States Constitution states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Supremacy Clause of Article VI of the U.S. Constitution mandates that states must provide hospitable forums for federal claims and the vindication of federal rights (*Felder v. Casey*, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988)).

The Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the Supreme Court ruled: “A state statute is void to the extent that it actually conflicts with a valid Federal statute”.

Holders Reply Exceptions at 4.

II. NEW OR NOVEL ARGUMENTS

1st Group of New or Novel Arguments: SMART METERS

A. Federal Communications Commission (FCC) regulations have been called into question in federal court.

1. Met-Ed claims they are within FCC regulations, and the Commission agrees.
2. The Commission’s Opinion makes reference to FCC regulations several times:

... [T]he Complainant... avers that the current Federal Communications Commission (FCC) guidelines are not sufficient to protect human health. Exc. at 3-6; 11-12.” Opinion at 23.

Met-Ed avers that credible and substantial record evidence demonstrates that its smart meters comply with all applicable safety requirements of the FCC. R. Exc. at 5 (citing Met-Ed M.B. at 19-20). *Id.* at 24.

Met-Ed addresses the Complainant’s arguments that the FCC guidelines are inadequate. Met-Ed contends that the Complainant is not an expert and

presented no expert testimony that contradicts Dr. Davis' findings and conclusions. R. Exc. at 14 (citing Met-Ed M.B. at 24-25)." *Id.* at 27.

3. Similarly, the ALJ's Initial Decision made reference to FCC regulations no less than **twelve (12) times**:

The smart meters deployed by Met-Ed comply with all safety requirements and standards established by the Federal Communication Commission (FCC) and American National Safety Institute (ANSI). Met-Ed St. 1-R at 11. I.D. at 7.

The FCC has determined safe maximum permissible exposure limits for non-portable devices, including smart meters, which transmit RF signals. Met-Ed St. 2-R at 10-13; Met-Ed Exh. CD-2. *Id.* at 9.

The RF levels from the AMI meters being used by Met-Ed comply with the applicable FCC RF exposure limit. Met-Ed St. 2-R St. 1 at 13. *Ibid.*

The peak RF field from the meters used by Met-Ed is 65 times lower than the FCC's safety standards. Met-Ed St. 2-R at 13. *Ibid.*

Smart meters are probably the weakest emitters of RF that are commonly encountered and their level of exposure are tens of thousands of time below the safe limit standards that the FCC has promulgated. Tr. 176. *Id.* at 10.

Dr. Davis...testified...that the RF field levels from the meters more than comply with FCC standards. *Id.* at 17.

Ms. Hendin refutes Dr. Davis' reliance on FCC guidelines as just that – guidelines – not statutes. *Id.* at 20.

Ms. Hendin further addresses other aspects of Dr. Davis' reliance on the FCC guidelines and argues that "at best, Dr. Davis does not address the contemporary findings, and at worst, his clear bias has caused him to ignore them." *Ibid.*

Ms. Hendin adds: Met-Ed failed to conduct any long-term testing of its smart meters. Ms. Hendin cannot be faulted for the fact that no such testing was conducted or required. Ms. Hendin does not wish to participate in this unethical large-scale experiment on humanity when there is ample scientific information available to the Commission and the public that shows that harmful effects at RF levels that are orders of magnitude below that of the FCC guidelines, and no evidence showing the long-term effects of the continuous exposure or the cumulative effect of the combined exposure an individual utility customer will experience. *Ibid.*

Met-Ed then responded to Ms. Hendin’s arguments regarding compliance with **FCC** guidelines as well as her mischaracterization of the findings of the scientific and medical communities. *Id.* at 22.

Dr. Davis also testified that “at only one meter (39.37 inches) away from an Itron meter the radiofrequency field levels for the LAN radio are 62,000 times smaller than the **FCC**’s safety standards and for the Zigbee radio are 527,000 smaller than the **FCC**’s safety standards.” *Id.* at 11-12; *see also*, Met-Ed Exh. CD-2. Even the peak RF field levels from the radios in meters is 65 times lower than the **FCC**’s safety standards and the ZigBee radio is 806 times lower than the **FCC** standards. *Id.* at 30.

Certainly, if a separate agency or judicial venue – perhaps by the **FCC** or some similar agency with appropriate expertise – were to determine that smart meters cause adverse health effects, that determination could be used in a Commission proceeding to establish that the use of smart meters in Pennsylvania violates the Public Utility Code. *Id.* at 32. (all emphases added *supra*)

4. **Clearly, FCC regulations loom large in the Commission’s assessment of the safety of smart meters.**

5. Since the PUC stay began (November 4, 2020), an important new development has occurred that the Commission should consider. FCC regulations have been called into question in a United States Court of Appeals case, *Environmental Health Trust, et al. v. Federal Communications Commission and United States of America*, District of Columbia Circuit, No. 20-1025, Decided August 13, 2021. **The Court ruled the FCC ignored scientific evidence and failed to provide a reasoned explanation for its determination that its 1996 regulations adequately protect the public against all the harmful effects of wireless radiation.** The Court remanded.

... [The FCC failed] ... to provide a reasoned explanation for its **determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer.** It must, in particular, (i) provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines, (ii) address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation [such as smart meters], the ubiquity of wireless devices, and other technological developments that have occurred since the [Federal Communications] Commission last updated its guidelines, and (iii)

address the impacts of RF radiation on the environment [sic]...
**we...conclude that the Commission's cursory analysis of material
record evidence was insufficient as a matter of law.** (emphases added)
USCA Case #20-1025 Document #1910111 Filed: 08/13/2021 at 30-31.

6. The FCC has been instructed to study a 24-page list of documents showing harm from radiofrequency radiation so it can come up with new guidelines for radiofrequency safety. See Attachment II.

7. As cited in the Introduction *supra*, Article VI, Clause 3 of the United States Constitution, the Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions.

8. THEREFORE: The PUC Commission's Opinion did not take *EHT v. FCC* into account.

The US Court of Appeals for the District of Columbia on August 13, 2021 ruled against the FCC because they could not provide evidence to support their guidelines and they ignored evidence of harm. The PUC cannot render a judgment that relies, in part, on FCC regulations that are currently being questioned in federal court. By taking *EHT v. FCC* into consideration, the Commission could now say that the **FCC regulations that previously claimed that radiofrequency radiation, such as that emitted by smart meters, was safe, are being reevaluated by court order.** Until the outcome of *EHT v. FCC* is known, the PUC cannot make a sound decision about Complainant's case, and should consider putting a stay on Complainant's case until results are known. The stay could apply to all current smart meter complainants. When the results do come in, the Commission could follow what ALJ Cheskis said with clear foresight in his Initial Decision:

Certainly, if a separate agency or judicial venue – perhaps by the FCC or some similar agency with appropriate expertise – were to determine that smart meters cause adverse health effects, that determination could be used in a Commission proceeding to

establish that the use of smart meters in Pennsylvania violates the Public Utility Code.
I.D. at 32. (emphasis added)

This is hugely relevant to the Commission's ruling in the current case.

B. State and federal statutes require Electric Distribution Companies (EDCs) to warn and protect the public from danger.

1. The Opinion said:

The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), **an EDC must use reasonable efforts to properly warn and protect the public from danger** and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. See, 52 Pa. Code § 57.28(a)(1). See, Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632 (Order entered April 20, 2017) (Electric Safety Final Rulemaking Order). (emphasis added)

Opinion at 9, fn. 3.

2. The Initial Decision quoted Complainant's Reply Brief: "Met-Ed failed to conduct any long-term testing of its smart meters." I.D. at 20.

3. The new argument here is that such testing is required by law, in:

- a. The National Environmental Policy Act (NEPA)
- b. 42 U.S. Code § 4332(C)

4. Both laws are cited in *Environmental Health Trust, et al. v. Federal Communications Commission and United States of America, supra*:

- a. The National Environmental Policy Act ("NEPA") and its implementing regulations require federal agencies to "establish procedures to account for the environmental effects of [their] proposed actions." *Am. Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027, 1032 (D.C. Cir. 2008) (per curiam).
- b. If an agency proposes a "major Federal action[]" that stands to "significantly affect[] the quality of the human environment," the agency must prepare an environmental impact statement ("EIS") that examines the

adverse environmental effects of the proposed action and potential alternatives. 42 U.S.C. § 4332(C).

EHT v. FCC at 4.

5. Relevant excerpts from 42 U.S. Code § 4332 state:

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

...

(A)

utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking **which may have an impact on man's environment;**

(B)

identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will **insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking** along with economic and technical considerations;

(C) **include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—**

(i)

the environmental impact of the proposed action,

(ii)

any adverse environmental effects which cannot be avoided should the proposal be implemented... (emphases added)

6. THEREFORE: The PUC Commission should include in its deliberations that no testing of the safety of smart meters has been conducted as required by at least two federal laws, the National Environmental Policy Act (“NEPA”) and 42 U.S. Code § 4332. With such consideration, the Commission would put a stay on Complainant’s case until such testing on the safety of smart meters has been done. The stay could apply to all current smart meter complainants.

C. The meter that caused Complainant harm was a smart meter.

1. One of the main issues in this case is the type of meter that previously caused Complainant to experience severe physical symptoms.

1. A letter by Complainant's physician, which is already entered as evidence, named the general type of meter as a smart meter.

2. The Opinion and Order cites Met-Ed's Replies:

Met-Ed argues that the Complainant's assertions that she was made ill by the gas utility's smart meter and then recovered when the meter was removed are not based on substantial evidence as Ms. Hendin is not aware of the model of meter used by the gas utility...and if it was an RF-emitting smart meter. R. Exc. at 8, 11 (citing Tr. at 59-60).

Opinion at 26.

3. Met-Ed's Reply to Exceptions speaks about the type of meter several times:

... Complainant's argument that any symptoms she has suffered are attributable to a smart meter hinges on her unsubstantiated belief that the meter used for her gas utility service, is an RF-emitting smart meter. Met-Ed MB at 23; Met-Ed RB at 18-19 (citing the Highly Confidential testimony of Dr. Kracht, the Complainant's treating position [sic]). Met-Ed RB at 18-19.

Met-Ed Reply to Exceptions at 8.

... Complainant's assertions that she suffered any symptoms from a gas utility smart meter, and that these symptoms retreated due to its removal, are not based on substantial evidence and should be denied. Met-Ed RB at 18-19.

Ibid.

... Complainant's argument that any symptoms she has suffered are attributable to a smart meter hinges on her unsubstantiated belief that the meter used for her gas utility service is an RF-emitting smart meter. Met-Ed MB at 23; Met-Ed RB at 18-19.

Id. at 11.

... [T]here is no scientific or medical basis upon which the ALJ or Commission could conclude that the symptoms alleged by Ms. Hendin were attributable to a smart meter. *See* Met-Ed MB at 23; Met-Ed RB at 18-19.

Ibid.

The Complainant herself also simply has no first-hand knowledge of the make and model of this meter, and does not know if it was, in fact, removed and exchanged.

Ibid.

4. Complainant recently found an email from 2012 stating that the model of meter used by the gas utility was a Sensus FlexNet, which is a smart meter. See Exhibit A1.
5. When Complainant found this important information, she submitted a Petition to Reopen the Proceeding for the Purpose of Submitting Additional Evidence, adhering to 52 Pa.

Code:

§ 5.571. Reopening prior to a final decision.

(a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

6. She efiled this additional evidence to the PUC on Sunday, January 21, 2024. It was posted the next day, which was prior to the issue of the Opinion and Order on January 26, 2024.
7. This is relevant information in this case. 225 Pa. Code § 401, Test for Relevant Evidence says:

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) **the fact is of consequence in determining the action.** (emphasis added)

8. THEREFORE: The model of meter that caused Complainant harm was a Sensus FlexNet, which is a smart meter. This information should lead the Commission to rule in Complainant's favor, compelling Met-Ed to provide her with an electromagnetic analog meter, and definitely not install a smart meter.

D. Independent of the question of cause, harm occurred.

1. The issue of harm that a smart meter inflicted on Complainant is presented here in a new argument.

2. Rather than using the usual term, “Complainant,” I will use the first person to convey how personal this is.
3. The word “harm” is addressed in Title 18 of the Pennsylvania Consolidated Statutes, Crimes and Offenses, § 2602, Definitions, where the term “Bodily injury” is defined as the “impairment of physical condition or substantial pain.”
4. My medical records show that previous exposure to a smart meter led to bodily injury:

Ms. Hendin already suffered previous symptoms from a previous smart meter. After UGI Utilities, Inc. installed a smart meter on Ms. Hendin’s residence, she developed physical symptoms that she had never experienced before. These were recorded by Dr. Kracht, her treating physician, and included frequent irregular heartbeats / palpitations, neurologic symptom of dizziness, and gastro-intestinal symptoms of constipation and abnormal stools. (Exhibits 9, 10, 11, St. of Hendin at 180-182, Hendin Direct, Dec. 19, 2019 Transcript at 29:11-18.) She also experienced cognitive dissonance, or “brain fog” (St. of Hendin at 188-189; Hendin Direct, Dec. 19, 2019 Transcript at 29: 14-17) and joint swelling in both hands, with decreased mobility, joint pain, joint stiffness, aches, stinging, and pinching. (Id. at 34:12-25) “I’d never had anything like this in my life,” she said. (Id. at 34: 19). Ms. Hendin also suffered insomnia and fatigue. (Id. at 35:14; Exhibit 12; St. of Hendin at 182). Most of the symptoms, except the joint pain and insomnia, subsided [as soon as] the smart meter was removed. The joint pain and insomnia subsided several weeks later. Hendin Cross, Dec. 19, 2019 Transcript at 35:24-25; 36:1-8.

Hendin Main Brief at 30.

5. Said in the simplest way, harm has been demonstrated thus:
 - Before the smart meter, my health was fine.
 - When the smart meter was installed, bodily injury occurred.
 - When the smart meter was removed, bodily impairments disappeared.
6. This is separate from the question of “cause.” Science is not yet totally clear on all the causal mechanisms of harm from smart meters. But you don’t have to know how the harm mechanisms work in the body. There is still harm. (See new argument *infra*.)

7. If a smart meter were to be put on my residence, exposure would be non-stop, 24 hours a day, 7 days a week. *Id.* at 56. Based on my prior experience, this exposure will lead to what Title 18 of the Pennsylvania Consolidated Statutes, Crimes and Offenses, § 2602, defines as “Serious bodily injury,” which is “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or **protracted loss or impairment of the function of any bodily member or organ.**” This definition was amended to say, “Bodily injury which creates **any** risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” (emphases added) See *supra* for my bodily members and organs that were affected by a smart meter. A previous smart meter caused me bodily injury, and if another one were to be installed, it is expected to result in my serious bodily injury.
8. Notably, if Met-Ed attempts to install a meter which subsequently causes my harm again, the events that led to that harm will be thoroughly documented, and their corporate officers, directors and agents will be charged in Federal courts according to the U.S. Department of Justice, Justice Manual, Title 9: Criminal, 9-28.000 - Principles of Federal Prosecution Of Business Organizations, 9-28.210, and the U.S. Department of Justice, Office of Justice Programs, Corporate Criminal Liability, NCJ Number: 76451. Met-Ed officers, directors and agent will also be charged in Pennsylvania courts according to:
 - (1) Title 18, Crimes and Offenses, § 307, Subsection a-1.
 - (2) Title 18, Crimes and Offenses, § 307 Subsection (e-1).
 - (3) Title 15 Pa.C.S.A. §§ 513 and 1713.
 - (4) 18 Pa. C.S. § 5503 parts (a)(4), and (b): 1972, Dec. 6, P.L. 1482, No. 334, § 1, effective 6/6/1973.

9. THEREFORE: The Commission previously ruled that a smart meter should be installed on my residence. But they did not consider that the harm previously caused by a smart meter is adjudged “serious bodily injury” by the Pennsylvania Code, and that Met-Ed could face federal prosecution for inflicting this harm. “Some argue that the law cannot be divorced entirely from human emotions and that empathy and compassion play a crucial role in ensuring fairness and justice.” (Tal Gur, *Elevate Society*, website) Pennsylvania law allows for empathy and compassion. Rather than criminal charges, one hopes that compassion might touch the heart of Met-Ed. By taking this into consideration, the Commission would allow me to have an electromagnetic analog electric meter.

E. General cause is different from specific cause.

1. In several places the Opinion states that cause of harm must be proven. The following two statements give the essence:

... [I]n affirming the Commission’s *2019 Povacz Order*, the Pennsylvania Supreme Court held in *Povacz II* that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specially, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive **causal** connection” between the harm to human health and the RFs from the AMI meter. See, *Povacz II* at 1006. In that context, the lay opinion of the Complainant does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.* (emphasis added)

Opinion at 28.

Here the DCALJ properly concluded that the Complainant has failed to satisfy her burden of demonstrating that the smart meters deployed by Met-Ed emit electromagnetic frequencies that **cause** her adverse health effects. *I.D.* at 33, 47. (emphasis added)

Id. at 29-30.

2. The new argument presented here examines different types of cause, and that harm can be shown to have occurred without understanding the underlying causal mechanism.

3. As a Phi Beta Kappa graduate of the University of Chicago and a professional Somatic Therapist, Complainant is able to present these basic concepts. (The issue of Complainant's competence is not being reargued here.)
4. A case currently before the Commonwealth Court of Pennsylvania, *Alexia and Lawrence McKnight v. Pennsylvania Public Utility Commission and PECO Energy Company*, No. 1253 C.D. 2019, is directly relevant in Complainant's case. To summarize, a smart meter placed on the home of Dr. Alexia McKnight caused her severe symptoms. The meter was removed and her symptoms disappeared. The meter was then replaced and her symptoms reappeared. When the second meter was removed, her symptoms disappeared again.
5. As you may see, *McKnights* directly parallels Complainant's case. A smart meter was placed on Complainant's residence and she got very sick. When the meter was removed, she got well.
6. Complainant experienced actual harm from a previous smart meter. This is different from arguing safety violations based on theoretical grounds. Complainant's case states the **proximal cause as the smart meter itself**. *Id.* at 13. (emphases added here and *infra*)
7. In law, proximal, or proximate, cause means "legal cause," or **one that the law recognizes as the primary cause of an injury**. This is distinguished from distal cause, the larger context in which individuals carry out their actions.
<https://www.justia.com/injury/negligence-theory/actual-and-proximate-cause/>
8. Mechanisms including RF were likely involved, but other mechanisms were also likely, and the mechanisms might work alone or in combination. Regardless, all mechanisms must have ultimately had proximal source in the smart meter. *Ibid.*
9. Complainant's case involves **specific cause**, not **general cause**. The specific cause of Complainant's harm and suffering was the installation of a Sensus FlexNet smart meter.

This is regardless of the mechanisms by which smart meters operate. *McKnights* elucidates this question of causation:

Although often used in litigation, the concept of “general causation” stems from epidemiology. To establish general cause is to establish ‘inevitable’ cause. In general causation no personal history or medical testimony is needed because the scientific understanding implies *everyone* is at risk.

McKnights at 20.

10. A common analogy is the peanut story. It may be “safe” for a company to sell peanuts because they are “safe” in the general sense. However, this product level safety does not indicate that the product is “safe” for a person with a peanut allergy. General product safety does not establish specific safety because it does not any make statement about the safe use in specific circumstances. Specific causation is thus distinguished from general causation because it evaluates cause in a specific situation. *Ibid.*
11. Cases of specific causation are determined by evaluating the competing potential causes of a specific situation. In some cases, questions may come up about general causation and/or science. However, the case itself is not evaluated solely based on scientific evaluation or by general causation. The proof burdens do not relate to evidence of risk implied by scientific study. With specific causation, the proof burdens relate to the evidence of specific events that took place. *Id.* at 20-21.
12. Another way to look at this is the “but for” argument. The but-for test is a test commonly used in law to determine actual causation. The test asks, “But for the existence of X, would Y have occurred?” (https://www.law.cornell.edu/wex/but-for_test) The proximal ‘but for’ cause was the installation of the Sensus FlexNet meter. But for the Sensus FlexNet meter, Complainant would not have had her severe symptoms.

13. To emphasize, the case for specific causality is established because presence of the Sensus FlexNet meter on Complainant's residence was concurrent with the start of her symptoms, and because removal of the smart meter resolved the symptoms.
14. The proximal cause is known. Knowledge of intermediate mechanisms do not matter in the determination of a proximal cause or medical decision making. *Id.* at 37.
15. The PUC tried to aver the smart meter could not be causal because Met-Ed experts testified that RF (radiofrequency radiation) causality was not established by science. This ignores the evidence of Complainant's witnessed events. It also makes no sense. Harm to Complainant may simply have proceeded via some mechanism other than RF and science may be incomplete. Reality occurs despite our studying it or completely understanding it. *Id.* at 39.
16. THEREFORE: In its Opinion, the Commission stated that Complainant must prove that a smart meter caused her harm by carrying out her burden of proof through a preponderance of the evidence. However, that ruling was based on general cause, whereas Complainant's case involves specific cause. Making this distinction would lead the Commission to allow Complainant to have an electromagnetic analog meter, and not force her to suffer again.

F. Installing a smart meter on Complainant's residence would constitute cruel and unusual punishment, citing the Pa. Code.

1. Title 51, Military Affairs, Chapter 58, § 5801, Sentencing, Cruel or Unusual Punishment says: "Punishment by...any...cruel or unusual punishment may not be...inflicted upon any person subject to this part..."

2. Obviously, this statute applies to the military. Yet a parallel exists. Given the proven history of her serious adverse reactions to a smart meter, installing a smart meter on her home would subject Complainant to cruel and unusual punishment.
3. THEREFORE: The Commission could consider this Pa. Code as precedent for the concept of banning cruel or unusual punishment, and thus rule that a smart meter not be placed on Complainant's residence.

G. Precedents for the electrically hypersensitive are being recognized under disability law.

1. The Initial Decision cited that "Dr. Kracht has been treating Ms. Hendin for electromagnetic hypersensitivity... Kracht St. 1 at 2-3." I.D. at 5.
2. The new argument here reports that:

...[T]here are precedents for the electrically hypersensitive specifically being recognized under disability law. Federal agencies already require accommodation under these laws. For example, the U.S. Department of Labor Job Accommodation Network specifically recognizes electrical hypersensitivity as a disability in its publication Accommodation and Compliance Series: Employees with Electrical Sensitivity and set forth reasonable accommodations employers can offer their sensitive employees. See <https://askjan.org/disabilities/Electrical-Sensitivity.cfm>.
Alexia and Lawrence McKnight v. Pennsylvania Public Utility Commission, No. 1253 C.D. 2019 at 51.
3. THEREFORE: Taking this precedent in disability law for the electrically hypersensitive, the Commission would rule that Complainant not be exposed to a smart meter on her residence and that she instead be given an electromechanical analog electric meter with no switched-mode power supply for metering and billing her electrical usage.

H. Complainant has the right to a pollution-free environment, which includes electromagnetic pollution.

1. This is a new argument that takes a broad view of the effect of smart meters on the environment, based on Article 27 of the Pennsylvania Constitution, which proclaims: “The people have a right to...the preservation of the natural...values of the environment.”
2. Radiofrequency transmission generated by human activity is not natural. It is not made naturally by the environment. It is made by humans.
3. Article 27 guarantees a citizen’s right to a pollution-free environment.
4. The public is accustomed to terms like “air pollution” and “water pollution.” New terms have entered the English language in recent years that can be found in scientific journals and in use by the general public: “**electromagnetic pollution**” and “**electrosmog.**” Two scientific articles in *Environmental Health Trust v. FCC* use these terms (See Attachment II):

12 2390-2439 Aug. 26, 2016 Heidi M. Lumpkin Biosystem & Ecosystem; Birds, Bees and Mankind: Destroying Nature by ‘**Electrosmog**’: Effects of Mobile Radio and Wireless Communication. Dr. Ulrich Warnke, Ph.D., 2007 (emphasis added)

120 6342- 6349 Apr. 8, 2014 M.K. Hickcox Biosystem & Ecosystem; The Dangers of **Electromagnetic Smog**, Prof. Andrew Goldsworthy, PhD.; 2007 (emphasis added)

5. The vast network of smart meters contributes to this electromagnetic pollution.
6. THEREFORE: If the Commission takes Article 27 of the Pennsylvania Constitution into consideration, it will rule in favor of reducing electrosmog by reducing the statewide network of smart meters. Complainant realizes this puts into question the entire smart meter network. Yet this argument needs to be stated.

2nd Group of New or Novel Arguments:
MET-ED

I. The law, as cited by both the Supreme Court and Commonwealth Court of Pennsylvania, compels Met-Ed to provide a reasonable accommodation.

1. The PUC’s Opinion did not take into account the ruling of the Commonwealth Court of Pennsylvania, which ruled decisively that accommodation of customer requests to avoid RF emissions from smart meters should be allowed:

...[A]s Consumers correctly argue, Act 129’s definition of ‘smart meter technology’ leaves the door open for accommodations of customer requests to avoid RF emissions from smart meters. *Povacz, et al. v. Pennsylvania Public Utility Commission*, PA Commonwealth Court, 241 A.3d 481 (Pa. Cmwlth. 2020) at 11.

Therefore, we conclude that Act 129 does not preclude either...[the utility company] or the PUC from accommodating a customer’s request to have RF emissions from that customer’s meter turned off ... or some other reasonable accommodation. We reverse that portion of the PUC’s decisions finding it lacked authority for accommodations of customers’ requests to avoid RF emissions. We remand to the PUC to allow consideration of Consumers’ requests for accommodations.... *Id.* at 13.

[T]he PUC’s position that Act 129 requires installation of wireless smart meters in all consumer residences is incorrect. Accordingly, the PUC is also incorrect in finding that ...[the utility company] may not or need not offer any accommodation to Consumers. *Id.* at 17.

... [T]he PUC appears to have based its decision largely on its conclusion that Act 129 mandated installation of wireless smart meters on every residence and did not permit the PUC to grant **any** form of relief to Consumers to accommodate their desire to avoid RF emissions. On remand, the PUC should consider whether reasonable accommodations should be provided in light of the conclusion that Act 129 does not preclude such accommodations of customers’ health concerns, regardless of proof of harm. *Id.* at 21.

... We reverse the PUC’s conclusion that it lacks authority to accommodate Consumers’ desire to avoid RF emissions from smart meters and vacate the PUC’s determination that such accommodation

would not be reasonable. On remand, the PUC should consider all reasonable accommodations, including, but not limited to, deactivation of the RF emitting functions of the smart meters; ...and installation of wired rather than wireless smart meters, if (as Consumers contend) such technology is available.” *Id.* at 22.

2. When *Povacz* was heard by the Pennsylvania Supreme Court, the Court said:

An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501.

Maria Povacz v. Pennsylvania Public Utility Commission, J-77A-L-2021 at 7.

3. However, the Supreme Court opened the door for utilities to provide an accommodation without proving a Section 1501 violation:

See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 “as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public”) and 1501 (requiring utility to take remedial action “as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public”). **This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.** *Ibid.* (emphasis added)

4. In the past, Complainant worked diligently with Met-Ed to try to find an accommodation:

She met with Met-Ed, twice to find a way to relocate the meter. Because of the topography of the land and Met-Ed’s specifications, this was not possible, and was therefore not a reasonable accommodation. *Hendin* Main Brief at 64-65. *Hendin* Exceptions at 7-8. (This is not being reargued here.)

5. Complainant recently contacted Met-Ed lawyers, Lauren Lepkoski and Tori Giesler, to discuss further accommodation options. Complainant left phone messages for Ms. Lepkoski on January 8, and for both on January 10, 2024. Complainant also sent emails to both lawyers on January 10, 2024, and received a response from Ms. Giesler saying, “I assure

you we'll be in touch...shortly." As of this writing, a month later, neither Met-Ed lawyer has contacted Complainant.

6. **THEREFORE:** The Commission's Opinion did not take into account the rulings of either the Commonwealth Court or the Supreme Court, both of which ruled decisively that accommodation of customer requests to avoid smart meters should be allowed. When the Commission takes this into account, they will compel Met-Ed to grant a reasonable and workable accommodation.

J. Two concepts in Pennsylvania statutes offer precedent for kindness in considerations of accommodation.

1. **Benevolent Gesture** – The General Assembly of the Commonwealth of Pennsylvania enacted the Benevolent Gesture Medical Professional Liability Act, Oct. 25, 2013, P.L. 665, No. 79, Cl. 40. While this applies to providing for benevolent gestures relating to medical professional liability insurance, the phrase itself evokes kindness.
2. **Compassionate Release** – An Informational Guide to Compassionate Release in Pennsylvania, 2014, allows sick prison inmates to be released from prison early if certain requirements are met. The requirements are laid out in Pennsylvania statute 42 Pa. C.S. § 9777.
3. **THEREFORE:** Complainant has shown that a smart meter caused her bodily harm, so the Commission could advise Met-Ed to look to the Pa. Code and consider benevolence and compassion in finding a reasonable accommodation that is acceptable to both parties.

K. The Commission should urge Met-Ed/FirstEnergy to take a cooperative, rather than adversarial, approach to allowing Pennsylvania citizens to opt out of a smart meter.

1. This is not so much a novel *legal* argument as a novel *logical* argument.
2. Both the ALJ’s Initial Decision and the Commission’s Opinion and Order maintain an adversarial relationship between Met-Ed and Complainant. However, the Commission could consider supporting a cooperative approach.
3. In Pennsylvania, FirstEnergy spends considerable funds on lobbying. Its 2022 Federal Lobbying Report shows these expenditures:

1 st Quarter:	\$620,000
2 nd Quarter:	\$150,000
3 rd Quarter:	\$140,000
4 th Quarter:	<u>\$422,000</u>
Total:	\$1,332,000

Source: <https://firstenergycorp.com/content/dam/investor/files/lobbying-reports/2022-Federal-Lobbying-Reports.pdf>

4. Complainant includes these figures here, not to criticize FirstEnergy, but to show that the company has the resources—over a million dollars spent in 2022—to lobby the Pennsylvania legislature to pass a smart meter opt-out bill.
5. Complainant proposes that the Commission take a fresh, cooperative stance and encourage Met-Ed/FirstEnergy to put its considerable resources behind the passage of a bill that will allow smart meter opt-outs. This could benefit both the PUC and the utility companies:
 - a. Utility companies and the PUC would save the inordinate amounts of time and money being spent to litigate smart meter opt-out cases.
 - b. As scientific research proceeds apace, utilities and the PUC risk the possibility that harm from smart meters will be proved (see, e.g., *EHT v. FCC, supra*), which could result in a flood of litigation.

6. THEREFORE: The Commission could rule that it would be prudent for utility companies, such as Met-Ed, to support smart meter opt-out legislation, both to reduce their current litigation and to avert future litigation.

L. FirstEnergy has been found guilty of bribery of public officials.

1. Since the stay on smart meter cases on November 4, 2020, FirstEnergy, Met-Ed's parent company, has been involved in accusations of bribery. Some of the cases are:

United States District Court for the Southern District of Ohio Eastern Division, *Owens v. FirstEnergy Corp.*, Case No. 2:20-cv-03785 (S.D. Ohio Nov. 23, 2020)

Deferred Prosecution Agreement filed on July 22, 2021, in *United States v. FirstEnergy Corp.*, Case No. 1:21cr00086 (SDOH).

Ohio v. FirstEnergy Corp., Ohio Ct. Com. Pl., No. 20-CV-6281.
The federal criminal case is *United States v. Householder*, S.D. Ohio, No. 1:20-cr-00077-TSB. Guilty verdicts reached 3/9/23.

Shareholder (derivative) lawsuits have also been filed against FirstEnergy. Private communication with Alex Ebert, Senior Correspondent, Bloomberg Industry Group, January 16, 2024.

2. The United States Attorney's Office published the following statements:

FirstEnergy Corp. signed a deferred prosecution settlement in July 2021, **agreeing to pay a \$230 million penalty for conspiring to bribe public officials and others...** FirstEnergy Corp...admits it conspired with public officials and other individuals and entities to pay millions of dollars to public officials in exchange for specific official action for FirstEnergy Corp.'s benefit. (emphases added)

United States Attorney's Office, Southern District of Ohio, July 22, 2021.

Former Ohio House Speaker [was] sentenced to 20 years in prison for leading racketeering conspiracy involving \$60 million in bribes...to pass and uphold a billion-dollar nuclear plant bailout [for FirstEnergy Corp.]. (emphases added)

United States Attorney's Office, Southern District of Ohio, June 29, 2023.

3. This new argument is meant to include the facts of the legislative record. It is not meant to give evidence of the character of Met-Ed/FirstEnergy, which is prohibited by Pa. Code Title 225, Rule 404. Character Evidence; Other Crimes, Wrongs, or Acts.
4. THEREFORE: As the Commission considers this legislative record of crimes committed by FirstEnergy, the Commission should make principles of honesty, fairness, and justice paramount in its deliberations in Complainant's case.

M. Contrary to the Commission's Opinion, Met-Ed is a state actor.

1. The Commission's Opinion and Initial Decision claimed that constitutional arguments brought by Complainant do not apply because Met-Ed is not a state actor:

The DCALJ concluded that Ms. Hendin's constitutional arguments do not apply because Met-Ed is not a state actor, which is required within the constitutional analysis. I.D. at 43

Opinion at 18.

Met-Ed provides that it is not a state actor and therefore cannot violate the Complainants' constitutional rights. R. Exc. at 16-17.

Id. at 31.

To the extent the Complainant's Exception No. 9 asserts that the ALJ erred by not finding that the installation of a smart meter constitutes a violation of the Complainant's constitutional rights, we shall deny the Exception. See Exc. at 9-11.

Ibid.

2. The actions of Met-Ed in Complainant's case are, and have been, **compelled** by the State.
3. The Commission's policy of mandatory installation of AMI wireless smart meters is such that, in addition to willful acquiescence, there exists sufficient involvement, influence, knowledge, and sanctioning by the Commission in the conduct engaged in by Met-Ed against the Complainant and the citizens of this Commonwealth to establish that Met-Ed

acted and is acting, along with the Commission, under color of law as an agent of the State and is thereby a “state actor.” *Holders* Reply Brief, December 19, 2023, Attachment I.

4. Because this is a complex topic, this new argument presents relevant cases in chronological order.
5. Back in 1941, a case examined the issue of state action:

“Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ‘under color of’ state law.” *United States v. Classic*, 313 U.S. 299, 326 (1941).

6. In 1973, the U.S. Court of Appeals for the Sixth Circuit, in *Palmer v. Columbia Gas of Ohio*, 479 F.2d 153, held:

STATE ACTION

...

... When a privately owned company enjoying a monopoly is in the business of providing a necessity of life it cannot, for purposes of evaluating its relationship to its customers and to the state in which and under whose control it operates, be considered as an independent, free market, common law competitor.

...

Virtually every aspect of this company’s operations are subject to the dictates of state statute or to the regulation of the Public Utilities Commission...

...

The important factor is not the number of statutes and regulations which pertain to the operation of a utility company, but the extent to which the state has reserved power to control the operations of a public utility, and the amount of power given to the utility which is usually reserved to the state.

...

[T]he state has granted to utilities powers not usually possessed by private corporations.

...

In addition, we must consider the fact that **the furnishing of natural gas to the citizens ... is a legitimate public function which itself has been held to satisfy the state action requirement;** when a public function is

performed by a private firm whose freedom of decision making has been restricted by governmental regulation and whose freedom of action has been severely circumscribed, the actions of the otherwise private firm become subject to the constitutional limitations placed upon state action. ... **When private individuals or groups are endowed by the state with functions or powers which are of a governmental nature, they become instrumentalities of the state...** *Evans v. Newton*, 382 U.S. 296, 299, 86 S.Ct. 486, 15 L.Ed.2d 373 (1966).

In summary, inasmuch as the operations of the appellant company are fully circumscribed by an all-encompassing system of state statutes...and the supervision of the state regulatory authority, and inasmuch as the state...is significantly involved in virtually every one of the company's activities, including the specific activity complained of, the conclusion that the regulatory activities of the state have insinuated it into a position of interdependence with the company so that it must be recognized as a joint participant with the company is inescapable. *Burton, supra*, 365 U.S. at 725, 81 S.Ct. 856. (all emphases added *supra*)

Palmer v. Columbia Gas of Ohio, U.S. Court of Appeals for the Sixth Circuit, 479 F.2d 153 (1973).

7. In the next year, 1974, the case of *Jackson v. Metropolitan Edison Co.* examined the issue of state action:

“... [A] customer sued a privately owned utility under the Civil Rights Act of 1871 for improperly shutting off her service without providing her notice or a hearing. The Supreme Court asked whether there was a close enough nexus between the state and the utility for the acts of the latter to be treated as those of the former. Although the utility was heavily regulated by the state, it was held not to be a state actor. The Court reasoned that the provision of utility service is not generally an ‘exclusive prerogative of the State.’ Also absent was the symbiotic relationship between the utility and the state found in previous cases.” (Congressional Research Service, CRS Report for Congress, Document R42338, February 3, 2012.)

“Though its holding [in *Jackson*] was broad **the Court did not foreclose the possibility that a privately owned utility could be a state actor under different circumstances.**” (CRS Report for Congress, Document R42338, *supra*) (emphasis added)

“[T]he inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the

action of the latter may be fairly treated as that of the State itself.” *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351.

8. In a dissenting opinion on the divergence of the Court’s analysis of ‘state action’ in *Jackson v. Metropolitan Edison*, Justice Douglas wrote:

... May a utility have complete immunity under federal law when the State allows its regulatory agency to become the prisoner of the utility or, by a listless attitude of no concern, to permit the utility to use its monopoly power in a lawless way?

...

It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling.

...

Section 1983 was designed to give citizens a federal forum for civil rights complaints wherever, by direct or indirect actions, **a State, acting “in cahoots” with a private group or through neglect or listless oversight, allows a private group to perpetrate an injury. The theory is that in those cozy situations, local politics and the pressure of economic overlords on subservient state agencies make recovery in state courts unlikely.**

...

The **Public Utility Commission is given extensive control over utility rates**, Pa. Stat. Ann., Tit. 66, 1141 et seq. (1959 and Supp. 1974-1975), **and over the character and quality of utility services and facilities**, 1171, 1182-1183; **it is given broad power to receive and investigate complaints**, 1391, 1398, **and to regulate and supervise the activities, rules, and contractual undertakings of utilities**, 1171, 1341- 1343, 1360. (all emphases added *supra*)

Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

9. In the same decision, Justice Douglas further named Met-Ed as a state actor when he addressed the particular issue of termination of service.

10. Let us quote from another case first to describe the broad concern:

“Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety.” (*Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978).)

11. Justice Douglas named Met-Ed as a state actor when considering termination of service:

In the aggregate, these factors depict a monopolist providing essential

public services as a licensee of the State and within a framework of extensive state supervision and control. **The particular regulations at issue, promulgated by the monopolist, were authorized by state law and were made enforceable by the weight and authority of the State. Moreover, the State retains the power of oversight to review and amend the regulations if the public interest so requires. Utilities' actions are sufficiently intertwined with those of the State, and its termination-of-service provisions are sufficiently buttressed by state law to warrant a holding that utilities' actions in terminating householders service were "state action" for the purpose of giving federal jurisdiction over respondent under 42 U.S.C. 1983.**

...

Section 1983 addresses itself to grievances inflicted "under color of any statute, ordinance, [or] regulation . . . of any State. . . ." **The regulatory regime imposed by Pennsylvania on respondent utility seems to fit this statute like a glove.** Electrical service, being a necessity of life under the circumstances of this case, is an entitlement which under our decisions may not be taken without the requirements of procedural due process. *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Palmer v. Columbia Gas of Ohio, Inc.*, 479 F.2d 153 (CA6 1973).

...

"Actions of the state that are considered in any analysis should include passive as well as active state involvement. The essential ingredient in this respect is knowledge. If the state is cognizant of the challenged activity and chooses not to prevent it, then for all purposes encouragement of the activity is taking place." *The State Action Doctrine in State and Federal Courts*, Hala Ayoub, Florida State University Law Review, Vol. 11, 1984.

...

... In the present case, however, respondent is not just one person among many; it is the only public utility furnishing electric power to the city. When power is denied a householder, the home, under modern conditions, is likely to become unlivable.

...

The utilities' threats of termination of service may never have been subjected to the same degree of state scrutiny and approval, whether explicit or implicit, that was present in *Public Utilities Comm'n v. Pollak*, 343 U.S. 451 (1952). Yet **in the present, the State is heavily involved in termination procedures**, getting into the approved tariff a requirement of "reasonable notice." **Pennsylvania has undertaken to regulate numerous aspects of similar operations in some detail, and a "hands-off" attitude of permissiveness or neutrality toward the operations in this case is at war with the state agency's functions of supervision over utilities' conduct in the area of servicing householders**, particularly where (as here) the State would presumably lend its weight and authority to facilitate the enforcement of respondent's published

procedures. Cf. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970); *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956); *Shelley v. Kraemer*, 334 U.S. 1 (1948). (all emphases added *supra*)

12. The *Jackson* case occurred in 1974. In 1982, *Lugar v. Edmondson Oil*, 457 U.S. 922, again examined the issue of state action:

“[W]e have consistently held that a private party’s joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a ‘state actor’ for purposes of the Fourteenth Amendment. The rule in these cases is the same as that articulated in *Adickes v. S. H. Kress & Co.*, *supra*, at 152, in the context of an equal protection deprivation: **“Private persons, jointly engaged with state officials in the prohibited action, are acting “under color” of law for purposes of the statute. To act “under color” of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,”** quoting *United States v. Price*, 383 U.S., at 794.”

“Our cases have accordingly insisted that the conduct allegedly causing the deprivation of a federal right be fairly attributable to the State. These cases reflect a two-part approach to this question of ‘fair attribution.’ First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. ... Second, the party charged with the deprivation must be **a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.**” (all emphases added *supra*)

Lugar v. Edmondson Oil, 457 U.S. 922 (1982).

13. In the same year as *Lugar*, 1982, other cases examined the issue of state action:

“[I]f the government coerces, influences, or encourages the performance of the act, it is state action.” (See e.g., *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).) (emphasis added)

“A state can be held liable for exercising coercive power or significantly encouraging, either overtly or covertly, a private party.” *Blum v. Yaretsky*, 457 U.S. 991 at 1002-03 (1982). (emphasis added)

14. In sum, from the perspective of these opinions, Met-Ed is a state actor. The actions of Met-Ed in the installation of smart meters are, and have been, **compelled** by the State. By virtue

of Met-Ed's actions directly pursuant to the Pennsylvania Public Utility Commission policy and implementation order mandating system-wide installation of smart meters, the Company's "conduct has sufficiently received the imprimatur of the State so as to make it 'state' action for purposes of the Fourteenth Amendment." *Blum v. Yaretsky, supra*.

15. Principle reference for the argument *supra* is *HOLDERS' Reply Brief*, December 19, 2023, Attachment 1.

16. To repeat from *supra*, the Commission's policy of mandatory installation of AMI wireless smart meters is such that, in addition to willful acquiescence, there exists sufficient involvement, influence, knowledge, and sanctioning by the Commission in the conduct engaged in by Met-Ed against the Complainant and the citizens of this Commonwealth to establish that Met-Ed acted and is acting, along with the Commission, under color of law as an agent of the State and is thereby a 'state actor'.

17. THEREFORE: The Commission said that Met-Ed is not a state actor, but when they take into account this new argument, they will see that Met-Ed is, in fact, a state actor. By taking this into consideration, the Commission's rulings on all constitutional issues in this case must be reexamined, and the Commission would then find for the Complainant in these constitutional issues.

3rd Group of New or Novel Arguments:
PENNSYLVANIA PUBLIC UTILITY COMMISSION
AND ITS ADMINISTRATIVE LAW COURTS

N. The Commission should consider the undue burden standard that has been established in the United States Supreme Court.

1. The undue burden standard states that a legislature cannot make a particular law that is too burdensome or restrictive of one's fundamental rights.

2. The Commission has fought for acceptance of a smart meter mandate through Act 129. Yet the undue burden standard sheds new light on this issue.
3. Complainant's constitutional rights are inherently her rights. (The specific rights in question will not be reargued here.)
4. The Pennsylvania Legislature, in Act 129, in the section applying to smart meters, was **not** too restrictive of Complainant's fundamental rights **if** that section were interpreted as **not** a mandate.
5. The PUC's Implementation Order of April 15, 2010, was too burdensome and restrictive of Complainant's fundamental rights, as is the PUC's continued forcing of smart meters on unwilling complainants.
6. The PA Supreme Court, in *Povacz II*, decided that Act 129 is a universal mandate for smart meters. That decision violates the undue burden standard as it is too burdensome or restrictive of Complainant's fundamental rights.

7. U.S. Supreme Court cases that have used the undue burden standard include:

Morgan v. Virginia, 328 U.S. 373 (1946) – In a 7-to-1 ruling, U.S. Supreme Court Associate Justice Stanley Forman Reed fashioned an “undue burden” test to decide the constitutionality of a Virginia law requiring separate but equal racial segregation in public transportation.

City of Akron v. Akron Center for Reproductive Health, 462 US 416 (1983) – The standard has been used in cases involving state restrictions on a woman's access to abortion.

Planned Parenthood v. Casey, 505 U.S. 833 (1992) – Supreme Court Justice John Paul Stevens, in his partial concurrence, partial dissent to *Casey*, further defined undue burden by saying, “[a] burden may be ‘undue’ either because [it] is too severe or because it lacks a legitimate, rational justification.” At 920.

8. THEREFORE: The question of whether Act 129 represents a mandate for smart meters is not being reargued here. Instead, in this new and novel argument, the undue burden

standard as fashioned by the Supreme Court of the United States is being applied to the burdensome and restrictive nature of Act 129 (the section on smart meters) for the Complainant and others. The question is, Where does responsibility for the undue burden standard lie? With the PUC, the Supreme Court, or the Legislature? Whatever the answer, Complainant believes that the undue burden standard should be met by nullifying the section of Act 129 that has been interpreted as a universal mandate for smart meters. Until this undue burden standard issue is resolved, no further installations of smart meters should occur.

O. The major questions doctrine addresses the authority of agencies in administrative law cases, and as such raises the question of the right of the Commission to act as it did in Complainant's case.

1. The major questions doctrine is a relatively new principle applied in United States administrative law cases. It states that courts will presume that **Congress does not delegate to executive agencies issues of major political or economic significance.**
2. Unlike several other countries, the United States does not have a separate system of administrative courts. Instead, administrative law judges preside over tribunals within executive branch agencies. https://en.wikipedia.org/wiki/Administrative_court
3. Before joining the Supreme Court, Brett Kavanaugh, then a judge on the D.C. Circuit, endorsed a broad interpretation of the major questions doctrine as a constitutional limitation on agency power in 2017, in a dissent in *U.S. Telecom Association v. FCC*, 855 F.3d 381, 422, saying that “[t]he major rules doctrine helps **preserve the separation of powers and operates as a vital check on expansive and aggressive assertions of executive authority.**” (emphasis added)

4. United States Supreme Court Chief Justice John Roberts summarized the major questions doctrine in *West Virginia v. Environmental Protection Agency*, 2022:

[I]n certain extraordinary cases, **both separation of powers principles and a practical understanding of legislative intent make us “reluctant to read into ambiguous statutory text” the delegation claimed to be lurking there.** *Utility Air*, 573 U. S., at 324. To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to “clear congressional authorization” for the power it claims. *Ibid.* (emphasis added)

...

As for the major questions doctrine “label[ed],” post, at 13[a], it took hold because it refers to an identifiable body of law that has developed over a series of significant cases all addressing **a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted.** Scholars and jurists have recognized the common threads between those decisions. So have we. See *Utility Air Regulatory Group v. Environmental Protection Agency* (2014), 573 U. S., at 324 (citing *Brown & Williamson* and *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218 (1994)); *King v. Burwell*, 576 U. S. 473, 486 (2015) (citing *Utility Air*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), and *Gonzales v. Oregon*, 546 U.S. 243 (2006)). (emphasis added)

5. THEREFORE: In the Commission’s actions relative to smart meter opt outs, the major questions doctrine raises the issue of, Is this the purview of the PUC? The major questions doctrine would say it is not. This had broad ramifications that would lead the Commission to provide Complainant, and all smart meter opt-out complainants, with favorable rulings.

P. The powers of PUC’s Administrative Law Courts extend beyond what has been legally delegated, as adjudicated in the U.S. Court of Appeals.

1. Administrative-law courts (ALCs) are courts inside agencies, such as the Administrative Law Courts within the Pennsylvania Public Utility Commission.
2. The United States Supreme Court has recently heard oral arguments in the case, *Securities and Exchange Commission v. George R. Jarkesy, Jr., et al.*, No. 22-859, Nov. 29, 2023.

3. *Jarkesy* arises out of an SEC civil action against George Jarkesy Jr., whom the agency accused of committing fraud in violation of federal securities laws. An SEC administrative law judge adjudged Petitioners liable and ordered various remedies.
4. The U.S. Court of Appeals for the Fifth Circuit sided with Jarkesy on three independent constitutional challenges to the SEC’s enforcement authority. *Jarkesy v. Sec. & Exch. Comm’n*, United States Court of Appeals, Fifth Circuit, No. 20-61007, 34 F.4th 446 (5th Cir. 2022), Decided May 18, 2022.
5. **The *Jarkesy* case challenges practices of Administrative Law Courts, saying that ALCs do not afford civilians the same protections as independent courts**, particularly in three areas:
 - “(1) Petitioners were deprived of their constitutional right to a jury trial; (2) Congress unconstitutionally delegated legislative power to the SEC by failing to provide it with an intelligible principle by which to exercise the delegated power; and (3) statutory removal restrictions on SEC ALJs violate Article II.” *Id.* at 4.
6. The same thing was said another way, which Complainant provides here for clarity’s sake:
 - a. “Congress unconstitutionally delegated legislative power to the SEC by failing to provide an intelligible principle by which the SEC would exercise the delegated power.” *Ibid.*
 - b. “...[T] the SEC’s in-house adjudication of Petitioners’ case violated their Seventh Amendment right to a jury trial.” *Id.* at 2.
 - c. “Statutory removal restrictions on SEC ALJs violate the Take Care Clause of Article II of the United States Constitution.” *Ibid.*

Note: The Constitution provides that the President “shall take Care that the Laws be faithfully executed” *Ibid.*
7. This new argument will address two of the three areas: Point 8 addresses powers exercised by ALCs, and Point 9 addresses the lack of jury trials. *Note*: The examples cited to illustrate these points are not being reargued here. They are included as examples in this new argument raised by *Jarkesy* concerning the excessive use of power by Administrative Law Courts.

8. Undelegated, unlawful powers are wielded by Administrative Law Courts:

Example #1: Cross-examination was blocked

(Note: Paragraphs in these examples are not numbered because it became too confusing: this method of presentation seemed clearer.)

One example of unlawful powers being wielded in Complainant's case was when ALJ Cheskis arbitrarily decided a time limit for cross-examination and also terminated an important hearing.

Complainant's hearing was scheduled for two days, December 19 and 20, 2019. "[A]n additional day of hearings was scheduled for January 24, 2020 to complete the presentation of the third witness." *Hendin* Decision at 2. On January 24, Judge Cheskis made it clear that he did not want to devote the day, or even half a day, to the hearing. He said, "I'm not interested in going all morning to wrap up this cross-examination." Transcript at 258. A few minutes later, he reiterated, "...[W]hat I would like to do is wrap up the cross-examination of Dr. Israel, and hopefully, you know, that can happen soon." *Id.* at 260-261. A bit later, he repeated, "Like I said, I'm interested in wrapping this up soon." *Id.* at 276-277.

On January 24, 2020, an exchange occurred between Judge Cheskis and Ms. Waldron, (who was Complainant's counsel before she became *pro se*):

JUDGE CHESKIS: How much longer do you think you're going to need?

MS. WALDRON: I would say I have at least a half an hour.

JUDGE CHESKIS: Okay. I will give you fifteen minutes.
Transcript at 272:25-273:1-5.

Then right in the middle of this cross-examination Judge Cheskis said, "Dr. Israel, I'm going to interrupt you for one second. Actually, I'm going to interrupt you for good. But it is 11 o'clock now, and I think we've reached our limit on pursuing this issue on cross-examination." *Id.* at 280.

This was an arbitrary time limit. Judge Cheskis had not given any advance notice about a specific time limit for the hearing, nor should he have. As a professional Somatic Therapist, the body and health is Complainant's professional field, and she had prepared 70 pages of important cross-examination questions for Dr. Israel. The cut-off of the hearing stopped her from addressing many important issues. Thus, Complainant did not receive a fair and impartial hearing because the ALJ did not give the hearing its fair and proper amount of time.

Example #2: Two hearings were stopped when the important NTP study was being discussed

The topic that was being discussed when ALJ Cheskis arbitrarily cut short the January 24, 2020 hearing was the **very significant 25-million-dollar, 10-year, National**

Toxicology Program report that found that radiofrequency radiation causes cancer. (*Hendin* Main Brief at 26-27, 58; Transcript at 236-238, 273-280) NTP is an interagency program run by the United States Department of Health and Human Services, and is headquartered at the National Institute of Environmental Health Sciences (NIEHS). *Id.* at 26 fn.

During early *Povacz* deliberations, the anticipated results of the NTP study were deemed significant:

[I]n the *Povacz* case now pending at the Commonwealth Court, **considerable attention was given to the anticipated results of a study being conducted by the National Toxicology Program** on the effects of cell phone radiation on health. *Maria Povacz vs. PECO Energy Co.*, C-2015-2475023, Order, p. 54.

Cited in *Hendin*, Main Brief at 26-27, 58. (emphasis added)

Results of the NTP study were released on November 1, 2018, confirming that radiofrequency radiation (RFR) from smartphones—RFR is also emitted by smart meters—caused cancer in animals. *Hendin* Main Brief at 26-27.

Complainant's hearings followed a year later, on December 19 and 20, 2019, and January 24, 2020.

It is noteworthy, and probably no coincidence, that **ALJ Cheskis halted the Complainant's proceeding exactly when the NTP study was being discussed, on both December 20, 2019 and January 24, 2020.** The record shows:

December 20, 2019:

MS. WALDRON: Dr. Israel, are you familiar with the National Toxicology Program?

MARK ISRAEL: Yes, I am.

Q. And are you familiar with the technical reports that the National Toxicology Program issued in 2018 with respect to the genotoxicity of cell phone radiofrequency?

A. Well, there were quite a few such reports, so you'd have to tell me exactly which one... I'm familiar with the data from the actual study and the study has been -- reports, technical reports of the study have been made available... [T]here are at least two final technical reports that I'm familiar with -- I'm familiar with what they report, but I'm not familiar -- I would be happy to look at it again if I had it in front of me, but I don't know the details of the study or the publication that you're referring to...

JUDGE CHESKIS: Okay. Before you ask your next question, I just want to do a time-check here and be sensitive to Dr. Israel because I know it's almost 10:15...

MARK ISRAEL: Can we do this in another 15 minutes or so?

JUDGE CHESKIS: Quite frankly, it's not just Ms. Waldron either. Mr. Renner [counsel for Met-Ed] may have redirect or if there's any other issues. I think maybe what we should just do at this time is temporarily excuse you [Dr. Israel]... Transcript at 237:14-240:23.

Stopping the hearing at that point seemed innocent enough. Then during the cross-examination about the same NTP study at the next hearing, the ALJ abruptly stopped the hearing:

January 24, 2020:

MS. WALDRON: Dr. Israel, last time we were together we talked a little bit about the National Toxicology Program study that was being completed. Do you recall that?

MARK ISRAEL: Yes, I do recall.

Q: And you're familiar with that study; correct?

A. Yes. *Cross Examination of Israel*, January 24, 2020. Transcript at 273:15-22.

[This cross-examination on the NTP study continued. Transcript, at 273:23 - 280:1. Then ALJ Cheskis abruptly stopped it.]

JUDGE CHESKIS: Dr. Israel, I'm going to interrupt you for one second. Actually, I'm going to interrupt you for good. But it is 11 o'clock now, and I think we've reached our limit on pursuing this issue on cross-examination. Transcript at 280:2-7.

In this way, the ALJ again wielded unlawful power.

Example #3: Every point Complainant made was ruled against

In Complainant's case, the ALJ in his Initial Decision, and the Commission in its Opinion, ruled against the Complainant and in favor of Met-Ed on every single point. The ALJ gave little weight to Complainant's expert witness testimony, but accepted all of Met-Ed's witnesses' testimonies without reservation. Complainant's Exceptions demonstrated several instances in which the PUC overtly favored the utility. *Hendin* Exceptions at 1-3. This led Complainant to state that Judge Cheskis is incapable of unbiased decision-making in this case. *Id.* at 20.

(Again, this is not being reargued here. It is provided solely as another example of the unlawful wielding of ALC power in light of *Jarkesy*.)

Example #4: The PUC showed possible prejudice against smart meter complainants

Being *pro se*, when Complainant was writing Exceptions, she called the Secretary’s Bureau to ask a formatting question. What followed was reported to the PUC in a Letter of Concern that raised the question of whether Complainant’s case was getting a fair and impartial hearing:

[When I, the Complainant, called the Secretary’s Bureau,] [t]he man [who answered the phone] asked me what my case was about, and when I said the case was to opt out of a smart meter, he started to explain that Act 129 is clear and right in saying that no opt outs are allowed. I said that I disagreed, and that Act 129 is an important part of this case. He said I didn’t understand. I said I have studied this thoroughly for two years, and I do understand.

...

Perhaps the man from the Secretary’s Bureau was the only person at the PUC with this opinion. Or perhaps he is indicative of the culture of the PUC, that has already decided that smart meter cases cannot, and will not, win.

Hendin, Letter of Concern Directed to the Pennsylvania Public Utility Commission, Sept. 18, 2020 at 1-2.

This indicates possible widespread prejudice within the PUC against smart meter complainants, which may have been reflected in the ALJ’s and Commission’s rulings.

Example #5: Sharing of evidence was difficult, even oppressive

The U.S. Court of Appeals said in *Jarkesy* that administrative agencies have different evidence-sharing standards from other courts. “SEC ALJs exercise considerable power over administrative case records by controlling the presentation and admission of evidence....” *Jarkesy* at 28.

In Complainant’s case and in similar cases brought by other complainants, sharing of evidence has been difficult, one might even say “oppressive.” Here are two instances:

- a. Overt interference with the hearing process, as described in Example #1, *supra*, prevented Complainant from providing important evidence. The ALJ blocked Complainant from being able to present the evidence required to fully make her arguments.
- b. “Complainant was permitted only an initial inquiry to Mr. Ahr about opt-out offerings in various other states in which he testified that he worked.” *Ahr Cross, Dec. 19, 2019 Transcript* at 156-157. Ms. Hendin had worked with the National Conference of State Legislatures in Washington, D.C., to compile a comprehensive list of states that offer smart meter opt outs and provides here the docket information for judicial notice. See 52 Pa. Code § 5.408; *See e.g.*, 20

V. S.A. §2811 (Vermont); see also Attachment I.” *Hendin* Main Brief at 20, fn. 7.

In these and other instances, significant evidence was blocked.

9. **The U.S. Court of Appeals said in *Jarkesy* that typically, ALCs do not give the right to a jury trial:**

Example #6: No jury trial was offered

Complainant was not offered the option of a jury trial. Jury trials are never offered by the PUC.

The U.S. Court of Appeals in *Jarkesy* said:

Thomas Jefferson identified the jury “as the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution.” Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), in *The Papers of Thomas Jefferson* 267 (Julian P. Boyd ed., 1958). And John Adams called trial by jury (along with popular elections) “the heart and lungs of liberty.” *The Revolutionary Writings of John Adams* 55 (C. Bradley Thompson ed., 2000). *Id.* at 3.

Complainant feels sure that if her case, and other smart meter cases showing suffering, backed by medical records and physicians’ testimonies, were brought before a jury, juries would rule in favor of those who were suffering.

10. Other cases decided by the United States Supreme Court prior to *Jarkesy*, resulted in decisions similar to *Jarkesy*:

- a. *Axon Enterprise, Inc. v. Federal Trade Commission et al., Certiorari to the United States Court of Appeals for the Ninth Circuit*, No. 21–86. Argued November 7, 2022—Decided April 14, 2023. In this case, the U.S. Supreme Court upended the adjudicatory monopoly enjoyed by Administrative Law Courts, ruling that some litigants can avoid administrative courts and move directly to federal courts, thus liberating many individuals from the burdens of ALC adjudication.
- b. With the *Axon* decision, the U.S. Supreme Court consolidated a similar case, *Michelle Cochran v. U.S. Securities and Exchange Commission*, No. 21-1239, Docketed March 11, 2022.
- c. An earlier U.S. Supreme Court case that ruled on the excessive extent of the powers of ALCs was *Lucia v. Securities and Exchange Commission. Certiorari to the United States Court of Appeals for the District of*

Columbia Circuit, No. 17–130. Argued April 23, 2018—Decided June 21, 2018.

11. The *Jarkesy* decision made clear the impropriety of Administrative Law Courts:

“We the People” are the fountainhead of all government power. Through the Constitution, the People delegated some of that power to the federal government so that it would protect rights and promote the common good. See The Federalist No. 10 (James Madison) (explaining that one of the defining features of a republic is “the delegation of the government ... to a small number of citizens elected by the rest”). But, in keeping with the Founding principles that (1) men are not angels, and (2) “[a]mbition must be made to counteract ambition,” see The Federalist No. 51 (James Madison), the People did not vest all governmental power in one person or entity. It separated the power among the legislative, executive, and judicial branches. See The Federalist No. 47 (James Madison) (“**The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.**”). *Id.* at 10-11. (emphases added)

12. THEREFORE: The Commission should reconsider its Opinion in light of the *Jarkesy* U.S. Court of Appeals case. According to *Jarkesy*, many Administrative Law Courts are not exercising their delegated power. Each example *supra* demonstrates how the ALJ wielded unlawful power in the current case. It is rule of men, not of law. The Commission would be well advised to find ways to remedy current ALC practices and procedures. These considerations would lead the Commission to reexamine how the examples *supra* would influence the ruling in Complainant’s case.

Q. Pennsylvania standards for evidence would have allowed much of Complainant’s evidence.

1. The Commission incorrectly deemed evidence as hearsay. The Opinion states:

Met-Ed contends that the Complainant relied heavily on the Bioinitiative Report which Met-Ed characterizes as extra-record evidence [and] hearsay... (citing Met-Ed R.B. at 10, 11; Exc. at 16-19).
Opinion at 27.

2. The Initial Decision stated:

... Met-Ed argued in its Main Brief that Ms. Hendin...introduced a number of exhibits and referenced a number of studies in her testimony that were properly objected to as hearsay.

I.D. at 18.

The parties argued in their respective briefs regarding the admissibility of the exhibits that Met-Ed previously objected to as hearsay.

Ibid., fn.

3. This new argument cites the Pa. Code which states:

Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received. 2 Pa. C.S. § 505. (*See, e.g., D'Alessandro v. Pennsylvania State Police*, 937 A.2d 404, 411, 594 Pa. 500, 512 (2007))

4. THEREFORE: The Commission disallowed much evidence submitted by the Complainant.

(This is separate from the evidence was disallowed in the Order Granting in Part and

Denying in Part Motion for Admission of Late-filed Exhibits and Motion to Strike, June 18,

2020, which is not being reargued here.) When the Commission reviews Pa. Code § 505, it

will allow the evidence submitted by Complainant.

R. Funding sources for the Pennsylvania Public Utility Commission may compromise its ability to be impartial.

1. The PUC website does not hide the sources of its funding:

The PUC is funded by assessment of the regulated public utilities throughout the state. Subject to budget approval, the PUC assesses utilities up to three-tenths of one percent of gross intrastate revenue to cover the cost of regulation. All assessments are paid into the General Fund of the State Treasury through the Department of Revenue for use solely by the Commission. (emphasis added)

The budget for Fiscal Year 2023-24 is \$82,296,000 in state funds and \$5,538,000 in federal funds, for a total of \$88,434,000.

PUC website, About the PUC, PUC Funding and Budget

2. Thus, **the PUC gets 94% of its budget on the assessments it levies on** the gross revenues of **the utilities it regulates**. The remaining 6% is from Federal sources. In short, the PUC is a captured agency.
3. In the ALJ's Initial Decision and the Commission's Opinion and Order, the PUC has favored Met-Ed and ruled against the Complainant on every single point. More broadly, to Complainant's knowledge, the PUC has ruled against all in smart meter opt-out complainants one hundred percent of the time.
4. These odds bring into question whether decisions by the PUC's Commission, its judges, lawyers, and staff, are influenced by the fact that their salaries are paid by an agency whose funding comes almost exclusively (94%) from utility companies.
5. THEREFORE: The Commission needs to ask itself, Is there any conflict of interest that would in any way detract from a fair and impartial ruling, for this Complainant as well as for others? A courtroom is a hallowed forum for honest and open dialogue in order to arrive at Truth. As such, it may require intense self-reflection.

S. The Commission should render the PUC's Implementation Order relevant to Act 129 *ultra vires*.

1. The legality of Act 129 as a universal mandate for smart meters will not be reargued here.
2. A particular legal issue has not previously been mentioned in Complainant's case: When the PUC issued its Implementation Order at a Public Meeting held on April 15, 2010 (Docket No. M-2009-21 23950), it did so *ultra vires*.
3. The *ultra vires* principle is based on the assumption that judicial action is legitimate on the ground that the courts are applying the intent of the legislature. However, at the time of the

Implementation Order, the intent of the legislature was not clear, as has been shown in many adjudications.

4. THEREFORE: Complainant asks the Commission to render the PUC's Implementation Order, relevant to Act 129, null and void because of *ultra vires*. This may affect all the dominoes that fell after that Implementation Order; in other words, if the PUC was *ultra vires*, that would have impacted the entire progression of what followed. Examining the issue of *ultra vires* could lead the Commission to re-examine its Opinion, which could result in a favorable ruling in Complainant's case.

II. MATTERS THAT WERE OVERLOOKED OR NOT ADDRESSED

T. The Commission overlooked the Pennsylvania Code that places the burden of proof on Met-Ed.

1. The Commission's Opinion said:

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a).

Opinion at 7.

2. In so saying, it overlooked an important point in Complainant's Reply Brief:

The Code does not directly address the burden of proof for customer complaints about the new smart meter installations, and other Code provisions suggest the wisdom of placing the burden on the utility when a change is being implemented. Section 332, on which Met-Ed relies, addresses "Procedures in general" and states only that "the proponent of a rule or order has the burden of proof," except as otherwise provided in Section 315 of the Code or in the statute. 66 Pa.C.S. § 332(a). Section 315 does not specifically address an individual consumer challenging the reasonableness or safety of a utility's smart meter deployment. Section 315 addresses Commission-initiated proceedings, and places the burden of proof on the Commission in those instances. *See, e.g.*, 66 P.S. § 3315(b). And where, Section 315 does address non-Commission initiated proceedings, the Code places the burden squarely on the utility. 66 Pa. C.S. § 315(a) (Commission-initiated challenge to reasonableness of rates, either proposed or existing, places the burden of proof on the utility; and, "in any

proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.”) *See also, Schellhammer v. Pennsylvania Pub. Util. Comm’n*, 1629 A.2d 189, 193 (Pa. Commw. Ct. 1993) (explaining that “[w]here a customer is heard to complain concerning a proposed change in rate, the burden of proof is upon the public utility to show the proposed rate is just and reasonable; where the complaint involves an existing rate, however, the burden falls upon the customer to prove that the charge is no longer reasonable”)(citations omitted)). Accordingly, the Code does not directly address the customer challenge to smart meter installation, but since this is a change initiated by the utility, the burden of proof should lie with the utility to prove that it is safe.

Hendin Reply Brief at 6-7.

3. To spell this out: There is a hierarchy in the Pa. Code that specifically relates to this case:

First, the Opinion cites § 332, which addresses Procedures in general. § 332 states:

(a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof. (emphasis added)

4. Then this code about Procedures in general points to 66, PA.C.S. §315. Section (c) states:

(c) Adequacy of services and facilities.--In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, **the burden of proof** to show that the service and facilities involved are adequate, efficient, safe, and reasonable **shall be upon the public utility**. (emphases added)

5. It is thus the General Assembly’s direction that in each and every proceeding upon the motion of the Commission, the burden of proof with regard to safety and reasonableness of facilities must rest, ultimately and from first to last, upon the public utility.
6. Thus, Met-Ed must establish, by means of conclusive evidence, that: its AMI wireless smart meter devices are safe; that its AMI wireless smart meter devices and its smart meter mesh network are safe in the aggregate; that they do not and cannot cause adverse health effects, harm, or increased risk to human health or safety; and that chronic, long-term exposure to its AMI wireless smart meter devices cannot result in a threat to human health or safety.

7. THEREFORE: The Commission said in its Opinion and Initial Decision that the burden of proof of the safety of smart meters lay with the Complainant, citing 66 Pa. C.S. § 332(a). But they did not take into consideration Title 66, PA.C.S. §315 (c). By taking this into consideration, the Commission would shift the burden of proof of the safety of smart meters—not radiofrequency radiation in general, but smart meters in particular—onto Met-Ed. Until such time as the requisite proof is provided, the Commission should halt issuing a final Opinion and Order in this case.

U. Another overlooked matter is *Daubert*, which ruled that judges are often not qualified to rule on matters of science.

1. The Opinion states:

In formal complaint proceedings, the Commission, not the ALJ, is the ultimate **fact-finder**; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)). (emphasis added)

Opinion at 9, fn. 2.

Once the parties have presented their evidence, the onus then falls on the **fact finder** [sic] to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. (emphasis added)

Id. at 29.

2. In her Main Brief, Complainant cited *Daubert*, in which the ruling stated that judges are often not equipped to rule in matters of science:

The Commission is not charged with expertise in the field of medical causation, nor should Ms. Hendin be.... The use of expert witnesses presents a fundamental paradox, where **judges may possess less knowledge of the specialized subject matter than the expert they are evaluating**. See, e.g., *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311,1316, (9th Cir. 1995) (“[W]e are largely untrained in science

and certainly no match for any of the witnesses who testimony we are reviewing.”). This problem persists here, where the Commission is not charged with the technical knowledge of effects on human health.
(emphasis added)

Hendin Main Brief at 17-18.

3. The term “fact-finder” does not seem to exist in the Pa. Code.
4. The term “fact-finder” is misleading. It implies that the Commission has the knowledge to adjudicate the facts about science in this case. As *Daubert* alerts us, it does not.
5. THEREFORE:
 - a. The Commission as “fact-finder” ruled on matters of science.
 - b. But they did not consider that they possess less knowledge of the specialized subject matter than the experts they were evaluating, or the Complainant, who has substantial credentials (which will not be restated here so there is no question of re-argument).
 - c. By taking *Daubert* into consideration, the Commission would recognize that it is not trained to rule on the science in this case.
 - d. Thus, the Commission would need to revise its Opinion in areas impacted by the science and rule in favor of Complainant.

V. The landmark Lamech study was cited in all of Complainant’s filings, but was overlooked.

1. The Lamech study showed that smart meters have been associated with the same kind of symptoms that Complainant presented with.
2. The ALJ accepted Lamech as Exhibit X11: “... Hendin cross examination exhibits...X9 through X19...are admitted into the record of this proceeding...” Order Granting in Part

and Denying in Part Motion for Admission of Late-filed Exhibits and Motion to Strike, June 18, 2020, at 13.

3. Lamech was mentioned in every one of the Complainant's filings: Main Brief, Reply Brief, and Exceptions.
4. But both the Initial Decision and the Opinion and Order overlooked it.
5. Complainant's Main Brief first introduced the Lamech study:

Many people who do not experience symptoms with cell phones, wireless routers, or other RF-emitting devices, experience symptoms when a smart meter is put on their home. (Exhibit X11). In a published, peer-reviewed study, Lamech reported the development of symptoms after smart meters were installed in Australia:

In 2006, the government in the state of Victoria, Australia, mandated the rollout of smart meters in Victoria. By August 2013, 142 people had reported adverse health effects from wireless smart meters by submitting information on an Australian public Web site using its health and legal registers.

RESULTS: The most frequently reported symptoms from exposure to smart meters were (1) insomnia, (2) headaches, (3) tinnitus, (4) fatigue, (5) cognitive disturbances, (6) dysesthesias (abnormal sensation), and (7) dizziness. The effects of these symptoms on people's lives were significant.

Exhibit X11.

Hendin Main Brief at 27-28,

6. Complainant's Reply Brief again mentioned Lamech:

The symptoms only appeared after the smart meter was installed, and all disappeared after the smart meter was removed. Not coincidentally, these symptoms are also the same as reported by thousands of people in epidemiological studies on the effects of RFs, and were reported in the Lamech study, which was specifically about smart meters.

Hendin Reply Brief at 24.

...Lamech...is a peer-reviewed published study from 2014.

Id. at 28.

7. Because the ALJ did not seem to understand the tremendous import of Lamech, in her Exceptions Complainant created a chart to explain:

At the time, these medical symptoms were not yet known to be directly related to radiation from smart meters. This became clear in the landmark, peer-reviewed study by Lamech... The following chart compares Ms. Hendin’s symptoms after a smart meter was placed on her home, next to symptoms reported by people after exposure to a smart meter in the Lamech study:

	Ms. Hendin’s Symptoms After Exposure to a Smart Meter	Lamech Study: Main Symptoms Reported by People After Exposure to a Smart Meter
1	Insomnia	Insomnia
2	Headaches	Headaches
3	Cognitive disturbance	Cognitive disturbance
4	Dysesthesias (abnormal sensations)	Dysesthesias (abnormal sensations)
5	Dizziness	Dizziness
6	Gastrointestinal distress	Digestive problems
7	Pain and swelling in joints	Pain in joints, bones, etc.
8	Tinnitus *	Tinnitus

* Ms. Hendin had experienced tinnitus prior to exposure to the smart meter. Otherwise, except for a rare headache, SHE HAD NEVER PREVIOUSLY EXPERIENCED ANY OF THESE SYMPTOMS. Hence, this chart is of paramount importance in this case.

Hendin Exceptions at 4.

8. THEREFORE: When the Commission takes into account the overlooked Lamech study, it will see that a smart meter caused Complainant’s symptoms, which will lead the Commission to allow her to have an electromechanical analog electric meter on her residence.

IV. ERRORS OF FACT

W. Complainant “appeared to” attempt to improperly utilize a third hearing day.

1. The Opinion states:

Ms. Hendin was not prepared during the hearing to use these exhibits when Dr. Israel appeared.
Opinion at 35. Quoting June 2020 Order at 11.

2. This is an error of fact. Neither Met-Ed nor the ALJ had any way of knowing how prepared Complainant was.
3. In fact, Complainant had spent months gathering and studying exhibits, and preparing cross-examination questions for Dr. Israel.
4. The Opinion also states:

According to Met-Ed [late-filed] exhibits **appeared to be** an attempt to take advantage of the additional time afforded to the Complainant to complete “a few clean-up items” on cross examination. R. Exc. at 18. (emphasis added)
Opinion at 34

5. Perhaps Met-Ed thinks it is psychic. The first hearing day with Dr. Israel was cut short, so Complainant brought to the January 24, 2020 hearing the months of preparation she had done for his cross-examination. What “appeared to be” occurring was pure conjecture.
6. THEREFORE: These are two related errors of fact.

X. Date when smart meter that caused harm was removed was, in fact, known.

1. The Opinion cites Met-Ed’s replies:

Ms. Hendin is not aware of the model of meter used by the gas utility, **exactly when it was** installed or **removed**, and if it was an RF-emitting smart meter. R. Exc. at 8, 11 (citing Tr. at 59-60). (emphasis added)
Opinion at 26.

2. This is an error of fact. Complainant knew exactly when the meter was removed:

Dr. Kracht issued a Letter of Medical Necessity to UGI and **the smart meter was removed on September 16, 2012**. *St. of Hendin* at 5:96-97; 103-104; Hendin Exhibit 2. (emphasis added)
Hendin Main Brief at 5.

Note: There may be more matters that were overlooked, or more errors of fact, but I've run out of time.

VI. CONCLUSION

In addition to pending decisions in federal cases that have a bearing on Complainant's case, such as *Environmental Health Trust. v. FCC, supra*, additional decisions are pending in the Commonwealth Court of Pennsylvania that are directly relevant to Complainant's case:

- *Alexia and Lawrence McKnight v. Pennsylvania Public Utility Commission*, No. 1253 C.D. 2019
- *Hughes v. Pennsylvania Public Utility Commission*, No. 827 CD 2020
- *Nancy Colbert v. Stephen M. DeFrank, Chair of the Pennsylvania Public Utility Commission*, No. 526 MD 2023

It would be prudent for the Commission to wait to make its decision in Complainant's case until all relevant cases, in both federal and Pennsylvania courts, receive final judgments.

For reasons set forth *supra*, Complainant Judith Hendin respectfully requests that the Commission grant these New or Novel Arguments, Overlooked Matters, and Errors of Fact, and that whenever it may issue a Final Order, it will reject the ALJ's Interim Decision of August 7, 2020, and order Met-Ed to grant Complainant's request for a reasonable and workable accommodation by using some means other than an RF-emitting smart meter installed on the property where she lives to collect data about electric usage for billing purposes. Specifically, Complainant respectfully requests that the Commission order Met-Ed to grant Complainant's request to have restored onto her home an electromechanical analog meter with no switched-mode power supply for metering and billing her electrical usage.

Respectfully submitted,

/s/ Judith D. Hendin

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(610) 330-9778
judith@consciousbody.com

Dated: February 12, 2024

ATTACHMENT I

EXHIBIT A1

Text of Exhibit A1

From: judith@consciousbody.com
Subject: Update
Date: Mon, 27 Aug 2012 16:41:53 -0400
To: kreifinger@hotmail.com

Dear Karen,

I don't want to take you time with this, and there is certainly no need for you to respond. I just wanted to let you know that further research showed that, in fact, the UGI meter, a Sensus FlexNet, is a smart meter.

UGI has requested that my physician send them a letter saying that it is unhealthy for me. Then they will remove the meter.

I thought you might want to know the process.

If you want any more details that might be useful to others, such as the information UGI requires, I would be glad to provide this.

Thank you so much for your great work.

Best wishes,
Judith

Date: Mon, 27 Aug 2012 17:43
From: Karen Reifinger
To: Judith Hendin

Hi Judith.

No bother at all. I'd love to have the info to share with others. Thank you for doing the legwork. Let me know how your physician responds.
Wishing you well!

Love,
Karen

Screenshot of Exhibit A1

The screenshot displays an email client interface with a search results pane on the left and a main email view on the right. The search results pane shows a search for "All Mailboxes" with 28 results found. The main view shows an email thread from Karen Reifinger to Judith Hendin.

Search Results:

- Top Hits:**
 - Karen Reifinger** Reifin... 8/27/12
RE: Update
Hi Judith. No bother at all. I'd love to have the info to share with others...
 - Karen Reifinger** Reifin... 8/21/12
FW: Smart Meters, Radiation and...
Thank You! for attending Huna Mua's seminar, "Restore Your Body with '..."
- All Results:**
 - Judith Hendin** Sent -... 9:42 AM
Hello 2
Hi Karen, I sent you an email yesterday to a hotmail address I...
 - Judith Hendin** Drafts -... 8:38 AM
Fwd: Update
Hello Karen, I hope you're very well. I don't know if you're still receiving...
 - Judith Hendin** Sent ma... 1/17/22
SOLVED!
Hi Derek, Anthony Ford of the support team helped solve the issu...

Reply Reply All Forward 28 Found

Karen Reifinger <kreifinger@hotmail.com> 8/27/12
RE: Update
To: & 1 more [Details](#)

Hi Judith.

No bother at all. I'd love to have the info to share with others. Thank you for doing the legwork. Let me know how your physician responds. Wishing you well!

Love,
Karen

From: judith@consciousbody.com
Subject: Update
Date: Mon, 27 Aug 2012 16:41:53 -0400
To: kreifinger@hotmail.com

Dear Karen,

I don't want to take you time with this, and there is certainly no need for you to respond. I just wanted to let you know that further research showed that, in fact, the UGI meter, a Sensus FlexNet, is a smart meter.

UGI has requested that my physician send them a letter saying that it is unhealthy for me. Then they will remove the meter.

I thought you might want to know the process.

If you want any more details that might be useful to others, such as the information UGI requires, I would be glad to provide this.

Thank you so much for your great work.

Best wishes,
Judith

Email Authentication of Exhibit A1

Karen Reifinger <kreifinger@hotmail.com>

RE: Update

To: Judith Hendin <judith@consciousbody.com>

X-MessageSniffer-Scan-Result: 0

<8E353492-7CBD-4612-B43B-7704089546DE@consciousbody.com>

X-Spam-Threshold: 95

Return-Path: <kreifinger@hotmail.com>

X-Originating-Ip: [65.55.90.175]

X-Virus-Scanned: OK

X-Cnfs-Analysis: v=1.0 c=1 a=ftAo3KWp8r8A:10 a=8uJ5MO_MQBGA:10

a=IYfJoN71IBsA:10 a=vYcJclWF_MoA:10 a=561R8fQIIIEA:10 a=vjGTrW6yAAAA:8

a=69EAbJreAAAA:8 a=SExBXqmwz03Okfj2tssA:9 a=wPNLvGTTeEIA:10

a=nn5LTPFgCUgA:10 a=EfJqPEOeqIMA:10 a=_W_S_7VecoQA:10 a=frz4AuCg-

hUA:10 a=tXsnliwV7b4A:10

Mime-Version: 1.0

X-OriginalArrivalTime: 27 Aug 2012 21:43:30.0893 (UTC)

FILETIME=[0008EFD0:01CD849D]

X-Orig-To: judith@consciousbody.com

<SNT125-W26E64630700110B192311DCBA20@phx.gbl>

X-Spam-Score: 0

<8E353492-7CBD-4612-B43B-7704089546DE@consciousbody.com>

X-Spam-Flag: NO

Importance: Normal

X-MessageSniffer-Rules: 0-0-0-7527-c

Content-Type: multipart/alternative; boundary="_f18738fc-08ce-48fb-8dcb-c1d597c6ee87_"

Delivered-To: judith@consciousbody.com

X-Cmae-Scan-Result: 0

Received: from smtp14.gate.ord1a (smtp14.gate.ord1a.rsapps.net [10.130.4.14]) by store41a.mail.ord1a (SMTP Server) with ESMTP id A63572D80CA for <judith@consciousbody.com>; Mon, 27 Aug 2012 17:43:31 -0400 (EDT)

Received: from [65.55.90.175] ([65.55.90.175:28780] helo=snt0-omc3-s36.snt0.hotmail.com) by smtp14.gate.ord1a.rsapps.net (envelope-from <kreifinger@hotmail.com>) (ecelerity 2.2.3.49 r(42060/42061)) with ESMTP id 6B/23-05935-30AEB305; Mon, 27 Aug 2012 17:43:31 -0400

Received: from SNT125-W26 ([65.55.90.137]) by snt0-omc3-s36.snt0.hotmail.com with Microsoft SMTPSVC(6.0.3790.4675); Mon, 27 Aug 2012 14:43:30 -0700

Further email Authentication of Exhibit A1

From: Judith Hendin <judith@consciousbody.com>

Re: Smart Meters, Radiation and F*R*EE Seminars (August 2012)

To: Karen Reifinger <kreifinger@hotmail.com>

Content-Type: multipart/alternative; boundary="Apple-Mail=_759E658A-4897-453C-868A-EB7DBC5BF7E0"

Mime-Version: 1.0 (Mac OS X Mail 10.2 \ (3259))

X-Universally-Unique-Identifier: 822AFD9F-638F-4FA8-BBB9-61283756A069

<1110075960066.1011310355122.6273.2.141195081@scheduler.constantcontact.com>

<SNT125-W64107A386E6653AAB06302CBB80@phx.gbl> <1BEF3FC7-E5F6-44B1-9B20-5D1388B08A1E@consciousbody.com>

<SNT125-W50CED10CFB916B40D942A6CBB80@phx.gbl>

<SNT125-W50CED10CFB916B40D942A6CBB80@phx.gbl>

<F8456F68-2006-4E67-803D-025EB5AA15B5@consciousbody.com>

ATTACHMENT II

Environmental Health Trust, et al.

v.

Federal Communications Commission and United States of America

United States Court of Appeals for the District of Columbia Circuit,

No. 20-1025

Decided August 13, 2021

Evidence of Harm Files

The United States Court of Appeals for the District of Columbia Circuit (Docket No. 20-1025) ruled on August 13, 2021 that the FCC failed to respond to the following 26 volumes of evidence of harm, including long term wireless exposure, impacts to children, testimony of people injured by wireless, impacts to the wildlife and the environment and to the developing brain and reproduction.

Comments filed by people who have been disabled by radiation sickness are included in volumes 22-25.

Note: Volume 1 is not listed here because it presented only *Notice of Inquiry* papers.

VOL 2 Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017, Part 1)

VOL 3 Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017, Part 2)

VOL 4 Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017, Part 3)

VOL 5 Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017, Part 4)

Joel Moskowitz PhD's research files of Harm

VOL 6 Joel Moskowitz PhD's newer files of harm [600], Garg C Vesperman [15], E. H. Trust files

VOL 7 Exposure Limits; Environment: Birds, Bees, Nature; Parents for Safe Technology, IARC

VOL 8 Cancer; BioInitiative Report

VOL 9 Autism, Cancer, Neurological

VOL 10 Harm, DNA, Oxidative Stress

VOL 11 Biological effects, Low-Intensity effects

VOL 12 Neurological, behavioral, Radiation Sickness, health effects

VOL 13 Environmental Working Group and other group appeals

VOL 14 Reproduction, Developmental & Other Harm

VOL 15 Children & Adolescent Harm

VOL 16 Children, Harm, Radiation Sickness

VOL 17 General Evidence of Harm, Wireless Utility Meters

VOL 18 Brain, Cancer
VOL 19 Children, Cancer, General Harm
VOL 20 Industry Influence and Harm
VOL 21 Exposure Standards/Radiation Sickness
VOL 22 Radiation Sickness
VOL 23 Radiation Sickness
VOL 24 Radiation Sickness Comments - Continued
VOL 25 Radiation Sickness, Individual Rights Comments
VOL 26 Individual Rights/Precautionary Principal Comments, Professor Claudia Roda (Impacts of digital technology on human behavior and social structure), Wi-Fi – Children – Dr. Ronald E. Koetzsch, PhD.
VOL 27 SUPPLEMENT Exposure Limits: The underestimation of absorbed cell phone radiation, especially in children, University of Utah, Salt Lake City; Cautionary Policy on Radio frequency Radiation Actions by Governments, Health Authorities and Schools Worldwide

VOLUME 2 Part 1: Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017)

<https://tinyurl.com/Evidence-Volume-2>

3 p.589-764 Sep. 16, 2019 Joel M. Moskowitz PhD Research Compilation; Abstracts of over 2,100 studies published between 1990 - 2017; Prof. Henry Lai. (Tab 7 Part 1)

VOLUME 3 Part 2: Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017)

<https://tinyurl.com/Evidence-Vol-3>

4 p.765-1164 Sep. 16, 2019 Joel M. Moskowitz PhD Research Compilation; Abstracts of over 2,100 studies published between 1990 - 2017; Prof. Henry Lai. (Tab 7 Part 2)

VOLUME 4 Part 3 Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017)

<https://tinyurl.com/Evidence-Volume-4>

5 p.1165-1564 Sep. 16, 2019 Joel M. Moskowitz PhD Research Compilation; Abstracts of over 2,100 studies published between 1990 - 2017; Prof. Henry Lai. (Tab 7 Part 3)

VOLUME 5 Professors' Henri Lai and Joel Moskowitz's research files – Evidence of Harm

<https://tinyurl.com/Evidence-Volume-5>

Part 4: Professor Henry Lai's files of Harm (over 2100 studies between 1990-2017)

6 p.1565-1602 Sep. 16, 2019 Joel M. Moskowitz PhD Research Compilation; Abstracts of over 2,100 studies published between 1990 - 2017; Prof. Henry Lai. (Tab 7 Part 4)

7 1603-1964 Sep. 13, 2019 Joel M. Moskowitz PhD Research Compilation; Abstracts of Over 600 Studies Published Between August 2016-August 2019, Dr. Joel Moskowitz; 2019 Part 1. (Tab 8 Part 1)

VOLUME 6 Professor Joel Moskowitz's newer files of harm [600], Garg C Vesperman [15], E. H. Trust files

<https://tinyurl.com/Evidence-Volume-6>

8 p.1965-2130 Sep. 13, 2019 Joel M. Moskowitz PhD Research Compilation; Abstracts of Over 600 Studies Published Between August 2016-August 2019, Dr. Joel Moskowitz; 2019 (Tab 8 Part 2)

9 p.2131-2142 Sep. 28, 2016 Gary C. Vesperman Research Compilation; Abstracts of 15 New Studies, Dr. Joel Moskowitz PhD, 2016

10 p.2143-2378 Jul. 7, 2016 Environmental Health Trust Research Compilation; Studies and Documents; City of Pinole, CA

VOLUME 7 Exposure Limits; Environment: Birds, Bees, Nature; Parents for Safe Technology, IARC

<https://tinyurl.com/Evidence-Volume-7>

11 2379-2389 Jul. 7, 2016 Environmental Health Trust US Exposures Limits – A History of Their Creation, Comments and Explanations; Eng. Lloyd Morgan

12 2390-2439 Aug. 26, 2016 Heidi M. Lumpkin Biosystem & Ecosystem; Birds, Bees and Mankind: Destroying Nature by ‘Electrosmog’: Effects of Mobile Radio and Wireless Communication. Dr. Ulrich Warnke, Ph.D., 2007

13 Part 1 2440-2778 Jul. 13, 2016 Parents for Safe Technology Cancer; IARC Monograph: Non-Ionizing Radiation Part 2: RF EMFs, 2013 (Tab 13 Part 1)

VOLUME 8 Cancer; BioInitiative Report

<https://tinyurl.com/Evidence-Volume-8>

13 Part 2 p.2779-2920 Jul. 13, 2016 Parents for Safe Technology Cancer; IARC Monograph: Non-Ionizing Radiation Part 2: RF EMFs, 2013 (Tab 13 Part 2)

14 p.2921-2927 Nov. 18, 2013 Kevin Mottus Cancer; IARC Press Release: IARC Classifies RF EMFs As Possibly Carcinogenic to Humans, 2011

15 p.2928-3002 Jul. 11, 2016 Environmental Health Trust NTP; Report of Partial Findings from the National Toxicology Program Carcinogenesis Studies of Cell Phone Radiofrequency Radiation in Hsd: Sprague Dawley. SD rats (Whole Body Exposures); Draft 5-19-2016

16 3003-3009 Oct. 1, 2018 Environmental Health Trust NTP; Commentary on the utility of the National Toxicology Program study on cell phone radiofrequency radiation data for assessing human health risks despite unfounded criticisms aimed at minimizing the findings of adverse health effects. Environmental Research. Dr. Ron Melnick; 2019

17 3010-3036 Apr. 16, 2018 Theodora Scarato NTP; Dr. Hardell and Dr. Carlsberg letter to the NTP, NIH, DHHS, NTP Technical Report On The Toxicology And Carcinogenesis Studies; Mar. 12, 2018

18 3037-3048 Oct. 1, 2018 Environmental Health Trust Cancer-NTP; Cancer epidemiology update, following the 2011 IARC evaluation of radiofrequency electromagnetic fields; (Miller et al); 2018

19 3049-3055 Oct. 18, 2018 Joel M. Moskowitz, Ph.D. Cancer-NTP; The Significance of Primary Tumors in the NTP Study of Chronic Rat Exposure to Cell Phone Radiation. IEEE Microwave Magazine. Prof. James C. Lin; 2019

20 3056-3065 Aug. 27, 2013 Cindy Sage and David O. Carpenter BioInitiative Comments

21 3066-3080 Nov. 18, 2013 Kevin Mottus BioInitiative; 2012 Conclusions

22 3081-3126 Nov. 18, 2013 Kevin Mottus BioInitiative; Section 24: Key Scientific Evidence and Public Health Policy Recommendations; 2012

23 3127-3146 Jul. 11, 2016 Cecelia Doucette BioInitiative; Section 1: Summary for the Public (2014 Supplement)

VOLUME 9 Autism, Cancer, Neurological

<https://tinyurl.com/Evidence-Volume-9>

24 3147-3218 Sep. 30, 2016 Catherine Kleiber BioInitiative-Modulation; Section 15: Evidence for Disruption by Modulation Role of Physical and Biological Variables in Bioeffects of Non-Thermal Microwaves for Reproducibility, Cancer Risk and Safety Standards, (2012 Supplement)

25 3219-3319 Sep. 3, 2013 Kevin Mottus BioInitiative; Section 20, Findings in Autism, Consistent with Electromagnetic Fields (EMF) and Radiofrequency Radiation (RFR); 2012

26 3320-3321 Sep. 16, 2019 Joel Moskowitz PhD. BioInitiative-Neurological; Percent Comparison, Effect vs No Effect in Neurological Effect Studies; 201

27 3322-3559 Sep. 16, 2019 Joel Moskowitz PhD. BioInitiative-Neurological; Research Summaries, RFR Neurological Effects (Section 8), 2007-2017; 2017

VOLUME 10 Harm, DNA, Oxidative Stress

<https://tinyurl.com/Evidence-Volume-10>

28 3560-3561 Sep. 16, 2019 Joel M. Moskowitz PhD. BioInitiative-Mechanisms of Harm; Percent Comparison Showing Effect vs No Effect, DNA (Comet Assay), 2017 and Free Radical (Oxidative Stress), 2019

29 3562-3602 Sep. 16, 2019 Joel M. Moskowitz PhD. BioInitiative-Mechanisms of Harm; Research Summaries, DNA (Comet Assay) Studies; 76 Studies, 2017

30 3603-3721 Sep. 16, 2019 Joel M. Moskowitz PhD. BioInitiative-Mechanisms of Harm; Research Summaries, Free Radicals (Oxidative Stress Effects), 225 studies, 2019

31 3722-3749 Apr. 11, 2014 Cindy Sage, MA BioInitiative Working Group; Preliminary Opinion on Potential Health Effects of Exposure to Electromagnetic Fields (EMF); 2014

32 3750-3755 Sep. 16, 2019 Bioinitiative Working Group BioInitiative Working Group; Consistent Failure to Identify the Potential for Health Effects (Exhibit A); 2014

33 3756-3766 Sep. 14, 2019 Bioinitiative Working Group BioInitiative Working Group; Reference List for Important Fertility and Reproduction Papers (Exhibit C); 2014

34 3767-3771 Apr. 14, 2019 Cindy Sage BioInitiative Working Group; Mitochondrial Dysfunction and Disruption of Electrophysiology (Exhibit G); 2014

35 3772-3779 Apr. 14, 2019 Cindy Sage, MA BioInitiative Working Group; Epidemiological Studies, RF fields epidemiology, Comments by Drs. Lennart Hardell, Fredrik Soderqvist PhD. and Michael Carlberg, MSc. Section 3.5.1.1 Epidemiological Studies (Exhibit B); 2014

36 3780-3874 Apr 11, 2014 Cindy Sage, MA BioInitiative Working Group; An Update on the Genetic Effects of Nonionizing Electromagnetic Fields by Prof. Henry Lai PhD; (Exhibit E); 2014

37 3875-3896 Apr. 11, 2014 Cindy Sage, MA BioInitiative Working Group; An Update on Physical and Biological Variables, Cancer and Safety Standards by Prof. Igor Belyaev Dr. Sc., (Exhibit F); 2014

38 3897-3904 Sep. 30, 2016 Maria Powell BioInitiative Co-Editor; Human Health Effects of EMFs: The Cost of Doing Nothing. IOPScience. (Prof. David Carpenter MD.); 2010

39 3905-3919 Sep. 28, 2016 Kevin Mottus BioInitiative Author; Statement of Prof. Martin Blank PhD., PhD.; 2016

- 40** 3920-3945 Aug 27, 2013 Sage Hardell Herbert BioInitiative Authors; Prof. Lennart Hardell MD. PhD., Prof. Martha Herbert MD. PhD. and Cindy Sage Comments
- 41** 3946-3984 Aug. 26, 2013 B. Blake Levitt & Henry Lai BioInitiative Author; Prof. Henry Lai PhD, and Blake Levitt Comments

VOLUME 11 Biological effects, Low-Intensity effects

<https://tinyurl.com/Evidence-Volume-11>

- 42** 3985-4072 Sep. 3, 2013 Paul Dart MD Dr. Paul Dart MD. (Petitioner) Comments
- 43** 4073-4102 Feb. 4, 2013 Dr. Andrew Goldsworthy The Biological Effects of Weak Electromagnetic Fields, Problems and Solutions, Prof. Andrew Goldsworthy; 2012
- 44** 4103-4106 Sep. 4, 2013 Richard Meltzer Dr. Richard Meltzer Comments, Radio Frequency (RF) Exposure: A Cautionary Tale
- 45** 4107-4112 Feb. 6, 2013 Donald R. Maisch Dr. Donald R. Maisch PhD. Comments
- 46** 4113-4129 Nov. 18, 2013 Catherine Kleiber Biological Effects from RF Radiation at Low-Intensity Exposure, based on the BioInitiative 2012 Report, and the Implications for Smart Meters and Smart Appliances; Dr. Ron M. Powell, PhD.; 2013
- 47** 4130-4137 Aug. 20, 2013 Lawrence James Gust Eng. Lawrence James Gust Comments
- 48** 4138-4146 Feb. 25, 2013 Michael Schwaebe Eng. Michael Schwaebe Comments
- 49** 4147-4178 Mar. 18, 2015 Environmental Working Group Organizations; Environmental Working Group Reply Comments
- 50** 4179-4195 Nov. 18, 2013 Nina Beety Nina Beety Comment
- 51** 4196-4206 Sep. 16, 2019 Joel Moskowitz PhD. Organizations; EMF Scientist Appeal, International Scientists' Appeal to the United Nations; 2015
- 52** 4207-4217 Apr. 5, 2018 Nancy D Organizations; 5G Appeal, Scientist Appeal to the EU, Scientists Warn of Potential Serious Health Effects of 5G; 2017
- 53** 4218-4240 Jun. 7, 2017 Environmental Health Trust Organizations; Medical Doctors and Public Health Organizations: Consensus Statements and Doctors' Recommendations on Cell Phones/Wireless; 2017
- 54** 4241-4244 Sep. 27, 2016 Kevin Mottus Organizations; Council of Europe, Resolution 1815, The Potential Dangers of Electromagnetic Fields and Their Effect on the Environment; 2011
- 55** 4245-4257 Feb. 5, 2013 Gilda Oman Organizations; Council of Europe, Parliamentary Assembly Report: The potential dangers of electromagnetic fields and their effect on the environment; 2011
- 56** 4258-4293 Jul. 11, 2016 Environmental Health Trust Organizations - Radiation Sickness; European Academy for Environmental Medicine, EUROPAEM EMF Guideline 2015 for the prevention, diagnosis and treatment of EMF-related health problems and illnesses; 2015
- 57** 4294-4305 Feb. 5, 2013 David Mark Morrison Organizations; Scientific Panel on Electromagnetic Field Health Risks: Consensus Points, Recommendations, and Rationales, Scientific Meeting: Seletun, Norway. Reviews on Environmental Health; (Fragopoulou, Grigoriev et al); 2010
- 58** 4306-4361 Aug. 30, 2013 EMF Safety Network Organizations; EMF Safety Network Comments
- 59** 4362-4374 Jul 7. 2016 Environmental Health Trust Organizations - Russian Government; Electromagnetic Fields From Mobile Phones: Health Effect On Children And Teenagers | Resolution Of Russian National Committee On Nonionizing Radiation Protection | April 2011, Moscow

VOLUME 12 Neurological, behavioral, Radiation Sickness, health effects

<https://tinyurl.com/Evidence-Volume-12>

60 4375-4482 Jul 7, 2016 Environmental Health Trust Organizations - Cyprus Government; Neurological and behavior effects of Non-Ionizing Radiation emitted from mobile devices on children: Steps to be taken ASAP for the protection of children and future generations.

Presentation Slides; 2016

61 4483-4531 Nov. 18, 2013 Kevin Mottus Organizations; Austrian Medical Association, Environmental Medicine Evaluation of Electromagnetic Fields; Dr. Jerd Oberfeld MD.; 2007

62 4532-4534 Jul. 11, 2016 Environmental Health Trust Organizations; The American Academy of Pediatrics, Letter to the FCC; 2013

63 4535-4540 Sep. 29, 2016 Kevin Mottus Organizations; California Medical Association, House of Delegates Resolution Wireless Standards (Resolution 107 - 14); 2014

64 4541-4543 Sep. 3, 2013 Grassroots Environmental Education, Inc. o/b/o American Academy of Environmental Organizations; American Academy of Environmental Medicine, Letter to the Federal Communications Commission; 2013

65 4544-4561 Sep. 29, 2016 Kevin Mottus Organizations - Radiation Sickness; Austrian Medical Association, Guidelines for the Diagnosis and Treatment of EMF Related Health Problems and Illnesses (EMF Syndrome); 2011

66 4562-4590 Sep. 28, 2016 Kevin Mottus Organizations; International Association of Fire Fighters, Position on the Health Effects from Radio Frequency/Microwave Radiation in Fire Department Facilities from Base Stations for Antennas and Towers; 2004

67 4591-4599 Sep. 28, 2016 Kevin Mottus Organizations; Cities of Boston and Philadelphia Reply Comments

68 Part 1 4600-4800 Sep. 3, 2013 Environmental Working Group Organizations; Appeal to the FCC Signed by 26,000 People and Organized by the Environmental Working Group, 2013 (Tab 68 Part 1)

VOLUME 13 Environmental Working Group and other group appeals

<https://tinyurl.com/Evidence-Volume-13>

68 Part 2 4801-5171 Sep. 3, 2013 Environmental Working Group Organizations; Appeal to the FCC Signed by 26,000 People and Organized by the Environmental Working Group, 2013 (Tab 68 Part 2)

69 5172-5186 Aug. 25, 2016 Kevin Mottus Organizations; Freiburger Appeal - Doctors Appeal; 2002

70 5187- 5191 Sep. 3, 2013 Grassroots Environmental Education, Inc. Organizations; Benevento Resolution, The International Commission for Electromagnetic Safety (ICEMS), 2006

71 5192-5197 Jul. 18, 2016 Environmental Health Trust Organizations; The Porto Alegre Resolution; 2009

72 5198-5204 Feb. 6, 2013 Kevin Mottus Organizations; Kaiser Permanente, Letter from Dr. De-Kun Li, Division of Research

73 5205-5210 Sep. 3, 2013 American Association For Justice Organizations; American Association for Justice, Comment

74 5211-5219 Feb. 6, 2013 Jonathan Libber Organizations; Maryland Smart Meter Awareness, Comments (filed by Jonathan Libber)

75 5220-5228 Feb. 6, 2013 Electromagnetic Safety Alliance Organizations; Electromagnetic Safety Alliance, Comments

76 5229-5241 Sep. 29, 2016 Ed Friedman Organizations; Wildlife and Habitat Conservation Solutions; What We Know, Can Infer, and Don't Yet Know about Impacts from Thermal and Non-thermal Non-ionizing Radiation to Birds and Other Wildlife. Dr. Albert M. Manville, PhD.; 2016

VOLUME 14 Reproduction, Developmental & Other Harm

<https://tinyurl.com/Evidence-Volume-14>

77 5242-5258 Sep. 30, 2016 Catherine Kleiber Mechanisms of Harm; Meta-Analysis, Oxidative mechanisms of biological activity of low intensity

radiofrequency radiation. Electromagn Biol Med (Yakymenko et al); 2016

78 5259-5269 Sep 3, 2013 Monnie Ramsell Mechanisms of Harm; Blood Brain Barrier; Increased Blood–Brain Barrier Permeability in Mammalian Brain 7 Days after Exposure to the Radiation from a GSM-900 Mobile Phone. Pathophysiology (Nittby, Salford et al); 2009

79 5270-5286 Sep. 3, 2013 Paul Dart MD. Mechanisms of Harm; DNA Damage; Microwave RF Interacts with Molecular Structures; Dr. Paul Dart MD.; 2013

80 5287-5303 Sep. 3, 2013 The EMR Policy Institute Medical Treatments & Modulation; Treatment of advanced hepatocellular carcinoma with very low levels of amplitude-modulated electromagnetic fields. British Journal of Cancer. (Costa et al); 2011

81 5304-5306 Sep. 3, 2013 The EMR Policy Institute Medical Treatments & Modulation; Treating cancer with amplitude modulated electromagnetic fields: a potential paradigm shift, again? British Journal of Cancer. (Dr. Carl Blackman); 2012

82 5307-5309 Feb. 8, 2013 Alan Frey Modulation; Dr. Alan Frey PhD., Comments, Feb. 7, 2013

83 5310-5319 Jul. 11, 2016 Environmental Health Trust Modulation; Real Versus Simulated Mobile Phone Exposures in Experimental Studies. Biomed Res Int. (Prof. Panagopoulos et al); 2015

84 5320-5368 Sep. 16, 2019 Joel M. Moskowitz, PhD Neurological; Book Chapter, A Summary of Recent Literature (2007-2017) on Neurological Effects of Radiofrequency Radiation, Prof. Lai; 2018 Referenced 122 Studies.

85 5369-5412 Sep. 28, 2016 Kevin Mottus Neurological - Report; Evidence of Neurological effects of Electromagnetic Radiation: Implications for degenerative disease and brain tumour from residential, occupational, cell site and cell phone exposures. Prof. Neil Cherry; 225 scientific references. 2002

86 5413-5415 Sep 3, 2013 Kevin Mottus Neurological; The effects of mobile-phone electromagnetic fields on brain electrical activity: a critical analysis of the literature. Electromagn Biol Med. (Marino et al) (Abstract); 2009

87 5416-5435 Nov. 18, 2013 Kevin Mottus Autism and EMF? Plausibility of a pathophysiological link. Pathophysiology, Part I. (Herbert et al); 2013

88 5436- 5460 Nov. 18, 2013 Kevin Mottus Autism and EMF? Plausibility of a pathophysiological link. Pathophysiology, Part II. (Herbert et al); 2013

89 5461-5486 Sep. 3, 2013 Kevin Mottus Fertility; Research Abstracts, List of References Reporting Fertility and/or Reproduction Effects from Electromagnetic Fields and/or Radiofrequency Radiation (66 references)

90 5487-5499 Sep. 3, 2013 Paul Dart MD Fertility; Effects of Microwave RF Exposure on Fertility, Dr. Paul Dart MD. (Petitioner); 2013

- 91** 5500-5506 Sep. 3, 2013 Paul Dart MD Hormonal; RF and Hormones, Alterations in Hormone Physiology; Dr. Paul Dart MD. (Petitioner); 2013
- 92** 5507-5514 Feb. 7, 2013 Toni Stein Prenatal & Children; Fetal Radiofrequency Radiation Exposure From 800-1900 Mhz-Rated Cellular Telephones Affects Neurodevelopment and Behavior in Mice. Scientific Reports. (Aldad, Taylor et al); 2012
- 93** 5515-5518 Jul. 7, 2016 Environmental Health Trust Prenatal & Children; Fetal Exposures and Cell Phones. Studies List. Prof. Hugh Taylor MD.; 2015
- 94** 5519-5553 Jul. 13, 2016 Parents for Safe Technology Prenatal and Children; Fetal Cell Phone Exposure: How Experimental Studies Guide Clinical Practice, Hugh S. Taylor MD. PhD., Chair of Obstetrics, Gynecology and Reproductive Sciences, Yale School of Medicine
- 95** 5554-5559 Sep. 3, 2013 Dr. Suleyman Kaplan Prenatal & Children; Dr. Suleyman Kaplan Comments
- 96** 5560-5614 Nov. 18, 2013 Kevin Mottus Prenatal & Children; Amended Declaration of Dr. David O. Carpenter MD. (Dec. 20, 2011); Morrison et al v. Portland Schools, No. 3:11-cv-00739-MO (U.S.D.C. Oregon, Portland Div.)

VOLUME 15 Children & Adolescent Harm

<https://tinyurl.com/Evidence-Volume-15>

- 97** 5615- 5712 Sep. 28, 2016 Kevin Mottus Prenatal & Children; Doctors and Scientists Letters on Wi-Fi in Schools
- 98** 5713- 5895 Jul. 11, 2017 Environmental Health Trust Dr. Devra Davis PhD., President of Environmental Health Trust (Petitioner) Comments
- 99** 5896- 5993 Jun. 7, 2017 Environmental Health Trust Children; Letter to Montgomery County Schools, Prof. Martha Herbert MD., PhD.; 2015
- 100** 5994- 6007 Apr. 29, 2019 Environmental Health Trust Neurological - Children; A Prospective Cohort Study of Adolescents' Memory Performance and Individual Brain Dose of Microwave Radiation from Wireless Communication. Environ Health Perspect. (Foerster et al); 2018 USCA Case #20-1025 Document #1869759 Filed: 11/04/2020 Page 17 of 454 INDEX TO DEFERRED APPENDIX -xviii
- 101** 6008- 6014 Sep. 28, 2016 Kevin Mottus Prenatal & Children; Cell phone use and behavioral problems in young children. J Epidemiol Community Health. (Divan et al); 2012

VOLUME 16 Children, Harm, Radiation Sickness

<https://tinyurl.com/Evidence-Volume-16>

- 102** p. 6015- 6026 Jul. 7, 2016 Environmental Health Trust Prenatal & Children; "Cell Phones & WiFi – Are Children, Fetuses and Fertility at Risk?"; 2013
- 103** p. 6027- 6060 Jul. 7, 2016 Environmental Health Trust Prenatal & Children; Safe Schools 2012, Medical and Scientific Experts Call for Safe Technologies in Schools
- 104** p. 6061- 6067 Sep. 3, 2013 Kevin Mottus Prenatal & Children - Stem Cells; Microwaves from Mobile Phones Inhibit 53BP1 Focus Formation in Human Stem Cells More Strongly Than in Differentiated Cells: Possible Mechanistic Link to Cancer Risk. Environmental Health Perspectives (Markova, Belyaev et al); 2010
- 105** p. 6068- 6069 Sep. 26, 2016 Angela Tsaing Radiation Sickness - Children; Angela Tsiang Comments
- 106** p. 6070- 6071 Mar. 5, 2013 Abigail DeSesa Radiation Sickness - Children; Abigail DeSesa Comments

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292 9160- 9162 Sep. 4, 2013 Kathryn K. Wesson Radiation Sickness; Kathryn K. Wesson Comments

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- 315** 9321- 9331 Feb. 5, 2013 Donna L. Bervinchak Radiation Sickness; Donna L. Bervinchak Comments

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2024, I caused to be served a true and correct copy of the foregoing upon the following:

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