SUPREME COURT THE STATE NEW YORK SEP ALBANY COUNTY

Index No: 902209-19

In the Matter of the Application Stephen P. Romine, Petitioner

For a Judgment pursuant to CPLR Article 78

vs.

The New York Public Service Commission and

Central Hudson Gas and Electric Corp.

****

PETITONERS REPLY TO RESPONDENTS MEMORANDUM AND ANSWER

****

Stephen P. Romine

Pro se, pro per, sui juris,

petitioner and litigant

P.O. Box 657

Woodstock, N.Y. 12498

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COUNTY OF ULSTER)

I, Stephen Romine, being duly sworn, deposed, states that I am a pro se, pro per, sui juris, petitioner, affiant and litigant in this action. I make this Reply in support of my petition for Judgment pursuant to CPLR Article 78.

Overview of Respondents Memorandum of Law Controverted

1. Petitioner is affirming in his petition with affidavit and this reply together with abundant, uncontroverted, scientific documented facts by health professionals and leading radiation experts in the world, that transmitting and non-transmitting Automated Meter Reader (hereafter called "AMR") style equipment carries with it the potential to cause, and has caused, serious adverse biological health effects to the public. This is not a difference of opinion but true facts from the scientific community versus the opinion of New York Public Service Commission (hereafter called the "PSC"). This issue is not in the realm of expertise of the PSC as they have no health professionals or radiation experts on their staff and have not done any studies of their own to document that AMR utility meters pose no threat to utility customers. Furthermore the PSC did not give proper notice to the public who had no idea of what was to take place even though the PSC claims indirect notice on an online website is sufficient by law as no utility customer were notified in their electric bills. This reply, the Article 78 petition and affidavit together with case 14-M-0196 original petition (hereafter called the "original petition")

has documented multiple errors of fact and law, especially constitutional law, rendering the October 20, 2017 and December 14, 2019 orders irrational, capricious and arbitrary, which are grounds for annulment/rescinding of those orders. This reply, supporting the Article 78 petition (hereafter called "A-petition") with

The Grounds Are The US Constitution

4. The grounds for this petition are founded in the constitutionally protected inalienable rights of the petitioner, the right to be safe in ones home, the right to be informed of toxic emitting devices being placed on ones home, the right to due process unhindered by arbitrary, capricious or irrational decision making, the right to redress of grievances, the right for equal protection of the law, the right to remedy, Furthermore the fact that the indirect consequence of the judgment of this Court will be on the public, is of societal interest, and will be far reaching. The bold but erroneous claim of the respondents, that because the PSC determinations, proceedings and orders are quasi-legislative, constitutional law does not apply, flies in the face of U.S. Supreme Court case law which is binding on this Court, Appellate Courts and Appeals Courts as well as tribunals, hearings or any government proceeding.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." No statutes, laws or acts passed by State government can violate the US Constitution (Davis v. Wechsler, 263 US 22, 24, Miranda v. Arizona, 384 U.S. 426, 491; 86 S. Ct. 1603).

The respondents, citing the State Administrative Act (hereafter called "SAPA), does not support their claims if is violates the petitioners constitutionally protected rights as

""An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." Norton v. Shelby County, 118 U.S. 425 (1886)

Furthermore "... the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." "In declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank". "All law (rules and practices) which are repugnant to the Constitution are VOID". Since the 14th Amendment to the Constitution states "NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law" (Marbury v. Madison, 5 U.S. (2 Cranch) 137, 180 (1803). In Boyd v. United, 116 U.S. 616 at 635 (1885) Justice Bradley states, "It may be that it is the obnoxious thing in its mildest form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated, by adhering to the rule that constitutional provisions, for the security of persons and property, should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizens, and against any stealthy encroachments thereon. Their motto should be Obsta Principiis."

The preceding citations of US Constitution makes it pretty clear that the respondent's claims of quasi-legislative immunity from constitutional adherence are without merit, capricious and irrational in spite of what state law concur. The supremacy clause of the U.S Constitution (Article VI clause 2) establishes the Constitution and federal laws made pursuant to it are the supreme law of the land. It provides that state courts are bound by the supreme law. In case of conflict between federal and state law, the federal law must be applied (Davis v. Wechler, 263 U.S. 22, 24; Stromberb v. California, 283 U.S. 359; NAACP v. Alabama, 375 U.S. 449 "The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice."

Poindexter v. Greenhow, 114 U.S. 270, 303 (1885). Brady v. U.S., 397 U.S. 742, 748, (1970) "Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness Williamson v. U.S. Department of Agriculture, 815 F.2d. 369, ACLU Foundation v. Barr, 952 F.2d. 457, 293 U.S. App. DC 101, (CA DC 1991).."It is the duty of all officials whether legislative, judicial, executive, administrative, or ministerial to so perform every official act as not to violate constitutional provisions." Edgar v, Mite Corp. 477 US 624 (1982) Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute."

Controverting Respondents Facts

4. Petitioner is in fact challenging the PSC October, 20, 2017 Order "Granting in Part and Denying in Part, Requests for Modifications of the Opt-Out Tariff" (Exhibit #41 S) and subsequent December 14, 2018 PSC Order 'Denying petitions For a Rehearing and Reconsideration" (Exhibit #15 E) as part of case 14-M-0196 "Tariff Filing by Central Hudson Gas and Electric Corporation To Establish Fees For Residential Customers Who Chose To Opt-Out Using Automated Meter Reading Devices". In the context of the history of utility metering and considering ½ of Central Hudson Gas and Electric Corporation's (hereafter called "CenHud") current customer base is still using electromechanical analog utility meters (hereafter "analog meters"), AMR metering is a relatively new development with the deployment of transmitting utility meters that emit Radio Frequency/Microwaves (hereafter called RF/MW) and emit High Frequency Voltage Transients spikes (hereafter called HF/VT's) throughout the ratepayers home .

The non-transmitting AMR meters also emit HF/VT's and nowhere in the respondents papers have they documented AMR meters do not emit HF/VT's or that analog meters do emit HF/VT's. Most customers are not even aware of the switch to AMR being undertaken or of the potential risks (Exhibits #4 A page 5 to 16, #35 M, #40 R, #42 T, #44V) because CenHud has not physically informed them and nowhere in the respondents papers do they document they physically informed utility customers so the statement that only a "small number of customers expressed opposition to the adoption of AMR meters" is out of context. What the PSC conveniently fails to mention is that there was zero input into the approval of AMR meters and that there were no pro comments either as no one knew what was taking place. The Feb, 14, 2005 GE I-210 Official PSC meter approval letter referenced in the Dec, 14, 2018 PSC order (Exhibit #15 E) on the bottom of page 6 states: "*In accordance with the State Administrative Procedure Act (SAPA) the petition was noticed in the State Register on November 3, 2004. The comment period expired on December 18, 2004 and no comments were received.*" So for only 6 weeks a notice online on a website (NY Register), most of the public are not aware of or visits (confirmed by unrebutted statements in Exhibit # 4 A page 2), and not mentioned in their electric bills, is claimed by the respondents to have informed customers AMR meters were going to be deployed in their locations. Only those familiar with the hazards of the emissions of transmitting meters (Exhibit # 4 A page 5 to 16 Exhibits #35 M, #40 R, #42 T, #44 V) would make any association with their adverse health and those meters to be able to voice opposition once the meters were deployed and the petitioner is one of them. On page 2 of the original petition (Exhibit #4 A) the petitioner stated as fact that he and his partner Nicole Nevin had experienced adverse

health effects from the meters as well as many other people so much so that 1,000 people signed a hard copy petition to request an analog meter opt-out choice. Those statements were not rebutted. The respondents are clearly attempting to mislead this court with fake facts and misleading statements.

5. The respondents admit on page 2 of their answer that AMR utility meters do transmit wirelessly radiofrequency, which is non-ionizing radiation, from the utility customers home to CenHud's truck driving by. The respondents also admit that: 'Petitioner further argues, though, that solid-state, non-AMR opt-out meters may also cause adverse health effects by inducing so-called "dirty electricity" onto house wiring, (and interject) despite the opt-out meter's lack of any radiofrequency transmission capabilities.' That statement demonstrates that the PSC's so-called expertise does not include a complete understanding of how AMR meters (they approved) actually work and what they are capable of as all digital meters, AMR being digital, have power supply switching devices that switch incoming alternating current (AC) into direct current (DC) as all computer components, which AMR utility meters have, work on DC current (bottom of page 5 Joint Utilities Comments #79 case 14-M-0196). It is the process of switching AC to DC that HF/VT"s are created, and travel on the homes wiring system which can be measured. Nowhere in all of the respondent's sworn submissions have they controverted that their digital meters do not create and send HF/VT's onto the home wiring because if they did they would be committing perjury and fraud.

6. The Petition's affirmations and claims are not merely the "opinions" of the

Petitioner but the extensive peer-reviewed medical research of PhD and MD health professionals trained in biology and radiation. The respondent has not submitted or referenced in the October 20, 2017 (Exhibit #41 S) or December 14, 2018 (Exhibit #15 E) orders any peer-reviewed scientific studies that support their claims of biological safety of digital AMR meters. The respondent cited 1 peer-reviewed article, which is not a study, on page 7 of their answer under "other sources" in their memorandum and cited 0 peer-reviewed medical studies to support the claims of biological safety of AMR meters, yet expects this Court and the public, to take their word that they have reviewed "more than 100 peer-reviewed studies" as they claimed in the Dec. 14, 2018 order (Exhibit #15 E page 13 bottom paragraph). Not to cite any references to peer-reviewed scientific health studies done by health professionals when claiming biological safety of AMR meters together with the other evidence presented in the original petition and the A-petition with affidavit and this reply, is unreasonable and not rational and grounds to annul the Oct. 20, 2017 & Dec. 14, 2018 orders (Exhibits #15 E, #41 S). The PSC would have this court believe that these issues are just a "difference of opinion" which is half right because the PSC submitting no peer-reviewed scientific medical studies makes their claims of biological safety of digital AMR meters just opinions which they readily admit on page 5 of their answer (#76). The petitioner though does not assign the extensive scientific medical research of 55 peer-reviewed studies, which he submitted in his original petition together with active links to 5,000 more (Exhibit #4 A page 8 #20) as mere opinion as his claims are grounded in documented scientific fact and not opinion. With that being stated the correct argument is: "the opinion of the PSC vs. the documented scientific medical facts, the expertise of MD.'s and PhDs with medical

training and a deep understanding of biology and electromagnetic fields (hereafter called "EMF's") who have carried out extensive scientific medical research in over 5055 studies peer-reviewed studies. To assert that PSC's administrative and engineering expertise is sufficient in matters of a biological nature, and no medical or radiation experts on staff or experience in biological lab research, examining subjects exposed to EMF's or HF/VT's, is certainly irrational and ridiculous.

7. The respondents allege on page 8 of their answer that the original petition (#4 A) was one for reconsideration therefore the statute of limitations was not tolled because the PSC states:

"Instead of identifying such an arbitrary error, the petition for reconsideration proposed that the Commission adopt a different public policy objective – as a matter of discretion. The Commission therefore determined that the Stop Woodstock Petition would be treated as a request for discretionary reconsideration rather than a petition for rehearing under PSL § 22 and 16 NYCRR § 3.7. [R. 0050]. Unlike a proper petition for rehearing, the Commission is not legally bound to act upon a petition for discretionary reconsideration, and such a petition does not toll the four-month statute of limitations in which to seek Article 78 review of the Commission's Order.

The problem with the PSC's reasoning is they fail to mention that the petition's title "Petition To Rescind" in no way implies a request to "adopt a different policy objective" but to "abrogate, annul or nullify "the order as Blacks Law fifth edition defines. The twisting of the intent of the petitioners petition to mean something it does not is capricious, arbitrary and unfounded.

The petitioner did not file a petition of "reconsideration" but filed a petition to rescind the October 20, 2017 PSC Order (#12 case 14-M-0196). The petitioner had filed for an extension request on November 16, 2017 (#19 case 14-M-0196) and on November 17, 2017 (#14 case14-M-0196) the PSC granted that request before the petitioners time to

submit his original petition had expired on November 20, 2017. The PSC committed fraud by stating: "*This is to acknowledge the receipt of your letter, on behalf of Stop Smart Meters Woodstock NY, dated November 16, 2017, requesting an extension of the deadline to submit a request for reconsideration of the Commission's Order Granting, in Part, and Denying, in Part, Requests for Modifications of Opt-Out Tariff, issued October 20, 2017, beyond the 30 days specified by law.*"

The plain fact is the PSC knows the term "reconsideration" was never mentioned in the original petition (Exhibit #4 A) or the petitioner's letter for a time extension dated Nov. 16, 2017 (#19 14-M-0196). The petitioner's letter for a time extension read as follows:

"*Dear Secretary Burgess, Stop Smart Meters Woodstock NY, besides being an activist group is also a group of people who have to work full time jobs to survive economically. The thirty days allowed to respond to the detailed October 19, 2017 PSC decision published on October 20, 2017, is not enough time to respond adequately with a point by point rebuttal of that said decision and carry on the personal business of maintaining our modest lifestyle. Stop Smart Meters Woodstock NY requests that the PSC extend the deadline to respond to said decision beyond the 30 days so as to be able prepare a more formal and detailed report on why the PSC decision is mistaken and incorrect in it's conclusions. We know that he Commission has been gracious enough in the past to extend comment period deadlines and we look forward to the commission doing so again so as to let the people have a voice in these matters.*"

November 16, 2017

Thank you for your time and consideration, Steve Romine

The PSC is committing fraud because it knew full well that the petitioner did not ask for more time for a petition of reconsideration. The PSC used that fraud to deprive the petitioner of his rights to a rehearing as prescribed in Public Service Law ("PSL") 22 by claiming that his time had expired because the PSC erroneously called the petition one for reconsideration. The PSC cannot deem the original petition anything before his time

to complete and submit all papers has elapsed. The time extension was granted with which the petitioner submitted more information that should have further deemed his petition as one for a rehearing as the original petition clearly challenged the PSC's October 20, 2017 (Exhibit #41S) Order as being incorrect because of the abundant errors of fact that the petitioner detailed and outlined with contrary correct facts. The PSC commits fraud stating at the bottom of the page 7 and top page 8 that the petitioner: *"...did not credibly allege any errors of law or fact or that changed circumstances required a different outcome*".

The PSC cannot possibly have missed all the errors of facts and law the petitioner included in his petition. The petitioner did file a letter of "Oversight" (Exhibit #14 D) on Feb. 14, 2014 detailing some of the errors of facts mentioned in the original petition (Exhibit #4 A), which the PSC obviously turned a blind eye to. The errors of law and fact mentioned in the original petition were as follows:

a. The PSC states on pages 5 & 6 of its October 20, 2017 Order (# 41 S):

"The petitions filed on May 29, 2015, which were signed by 50 individuals." "The July 10 Resolution seeks the right for customers to retain an existing electromechanical meter without fee, limitation of time or other constraint. Apparently cognizant that electromechanical meters are no longer manufactured, the July 10 Resolution proposes that if an electromechanical meter needs to be replaced, the customer would have the right to demand a refurbished electromechanical meter."

The original petition identified and corrected the above PSC error of purported fact by stating on pages 2 & 3 of Item I section A: "For some reason the PSC never mentions or refers to this 1,000 people petition and only mentions the 50 signature petition submitted with the Jane Valand resolution." The July 10th resolution, which the PSC fails to identify that Stop Smart Meters Woodstock NY drafted or that it was accompanied by more than

1,000 signatures on a petition are pretty substantial facts to be omitted. When all that is referred to is 50 signatures of support the omission of 1,000 signatures is a misleading error of fact in the October 20, 2017 PSC Order (Exhibit #41 S).

b. The petitioner stated early on his original petition the violation of inalienable rights that are protected by the US Constitution and dealt with it on the conclusion of Item I-B on page 3 of the original petition (Exhibit #4 A) declaring the PSC forcing digital meters on the public without their consent or informing them of the installation and potential hazards , is an error of law by approving routine violations of constitutionally protected rights of due process and the right to be secure in ones home or to be informed of the installation on ones home of a toxic emitting device.

c. The PSC stated on page 3 of its October 20, 2017 (Exhibit #41 S) Order:

" In this Order, the Commission finds that available research shows solid-state meters pose no credible threat to the health and safety of Central Hudson's customers, nor, for that matter, do the AMR meters which they replace."

The original petition identified and corrected the above PSC error of purported fact by itemizing and referencing "available research" of 55 peer-reviewed scientific medical studies (with active links to over 5,000 peer-reviewed scientific medical studies) that document low level, non-thermal, EMF's, emitted from digital meters, causes a variety of harm and listed them study by study (Exhibits #4 A page 5 to 16, #35 M, #40 R, #42 T, #44 V). While the petitioner claimed biological harm from the emissions of digital AMR meters, he referenced 55 peer-reviewed scientific medical studies with links to thousands

of other studies, the PSC has referenced 0 peer-reviewed scientific medical studies. To say the "that available research shows solid-state meters pose no credible threat to the health and safety of Central Hudson's customers, nor, for that matter, do the AMR meters which they replace" without referencing one single peer-reviewed scientific medical study is either fraud or just irrational modus-operandi when putting together a report that could seriously affect the public. Any academic knows that all claims must be referenced not to do so is irrational and capricious.

d. The PSC stated on page 3 of its October 20, 2017 Order (# 41 S):

"Furthermore, electromechanical meter technology is obsolete and currently not in production by any major meter manufacturer."

The original petition identified and corrected the above PSC error of purported fact by documenting two major remanufacturers, employing a type of manufacturing that produce American National Standards Institute (hereafter called ANSI) approved analog meters. The remanufactured meters are more accurate than the meters were when they were first manufactured so they are certainly not "obsolete" but improved as utilities continue to purchase them and use them as detailed in Item IX on pages 27 to 30 of the original petition.

e. The PSC stated on page 27 3rd paragraph of its October 20, 2017 Order (# 41 S)*:"*

An electromechanical meter contains no radio transmitter and emits no RF, but a substantial amount of EMF. "

The original petition identified and corrected the above PSC error of purported fact that stated analog meters create a "substantial amount of EMF" compared to non-transmitting

AMR digital opt-out meters, when in fact all AMR digital meters do create HF/VT's and analog meters do not create HF/VT's any as documented in Item X section A, top paragraph, page 31, note 1. The PSC has not since rebutted this undisputed fact in their October 20, 2017 & Dec. 14, 2018 Orders. Digital meters produce by far, much more "substantial" electromagnetic radiation in the form of HF/VT's, whose harm is documented by the 7 peer-reviewed scientific medical studies in III page 5 & 6 of the original petition (Exhibit #4 A). The magnetic field the PSC is calling EMF is localized to a few inches around the analog meter just as a light bulb has an electric field around the light bulb. The measurable HF/VT's also called electromagnetic interference, dirty electricity, and called "dirty power" by Industry, once created in the digital meters switching mode power supply unit, or any AC to DC switching device, travels onto the entire homes wiring system to every part of the house where wiring exists and spikes into the rooms. Contrary to the PSC aforementioned erroneous claim, CenHud has stated on page 6 and 7 in its June 23, 2016 "Joint Utilities Comments" that: "All digital meters, however, contain a device that converts alternating current ("AC") to direct current ("DC")." It is in the process of converting AC to DC that HF/VT's are created. Dr. Sam Milham has stated in his "Dirty electricity, chronic stress, neurotransmitters and disease" peer-reviewed study, listed as Study #6 on page 6 of the original petition (Exhibit #4A): "Dirty electricity, also called electrical pollution, is high-frequency voltage transients riding along the 50 or 60 Hz electricity provided by the electric utilities. It is generated by arcing, sparking, and by any device that interrupts current flow, especially switching power supplies".

The petitioner stated unequivocally on page 3 of his July, 28, 2016 (#63 case 14-M-0196)

Rebuttal to the Joint Utilities Comments, "Last but not least, there are no studies done by industry or anyone else that proves these wireless transmitting digital AMR meters or the non-transmitting digital, opt-out, AMR meters, which create voltage transients on home wiring circuits causing adverse health effects are safe for children and pregnant women.

The petitioner then stated again in his original petition this "undisputed fact" that analog meters don't create HF/VT's and nowhere in the October 20, 2017 (Exhibit #41 S) and December 14, 2018 PSC (Exhibit #15 E) Orders has the PSC refuted that analog meters do not create HF/VT's or that non-transmitting AMR opt-out meters most certainly do.

> *N.Y. Court of Appeals: "Facts appearing in the movants papers which the opposing party does not controvert may be deemed to be admitted." Kuehne & Nagel, Inc., Appellant v. F.W .Baiden et.al. Respondents 36 N.Y. 2d 539.330 N.E. 2d 624, 369 N.Y. 2d 667.*

Meanwhile the PSC states: "Petitioner further argues, though, that solid-state, non-AMR opt-out meters may also cause adverse health effects by inducing so-called "dirty electricity" onto house wiring, despite the opt-out meter's lack of any radiofrequency transmission capabilities. " Considering this last PSC statement, in view of the aforementioned documented facts, is absolutely false and an attempt to mislead this Court. To claim that analog meters put out "substantial EMF's" which cannot be measured beyond a few inches from the meter and disregard the truly home pervasive EMF's in the form of HF/VT's emitted non-transmitting AMR opt-out meters, which can be measured as substantial in every room of the home, is not only error of fact, but deception and fraud and at the very least an irrational claim.

f. In the two aforementioned PSC orders (Exhibits #15 E & #41 S) lists other agencies that it claims corroborate its purported facts with conclusions by administrative agencies that have no health professions on their staff except for the Vermont Department of Health (VDH), which carried out a study it uses to purportedly show smart meters are biologically safe. The PSC stated on page 26 of its October 20, 2017 (Exhibit #41 S) "The Vermont Department of Health Report also found the exposure from the smart meters was well below the FCC limits" as though that is a guarantee of biological safety (Federal Communications Commission-FCC).

In Item VIII section E on page 27 of the original petition, corrects the PSC's error of purported fact that the VDH study allegedly proves smart meters are biologically safe when in fact the VDH study had no biological subjects, but simply demonstrates a large array of smart meters meets the FCC guidelines. The petitioner and his partner Nicole Nevin, as well as many of the 1,000 people who signed the Woodstock petition and made 322 public comments on the PSC 14-M-0196 deliberation page, testify to the harm posed by AMR meters so much so that they needed to assert their right not to have one as stated in Item I section A page 2 of the original petition (Exhibit #4 A) which was unrebutted.

The petitioner continued to correct the PSC errors of fact by documenting on pages 20 & 21 in Item VII section B, note 3 & 4 of the original petition (Exhibit #4 A, #62 item 9 case 14-M-0196, included in this petition as Exhibit #48 AA & #49 BB that two agencies of the Federal Government, The Environmental Agency ("EPA") and the U.S. Dept. of the Interior ("USDI") have both officially stated the FCC guidelines are inadequate and not proof of biological safety as the VDH and the PSC erroneously assert (Exhibit #48 AA & #49 BB). The EPA stated: "The FCC's exposure guideline is

considered protective of effects arising from a thermal mechanism but not from all possible mechanisms. Therefore the generalization by many that the guidelines protect human beings from harm by any or all mechanisms is not justified" and " In summary, the current exposure guidelines are based on the effects from whole-body heating, not exposure of and effect on critical organs including the brain and eyes." The USDI stated the FCC guidelines are "30 years out of date and not applicable today". The original petition clearly documented and controverted the error of the PSC's purported fact that the VDH Study allegedly corroborates biological safety based on the FCC guideline adherence without any biological subjects, man or beast.

The petitioner also identified and corrected the PSC's error of fact regarding the VDH smart meter report by submitting in Item VII section B note 5 of the original petition, the "EMR Policy Institute: Deficiencies in Vermont Department of Health (VDH) February 10, 2012 Smart Meter Report":

g. The PSC's error of fact on page 26 of its Dec, 14, 2018 Order (Exhibit #15 E) that if a device that emits EMF's is below the FCC guidelines it must be biologically safe, is also controverted and corrected by the undisputed letter from the President of the American Academy of Pediatrics which was submitted on page 21 Item VIII section E note 1 of the original petition (Exhibit #4 A).

h. The PSC's error of fact on page 26 of its Dec, 14, 2018 (Exhibit #15 E) Order that if a device that emits EMF's is below the FCC guidelines it must be biologically safe, is controverted and corrected by the Santa Cruz Department of Health Report on the risks associated with smart meters on page 27, Item VIII, section E, note 2, of the original

petition (Exhibit #4 A).

i. Conclusion: It should be crystal clear that the original petition without the Addendum (#9 case 14-M-0196) set out to correct the PSC's errors of law and fact, not limited to the aforementioned ones in the above sections 5-a through h, and supplemented with 26 more errors of law and facts in the petitions Addendum. To say that the original petition with all of its parts did not cite errors of law and facts is certainly not accurate and could be construed as misleading and fraud and at the very least not rational. The original petition most certainly fit the criteria of a petition for a Rehearing as stated in 16 NYCRR § 3.7.

"(b) *Rehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.*"

8. The A-petition:

a) The respondents state on page 6 of their memorandum of law:

"On November 17, 2017, the Commission's Secretary granted an "extension of time in which to file an administrative request for reconsideration" (emphasis added) until December 4, 2017...."

The PSC stated in the "Ruling on Extension Request": *"Dear Mr. Romine:*

"This is to acknowledge the receipt of your letter, on behalf of Stop Smart Meters Woodstock NY, dated November 16, 2017, requesting an extension of the deadline to submit a request for reconsideration of the Commission's Order Granting, in Part, and

Denying, in Part, Requests for Modifications of Opt-Out Tariff, issued October 20, 2017, beyond the 30 days specified by law."

The original petition (Exhibit #4 A) was not a petition for reconsideration as it cited numerous errors of facts and law. The PSC cannot change the petition into something it is not by granting an extension of time. Extensions of time can be granted whether it is a petition for rehearing or reconsideration. The PSC has no right to convert the original petition into something it is not and the petitioner did not ask for a extension of time for a petition of reconsideration. To say he did is misleading and fraud and a violation of due process.

b) The respondent states on page 7 and 8 of its memorandum of law:

"The Petition was not styled as one for rehearing, nor did it make substantive claims that would lead to a reasonable conclusion that it was intended to be a rehearing petition, because it did not credibly allege any errors of law or fact or that changed circumstances required a different outcome."

As detailed before in this document in the petitioner most certainly did outline PSC arbitrary errors of law and fact in the original petition that would without a doubt produce a different outcome had those corrections been incorporated in the PSC orders in question. The available research that the PSC erroneously stated documented digital AMR meters are biologically safe and referenced none while the original petition referenced 55 peer-reviewed studies with active links to 5,000 peer-reviewed studies that show the emissions from digital AMR meters do in fact cause biological harm,

would have produced a different outcome to anyone with a rational mind who appreciates the gold standard of peer-reviewed research.

c. The respondents state on page 8 of their memorandum of law (#79-Memorandum): "The Commission's Secretary had not authorized an extension of time to submit a petition for *rehearing*, and had specifically cautioned that the statute of limitations would not be tolled, the Commission ruled that this "Addendum" did not convert Stop Woodstock's original petition for discretionary reconsideration into a properly-filed petition for rehearing. The petitioner has documented he filed a petition to rescind that identified many arbitrary errors of law and facts by the PSC. He filed a request for a time extension to submit more papers with his petition. He did so to enhance what he already submitted which was a petition that originally cited many arbitrary errors of facts. There was no conversion that happened to the petition only an enhancement of it by adding additional errors of law and facts.

d. The respondents' state, on page 8, of their memorandum of law: "Instead of identifying such an arbitrary error, the petition for reconsideration proposed that the Commission adopt a different public policy objective – as a matter of discretion. The Commission therefore determined that the Stop Woodstock Petition would be treated as a request for discretionary reconsideration rather than a petition for rehearing under PSL § 22 and 16 NYCRR § 3.7. [R. 0050]."

The petitioner clearly documented in his petition that the respondents were alleging false facts and he referenced much documentation in the form of peer-reviewed scientific studies demonstrating arbitrary and capricious error on the part of the PSC.

The PSC is holding the petitioner to stringent standards by allocating his petition to one for reconsideration thereby denying him due process rights.

U.S Supreme Court case law, binding on the PSC and this court states:

(*Haines v. Kerner*, 404 U.S. 519 (1972) "Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient"... "which we hold to less stringent standards than formal pleadings drafted by lawyers..and *Jenkins v. McKeithen,* 395 U.S. 411, 421 (1959) *Pucket v. Cox,* 456 F2d 233). Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938) "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers, which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

RESPONDENTS ARGUMENTS CONTROVERTED

POINT I

THIS PROCEEDING IS NOT TIME-BARRED

A. The Commission Purportedly Approved AMR Meters Years Ago

The PSC approved AMR meters in 2005 and 2008 (Exhibit #15 E, page 6 note 7) with indirect notice online, which is not "proper notice":

"Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party . . . if its name and address are reasonably ascertainable" (*DeVita v City of Poughkeepsie*, 296 AD2d 523, 525 [2002]

without informing power consumers of AMR deployments to take place on their homes and without informing them of the potential risks (Exhibit #4 A, page 5 to 16, #35 M, #40 R, #42 T, #44 V). There were zero public comments in the 2005 & 2008 PSC Order:

"The comment period expired November 3, 2004 and no comments were received" (#1case 04-E-1220 page 1).
"The comment period expired March 19, 2008 and no comments were received." (#1case 07-E-1503 page 1)

No health issues were mentioned in the PSC Orders regarding the risks of deployment of microwave/transmitting utility meters only mention of accuracy tests before being approved:

"General Electric certifies that the GE I-210 electronic meters are designed and tested to comply with the applicable requirements in the American National Code for Electricity Metering (ANSI C-12.1 and C-12.20 and 16 NYCRR Part 93)."

Much of the public back then were not computer savvy or even knew that the online New York Register existed as most of the public today does not know it exists, who are computer savvy as no notices were ever included in customers electric bills. To say the public was properly noticed is fraud and deception and a violation of the constitutionally protected right of due process and the right to be secure in ones home free from intrusive government approved deployments of toxic emitting devices being placed on homes without obtaining physical informed consent. When fraud is present in a proceeding, the resulting order or judgment is vitiated. 37 Am Jur 2d at section 8 states, in part:

"Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments."
U.S Supreme Court Agrees:
"Fraud destroys the validity of everything into which it enters" Nudd v. Burrows, 91 U.S. 426, (1875) "Fraud vitiates everything it touches" Boyce's Executors v. Grundy, 28 U.S. 3 Pet. 210 (1830), "Fraud vitiates the most solemn of contracts, documents and even judgments" U.S. v. Throckmorton, 98 U.S. 61 (1878).

The 2005 & 2008 orders approving AMR meters is vitiated by the fraud of claiming the public was notified of the approval and deployment of AMR utility meters.

B. The Statute with Respect to The Commission's October 20, 2017 Order Has Not Expired.

The Petitioner did not file a petition of "reconsideration" but filed a petition to Rescind the October 20, 2017 PSC Order. The Petitioner also filed for an extension request on November 16, 2017 (#19 Case 14-M-0196) and on November 17, 2017 (#14 Case 14-M-0196) the PSC granted that request before the Petitioners time to submit had expired on November 20, 2017. The PSC committed fraud by stating:

"*This is to acknowledge the receipt of your letter, on behalf of Stop Smart Meters Woodstock NY, dated November 16, 2017, requesting an extension of the deadline to submit a request for reconsideration of the Commission's Order Granting, in Part, and Denying, in Part, Requests for Modifications of Opt-Out Tariff, issued October 20, 2017, beyond the 30 days specified by law.*" (#14 case 14-M-0196)

The plain fact is the term "reconsideration" was never mentioned in the original Petition (Exhibit #4 A) or the Petitioner's Nov.16, 2017 letter for a time extension (#19, Case 14-M-0196). Furthermore The PSC took almost a year to make their December 14, 2018 decision violating the 30day legal requirement for them to make a decision on the petitions. New York Public Service Law ("PSL") 22 states:"

"After an order has been made by the commission any corporation or person interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, but any such application must be made within thirty days after the service of such order, unless the commission for good cause shown shall otherwise direct; and the commission shall grant and hold such a rehearing if in its judgment sufficient reason therefore be made to appear. The decision of the commission granting or refusing the application for a rehearing shall be made within thirty days after the making of such application."

Clearly the PSC was stonewalling the petitioner, 1,000+ people, 4 municipalities, two

county governments and legislators who were demanding an analog meter opt-out option which has not been disputed as a fact (Exhibit #4 A Item I B pages 3 &4).

The PSC is committing fraud because it knew full well that the petitioner did not ask for more time for a petition for reconsideration. The PSC used that fraud to deprive the petitioner of his rights to a rehearing as prescribed in Public Service Law ("PSL") 22 by claiming that his time had expired because the PSC erroneously called the original petition one for reconsideration. The PSC cannot deem the petitioners petition anything before his time to complete it has elapsed and submitted all his papers. The time extension was granted with which the Petitioner submitted more information that should have further deemed his petition as one for a Rehearing as the original petition clearly challenged the PSC's October 20, 2017 Order (Exhibit #41S) as being incorrect because of errors of fact that the petitioner detailed and outlined with contrary correct facts. The Respondents have declared on page 7 & 8 of their answer that

"*The Petition was not styled as one for rehearing, nor did it make substantive claims that would lead to a reasonable conclusion that it was intended to be a rehearing petition, because it did not credibly allege any errors of law or fact or that changed circumstances required a different outcome.*" Those statements contradict their own statements on pages 6 through 10 in the PSC's Dec. 14, 2018 Order (Exhibit #15 E) in the chapter "

The Petition of SSMNY" where the PSC mentions the original petition (Exhibit #4 A) cites many errors of fact and law:

Error of Fact Example 1: Page 8 "SSMWNY states that the Commission committed an error of fact, collaborating with Central Hudson to identify the Aclara I-210 as an encoder/receiver/transmitter (ERT) meter, when it is in fact a "smart" meter."

Error of Law Example 2: Page 9 'SSMWNY claims that the Commission is negligent in allowing the Company to deliver "dirty electricity" and, further, that compelling customers to accept such meters violates the Fourth Amendment of the United States Constitution.'

Errors of Facts Example 3: 'SSMWNY states that the Commission committed errors of fact in determining that research has not shown any negative health impacts from low level RF transmissions, and in failing to account for the information contained in the BioInitiative Report and other reports that document such harm. SSMWNY states that, to the contrary, there are no studies that document the absence of such harm.'

These are but a few of the errors of fact and law mentioned in the original petition the PSC themselves acknowledged in their Dec. 14, 2018 Order (Exhibit #15 E) which should have deemed it a petition for a rehearing and contrary to the PSC deeming it a petition for reconsideration.

The original petition did just that in great detail. The PSC's determination stating:

'The Commission, therefore, determined that Stop Woodstock's "Petition for Rescinding New York Public Service Commission Decision on Order Denying, In [P]art, Requests For Modification of Opt-Out Tariff" was not properly a rehearing petition inasmuch as it only stated a policy disagreement, and did not credibly allege errors of law or fact or changed circumstances requiring a different outcome '

The PSC turned a blind eye to all the petitioners' citations of errors of facts and law could be construed as misleading and fraud or at least irrational and arbitrary.

POINT II

THE COMMISSION'S POLICY DETERMINATION TO APPROVE THE OPT-OUT TARIFF WAS IRRATIONAL

A. Statutory Framework: Purportedly "Safe and Adequate" Utility Service.

The petitioner agrees that the PSC's obligation under the Public Service Law is to ensure "safe and adequate" service at "just and reasonable" rates. (*Rochester Gas & Elec. Corp. v. Public Serv. Commn. of State of N.Y.*, 66 A.D.2d 509, 512 (3d Dep't 1979) . The petitioner also agrees that this duty includes supervision of the equipment used by utility corporations to furnish service. The argument is the PSC is negligent in those duties: that the PSC did not give "proper notice" of the deliberations and deployment of digital AMR meters; did not get physical informed consent of utility customers to have a digital AMR meter that emits EMF' throughout their home; turned a blind eye to the important current research credible health organizations that documented biological harm from the emissions of digital AMR utility meters turned a blind eye to federal agencies who stated the FCC exposure guidelines the PSC uses to determine biological safety is not justified; turned a blind eye to municipalities , towns and over thousand people who urged the PSC to order CenHud to make analog meters available; turned a blind eye to analog meter remanufacturers, turned a blind eye to utilities in other states including Maine and Vermont who remanufactured analog meters with no ensuing problems CenHud and the PSC imagine; that the cumulative sum of all the aforementioned PSC actions or lack of action in decision making can

only be described as misleading, irrational, arbitrary, capricious and unreasonable.

B. **The Commission Irrationally Turned a Blind Eye to the Best Available Evidence Regarding EMF.**

The petitioner has referenced and supplied in his original petition (#4, Exhibit A) active links to 55 peer-reviewed scientific medical studies with active links to over 5,000 studies some of which were performed by some of the worlds leading experts on EMF radiation exposure and the biological harm it can and does cause. The PSC turned a blind eye to each and every one of them, somehow irrationally believing that it has the academic and scientific qualifications to dismiss the gold standard of peer-review. The PSC turned a blind eye to the Environmental Protection Agency (Exhibit #49 BB) and the Department of Interior (Exhibit #48 BB) warnings not to trust the outdated FCC guidelines who is reported to be a captured agency of the wireless industry as expounded on in "FCC – Captured Agency Report" published by Harvard School of Law Ethics Dept. (Exhibit #45 W) also submitted in the original petition (Exhibit #4 A). The PSC turned a blind eye to the Bioinitiative Report of 2012 based on 2,000 peer-reviewed studies performed by the worlds leading experts on radiation exposure (Exhibit 4 A, bottom page 8, link 20). The PSC turned a blind eye to the President of the American Academy of Pediatrics warnings about the increased risk to pregnant women, children and infants from EMF radiation exposure, which

is what is emitted from digital AMR utility meters. The PSC turned a blind eye to the Naval Medical Research Institute report which together with the Bioinitiative Report have cited 5,000 studies available to review in the active link in the original petition (Exhibit #4 A, bottom page 8, section A- link 20) documenting the biological harm to chronic exposure to low level EMF's. All this, and much more, was submitted in the original petition (Exhibit #4 A). To turn a blind eye to all of the aforementioned science and warnings from reputable sources is unreasonable and irrational especially if one is tasked with the public safety as the PSC has admitted in their mission statement is obligated to do and mandated by SAPA (article 2, section 202, 6a and section 202-b 1a). To turn a blind eye to all the aforementioned evidence of harm from EMFs is certainly not "rationally accepting the best available evidence on EMF" (#79 Answer sect-B) and at the same time not providing any links or reference to the purported "more than 100 peer-reviewed studies" the PSC claims it purportedly reviewed is certainly irrational when the agency in question is supposed to be a public servant tasked with looking out for publics good (Exhibit #15 E, bottom of page13).

The respondent claims the PSC can choose among conflicting expert opinions but what it has done is irrational not providing this Court with the references to the purported 100 peer-reviewed studies it claims to have reviewed and used to make a determination. The PSC is not required to chose what the petitioner may have proffered but the PSC is required to accept the latest,

most current and accurate information and science that will benefit the wellbeing and biological safety of NY State residents who rely on the PSC to do so. If it is the petitioner making this information available, the PSC should welcome it and incorporate it. The PSC has erred in law by violating the public trust by demanding conclusive proof digital meters AMR utility meters harm the public by turning a blind eye to the U.N.'s "Precautionary Principle" used by jurisdictions around the world. Turning a blind eye to the "preservation of the public health, safety and general welfare" (SAPA article 2, section 202, 6a and section 202-b 1a) by ignoring available past military studies and the most current up to date peer-reviewed scientific studies done by experienced health professionals which document harm from chronic exposure to low level EMF's emitted from wireless devices, including digital AMR utility meters, are listed as follows:

1. On page 7 of the original petition (Exhibit #4 A, Item IV-A-10) is an award winning peer-reviewed study which documents and explains the biological mechanism of harm from exposure to EMF's that the PSC erroneously and irrationally claims does not exist: Electromagnetic Fields Act via Activation of Voltage-Gated Calcium Channels to Produce beneficial or Adverse Effects (Martin pall PhD. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780531/).
2. Self-Reporting Of Symptom Development From Exposure To Radio Frequency Fields of Wireless Smart Meters - a case series (Dr.

Frederica Lamech MBBS

https://www.ncbi.nlm.nih.gov/pubmed/25478801) (Exhibit #42 T). This unchallenged peer-reviewed study documents adverse health effects appearing in 90 individuals once a digital transmitting utility meter is installed on their home

3. The Conrad Study (Exhibit #44 V) documents the adverse biological health effects of 210 utility customers who after having transmitting utility meters installed on their homes by the Utility experienced the onset of adverse health effects. As with the Lamech Study, which specifically noted that many of these subjects became electro-sensitive once exposed to transmitting meter radiation frequencies having not been before.
4. On bottom of page 8 of the original petition (Exhibit #4 A item 20) is an active link to 2,000 peer-reviewed studies referenced in the Bioinitiative Report of 2012 and an active link to 3,000 studies cited in the Naval Medical Research Institute Report documenting adverse biological harm from EMFs, many below the thermal threshold point which the PSC and the captured agency FCC capriciously claims cannot happen.
5. In the original petition (Exhibit #35 M chapter 5) Microwave Frequency Electromagnetic Fields (EMF's) Produce Neuropsychiatric Effects.

6. Cited in Exhibit M study are active links to the 1981 Raines Report by NASA: (https://ntrs.nasa.gov/archive/nasa/casi.ntrs.nasa.gov/19810017132.pdf) and the 1994 Bolen Report by the US. Air Force Rome Laboratories: (https://apps.dtic.mil/dtic/tr/fulltext/u2/a282886.pdf)

Both reports document abundant citations of biological harm from EMFs, many at non-thermal levels of exposure. Dr. Martin Pall has assembled a chart in his aforementioned report that has been included in the exhibits with the Article 78 petition and labeled as Exhibit #35 R. Is the U.S. Naval Medical Research Institute, U.S. Air Force and NASA credible enough for the PSC? For the PSC to say they have reviewed the available research and found EMF's do not cause adverse biological health effects, is irrational, capricious and ludicrous or possibly just plain fraud. If they did review the available research they are in fact committing fraud, because available research documents EMF's most certainly cause adverse biological health effects and all the studies just referenced taken from the administrative record prove the PSC has at the very least made irrational and capricious statements and decisions regarding this issue. Regarding the PSC case law references such as the *Matter of Gansevoort Holding Corp. v Consolidated Edison Co. of N.Y.*, 167 A.D.2d 648 (3rd Dep't 1980), it provides no comfort to Respondent Public Service Commission (PSC)'s contention that it is entitled to claim that they can review evidence, not disclose which evidence was

considered in forming its opinion, ignore evidence presented to it and beg agency deference. While the commission may not have been "required to credit any opinions Petitioner may have proffered", it certainly had an obligation to "weigh conflicting evidence and to assess the credibility of witnesses". Nowhere does the PSC explain how it came to weigh the evidence provided by myself and others and reject it outright. It does not explain it's reasoning and is obligated to do so to if it is claiming to this Court it had a rational basis to come to its conclusion.

The PSC has proffered no basis for coming to its conclusion that could be deemed rational. Aldous Huxley said it best, "Facts don't cease to exist just because they are ignored"; the rational basis standard does not give the PSC the right to outright dismiss information that doesn't fit its desired thesis or agenda. (The late Senator from the State of New York said it another way, "You are entitled to your own opinion, you are not entitled to your own facts". The PSC's *modus operandi* is simply to ignore facts that would cause cognitive dissonance.)

Gansevoort is in fact wholly inapposite; the case is about a ConEd customer who did not think retroactive billing after a year was fair; it refers to a situation where the facts are not in dispute; indeed, the Petitioner did not even dispute ConEd's claim that the bill was accurate:

There is no contention that the meter reading of actual gas use was in

error. The reason for the back billing in this case was not ascribable to any company deficiency as defined in Con Ed's operational procedures. Rather, the circumstances fall within the procedures which provide that back billing is not subject to any time limitation if Con Ed underestimates the bill and has made efforts to obtain a reading, but the customer did not provide access or when the customer knew or reasonably should have known of the estimated billing problem.

The instant case involves a question of emissions from meters and as described in my petition, concerns a matter of health and for the occupants of a residence subjected to such meters. I proffered expert scientific and medical opinion (Exhibit #4 A, page 5 to 16, #35 M, #40 R, #42 T, and #44 V); the PSC did not credibly dispute these opinions or provide any basis for attacking them. Furthermore, the PSC has NO expertise in the health of effects of electromagnetic fields in house; nor did they demonstrate that they consulted any such expert. I will add that the New York State Department of Health ("NYSDOH") by its own admission has no in-house expertise on the effects of electromagnetic radiation; Dr. David O. Carpenter, who was head of Wadsworth Laboratories for the State of New York is at the Rensselaer campus of the University of Albany, and the PSC neither consulted him nor debunked anything he has stated in his August 12, 2016 official letter to the PSC (#51 case 14-M-0196):

"There have been few careful studies specifically of the health effects of

electronic meters to my knowledge, in great part because they haven't been around very long. But they utilize the same type of RF radiation that is used in cell phones. It should be noted that the World Health Organization has and Department of Environmental Health Sciences School of Public Health declared radiofrequency radiation to be a possible human carcinogen. While it is true that the nature of exposure to RF from electronic meters is not significantly different from that coming from other wireless devices, what is important is cumulative, aggregate exposure. My position is that we should practice "prudent avoidance", which is to say reduce unnecessary exposure to the degree possible until the magnitude of risk is fully understood.

My specific concerns about electronic meters are as follows:

1. The benefit of the electronic meters is entirely to the utilities, and is economic in nature. If they install these meters they can fire those individuals who at present are employed to go around reading meters. Thus this is a job-killing proposal, and will increase unemployment, which is already too high.

2. When an electronic meter is installed residents have no choice in the matter or ability to avoid exposure. But every individual has the option to use or not use other personal wireless devices. There is a major difference between an exposure which an individual chooses to accept and one that is forced on individuals who can do nothing about it.

3. Most electronic meters transmit signals to the utility for relatively short periods of time, but generate radiofrequency pulses at frequent intervals all day and night. Thus the device continuously generates RF radiation that will expose anyone nearby 24/7.

4. The evidence for adverse effects of radiofrequency radiation is currently strong and grows stronger with each new study. Analog meters with shielded cable do not increase exposure.

5. In my view, as a public health physician with specific expertise in the human effects of radiofrequency radiation, I urge you to require Central Hudson to install analog meters where residents request them. At the very least individuals concerned about their health and the health of their families should be allowed to choose an analog meter. Analog meters have withstood the test of time for safety and are not a source of RF radiation. Installation of electronic meters will adversely affect the health of New York State residents and will ultimately invite legal action arising from the development of diseases known to be associated with exposure to RF radiation."

Yours sincerely, David O. Carpenter, M.D., Director, Institute for Health and the Environment University at Albany

Dr. Carpenter who has an undergraduate and medical degree from Harvard University is a member of the Presidential Cancer Panel of the United States and has served in this important capacity under Presidents Bush, Obama and Trump. He was also Secretary of the court-ordered New York Power Lines Project and runs a World Health Organization ("WHO") collaborating center at the University at Albany School of Public Health where he was the founding dean. This is an example of the PSC turning a blind eye to the claims of serious harm that are inconvenient to it stated goals and agenda of promoting the rollout of wireless metering. He should have been the first person the PSC consulted.

Gansevoort cites to another meter back billing case, *Matter of Timmv. New York Public Service Commission*, 144 A.D.2d 139 (Third Dept.: 1988) in which the Petitioner proffered no evidence linking the meter reader's "conviction for bribe-taking in connection with a completely unrelated meter-tampering incident was in any way linked to or affected the meter tampering at the Petitioner's residence." Again in both these cases, no argument was adduced by Petitioner that the utility did not have the right to recover for electricity that had not been charged to the Petitioner by meter mistake. *Gansevoort* also cites to *Matter of Consumer Protection Bd. of State of New York v. Public Service Commission*, 441 N.Y.S.2d 590 (Albany County: 1981) in which the Court takes pains to point out petitioner submitted evidence to the commission, which conducted extensive investigations where-after all of the

parties had an opportunity to discuss, analyze and object to the proposed findings and then: PSC conducted extensive investigations where-after all the parties hereto had an opportunity to discuss, analyze and object to the proposed findings. It is apparent that the petitioner submitted evidence to the commission that lengthy studies were made. There was no public hearing in that case. In this case, (which also had no public hearing), there is no evidence of these types of "extensive investigations" which the Court identified the PSC as having undertaken in that case. The case also cites to an old case, *Matter of United States Tube & Foundry Co. v Feinberg*, 7 AD2d 59 (3rd Dep't, 1959) that states:

"Obviously this is a field where the scanty knowledge of the court can hardly be set up against engineering judgment[s] backed by a commission which has its own engineering experts. This is an area of regulatory power where the judgment of the commission must necessarily be conclusive unless it clearly appears to be arbitrary or capricious; otherwise the courts would be assuming regulatory powers which belong to the commission alone."

There are two relevant points here: the PSC, like the FCC are not a health and safety agency and do not contain any such in-house expertise. Furthermore, in regard to the 50 KHz line emissions of the digital opt-out meter, it is common knowledge that any device with a computer function in it produces this type of line emission; for the PSC to claim otherwise shows their essential dishonest. They can't hide behind their claim

that they have engineers in house when their engineers are denying basic facts of product engineering that are understood as fact [put in some more proof here]. The bottom line is the PSC is asserting that they should be able to put whatever they want on the side of the house even if it is less safe than what was there previously (an analog meter), which protected *all parties.* It is not rational for the PSC to ask this Court to take as an article of faith that (a) the meter is safe when they have no in house expertise on the biological health effects of electromagnetic fields and (b) that the meter is not creating line pollution when it is common knowledge all other devices with a computing function do this. The PSC does not state that HF/VT's are not created in digital AMR meters in any of their sworn testimony. What they do state is that the petitioner "alleges" HF/VT's are created by digital AMR meters. The PSC meets no standards for agency deference when they misrepresent a fact about engineering, which they are supposed to have experience with and have no in-house health expertise.

Gansevoort also quotes *Matter of Silberfarb v Board of Coop. Educ Servs., Third Supervisory District,* Suffolk County (Court of Appeals: 1983):

It was for the school district to weigh the conflicting evidence of motive and assess the credibility of the witnesses.

Where is the assessment of the credibility of the witnesses that I and other opponents of the digital meter proffered? The PSC provides no such real

assessment; they merely ask this court to provide deference that they did. That is not rational. *Gansevoort also cites to Matter of Campo v Feinberg*, 279 A.D. 302 (3rd Dep't: 1952) which states: In this case the findings of the commission are not only supported by the record, but are almost self-evident propositions, requiring but slight proof to support them.

Here the PSC advances no self-evident propositions, and the record does not support robust review.

C. The Commission Acted Irrationally By Not Accepting the Best Available Evidence Regarding High Frequency Voltage Transients.

The respondents only submitted on peer-reviewed article, which is not a study, and rejected the 7 peer-reviewed studies on high frequency voltage transients that the petitioner has submitted with his original petition documenting adverse biological health effects HF/VT's. The PSC stated: "The Commission found that the most reputable current literature does not conclusively establish a causal nexus between exposure to high frequency voltage transients and adverse biological health effects." Of course the PSC does not provide or submit any peer-reviewed medical studies that conclusively prove that high frequency voltage transients are biologically safe for utility customers to be exposed to on a chronic basis. Instead they submit one peer-reviewed article, which is not a study, to discount the petitioners 7 peer-reviewed medical studies. 'Dirty Electricity': What, Where, And Should

We Care?" Journal of Exposure Science and Environmental Epidemiology (Vol. 20, pp. 399–405) on page 15 of the Dec. 14, 2018 Order (Exhibit #15 E) was published in 2010. Dr. Sam Milham published "Evidence that dirty electricity is causing the worldwide epidemics of obesity and diabetes" in Jan. 2014, "Dirty Electricity, Chronic Stress, Neurotransmitters and Disease," in Dec. 2013 and "Dirty electricity, cellular telephone base stations and neoplasia." in Dec. 2011 (Exhibit #4 A, Item III-A, 5, 6, and 7. The Frank DeVocht article was NOT referring to those Sam Milham studies just mentioned, as DeVocht's article were published in 2010. The PSC carelessly misses these facts and erroneously claims by submitting the Frank DeVocht article, it refutes all of the petitioners studies on dirty electricity.

Furthermore the PSC misses the fact that the Frank DeVocht article was only cited 9 times whereas the Magda Havas studies had many more citations: "Power quality affects teacher wellbeing and student behavior in three Minnesota Schools " was a single blind study repeated 3 times in 3 locations in Minnesota and was cited 11 times by other researchers; "Dirty Electricity Elevates Blood Sugar Among Electrically Sensitive Diabetics and May Explain Brittle Diabetes" has been cited in other peer-reviewed studies 36 times; "Electromagnetic Hypersensitivity: Biological Effects of Dirty Electricity with Emphasis on Diabetes and Multiple Sclerosis" was cited 51 times by other researchers in their peer-reviewed studies (Exhibit # 4 A, Items III, pages 5 & 6). Instead the PSC choses the Frank DeVocht article "Dirty Electricity: what, where, and should we care" to

critique other HF/VT's studies when had it only 9 citations (Exhibit #15 E, bottom of page 15). Citations are provided with the study or by going to pubmed.com or research.net

Is it rational to ignore peer-reviewed studies that document harm when representing the public's well being the PSC is bound by the State Administrative Procedures Act to protect. The PSC has erred in law violating the public trust by demanding conclusive proof digital AMR utility meters harm the public and ignoring the U.N.'s "Precautionary Principle" used by jurisdictions around the world for the "preservation of the public health, safety and general welfare" (SAPA article 2, section 202, 6a and section 202-b 1a) and by ignoring the peer-reviewed scientific studies done by experienced award winning health professionals like, Dr. Sam Milham, which document harm from chronic exposure to HF/VT's emitted from all digital meters. Contrary to the PSC aforementioned erroneous claims, CenHud has stated on page 6 and 7 of the June 23, 2016 "Joint Utilities Comments" that: "All digital meters, however, contain a device that converts alternating current ("AC") to direct current ("DC")." It is in the process of converting AC to DC that HF/VT's are created. Dr. Sam Milham has stated in his "Dirty electricity, chronic stress, neurotransmitters and disease" peer-reviewed study, listed as Study #6, on page 6, of the original petition:

"Dirty electricity, also called electrical pollution, is high-frequency voltage transients riding along the 50 or 60 Hz electricity provided by the electric utilities. It is generated by arcing, sparking, and by any device that interrupts current flow,

especially switching power supplies". It is the moral responsibility of the PSC to employ the precautionary principle and at the very least make available the time tested biologically safe analog meter and to refuse to do so based on petty economics and not the intentioned wellbeing of the public when other states are able to so, is irrational on the part of the PSC.

D. The Commission Inappropriately Did Not Identify Various "Studies" that Commission Relied On

The PSC did not provide any active link or reference that support their claim of: "The evidence supporting this determination includes more than 100 peer-reviewed scientific studies," (Exhibit #15 E page 13) which would document low level EMF's do not cause adverse health effects. They did not do that in their October 20, 2017 order or in the December 14, 2018 order. The PSC is not doing that in their answer either is plainly clear. This section of the respondent's memorandum should be listing studies the PSC relied on to bolster and authenticate their claim yet they have not done here also. It should be apparent that the PSC has been misleading the public and attempting to mislead this Court and committing fraud. What the PSC has supplied are non-medical professional sources that did not do any biological studies but supplied engineering reports that favor industry's agenda. The bulk of the sources supplied by the PSC totally rely upon the FCC's outdated and incorrect exposure guidelines. These guidelines have no medical scientific standing when compared to the gold standard of peer-reviewed medical

studies of which the PSC supplied none and the petitioner has supplied 55 with access to over 5,000 studies. The respondent states:

"But in any event, there is no legal requirement that the Commission individually describe every piece of evidence it considered in reaching its determination."

Firstly the PSC has not referenced one single peer-reviewed scientific medical study to support their claims let alone a *"shred"* while claiming to have purportedly reviewed *"more than 100 peer-reviewed studies"* (Exhibit #15 E, bottom of page 13). What is so hard for the PSC that they can't provide active links or references to the purported 100+ peer-reviewed studies they purportedly reviewed? Why would they not do that as the layman petitioner has, and abundantly? Without the purported 100+ peer-reviewed studies all the PSC has to confirm their assertions is other States PSC agencies and organizations that totally rely on the outdated FCC standards. The PSC refusing to present the references to the purported 100 + studies they purportedly reviewed is violating the due process rights of the petitioner who has a right to discovery in a proceeding that will affect him (Wardius v. Oregon, 412 U.S. 470 (1973). The PSC in not making full disclosure to the public about what studies they purportedly reviewed is acting in extremely bad faith, not only to the public who will be affected by their capricious and arbitrary determinations, but to this Court demonstrating irrationality or fraud or both.

E. The Commission Did Not Afford Appropriate Consideration to Petitioner's Submissions

The respondent has obviously not fully considered the submissions of the petitioner contrary to their claim that they did. How can a administrative government agency with no health professionals on their staff discount or not incorporate the expertise of the Environmental Protection Agency (Exhibit #49 BB), the U.S. Department of Interior (Exhibit #48 AA), The President of the American Academy of Pediatrics (60,000 physicians) (Exhibit#4 A, page 21, Item VI B-5), Dr. Anthony. B. Miller, former chairman of the World Health Organization's International Agency for Research on Cancer who himself has 50 years of doing cancer research (Exhibit #4 A, Item VIII, B-1, #2-Affidavit bottom of page 14), Dr. Grigoriev, the Chairman of the Russian National Committee on Non-ionizing Radiation Protection (RNCNIRP) (Exhibit #4 A, page 7 study #12), and a member of the International Advisory Committee on Electromagnetic Fields and Health for the World Health Organization, world expert Professor Ollie Johansson, 40 year microwave radiation researcher at the Karolinska Institute in Stockholm Sweden, world radiation expert (Exhibit #4 A, page 10 study #29, page 14 study #48, page 15 study #51) Dr. David Carpenter, NY public health physician who serves as director of the Institute for Health and the Environment, a Collaborating Center of the World Health Organization, as well as a professor of environmental health sciences at University Albany's School of Public Health, previously Director of the

Wadsworth Center of the New York State Department of Health, and as Dean of the University at Albany School of Public Health (#51 case 14-M-0196), Dr. Martin Pall PhD, Caltech graduate, Professor emeritus of Biochemistry and Basic medical Sciences at Washington State University (#62, page 8, #5, case 14-M-0196), The U.S. Air Force's comprehensive microwave research report (#62, page 8, #5, case 14-M-0196), The U.S. Naval Medical Research Institute's comprehensive microwave research report ", NASA's comprehensive microwave research report (#62, page 2 study #8 case 14-M-0196) and 5,000 scientific medical peer-reviewed studies submitted with the original petition with active links and Harvard School of Law/Ethics Dept.(Exhibit #45 W)? To claim that the above list of extremely credible health professionals are not credible and to not incorporate its findings in a PSC order dealing with the same subject matter is being completely irrational and unreasonable.

The PSC did not fully consider the peer-reviewed studies on HF/VT's as they seem to be ignorant in their so-called expertise that demands deference, that studies that are very credible get cited in other peer-reviewed studies and the citations can be seen in each study or verifying them at researchgate.net by typing the title and author in the search window. Some of the peer-reviewed studies listed in the original petition (Exhibit # 4 A, Items III, pages 5 & 6) are listed here with citations: The Havas study "Power quality affects teacher wellbeing and student behavior in three Minnesota Schools " was a single blind study repeated 3 times in 3 locations in Minnesota and was cited 11 times by other researchers; the Havas study "Dirty Electricity Elevates Blood Sugar Among Electrically Sensitive

Diabetics and May Explain Brittle Diabetes" has been cited in other peer-reviewed studies 36 times, the Havas study "Electromagnetic Hypersensitivity: Biological Effects of Dirty Electricity with Emphasis on Diabetes and Multiple Sclerosis" was cited 51 times by other researchers in their peer-reviewed studies.

Instead the PSC choses the Frank DeVocht article "Dirty Electricity: what, where, and should we care" (https://www.nature.com/articles/jes20108) to critique other HF/VT's studies when had it only 9 citations. To purportedly do analysis and form a conclusion based on one article (which is not study) on HF/VT's that had such a low amount of citations and not submit any studies to support it, while discounting actual studies that had 3, 4 and 5 times more citations is academically careless, irrational, capricious and arbitrary.

Regarding EMF's (Exhibit #4 A, pages 7 to 16, Items IV & V): Dr. Martin Pall Studies: Study # 10: Electromagnetic fields act *via* activation of voltage-gated calcium channels to produce beneficial or adverse effects" that was cited by other researchers in their peer-reviewed studies 48 times (pubmed.com) & Microwave frequency electromagnetic fields (EMFs) produce widespread neuropsychiatric effects including depression was cited 34 times on reseachgate.net which all the other studies have been verified by. Study #15: "Mortality By Neoplasia And Cellular Telephone Base Stations In The Belo Horizonte Municipality, Mineras Gerais State, Brazil" had 36 citations, Study # 16: "Self- Reporting Of Symptom Development From Exposure To Radio Frequency Fields of Wireless Smart Meters- a case series " had 11 citations, Study #17 "Electromagnetic Fields and DNA

Damage" had 136 citations, Study #18 "Biological effects of Weak Electromagnetic Fields" had 23 citations, Study #19"Fielding a current idea: Exploring the public health impact of electromagnetic radiation" had 90 citations," "Electromagnetic field effects on cells of the immune system: The role of calcium signaling" had 292 citations. This study documents that extremely low non-thermal EMF's affect the body on a cellular level compromising the immune system. How can the PSC turn a blind eye to a study that has 292 citations and chose only one to submit that has only 8 citations and use that as purported proof of anything. That is irrational. (https://www.researchgate.net/publication/235945088_Electromagnetic_field_effects_on_cells_of_the_immune_system_The_role_of_calcium_signaling.

Listing the electro-hypersensitivity studies in original petition (Exhibit #4 A Item V, pages 9 through 16 by study number and citation in parenthesis are: 21(39), 22(54), 23 (71), 24(20), 25(169), 26(27), 27(24), 28(32), 29(59), 30(222), 31(37), 32(8), 33, (32), 34(86), 35(38), 36(26), 37(65), 38(23), 39(144), 40(125), 41(46), 42(112), 43(98), 44(35), 45(127), 46(64), 47(114), 48(38), 49(64), 50(66), 51(46), 52(74), 53(15), 54(50), 55(26), 56(3).

As can be seen 98% of the peer-reviewed studies the petitioner has submitted are much more credible than the only peer-reviewed article (Devocht), the PSC submitted, not even comparing the 5,000 plus studies the petitioner supplied access to. The DeVocht article was only cited 9 times yet the PSC uses that article, which is not a study with live subjects, to discredit medical studies that many had live subjects and have been cited in other peer-reviewed studies many times higher than

the PSC's only referenced article. Some of the petitioners studies were cited 48, 136, 90, 292, 169, 222, 144, 125, 112, 127, 114 times and most of the rest of 55 studies have been cited 4 times more than the DeVocht article the PSC clings to and irrationally uses as a yardstick against the other studies. The PSC is either totally incompetent, irrational, capricious or arbitrarily choosing a single article or they are committing fraud as there are some very credible studies cited in the original petition contrary to the PSC statements the Dec, 14, 2018 Order (Exhibit #15 E, bottom of page 17): Regarding the petitioners submitted studies: "Moreover, many of the studies suggesting adverse health effects suffer from serious methodological flaws, and the Commission therefore does not credit them." That is a very interesting comment because the PSC doesn't credit the petitioner's peer-reviewed medical studies that have 5 to 10 times more citations than the only one they submitted which is not even a study but an article. Either the PSC is incompetent or they are trying to deceive this Court and the public.

Furthermore being a Public Service Agency and not revealing to "We the People" who it is supposed to be serving what peer-reviewed studies the agency used to come to a determination is irrational and capricious. Turning a blind eye to the warnings of health professionals who have experience with EMF's while making determinations of a biological nature with no health professionals on that agencies staff is irrational capricious and arbitrary.

"Arbitrary and capricious action is that which is taken without sound basis in reason and without regard to the facts "(Spaid v. Liverpool Cent. School Dist. 169 Misc. 2d 41 (Supreme Court, Onondaga County, 1996)

The respondent's further stated:

'The Court should disregard Petitioner's assertions that the Commission has "failed to rebut or controvert" various statements made in Stop Woodstock's submissions in Commission Case 14-M-0196, and that such statements therefore "stand[] on the record as undisputed fact." See Romine Affidavit ¶¶ 28-37. To the contrary, the Commission considered and rejected each and every one of Petitioner's arguments.'

The respondent is misleading this court. The unrebutted facts presented by the petitioner in his sworn become facts on the record for this Court. The respondent's may have considered and rejected petitioner's declaratory statements in but did not rebut them with contrary statements and contrary facts therefore those unrebutted statements stand as undisputed fact on the record and admissible as evidence and without a doubt in the Article 78 affidavit (#2, Affidavit of Facts). The respondent stated:

"Therefore, the cases cited by Petitioner for the notion that the Commission was required to specifically rebut every one of his statements made in the administrative proceeding, or else accept them as true, are simply inapplicable."

The respondent fails to comprehend that not rebutting petitioner's declaratory statements and facts in this article 78 affidavit, make those unrebutted statements and facts recognized as true facts and admissible as evidence and applicable to this Albany Supreme Court proceeding. Nineteen controlling and binding higher court cases concur and bind this Court to admit unrebutted facts and unrebutted affidavits:

19 Binding/Controlling Case Law Citations

1. *N.Y. Court of Appeals: "Facts appearing in the movants papers which the opposing party does not controvert may be deemed to be admitted." Kuehne & Nagel, Inc., Appellant v. F.W .Baiden et.al. Respondents 36 N.Y. 2d 539.330 N.E. 2d 624, 369 N.Y. 2d 667.*

2. *N.Y. Court of Appeals: "Facts appearing in the movant's papers which the opposing party does not controvert may be deemed to be admitted." Laye v. Shepard, 48 Misc 2d 478, affd 25 AD2d 498; Siegel, Practice Commentaries, Mckinney's Cons. Laws of NY, Book 7B, CPLR 3212: 16, p 437.*

3. *N.Y. Court of Appeals: "The uncontroverted affidavits submitted at Special Term unquestionably establish ..." Matter of Montero v Lum 68 N.Y.2d 253, 501, N.E.2d 5, 508 N.Y.S2d 39*

4. *N.Y. Appellate Division - Third Dept.: "In light of this uncontested affidavit" Noble v Kowalenko 32 A.D.2d 703, 299, N.Y.S.2d 889.*

5. *N.Y. Appellate Division - Third Dept.: "An uncontested affidavit...." Matter of Winnie v Poston 36 A.D.2d 991, 320 N, Y, S, 2d 96.*

6. *N.Y. Appellate Court - First Dept.: "Facts appearing in the movant's papers which the opposing party does not controvert may be deemed to be admitted"-- Bank of America, National Association, Appellant v. Sara Brannon, Respondent October 31,2017 156 A.D. 3d1,63 N.Y.S. 3d 352, 2052, 2017 N.Y. Slip Op. 07578.*

7. *N.Y. Appellate Division - First Dept.: "The unjust enrichment causes of action against the individual Defendants were also properly dismissed in light of their unrebutted affidavits explaining why they were not unjustly enriched..." Underhill Holdings, LLC, t v. Travelsuite, Inc 137 A.D. 3d 533, 27 N.Y.S. 3d 521, 2016 Slip Op. 01760.'*

8. *N.Y. Appellate Division - First Dept.: "Furthermore, the unrebutted affidavit of the project superintendent for Tishman construction at 3 Times Square establishes...." Amarosa v City of New York) 51 A.D. 3d 596, 598, 858 N.Y.S 2d 173, 2008, N.Y.S. Slip Op. 04783.*

9. *N.Y. Appellate Division - First Dept.: "The motion, which was supported by a detailed and unrebutted affidavit..." City of New York v Welsbach Elec. Corp. 30 A.D.3d 157, 817 N.Y.S.2d 11, 2006 N.Y. Slip. Op. 04314.*

10. N.Y. Appellate Division - First Dept.: "Given the facts as set forth in the unrebutted affidavit" Matter of Bombardier Transp. (Holdings) USA, Inc. v Telephonics Corp. 14 A.D.3d 358, 788 N.Y. Slip. 00094.

11. N.Y. Appellate Division - Second Dept.: "In addition, the unrebutted affidavit ...." Valentin v. Bretting, Mfg, Co. 278 A.D.2d 230, 717 N.Y.S.2d 281, 2000 N.Y. Slip Op.10724.

12. N.Y. Appellate Division - First Dept.: "The malpractice claims were properly dismissed as conclusory, the Plaintiffs' assertion that their claimed losses were caused by the use of inexperienced attorneys were flatly contradicted by the unrebutted affidavit of the law firm partner who supervised their work." Schonfeld v Thompson 243 A.D.2d 343, 663 N.Y.S.2d 166, 1997 N.Y. Slip Op. 08799.

13. N.Y. Appellate Division - First Dept.: 'The unrebutted affidavits of the attorneys who had participated in the settlement demonstrate that , rather than having been disabled, the granddaughter had effectively employed the potential for publicity" Matter of Bobst 234 A.D.2d 7, 651 N.Y.S.2d 26.

14. N.Y. Appellate Division - First Dept.: "However, the record discloses an unrebutted affidavit..." Matter of Treotola v New York City Off-Track Betting Corp. 86 A.D. 822, 477 N.Y.S.2d 268.

15. N.Y. Appellate Division - First Dept.: "Plaintiff made a prima facie showing of his entitlement to a summary judgement on a promissory note by submitting the executed note and his uncontested affidavit." Mann v Green 159 A.D.3d 545, 73 N.Y.S.3d 42, 3018 N.Y. Slip Op. 01886.

16. N.Y. Appellate Division - First Dept.: "Supreme Court found that the production of the report was inadvertent, and that finding is supported by the uncontested Chenis and Nugent affidavits" New York Times Newspaper Div. of New York Times Co. Lehrer Mcgovern Bovis 300 A.D.2d 169, 752 N.Y.S.2d 642, 2002 N.Y. Slip op. 09577.

17. N.Y. Appellate Division - First Dept.: "Their uncontested affidavits and the police reports of the accident establish the meritoriousness of their cause of action. "To Yiu Yeung v City of New York 282 A.D.2d 217,722 N.Y.S.2d 382 (Mem), 2001 N.Y. Slip Op. 02924.

18. N.Y. Appellate Division - First Dept.: "The IAS Court properly dismissed the petition without a hearing, based upon the uncontested affidavits...." Jerez v City of New York 244 A.D. 188, 664, N.Y.S.2d 11 1997, Slip Op. 09385.

A partial list of those unrebutted facts submitted in the Affidavit of the Petitioner:

1. The facts laid out in the FCC-Captured Agency Report by Harvard Law School/Ethics Department was affirmed to be true in the Affidavit by the failure of the respondent to rebut then point by point (#2-Affidavit pages 4 to 6).

2. I, Stephen P. Romine, and my partner, Nicole (Raji) Nevin, members of Stop Smart Meters Woodstock NY group, each have experienced adverse health affects from said digital meters (#2-Affidavit, pages 7 & 8).

3. We would not accept the digital opt- out because even though it is not a transmitting meter, it is known to create high frequency transients, also known as dirty electricity or DE. This fact has not been rebutted by the defendants, so it now stands as true fact on the record (#2-Affidavit, page 8).

4. The PSC has no rule, regulation or law that says that CenHud may not use analog meters- refurbished or otherwise and the PSC has made no rule mandating wireless. Analog meters could reissued customers who request them as no PSC rule, regulation law restrict their use. This has not been rebutted by the respondents, so this stands as true fact on the record (#2-Affidavit page 8 & 9).

5. CenHud could have their own Analog Meters that test inaccurate, refurbished from three meter remanufacturers nationwide detailed in the SSMWNY Petition in chapter IX. Utilities in states including California, Vermont and Texas issue Analog Meters an opt-out choice and the opt-out chart (exhibit #26 J) was not disputed or rebutted by the respondent and stands as true fact on the record (#2-Affidavit page10).

6. The Bioinitiative Report 2012, prepared by 21world renown PhDs and 10 MD's cited by SSMWNY, references approximately 2,000 peer-reviewed medical studies performed by hundreds world renown medical scientists (#2-Affidavit page 11).

7. Dr. Anthony B. Miller PhD, M.D. and chief scientist of The World Health Agency's International Agency for Research on Cancer (hereafter called "WHO/IARC") committee that classified radio-frequency electromagnetic fields as "Group-2 possibly carcinogenic," gave testimony to the Oklahoma Corporation Commission on November 15, 2017 that this radiation should be categorized Group Carcinogenic to humans based on the scientific evidence associating RF exposure to cancer development. These statements have not been rebutted by the respondents, so this stands as true fact on the record (#2-Affidavit page 14).

8. There are indeed peer-reviewed studies that connect depression and suicide directly to low-levels electromagnetic radiation. Martin Pall PhD. has

authored a peer-reviewed scientific article whose title is: "Microwave frequency electromagnetic fields (EMF's) produce widespread neuropsychiatric effects including depression" in the peer-reviewed Journal Chemical Neuroanatomy, September 2016 which mentions smart meters among other wireless devices as a source harmful EMF's and studies supporting that in Table 2 exhibit R has not been rebutted by the defendants, so this stands as true fact on the record (#2-Affidavit, page 15).

9. The effects of EMF's are profound as they are much more vulnerable to EMF's than adults has not been rebutted by the respondents so this stands as true facts on the record (#2-Affidavit, page 15).

10. The PSC's vague reference to "government research agencies" that purportedly discredited the Bioinitiative Report of 2012 mentioned on page 16 ¶3 of their December 14, 2018 Order which cites page 32 ¶1 of the PSC October 20, 2017 PSC Order. Both PSC Orders give no reference to who these "government research agencies" actually are and what are their medical and scientific credentials, and this PSC statement should be deemed as hearsay and not valid evidence. z (#2-Affidavit page 15).

11. The NTP has issued a later statement in November 2018 that the cancer link from cell phones is documented with "clear evidence" has not been rebutted by the respondents so this stands as true facts on the record (#2-Affidavit page 16).

12. The PSC negligently oblivious to the multitude peer-reviewed studies, many of which are referenced in chapter the Martin Pall aforementioned peer-reviewed article that cites 24 recent studies that document adverse bio-effects in the non-thermal range and listed in Table (See Exhibit R)" has not been rebutted by the respondents so this stands as true facts on the record (#2-Affidavit, page 16, Exhibit #35 M chapter 6 table 3, #40 R).

Furthermore chapter the Pall peer-reviewed article documents non-thermal effects cited in the Naval Medical Research Institute Report.:

The earliest to these was Naval Medical Research Institute (NMRI) Research Report (1971) which listed 40 apparent neuropsychiatric changes produced by non-thermal exposures including: central / peripheral nervous system (NS) changes, CNS effects, autonomic system effects, psychological disorders, behavioral changes and misc. effects. This NMRI report also provided supplementary document listing over 2300 citations documenting these and other effects microwave exposures in humans and in animals.

The Raines Report NASA:

The Raines (1981) NASA report reviewed extensive literature based on occupational exposures to non-thermal microwave EMFs, with that literature coming from U.S., Western European and Eastern European studies. There are no obvious differences in the literature coming from these different regions. Based on multiple studies, Raines (1981) reports 19 neuropsychiatric effects to be associated with occupational microwave/radiofrequency EMFs.

The Bolen Report of 1994:

The Bolen (1994) report put out by the Rome Laboratory of the U.S. Air Force, acknowledged the role of non-thermal effects of microwave EMFs on humans. This report states in the Conclusion section that "Experimental evidence has shown that exposure to low intensity radiation can have a profound effect on biological processes. The nonthermal effects of RF / MW radiation exposure are becoming important measures of biological interaction of EM fields." Clearly Bolen (1994) rejects the claim that only thermal effects occur. Bolen (1994) discusses a specific non-thermal neuropsychiatric effect, where anesthetized animals are awakened when the head is irradiated with microwave EMFs. This suggests a similar mechanism to that acting in humans where such EMFs produce insomnia.

None of the aforementioned military reports nor their facts have been rebutted by the respondents so this stands as true facts on the record (#2, Affidavit page 17 & 18, Exhibit #35 M chapter 5).

13. The U.S. Department of the Interior wrote to the FCC in 2014 to assert that there are biological effects in the non- thermal range and that the FCC standards are way out of date and has not been rebutted by the respondents so this stands as true facts on the record (#2-Affidavit page 18, Exhibit #48 AA).

14. "The electromagnetic radiation standards used by the Federal Communications Commission continue to be based on thermal heating, a criterion now nearly 30 years out of date and inapplicable today," demonstrates gross negligence and bias on the part of the PSC for not addressing or mentioning this important SSWNY submission has not been

rebutted by the respondents so this stands as true facts on the record (#2-Affidavit page 19).

15. David Carpenter was qualified by federal Judge Timothy Hillman as reliable expert on the subject electromagnetic radiation, specifically for general causation- i.e. the link between symptoms and disease- pursuant to Daubert standards in G vs. the Fay School, 4:15-cv-401169Feral District Court, Worcester, MA. Clearly, the state New York found him credible.This has not been rebutted by the respondent's, so this stands as true facts on the record (#2-Affidavit page 19).

16. CenHud failed to initiate a survey with a resulting report to determine if any adverse health impacts were being experienced by its power consumers after it began deployments of smart meters and non-transmitting meters over 10 years ago. This has not been rebutted by the respondent's, so this stands as true facts on the record (#2-Affidavit page 21).

17. The PSC has erred in law violating the public trust by demanding conclusive proof smart meters aka digital meters and solid state meters harm public and ignoring the UN. "Precautionary Principle" used jurisdictions around the world for the "preservation of public health, safety and general welfare (SAPA article, section 202, 6a and section 202-b 1a). This has not been rebutted by the respondent's, so this stands as true facts on the record (#2-Affidavit, page 21).

18. A Constitutional issue in this petition of notice, because fundamental rights and property rights are at stake. I continue to assert no one checks SAPA notices. Most people don't know what SAPA is or where to find it. This has not been rebutted by the respondent's, so this stands as true facts on the record (#2-Affidavit, page 23).

19. Addendum points #5, #6, #11, #12, #17, #23, #24 were restated in this affidavit and were not been rebutted by the respondent's, so this stands as true facts on the record (#2-Affidavit pages 23to 29). The statements and facts in the official letters of the EPA and USDI that was not rebutted by the respondent in a sworn affidavit with counter facts, must be accepted as true and admitted as evidence on the record (Exhibits #48 AA & #49 BB)

20. The statements and facts in the official letter of the president of the American Academy of Pediatrics that was not rebutted by the respondent in a sworn affidavit with counter-facts, must be accepted as true and admitted as evidence on the record (Exhibit #4 A Item VII B-5 page 21).

21. The 25 Addendum points of the original petition that was not rebutted by the respondent in with counter-facts, must be accepted as true and admitted as evidence on the record (Exhibit #8 B)

22. The fact that CenHud could have their own analog utility meters that test inaccurate refurbished at minimal cost, has not been rebutted by the

respondent with counter-facts must be accepted as true and accepted as evidence on the record (Exhibit #4 A Item IX A page 28).

23. The fact that the PSC has not provided any references or active links to scientific peer-reviewed studies that support their claims of EMF safety, which has not been rebutted by the respondent with counter-facts, must be accepted as true and accepted as evidence on the record (#2-Affidavit page 11).

24. The fact that the PSC has engaged in hearsay when it discredited world renown Dr. David O. Carpenter, who is a public health physician but is credible enough to be Director of the Institute for Health and the Environment, a Collaborating Center of the World Health Organization, as well as a professor of environmental health sciences at University at Albany's School of Public Health and former Director of the Wadsworth Center of the New York State Department of Health, has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and accepted as evidence on the record (#2-Affidavit page 19).

25. The fact that Dr. David Carpenter being qualified to be a reliable witness on EMF's by federal judge Timothy Hillman, has not been rebutted by the respondent in a sworn affidavit with counter-facts, must be accepted as true and accepted as evidence on the record (#2-Affidavit page 19).

26. The fact the PSC stated on the top of page 14 of it's Dec. 14, 2018 order as fact "The crux of the errors of fact alleged in the Petitions" clearly stating both petitions contained alleged errors of fact, was not rebutted by the respondent in a sworn affidavit with a counter statement, must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 3).

27. The fact that the Bioinitiative Report of 2012 was prepared by 21world renown PhD's and 10 MD's referencing 2,000 peer-reviewed medical studies performed by hundreds world renown medical scientists, which has not been rebutted by the respondent in a with counter-facts, must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 11).

28. The fact that Frank Vocht ,who authored the paper the PSC lists in "other sources" on page 9 of their memorandum which they use to attempt to discredit the HF/VT studies of the petitioner, has done no medical studies of his own on high frequency/voltage transients, while alleging the petitioner's scientific peer-reviewed medical studies on HF/VT's as *"flawed"* and his article is not a study, was not rebutted by the respondent in a sworn affidavit with a counter statement, must be accepted as true and admitted as evidence on the record , (#2-Affidavit, page 11).

29. The fact that the 1971 Naval Medical Research Institute Report, the 1981 NASA Raines Report, the U.S. Air Force Rome Lab Bolen Report and

the 2012 Bioinitiative Report based on 2,000 peer-reviewed scientific medical studies, all report adverse biological health effects from exposure to chronic low-level EMF's, has not been rebutted by the respondent in a sworn affidavit with counter-facts, must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 17 & 18).

30. The fact that the PSC statements regarding science, has no in-house expertise to asses the science, has not been rebutted by the respondent in a sworn affidavit with counter-facts, must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 7). . The fact that it is incontrovertible that an electromechanical (analog) meter does not create high frequency transients and the digital opt-out meter does, has not been rebutted by the respondent in a sworn affidavit with counter-facts must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 24).

31. The fact the PSC is violating it's own "*primary mission of State Department of Public Service to ensure affordable, safe, secure, and reliable access electric*", has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidfavit).

32. The fact that the respondent has supplied no references to the purported " more than 100 peer-reviewed scientific studies" (or any other identifying

information) they claim they reviewed', has not been rebutted by the respondent in a sworn affidavit with counter-facts must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 11).

33. The fact that the National Toxicology Program Report declared there is a clear evidence of cancer from exposure to chronic low level EMF's has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 16).

4. The stated fact that most people do not know what State Administrative Procedure Act Notices are or what the New York Register is, has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 22 & 23)

35. The stated fact that giving notice in people's electric bills that an approaching proceeding that will affect the power consumer, is an easy remedy, has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 23)

36. The stated fact that The PSC has erred in law through negligence by ignoring that Central Hudson is not complying with the terms of the tariff or

the terms of duly promulgated regulations of the PSC for the tariff and the regulations all refer to a "meter" as that term is defined in the law and regulations. The definition of a meter is very simple and does NOT encompass the radio transmitting devices they are now installing on consumers homes. The law will hold that, when we signed up for electric service, we consented only to the installation and access to a "meter", not to a radio transmitting device transmitting pulses of microwave radiation every 10 to 20 seconds twenty-four hours around the clock. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 24)

37. The stated fact the PSC has erred in fact by claiming that smart meters aka digital meters are safe based on decisions of the Michigan Public Service Commission, The Public Utility Commission of Texas and the British Columbia Utilities Commission when in fact none of those commissions investigated long term chronic exposure from said meters but relied only on data from very short term exposures. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 25 item 29.)

39. The stated fact The PSC has erred in law by not approving re-manufactured analog meters for use in a utility opt-out program thereby disregarding the publics right to preserve their "health, safety and general welfare", a principle tenet of the State Administrative Procedures Act. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 25 item 30).

40. The fact the PSC has erred in law in determining that "*the acceptability of risk*" of smart meters aka digital meters and solid state meters "*given the benefits of the technology*". It is not the PSC's place to make those determinations but the occupant of the home who can decide not to have any radiating devices if he or she chooses which currently is not the case with the digital meter and is unlawful. A flesh and blood human being citizen of the U.S. has inalienable rights guaranteed by the U.S. Constitution including but not limited to life, liberty and the pursuit of happiness. Forcing microwave emitting and voltage transient spiking digital meters on utility consumers when radiation free re-manufactured analog meters are available and allowed in 12 other states is violating those constitutional rights. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, pages 25 item 31).

40. The fact that the PSC errs by stating there are 'no studies demonstrating no harm from digital utility meters' when in fact there is 2014 Australian Study that examines the adverse health effects smart meters aka digital meters on 92 people who had smart meters installed on their homes https://www.ncbi.nlm.nih.gov/pubmed/2547$801), On the contrary there are no scientific studies, industry or peer-reviewed, that document no harm to occupants of homes that have smart meters aka digital meters or solid state digital meters installed on their homes (#2-Affidavit, pages 25 item 30).

41. The PSC's vague reference to "government research agencies" that purportedly discredited the Bioinitiative Report of 2012 mentioned on page 16 ¶3 of their December 14, 2018 Order which cites page 32 ¶1 of the PSC October 20, 2017 PSC Order. Both PSC Orders give no reference to who these "government research agencies" actually are and what are their medical and scientific credentials, and this PSC statement should be deemed as hearsay and not valid evidence. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 16).

42. The fact that Richard Conrad PhD did a study with 210 persons that documents adverse health effects after the installation of smart meters (aka AMR meters), has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (Exhibit #44 V, #2-Affidavit, page 27 item 36).

43. The fact that the PSC errs in fact when it misquotes 16NYCRR 93.5 when it states "*a competitive meter provider may apply* " when in fact the code says "A manufacturer may also apply, provided the application is accompanied by a statement of an entity certifying that it intends to use such type of meter" which Stop Smart Meters Woodstock NY has arranged. A "certifying entity" is not identified in the code exclusively as a utility but could be a town. " Because Central Hudson has not indicated its willingness to sponsor refurbished electromechanical meters" does not mean that the PSC cannot approve re-manufactured analog meters and order Central Hudson to make them available to the certifying entity. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (Exhibit #2-Affidavit page 26 item 34).

44. The fact the EPA states: "*The FCC's exposure guideline is considered protective of effects arising from a thermal mechanism but not from all possible mechanisms. Therefore the generalization by many that the*

guidelines protect human beings from harm by any or all mechanisms is not justified" demonstrates gross negligence and bias on the part of the PSC for not addressing or mentioning this important submission of SSMWNY (petitioner). This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 25 item 30).

45. The PSC has erred in law by not approving re-manufactured analog meters for use in the utility opt-out program thereby disregarding the publics right to preserve their " health, safety and general welfare," a principal tenet of the State Administrative Procedures Act. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-Affidavit, page 27 item 36).

46. The PSC has NO expertise in the health of effects of electromagnetic fields in house; nor did they demonstrate that they consulted any such expert. I will add that the New York State Department of Health ("NYSDOH") by its own admission has no in-house expertise on the effects of electromagnetic radiation. This has not been rebutted by the respondent in a sworn affidavit with counter-facts and must be accepted as true and admitted as evidence on the record (#2-A bottom of page 6 top of page 7).

The 46 unrebutted statements and facts paint a much different picture than what the respondent would have this Court believe. The aforementioned 46 points of evidence annexed with the verified petition and affidavit with exhibits clearly forms prima facie case that the PSC has been negligent in their research, irrational, capricious and arbitrary in their October 20, 2017 & Dec. 14, 2018 Orders and unconstitutional in their proceedings.

F. The Commission Irrationally Declined to Order an Electromechanical Opt-Out Option

The PSC is grossly mistaken in their reasoning to not order an analog meter opt-out option. Their reasoning only considers economics. There is no consideration for electric consumers wellbeing. The aforementioned true facts and the 5,000 plus peer-reviewed medical studies confirm the petitioner's claims of a potential biological hazard in the form of the EMF emissions of digital AMR meters from chronic exposure. The PSC in refusing to believe the abundant clearly credible peer-reviewed scientific studies and military reports is acting irrationally only believing the FCC who is being reported by Harvard Law School/Ethics Department to be captured by industry and doing their bidding and not the publics. This is not an issue of two rational choices. Obviously if a government agency tasked with looking out for the wellbeing and safety of citizens would be irrational not to give those people the chance to make their own decision to opt for the time tested biologically safe analog

meter. To ignore the requests of over 1,000 people, 4 municipalities, two State Counties, the unanimous 322 public commenters, which included several elected representatives, who all request the analog meter opt-out option, is irrational capricious and cold hearted. Some states have analog options as long as the supply lasts. There is no rule, regulation or law that restricts CenHud from re-issuing their used analog meters they remove from upgrades and renovations. Refurbishing CenHud's analog meters is inexpensive and possible. To force people to live with potentially harmful emissions from digital AMR is irrational when a safer option is available and being done in other states. The evidence submitted by the petitioner at the minimum raises the specter that digital AMR meters are not as safe as the industry and the PSC say they are. The petitioner and his partner have both been harmed by an AMR meter as have many others. Their injuries ceased once the AMR meters were removed. Their testimony has not been rebutted but only supported by other people who commented on case 14-M-0196. The PSC turning a blind eye to the documentation in on page 32, 33 Item XI A through G in the original petition, that insurance companies, like Lloyds of London who sets the standards in the insurance industry, will not insure for damages from exposure to EMF's. Lloyd's states: " The Electromagnetic Fields Exclusion (Exclusion 32) is a General Insurance Exclusion across the market as standard. The purpose of the exclusion is to exclude cover for illnesses caused by continuous long-term non-ionizing radiation exposure i.e.: through

mobile phone usage." The PSC in ordering only EMF digital AMR meters deployed and not ordering an analog utility meter as a choice in the opt-out program is making itself liable and that is irrational. The PSC has been silent on these facts.

POINT III

THE COMMISSION DID NOT SATISFY ALL NOTICE REQUIREMENTS BECAUSE IT VIOLATED THE U.S. CONSTITUTION BY RELYING ON INDIRECT NOTICE

The fifth amendment of the U.S. Constitution guarantees due process rights. Proper notice of a proceeding that would affect liberty or property interests require a mailing and not publishing or posting. The property interests being affected in this instance are the petitioners physical body and his health and wellbeing, which is much more important than any land in a tax issue. If "proper notice" is "direct notice" and is required by the U.S. Constitution to satisfy due process in a tax, or insurance issues then how much more in a health issue that could possibly result in medical treatment, hospitalization or death. The petitioner has documented with references to over 5,000 peer-reviewed scientific medical studies and credible medical organizations that chronic exposure to EMF's can potentially lead to serious health problems. If the PSC is going to carry on a proceeding whose determination could possibly adversely affect a flesh and blood person's physical body, that person has a constitutional right to be notified by mail at the very least and not just by "*indirect notice*" publishing a post on an online website that most people are

unaware of. The SAPA requirements for notice in this instance are constitutionally deficient and not applicable where the health of a person could be of concern. If the person has no expectation or reason to believe that a PSC proceeding would order microwave emitting digital AMR meters to replace analog utility meters that had been in place for over 80 years, then direct notice is required. Indirect notice is allowed when the person affected has some idea that a proceeding might be taking place or responsibility to know as in a tax issue where property taxes come due every year and not paying them will result in a proceeding. In this case the electrical consumers had no idea that digital meters would be deployed pending a PSC proceeding. The US Constitution is the law applicable, namely the fifth and fourteenth amendment guaranteeing due process of law, which in this instance requires direct notice. The placing of microwave emitting devices on ones home without getting informed physical consent from the occupant and supplying no direct notice is a "stealthy encroachment" of "constitutional rights."

"The Appellate Division correctly determined that the Plaintiff insurer presented sufficient evidence of a regular office practice to ensure the proper mailing of notifications to insured's so as to raise the presumption that such a notification was mailed to and received by the insured. Specifically, the Plaintiff insurer submitted an Affidavit from an employee who had personal knowledge of the practices utilized by the insurer at the time of the alleged mailing to ensure the accuracy of addresses, as well as office procedures relating to the delivery of mail to the post office. Thus, the Plaintiff insurer provided proper notice of the amendment to the policy upon renewal adding the relevant exclusion. Defendant's remaining contentions are without merit. [Preferred Mut. Ins. Co. v Donnelly Court of Appeals of New York April 03, 201422 N.Y.3d 11698 N.E.3d 847.]

"Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or

property interests of any party." {Matter of McCann v Scaduto Court of Appeals of New York December 23rd, 198771 N.Y.2d 164519 N.E.2d 309}.

Since "[n]otice by publication and posting is unlikely to reach those who . . . do not make unusual efforts to stay abreast of such notices," the taxing authority may not use such forms of indirect notice "where there are inexpensive and efficient direct alternatives—such as personal delivery or mailing" (Matter of McCann v Scaduto, supra at 175)

"Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . . if its name and address are reasonably ascertainable" (DeVita v City of Poughkeepsie, 296 AD2d 523, 525 [2002

Posting by publication of an impending tax sale pursuant to Real Property Tax Law former § 1452 does not comport with the constitutional requirement of due process (see Kahen-Kashi v Risman, 8 AD3d 342 [2004

In Mennonite Bd. of Missions v Adams (464 US --, 51 USLW 4872, supra), the Supreme Court held that constitutional due process requires that a party possessing a substantial property interest which is affected and whose name and address are "readily ascertainable", is entitled to notice "reasonably calculated to apprise him of a pending tax sale" (at --, p 4874). The action involved a claim by a mortgagee whose rights had been extinguished by a tax sale. The court held that as to the mortgagee neither publication, posting nor mailed notice to the owner was sufficient because the mortgagee's interest clearly appeared on the real property records. Unless the mortgagee was not reasonably identifiable, it held that constructive notice was insufficient to satisfy due process strictures.

We do not find the determinations in Mullane v. Central Hanover Trust Co. *(339 U. S. 306),* Schroeder v. City of New York *(371 U. S. 208) (1968) or* Smith v. City of New York *(24 N Y 2d 782) as mandating a contrary conclusion from that which we reach herein. In these cases (none of which is a tax sale case) by either publication or posting was held invalid for the reason that the individuals had no reason to expect that their property interests were being affected (Botens v Aronauer)*

Justice Bradley, "It may be that it is the obnoxious thing in its mildest form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of persons and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the

Constitutional Rights of the Citizens, and against any stealthy encroachments thereon. Their motto should be Obsta Principiis." [*Boyd v. United*, 116 U.S. 616 at 635 (1885)]

"It is well settled that procedural due process in the context of an agency determination requires that the agency provide an opportunity to be heard in a meaningful manner at a meaningful time (see Mathews v Eldridge, 424 US 319, 333 [1976]). In this case, petitioners had an opportunity to comment on the proposed Project in a meaningful manner—both orally and through written submissions—and at a meaningful time"

Without proper notice and the full participation orally and with written submissions, any proceeding that occurred deprived the petitioner of his due process rights and violated 42USC section 1983 which states:

"Every person who under color of any statute, ordinance, regulation custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

CONCLUSION

This reply supports the A-petition with an abundance of true facts gleaned from the affidavit, the administrative record and the exhibits. These facts provide concrete evidence that demonstrates the PSC has made determinations based on fake facts without regard to what the scientific community has contributed to the understanding of EMF's, documenting they cause adverse biological harm. Ninety nine percent of the petitioner's evidence and exhibits went unchallenged. What was challenged was done so with blanket statements that could not be corroborated. Furthermore considering the ramifications of the 45 unrebutted true facts of the petitioner, there should be a prima facie case for the

annulment/rescinding of the PSC October 20, 2017 & December 14, 2018 PSC orders asked for in the A-petition, as they were obviously irrational, capricious and arbitrary in nature. The petitioner affirms the respondent has demonstrated bad faith and or possibly fraud, depriving the petitioner of due process by not giving proper notice of the proceedings that affect his property interests. Due process was also denied by refusing to give him full disclosure of the facts refusing to reveal the names and identifying information of the PSC's purported 100 plus peer-reviewed studies they allegedly reviewed to make their determinations.

CPLR 7803 (3), which authorizes the Court to make a finding as to whether a determination of an administrative agency, public body or officer was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. Contrary to the respondents statements, Mandamus, Prohibition and Centiorari apply to the broad scope of unlawful and unconstitutional actions of the New York Public Service Commission, which the petitioner has set forth in great detail in his Article 78 Petition, the Affidavit of facts, all the annexed exhibits and this reply.

In closing the petitioner disputes respondent's claims in their supporting document (#83) that submissions to the administrative record that include active links in the documents. is purportedly not valid to present information, is inter alia, violating equal protection under the law. The petitioner raises objections to the respondents using artificial intelligence to assemble case law violates "fundamental fairness" in a proceeding (Wardius v.Oregon).

PLEASE TAKE NOTE: The petitioner requests "Findings of Fact and conclusions of Law" with the decision of this Honorable Court.

I, Stephen P. Romine, petitioner, affiant, pro se, pro per, sui juris litigant, do swear under the pain and penalty for perjury, and declare the aforementioned statements in the above document are true to the best of my knowledge and understanding and information and belief.

Stephen P. Romine — Oct. 10, 2019

Stephen P. Romine — Date

Subscribed and Sworn to before me this 10th day of October, 2019

Notary Public — 10/10/19

Notary — Date

NATALIA N. MALINOSKI
Notary Public, State of New York
Reg. #01MA6382236
Qualified in Ulster County
Commission Expires 10-22-2022