SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

Index No: _____

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

For a Judgment pursuant to CPLR Article 78

VERIFIED PETITION

-against-

The New York Public Service Commission and
Central Hudson Gas and Electric Corp,
The State of New York

Return Date: June 28, 2019

Respondents

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I, Stephen P. Romine, the Petitioner pro se respectfully allege to be true upon my own knowledge or upon information and belief as demonstrated by my verification and exhibits submitted herewith as follows:

PRELIMINARY STATEMENT

1. This is a special proceeding brought in Albany County Supreme Court pursuant to Articles 78 of the Civil Practice Law and Rules (CPLR) and upon the annexed petition to annul, vacate and void the portion of the October 20, 2017 order of the New York Public Service Commission ("PSC") in case 14-M-0196 that imposes a charge to switch out an AMR meter for a solid state digital meter and that prevents the maintenance and provision of analog (aka electromechanical) meters and to annul, vacate and void the PSC's December 14, 2018 order denying the petition I filed for Stop Smart Meters Woodstock NY ("SSMWNY") in its entirety. I also am asking this Honorable Court for a stay of the further removal of any analog meters in Central Hudson Gas and Electric Corp's (CenHud's) territory and a stay on CenHud's ability to sell, junk or otherwise dismantle meters in the service territory. I am also asking this Honorable Court to order the PSC to order all utilities under its purview to cease and desist from selling, junking or otherwise dismantling analog meters (or for the PSC to purchase them if the utility

wishes to offload them) (this would partially address CenHud's claim that the supply is "dwindling" and furthermore; the PSC complains in its second order that people from outside the service territory weighed in on this petition; yet they cite to this ruling in supporting other utilities who wish to retire the analog meters). I am also asking this Court to rule that my petition for rehearing that led to the December 14, 2018 order was not properly noticed and to rule that the PSC should re-run the re-hearing. The PSC should be ordered to pay utilities it regulates to put a notice in the electric bill of upcoming proceedings so that all ratepayers get full notice. I am also asking this Court to rule that the Rehearing that led to the December 14, 2018 order should be run *de novo* and with a public hearing; the PSC needs to be transparent about what science they reviewed and what government agencies they consulted. I am also asking the Court to order the Sttable ate of New York to undertake a restructuring program to staff the PSC with competent people who can make assessments about science, health and the business case of meter without parroting whatever industry tells it. This is a critical request, because the PSC has all the hallmarks of a wholly captured agency (it behaves like a subsidiary of the utilities it seeks to regulate; I am asking for *De Novo Review* in any event, but I assert it cannot be competently done by this agency as it exists absent guidance from this Honorable Court.

THE PARTIES

2. I, Stephen P. Romine, a former Central Hudson Gas and Electric Corp. ("CenHud") ratepayer[1] and current resident of Woodstock, N.Y. who first challenged the October 20, 2017 order of the New York Public Service Commission ("PSC") in case 14-M-0196 in a Petition that

[1] CenHud cut off the Petitioner's (my) access to electricity because I and my partner, Nicole Nevin, wanted a return to an analog, electromechanical meter. Nicole had a stroke after getting close to the meter and then became extremely electrosensitive after the wireless AMR was installed by CenHud. I engaged in self-help and removed the wireless meter, installed an analog meter, sent back the AMR meter to CenHud, whereupon they came and disconnected our electricity. When it was removed, Nicole was able to tolerate our home (but now has permanent sensitivity to wireless devices and transmitters, including cell phones, Wi-Fi, cell towers and other forms of electromagnetic radiation) and I, the

was rejected on December 14, 2018, am the Petitioner in this special proceeding for an Article 78 and appears before this Honorable Court pro se. I make this Petition as a representative of the group Stop Smart Meters Woodstock New York ("SSMWNY").

3. The Respondents are the New York Public Service Commission ("PSC") which issued the orders in question and Central Hudson Gas and Electric, Corp. ("CenHud") which filed the Petition that started case 14-M-0196 and led to the orders being challenged. CenHud is a public utility and is regulated by the Public Service Commission. Its service territory encompasses parts of Orange County, parts of Sullivan County, parts of Columbia County, parts of Putnam County, parts of Dutchess County, parts of Greene County and parts of Albany County and much of Ulster County where Petitioner resides. On information and belief, the PSC represents itself in such proceedings even though it would otherwise be customary for the Attorney General to represent state agencies. The State of New York, which is represented by the Office of the Attorney General is also named as a party because of the constitutional issues presented herein; namely, that Petitioner finds the PSC's notification procedure to be constitutionally deficient and also that the PSC is so grossly incompetent that it needs to be broken down with people fired, new people hired and wholly restructured by the State of New York so that it can effectively serve the People of the State of New York.

JURISDICTION

4. The Court has subject matter jurisdiction over this matter and may exercise personal jurisdiction over the respondents. Pursuant to CPLR 506(b), venue is proper because the challenged determinations were made in Albany County, and the Public Service Commission's

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Petitioner, found that neuromuscular symptoms that had required daily doses of acetaminophen to mask them- completely went away after the removal of the wireless meter. Nicole and I are now off-grid and generate their own electricity since CenHud would not service us unless we continued to use their dirty-electricity emitting so-called solid-state digital meter.

offices are located in Albany County. The petition is timely pursuant to *N.Y. State Ass'n of Counties v. Axelrod*, 78 N. Y.2d 158 (Court of Appeals, 1991), in which an Article 78 proceeding that accrued on June 2, 1987, and was commenced exactly four months later on October 2, 1987, was properly before the court. Here the order was issued and effective on December 14, 2018 so this Article 78 can be filed as late as April 15, 2019 (April 14, 2019 is a Sunday and pursuant to the law of General Construction, can be filed the following Monday). Notwithstanding the PSC's *sua sponte* declaration that Petitioner's Petition before the PSC was one for "Reconsideration" and taking it upon itself to declare that it is not eligible for Article 78 consideration, this Court does indeed have jurisdiction, because Petitioner's Petition including the Addendum which was filed before the deadline before the PSC is understood to be one pursuant to 16 NYCRR §3.7. (See point 6 below for further discussion).

5. Pursuant to *Blauman v Spindler-Blauman,* 68 A.D.3d 1105, 892 N.Y.S.2d 143 (2009: 2nd Department), the statute or rule does not need to be identified in the Notice of Motion and in administrative practice before the PSC, the cover letter functions as the *de facto* Notice of Motion.

> Contrary to the father's contention, *there is no requirement that a movant identify a specific statute or rule in the notice of motion*, only that the notice "specify ... the relief demanded and the grounds therefor" (CPLR 2214 [a]). Even though the mother's notice of motion and supporting affirmation did not formally and specifically request relief pursuant to CPLR 3126, where, as here, there is no misunderstanding or prejudice, "*a court may grant relief that is warranted by the fact plainly appearing on the papers on both sides*".
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> (Emphasis italicized)

Even if the Notice did not "specify the relief demanded and the grounds therefor", the "court may grant relief that is warranted by the fact plainly appearing on the papers on both sides". Furthermore, pursuant to *Cook v Mishin*, 95 A.D.2d 760 (1st Dep't 1983),

> a court will look to the true nature of the motion upon which the order was made *and not the label which is placed on the notice of motion* (*Thornlow v. Long Island Rail Road Co.,* 33

A.D.2d 1027, 307 N.Y.S.2d 1017; *Firedoor Corporation of America v. Reliance Electric Company,* 56 A.D.2d 523, 391 N.Y.S.2d 414).

(Emphasis added)

Id. 95 A.D.2d 761

6. In this Article 78, Petitioner was clear that there are issues of law and fact and his Petition can clearly be understood to be one that is made pursuant to 16 NYCRR §3.7. The PSC is self-serving in its attempt to claim otherwise- that the PSC order is final in an attempt to obviate review by this Honorable Court. Petitioner also notified the Court that it wanted an extension and that its Petition and Addendum which were submitted before the deadline addressed both[2].

STATEMENT OF FACTS

1. 14-M-0196 is a case before the PSC in which CenHud wanted to set rates for the solid-state digital opt-out meter. CenHud had started to roll out wireless AMR meters in the service territory. Petitioner calls them smart meters; smart meters are a term for any type of wireless meter. Other wireless meters include those that operate on a mesh network or on a cell network where the device communicates directly with a utility. CenHud's devices continually emit wireless radiation, technically known as Pulse-Modulated Radiofrequency Radiation and/or Pulse-Modulated Microwave Radiofrequency Radiation (either will be termed "RFR" by Petitioner).

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[2] Temporally, Petitioner initially asked for an extension of time on 11/16/17 because I wasn't going to meet the deadline. I filed my petition on 11/20/17. They granted an extension until December 4, 2017 and cited to 16 NYCRR §3.7. Before the extension period ran out, they announced on December 1, 2017 that my petition would be deemed one for reconsideration and not one for rehearing based on some verbiage in the title. I submitted an addendum to the original petition on December 4, 2017, inasmuch as the PSC's original letter granting me an extension of time did not claim that I couldn't submit a petition for rehearing prior to the close of business on December 4, 2017. I respectfully assert that this Honorable Court should view my entire petition as one for rehearing; the PSC cited to no law that truly allows them to re-categorize my petition. Inasmuch as my addendum re-emphasizes that I had brought up issues of fact and was also raising issues of law and that I was amending a Petition that I had been given until December 4, 2017 to do pursuant to the initial letter, the PSC was trying to avoid having a future light shine upon its decision-making capabilities but they demonstrated no basis in law for doing so.

2. Petitioner wanted to maintain an electromechanical/analog meter ("analog meter"), but CenHud would not provide this meter, which was used to meter electricity at all utilities around the world until very recently. Over 1,000 people signed an SSMWNY circulated petition asking for the same relief as did multiple town governments.

3. After the original ruling granted CenHud the right to charge to install the opt-out meter as well as a monthly charge, Jane Valand filed a petition to ask to retain the analog meter if someone has it, and to offer the analog as an opt-out for those who did not want the wireless meter. The Town of Woodstock sent a resolution in support of analog meters. Ultimately this resulted in the October 20, 2017 order rescinding the monthly fee for the opt-out but denying use of analog's as an opt-meter. Subsequently Stop Smart Meters New York (another group) ("SSMNY") and I on behalf of Stop Smart Meters Woodstock New York ("SSMWNY") filed separate petitions claiming that the PSC erred on facts and the law. On December 14, 2018, the PSC rejected both the SSMNY and SSMWNY petitions.

4. The opt-out is routinely requested by people who are sensitive to the microwave radiation emissions. This condition is known as electromagnetic hypersensitivity ("EHS") (and was formerly known by its Cold War nomenclature, microwave sickness[3]) and has been recognized as an Americans with Disabilities Act ("ADA") qualifying disability by the United States Access Board since 2002 as documented in the Federal Register Vol. 67. No.170, Tuesday September 3, 2002. Since 2005, the Access Board in conjunction with the Congressionally-chartered National Institute for Building Sciences ("NIBS") have recommended not having such emissions in buildings in their 2005 Indoor Environmental Quality Report ("IEQ")[4].

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[3] Electrohypersensitivity is referred to as microwave sickness in *Yannon v. New York Telephone*, 86 A.D. 2d 241 (3rd Dep't: 1982)

[4] IEQ Indoor Environmental Quality, A project of the National Institute of Building Sciences (NIBS) with funding support from The Architectural and Transportation Barriers Compliance Board (Access Board). 2005 https://ecfsapi.fcc.gov/file/7520945309.pdf See esp. pp 87-88.

5. The digital opt-out meter, while not transmitting microwave radiation to the utility, puts in a 50 Kilohertz signal onto the electric wires in a home, creating so-called transients, also known as "dirty electricity; some people are sensitive to these emissions and some people want to avoid developing EHS from being exposed to RFR. (Others are concerned with the hackability of the transmissions and privacy, and others fall into 2 or 3 of these categories). See page 9 of SSMWNY petition, item V, listing 34 studies on EHS. The analog meter does not emit any microwave or other radiofrequency radiation, does not put electrical pollution on the home wiring and only emits a small standing extra-low frequency field that emanates in close proximity to the meter and goes no farther. Dirty Electricity.com contains the open and notorious definition:

> Dirty electricity is unusable electromagnetic energy that is created by many electrical devices as they operate. It is caused by interruptions in the flow of normal 60-Hertz AC (alternating current) power traveling through wires and electrical systems in homes and other buildings.

Any device that interrupts the flow of normal 60 Hertz current can create DE. This includes compact fluorescents and dimmable LED lights and any device with a switch mode power supply like a computer. Most regular simple devices do not interrupt the flow of the current; the PSC talks about coffee pots and electric razors emitting the same as a solid state digital meter. Unless the coffee pot or razor has a mini-computer and/or device that breaks up the current in it and is complex enough, it will not produce DE. In any event these type of devices do not stay plugged in and stay on and will not create DE when they are shut off. The digital meter cannot be turned off and is always plugged in. 40 years ago, people only had a few simple electrical appliances in their home. Now they have at least 10 times as many, they are more complex and some emit DE, but again all can be unplugged except for the solid state digital opt-out meter. This is significant because it robs the ratepayer of choice; to get electricity, he must accept

CenHud and the PSC's invoicing tool of choice- the digital solid state meter. It is also significant that the analog meter incontrovertibly does not create these types of emissions. By the PSC's argument, they are allowed to choose whatever invoicing tool they want to measure electricity. They can take one that is safe, for which there have been no known complaints made (See affidavit point 25) and replace it with one which puts an entity that the Bioinitiative Report categorizes as a toxin and make it ubiquitous on the wiring of a home. (See also page 4, item III of the SSMWNY petition).

6. The PSC claims that an analog meter emits more radiation than a solid state meter. This is a laughable, but disturbing misrepresentation. At close range, the analog will emit extra-low frequency (ELF) radiation- the same type of radiation emanating off the cord from an appliance plugged into the wall. This is not the type of radiation we are concerned about because it is so localized to a tiny point in space as to be a non-issue (and still relatively low intensity). The point is it does not extend throughout the home or far into the home, if at all (the wall sometimes blocks this minor emission). The analog meter does not have a switch-mode power supply and does not contain a device to break up the current. Without either, it cannot put DE onto the house wiring and indeed does not. However, the solid state digital meter which the PSC is allowing CenHud to use as an opt-out instead of the analog meter <u>does</u> put 50 KHz DE line pollution onto the wiring. So even if it has less of an already very tiny ELF radiation field at the face of the meter than an analog, it creates pollution off the wiring in *every room of the house*. Obviously, it's not hard to stay a few inches away from the analog meter to avoid the field; it is impossible to avoid the DE, which will be present in every room. Obviously, since radiation drops with the square of distance, the fields in the middle of the room won't be as high as those at the locus of the wall, but beds are against walls as are office desks and when working in the kitchen one is close to the walls. The significance of the closeness, of course, is related to one's

sensitivity to the toxin in question. It is not for the PSC and CenHud to play doctor, say that they will no longer support the meter that creates no hazard and replace it with one that by their own admission creates an uncertain risk and then point to a paper by a paid flack for industry, who merely reviewed other papers (and six years later admits in yet another study that the PSC didn't even bother to quote that more studies are needed). See Affidavit point 18 and Exhibit K1 to the Affidavit. It is a violation of the Precautionary Principle to say- oh let's roll out something new that emits something the other proven safe meter does not and you, the ratepayer prove that the new meter is unsafe. The PSC also does not have a mechanism, it seems, to recall old decisions if something is found to be unsafe *ex post facto* as one would recall a drug. There is, in other words no post-market surveillance. PSC cites to SMUD, (see Exhibit Q) which took down the graphic from their website comparing the radiation from a digital to an analog meter. Merely note that they no longer have this misrepresentation and confusing graphic front and center on their opt-out page.

7. Radiofrequency radiation ("RFR") which is emitted by wireless devices runs from the Kilohertz range into the Gigahertz. The frequencies at which wireless meters, cell towers, smart phones, Bluetooth, Wi-Fi and the like operate at are the microwave range of radiofrequency radiation. DE consists of any frequency, but is usually in the kilohertz range. The PSC does not deny the existence of DE and their so-called expert they rely upon, deVocht, takes issue with the measurements and the way the studies on DE correlate it to health effects. However in a 2016 paper, he concludes that more research is needed. (See affidavit point 18 and Exhibit K) Furthermore, there is another body of literature that shows that various frequencies cause nerve blocks, AKA neurological disruption from various frequencies (See Exhibit Z1 in the affidavit). The Bioinitiative Report, too, referred to by Petitioner, refers to DE twice:

> There are four phenomena that emerge from the use of electricity: ground currents; "electromagnetic smog" from communications equipment; magnetic fields from power lines and specialized equipments; and radiofrequencies on power lines or so-called "dirty electricity." They may all be potential environmental toxins and this is an area of research that must be further pursued.
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> Page 419, Bioinitiative Report

> Exposures prior to conception or during pregnancy and infancy are also important to consider. These exposures can come from faulty wiring, proximity to power lines, or high-frequency transients from a proximate transformer on a utility pole, or internal sources of pulsed RFR in the home (examples include an electronic baby monitor in the crib, a wireless router in the next room, a DECT phone that pulses high emissions of RFR on a continuous basis 24/7, or conversion to all compact fluorescent bulbs that produce significant 'dirty electricity' for occupants due to low-kilohertz frequency fields on electrical wiring and in ambient space. Sick and vulnerable infants in neonatal intensive care units are heavily exposed from being surrounded by equipment, with negative metabolic and autonomic consequences documented and other likely consequences needing further investigation (Bellieni et al. 2008; Bellieni, Tei, et al. 2012).
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> Page 1324, Bioinitiative Report

The point is that DE adds to a problem for vulnerable populations and this includes people who have electrohypersensitivity ("EHS"), also known as microwave sickness- a phenomenon that is a known occupational health problem (military people got it from exposure to radar- see again *Yannon v New York Telephone,* ibid and the World Health Organization did acknowledge that people suffered ill effect from publicly allowable levels of EMF (See affidavit point 19 and Exhibit CC) but that is now a public health problems (people develop it from public exposure to electromagnetic radiation, including from wireless smart meters) (See footnote 5 as well as Carpenter DO. Human disease resulting from exposure to electromagnetic fields. Rev Environ Health 2013; 28(4): 159–172). (The WHO has more recently come under fire by the world's leading authorities on electromagnetic field health effects for failing to pay attention to the overwhelming science that suggests EMFs should be categorized as a Group 1 carcinogen- See Affidavit Exhibits DD, EE, FF, GG, HH) Besides explicit acknowledgements by the Access Board, the National Institute of Building Sciences and the Department of Labor, which now

recommend accommodation for people who claim sensitivity to these fields (reducing source of exposure and/or telecommuting[5]), a study that came out in January 2019 suggests that up to 30% of people are reacting to publicly allowable levels of electromagnetic fields and that .65%[6] cannot access buildings unless the fields are mitigated. As DE can contain any number of frequencies (the meter in question, on information and belief, creates a 50 KHz field, it is necessary that this population be able to maintain levels as low as reasonably achievable (ALARA). (See affidavit point 24.) Much of the literature on electromagnetic health effects is for Extra-Low frequency (ELF) radiation and Pulse-Modulated Microwave radiofrequency radiation (PM MW RFR) as well as other non-microwave radiofrequency radiation (PM RFR and RFR), of which many DE frequencies are comprised. The more electronic frequencies there are, the more electronic noise there is, by definition. The PSC readily admits this noise can interfere with the functioning of electronics. Given that individual frequencies are also shown to disrupt biological functioning, it would be likely that more frequencies, that is to say more noise could be more bioactive and could interfere with human cells, which are considerably more delicate than electronic instruments. It is truly bizarre that at this late date, the PSC persists in questioning the existence of EHS when many government agencies recognize it and the California Public Utilities Commission ("CPUC") head emailed executives at Pacific Gas and Electric about it saying, "There really are people who feel pain, etc., related to EMF, etc." Peevey goes on to say they should be accommodated if they can produce a doctor's letter saying they suffer "*from EMF and/or related electronic-related illnesses* or "*expressing likelihood of*

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[5] Department of Labor, Job Accommodation Network: https://askjan.org/articles/When-New-Technologies-Hurt.cfm last viewed (4/14/19)

[6] Bevington M, The Prevalence of People with Restricted Access to Work in Man-Made Electromagnetic Environments. *Journal of Environment and Health Science. 2019: January 18. https://doi.org/10.15436/2378-6841.19.2402* https://www.ommegaonline.org/article-details/The-Prevalence-of-People-With-Restricted-Access-to-Work-in-Man-Made-Electromagnetic-Environments/2402?fbclid=IwAR0ESEumNymjHpuU40aXPaFl--I2Mb5aP88UVHcgFywHhleUVaX7-M-_xlA

suffering same". His exact words are "*I would quietly leave them alone*" and that was in the context of not taking their analog/ non-radiation emitting meters off their houses (which were then still present on homes in CA pre-rollout) and replacing them with a wireless one; effectively, he is saying, " accommodate them". [7] The California Department of Health[8] also recognized in 2002 that 3% of the population surveyed said they were sensitive to EMFs.

8. The PSC contends that the analog meters are out of date; as they remove these meters, they then junk them and use it as an excuse to say they are no longer available. Other utilities around the country continue to use them and since the comments to my petition before the PSC was due, the New Mexico Public Regulation Commission (Case No. 15-00312-UT) rejected alternate meters in their entirety and keep analog meters, and the Commonwealth of Virginia State Corporation Commission (Case No. PUR-2018-00100, January 17, 2019) and the Commonwealth of Kentucky Public Service Commission (Case No. 2018-0005, Order entered August 30, 2018) similarly rejected smart meters, which on information and belief means that analog meters can be maintained in those jurisdictions as well. In other words, the tide has turned on electronic metering among the PSC's peers and the old technology is being vindicated. Much of this has to do with the fact that evidence was submitted in all three of these cases (and by the State Attorneys General in VA and KY that the smart meter business case is defective, so they are a costly boondoggle; in NM, especially, much evidence was presented to the regulator regarding the health impacts, the privacy issues (wireless networks are hackable[9] and the utilities become in possession of granular data on time-of use of electricity and amounts consumed) and the fire risk posed by wireless meters.

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[7] 2010 email from CPUC head Michael R. Peevey to PG&E:
ftp://ftp2.cpuc.ca.gov/PG&E20150130ResponseToA1312012Ruling/2010/09/SB_GT&S_0000529.pdf
[8] Lavallois P, Neutra R, Lee G, Hristova L. Study of self-reported hypersensitivity to electromagnetic fields in California. Environ Health Perspect 2002;110 (Suppl. 4):619–23.
[9] In July 2018, the U.S. Department of Homeland Security announced it would hold four hearings on how Russia has hacked US utilities.

9. The PSC's contends that the solid-state digital opt-out meter is analogous to a "coffee pot" or "electric razor" (it emits 50KHz line pollution[10] onto the premises' wiring continuously). Furthermore, I dispute the PSC's contention that the solid-state opt-out meter has fewer EMF emissions than the analog meter it is supposed to replace. These gross misrepresentations by the PSC are made in service of their attempt to paint me and the 1,000 petitioners and multiple town governments who demanded the maintenance of an analog opt-out as making a mountain out of a molehill. In further service of their attempt to paint this demand as fringe (a demand which has been **met** in other jurisdictions which maintain analogs (See Exhibit J in the affidavit) and which has effectively been enshrined in NM, KY and VA, where wireless metering has been rejected by the regulators since this petition closed out), the PSC effectively calls me, several town boards and leading scientists "conspiracy theorists" for discounting science that is funded by industry; the scientific literature on this particular issue is clear that industry funded science is extremely likely to find "no harm". (See affidavit point 6 and 7) They also effectively call many agencies of the federal government conspiracy theorists as well[11]. Even the World Health

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[10] This line pollution is referred to as "dirty electricity" or DE. Technical terms that are used and are interchangeable for dirty electricity are "high frequency transients" or "high frequency voltage transients.

[11] Presumably, the PSC thinks the Department of the Interior ("DOI") (see SSMWNY original petition page 20, note 4 and Exhibit AA from Affidavit) are conspiracy theorists because they have publicly stated that the FCC standards are out of date and that the claim that there are no biological effects below the heating threshold is a fallacy. The PSC must also think that the Access Board and the National Institute of Building Sciences ("NIBS") are conspiracy theorists because they recognize that some cannot tolerate and are disabled by the emissions from Wi-Fi, Bluetooth, which operate below the heating threshold and at a fraction of FCC limits. Perhaps the PSC thinks that the armed services are staffed with conspiracy theorists, because they have published papers acknowledging that people can get sensitized to electromagnetic radiation such that they cannot tolerate increasingly lower doses of it- again below the heating threshold. The PSC conveniently ignores the fact that the FCC has sat on Docket No. 13-84, in which hundreds of parties, including the American Academy of Pediatrics ("AAP") weighed in to say the standards were inadequate, since 2013- for almost 6 years. The military papers include:

U.S. Naval Observatory Biosciences Division 1969 Symposium Proceedings, "Clinical and Hygienic Aspects of Exposure to Electromagnetic Fields" http://www.magdahavas.com/wordpress/wp-content/uploads/2010/08/Dodge_1969.pdf

Organization ("WHO") that the PSC hangs its hat on even though its statements are legally hearsay (*Bonds v Fowler,* 2017 WL 4102482 (U.S. District Court, Kentucky Bowling Green Division) and *Bartlett v Mutual Pharmaceutical Co., Inc.*, 2010 WL 3092649, (U.S. District Court, New Hampshire), has taken 25 years in the past to acknowledge what was found in the literature (for example, categorization of power line fields (ELF) radiation as a Group 2b carcinogen- which occurred around 25 years after the seminal Wertheimer Leeper studies linking childhood leukemia to electromagnetic fields from faulty wiring configurations) and in fact contradicts its own previous statements from the 1970's and 1980's and was found to take money from the wireless industry for the WHO EMF project and had to kick off the head of the

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"The Effect of Microwaves on the Central Nervous System" W. Bergman for Ford Motor Company, 1965http://www.magdahavas.com/wordpress/wp-content/uploads/2010/12/German_Ford_Motor_company_The_Effect_of_Microwaves_on_The_Central_Nervous_System.pdf

"Radiofrequency Microwave Radiation: Biological Effects And Safety Standards: A Review", Scott Bolen, Rome Laboratory, Air Force Materiel Command, Griffiss Air Force Base, New York 1988 https://electroplague.files.wordpress.com/2014/09/rf-microwave-radiation-biological-effects-rome-labs.pdf

"Biological Effects of Nonionizing Electromagnetic Radiation, Vol III, No. 1, September, 1978, A Digest of Current Literature Produced for National Telecommunications and Information Administration and United States Navy" http://www.dtic.mil/dtic/tr/fulltext/u2/a059870.pdf

"Electromagnetic Field Interactions with the Human Body: Observed Effects and Theories. NASA Purchase Order No. S75151B, April 1981. Prepared for Goddard Flight Center, Greenbelt, MD www.robindestoits.org/attachment/489726/

Biological Effects of Electromagnetic Radiation (Radiowaves and Microwaves) Eurasian Communist Countries", Defense Intelligence Agency, Prepared by US Army Medical Intelligence and Information Agency, Office of the Surgeon General, March 1976, Authors, RL Adams, RA Williams: http://www.magdahavas.com/wordpress/wp-content/uploads/2011/02/BIOLOGICAL_EFFECTS_OF_ELECTROMAGNETIC_RADIATION-RADIOWAVES_AND_MICROWAVES-EURASIAN_COMMUNIST_COUNTRIES.pdf

Bibliography of Reported Biological Phenomena ("Effects") and Clinical Manifestations Attributed to Microwave and Radiofrequency Radiation, 20 April 1972, Dr. Zorach Glaser, Research Report, Naval Medical Research Institute, National Naval Medical Center, Bethesda, MD http://docs.stetzerelectric.com/Naval-Medical-Research-Institute-1972-Full-Bibliography.pdf

International Agency for Research on Cancer's ("IARC") radiofrequency radiation committee, Anders Albohm[12], because he worked for the telecommunications industry. If industry funded scientists have no conflicts of interest, there would have been no need for Albohm to be removed from the committee. Most people understand that when industry funds a candidate, they get what they pay for. Most people understand this about science too, as the WHO IARC obviously did in their removal of Albohm, but the PSC incredibly tries to make the argument that those who decry such conflicts are conspiracy theorists. The literature cited by the Safra Center documents this scientifically as so the citations provided in another paper about the Conference on Corporate Interference with Science and Health that is submitted herein to rebut the "conspiracy theorist" claim makes the relationship between funding and results clear. (See Affidavit points 6 and 7.) The seminal study quoted is by Henry Lai who found that industry funded EMF studies found *biological effects in just 28% of studies whereas* 67% of non-industry funded studies found biological effects. This is a huge discrepancy. At least one of the papers cited, about dioxin and vinyl chloride documents that the industry funded scientists proclaiming its safety was later discredited- the point is this is ubiquitous across industries- not just the wireless industry. The PSC quotes to a utility funded scientist's paper to claim that the articles about dirty electricity/ high frequency transients were not well done. They fail to cite one of that author's 2016 papers in which he acknowledges he is funded by industry and specifically recommends further studies to be done on this topic (he does not discredit the concept of DE).

10. Other utilities continue to use these meters and on information and belief, New York State Electric and Gas ("NYSEG") has told concerned ratepayers/residents that they will always maintain them and are aware that people have health/medical conditions necessitating them. Demand also has a way of increasing supply, so the notion that new ones are no longer being

[12] This event is open and notorious, well covered in the European press, and incontrovertible.

manufactured (when old ones can be easily recalibrated and repurposed for use) is a poor argument for refusing to provide these meters and/or allowing people who have them to keep them, especially when other Public Service Commission equivalents require analogs to be maintained and have rejected applications for radiation-emitting smart metering or other replacement meters.

11. I continue to dispute the PSC's contention that the weight of the evidence does not show significant harm from electromagnetic fields and continue to maintain that when industry funds science, the results skew towards their desired outcome. The PSC's reliance on industry science and studies which it won't name and itemize and government agencies, which it won't name is evidence of bad faith and capricious manner of deciding things as an institution. This is interesting considering the fact that the Department of the Interior stated 5 years ago that the FCC guidelines are based on thermal heating criterion and are inapplicable today (SSMWNY page 20, note 4 and Exhibit AA from Affidavit). The EPA has also deemed the FCC guidelines problematic:

> The FCC's exposure guidelines are 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 no justified.
>
> (See Exhibit BB from affidavit and SSMWNY page 20, note 3)

The PSC clings to outdated wishful thinking that there are no biological effects below the heating threshold when the weight of the evidence shows otherwise and studies by the federal government states otherwise and international governments state otherwise. The PSC is not a health and safety body and lacks the in-house expertise; they did not say who they had review the studies they won't even identify as having been reviewed!! In regard to electro-hypersensitivity ("EHS"), it is recognized by the Access Board, which also recommends, along

with the National Institute of Buildings Sciences ("NIBS") that Wi-Fi and Bluetooth connections not be used indoors or at least if they are that they be confined by foil backed drywall. The Department of Labor also recognizes this population and suggests to employers they let them mitigate electromagnetic field exposure (EMF) and/or telecommute from home. Two federal courts (NM and MA) have acknowledged the existence of EHS (*Firstenberg v. City of Santa Fe*, 696 F.3d 1018 (10th Cir. 2012) and (*G v. the Fay School,* (4:15-cv-40116), Federal Dist. Court Worcester, MA), with the latter qualifying Dr. David O. Carpenter under *Daubert*[13] as reliable to opine on general causation of exposure from EMF and symptoms. That court also said that those making claims for accommodation under the Americans with Disabilities Act ("ADA") are not preempted by FCC regulations. This is significant because it is an acknowledgment that people get sick from EMF below publicly allowable standards. This population of people needs to have access to the meter with the lowest possible emissions. People who are sensitive to electromagnetic fields and appear to be statistically significant and are recognized as needing accommodation under the ADA by the access board should have the meter that exposes them to the least electromagnetic radiation, including such radiation that is sent into the homes' wiring. At least one court has found that such line pollution (dirty electricity/ high frequency transients) resulted in serious illness to dairy cows in Wisconsin (arthritic type symptoms, failure to thrive and little and low quality milk yield) (*Gumz v. Northern States Power*, 2005AP1424, Supreme Court of WI (12/6/07)[14] If a court can acknowledge the existence of this radiation as a contributory factor to sickness in animals, it is not a stretch to assume that humans can be similarly affected. *G states the following:*

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[13] That court also qualified a doctor (Martha Herbert, MDPhD of Harvard Medical School and the Massachusetts General Hospital to opine on general and specific causation as to whether an individual has the affliction of EHS.

[14] The trial transcript confirms that the dairy in question had both stray voltage and DE which was found to be affecting the cows.

> … Defendants assert that all of Plaintiffs' claims fail for lack of jurisdiction because they are preempted by the exclusive jurisdiction of the Federal Communications Commission ("FCC").....EHS is a genuine phenomenon and that, absent a technical determination to the contrary, or other clarification of the scope, nature, and *impact of EHS in relation to regulated emissions by the FCC, that jurisdiction to consider this matter as a potential disability under the ADA is not preempted here.*
>
> (Emphasis added)

Not only is EHS recognized, but the Court found that the FCC regulations do not preempt consideration of accommodation claims for EHS which fall well below the FCC radiation regulations. This also means that the court accepted the concept that there are biological effects BELOW THE HEATING THRESHOLD (which the PSC persists on denying with a few holdout science denialists). The dirty electricity studies quoted by Magda Havas show that people with multiple sclerosis have seen remarkable improvement and reduction in tremors just by filtering out DE. The compromised, paid flack De Vocht can quibble with the results, but for people who have had them, it would be the correct policy to offer them an analog meter so they don't have to filter out the DE, which is very complicated to do (and for which there is no readily commercially available method that eliminates and suppresses all DE on a line). Furthermore, in January 2019, Judge Susann Zanda of the Court of Florence Italy (Tribunale di Firenze, Second Civil section) issued an order to a school (L'Istituto Comprensivo Botticelli) to shut down Wi-Fi for a child with EHS[15]. Also, The Lazio region's administrative tribunal also ruled that Italy's Health, Environment and Education ministries must begin a public health campaign about the dangers of cell phones[16]. Furthermore the Swiss government warns its citizens that biological

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[15] *"A Firenze il Tribunale fa spegnere il Wifi a scuola. Un atto straordinariamente innovative" Il Fatto Quotiddiano, 1/28/19* https://www.ilfattoquotidiano.it/2019/01/28/a-firenze-il-tribunale-fa-spegnere-il-wifi-a-scuola-un-atto-straordinariamente-innovativo/4916086/?fbclid=IwAR13yCVOD08krcMoB4Y8UjqgveEfPFEbova2TmqFDy4Fd24TmUcfwLMMI-0

[16] "Court orders Italian government to publicize cell phone risks" ABC News. January 16, 2019 https://abcnews.go.com/Technology/wireStory/court-orders-italian-govt-publicize-cellphone-risks-60424975

effects occur below publicly allowable levels of radiation[17], and Swisscom asserted in a patent that Wi-Fi radiation breaks DNA and is a cancer risk:

> The influence of electrosmog on the human body is a known problem.....
>
> These findings indicate that the genotoxic effect of electromagnetic radiation is elicited via a non-thermal pathway.
>
> Moreover aneuploidy is to be considered as a known phenomenon in the increase of cancer risk. Thus it has been possible to show that mobile radio radiation can cause damage to genetic material, in particular in human white blood cells, whereby both the DNA itself is damaged and the number of chromosomes changed. This mutation can consequently lead to increased cancer risk. ...
>
> Despite increasingly strict national guidelines with respect to legally specified limits, ***the impact of electrosmog in WLANs on the human body can be considerable***. Moreover it is to be expected that this impact will continue to increase in the future for many people.
>
> This means that even when the WLAN is not being used at all, ***an underlying stress from electromagnetic radiation remains for persons in the Basic Service Area of an access point of the WLAN***. For example, in the case of WLANs at places of employment, such as offices, etc., there exists ***therefore permanent stress from electrosmog from the WLAN on the employees of the company or organization***.[18]

The EU in fact passed a resolution stating that EHS is growing exponentially[19]. In the Council of Europe's 2011 report, "The potential dangers of electromagnetic fields and their effect on the environment", it is recommended

> 8.1. in general terms: 8.1.1. take all reasonable measures to reduce exposure to electromagnetic fields, especially to radio frequencies from mobile phones, and particularly the exposure to children and young people who seem to be most at risk from head tumours;
> 8.1.2. reconsider the scientific basis for the present electromagnetic fields exposure standards set by the International Commission on Non-Ionising Radiation Protection,

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[17] "Electrosmog in the Environment", Swiss Agency for the Environment, Forests and Landsacape. June 2005

[18] World Intellectual Property Organization REDUCTION OF ELECTROSMOG IN WIRELESS LOCAL NETWORKS, International Publication Number WO 2004/075583 A1 http://www.safeschool.ca/uploads/WiFi_Swisscom_Patent.pdf

[19] European Parliament Written declaration on the recognition of multiple chemical sensitivity and electrohypersensitivity in the International Statistical Classification of Diseases and Related Health Problems (ICD), 3/12/12, http://www.europarl.europa.eu/sides/getDoc.do?type=WDECL&reference=P7-DCL-2012-0014&format=PDF&language=EN, page 2.

> which have serious limitations and apply "as low as reasonably achievable" (ALARA) principles, covering both thermal effects and the athermic or biological effects of electromagnetic emissions or radiation;
> 8.1.3. put in place information and awareness-raising campaigns on the risks of potentially harmful long-term biological effects on the environment and on human health, especially targeting children, teenagers and young people of reproductive age;
> 8.1.4. pay particular attention to "electrosensitive" persons suffering from a syndrome of intolerance to electromagnetic fields and introduce special measures to protect them, including the creation of wave-free areas not covered by the wireless network;
> 8.1.5. in order to reduce costs, save energy, and protect the environment and human health, step up research on new types of antennas and mobile phone and DECT-type devices, and encourage research to develop telecommunication based on other technology…

By this metric, the PSC certainly fails in its mandate to protect the general health and welfare. Their argument is that they are more concerned about the average or most people so they fail to set a bottom line level of precaution for the vulnerable sensitive populations, which they could easily do by allowing them to keep their analog meter like so many other utilities do. So, while the Europeans are open about the fact that there are health risks from radiofrequency radiation, the PSC tries to argue alternative facts. And even industry scientists, as conflicted as they are documented to be, are on record in a scientific journal acknowledging that people get symptoms below internationally limits: The International Commission on Non-Ionizing Radiation Protection (ICNIRP) an organization staffed with people who are on record in scientific journals as being remunerated by industry, stated in 2002:

> ***Different groups in a population may have differences in their ability to tolerate a particular NIR (non-ionizing radiation) exposure***. For example, children, the elderly, and some chronically ill people might have a lower tolerance for one or more forms of NIR exposure than the rest of the population. Under such circumstances, it may be useful or necessary to develop separate guideline levels for different groups within the general population, but it may be more effective to adjust guidelines for the general population to include such groups.
>
> ***Some guidelines may still not provide adequate protection for certain sensitive individuals*** nor for normal individuals exposed concomitantly to other agents, which may exacerbate the effect of the NIR exposure….Where such situations have been identified,

> appropriate specific advice should be developed within the context of scientific knowledge. [20]
>
> (Emphasis Added)

Adding to the list of US agencies already cited who accept the existence of EHS and health hazards from EMR is the Interagency Radiofrequency Working Group ("RFIAWG") which acknowledged variation in "susceptibility (response/sensitivity) among individuals" from EMF back in 1999[21]. All of these agencies assert the link between EMF and health effects and the existence of a sensitive population and by extension the existence of effects below the heating threshold. Add this to the list that the PSC calls conspiracy theorists. The Institute for Building Biology and Ecology had standards[22] that predated the rollout of wireless devices that define the lower boundary of extreme concern at 1/10,000 of FCC guidelines for maximum human exposure.

Bau Biologie RADIOFREQUENCY RADIATION (High Frequency, Electromagnetic Waves)

Power density in microwatt per square meter **μW/m²**	**< 0.1 no concern**	**0.1-10 slight concern**	**10- 1000 severe concern**	**> 1000 extreme concern**

The Canadians apparently qualify too, their Standing Committee on Health produced a 2015 report, "Radiofrequency Electromagnetic Radiation and the Health of Canadians"[23] in which it was stated that not accommodating people with EHS is a violation of the Canadian Human Rights Act.

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[20] International Commission on Non-Ionizing Radiation Protection, ICNIRP Statement: General Approach to Protection Against Non-Ionizing Radiation: *Health Physics* 82(4):540-548; 2002.
[21] Letter of W. Gregory Lotz. PhD, Chief, Physical Agents Effects Branch, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health to Richard Tell, Chair, IEEE Risk Assessments Working Group, June 17, 1999
http://www.emrpolicy.org/litigation/case_law/docs/exhibit_a.pdf
[22] Institute of Building Biology and Ecology 2008 standards: https://hbelc.org/pdf/standards/sbm2008.pdf page 4.
[23] Ben Lobb, Chair. Standing Parliamentary Committee on Health. Radiofrequency Electromagnetic Radiation and the Health of Canadians. http://publications.gc.ca/site/eng/9.801730/publication.html
http://www.c4st.org/images/hesa-2015/412_HESA_Rpt13-e.pdf

12. The PSC insists the fee is necessary to cover the installation of the digital opt-out; we should not pay for the removal of a wireless AMR meter (which I call a smart meter[24]) which we never consented to have in the first place. The Iowa Utilities Board found in its February 6, 2019 Final Order and Decision in Docket No's SPU-2018-0007, TF-2018-0029, TF-2018-0030, C-2018-0006, C-2018-0007, C-2018-0008, RG-0150 that customers would not be charged- an opt-out fee[25]. The weight of the evidence shows that electromagnetic radiation has serious biological effects, even at publicly allowable levels, contrary to the PSC's outmoded and disproven statements. (See Exhibits from Affidavit, L1, L2 M, R, T, U, V and Y). People did not weigh in on the proceeding for the approval of wireless meters in the service territory because they did not know it was occurring. There is an ongoing issue which affects all PSC proceedings, which is that SAPA notice is insufficient and true notification of proceedings could easily occur if the CenHud bill notified people since every ratepayer gets a bill in the mail. (See Affidavit point 27). The alternative is continued violation of fundamental rights and property rights. Property rights are implicated because the meter is literally affixed to the property and the right to have one's disability accommodated is a fundamental right as is the right to health. It is capricious of them not to offer this meter on demand as other utilities, including neighboring New York State Electric and Gas ("NYSEG") does.

13. The military documents demonstrating detailed awareness of the problem of

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[24] The argument over the name of the wireless meters that have been rolled out into the service territory may seems somewhat semantical, but the point that I made about the PSC not notifying people properly about that rollout of these AMR wireless meters to begin with is that by calling them "AMR" they obscured the fact that they were in fact smart meters- which are meters that communicate wirelessly. The AMR is a one-way smart meter, as opposed to the meters being rolled out in ConEd's service territory which are two-way wireless smart meters- they communicate directly to the utility via a cellular network which can also communicate back with the meter to shut off the electricity. The one-way EMR smart meters have to be wanded by a passing truck.

[25] The Iowa Utilities Board also is allowing customers to keep their analog meters until they fail.

sensitivity to EMR as well as documents from DOI, RFIAWG and the EPA and the email correspondence at the CPUC suggests that the PSC did not credibly consult with various agencies of government or do a serious look at the literature. That is why there must be *de novo* review and why I am asking for the court to order a restructuring of the PSC. The PSC is clearly conflicted- it can't even accept the simple reality that industry science does not produce independent results. In footnote 3 of *De Novo Judicial Review of Administrative Agency Factual Determinations Implicating Constitutional Rights*, 88 Colum. L. Rev. 1483 (November 1998), in which he refers to *Cox v. Louisiana*, 379 U.S. 536 (1965), author Judah A. Schechter emphasizes that while review is usually based upon the record, a court "may also opt to reorganize the record and marshall the facts." This Honorable Court could opt to "marshall the facts" to address the repeated misrepresentations by the PSC about the science and government agency positions. *De Novo Judicial Review,* supra refers to *Crowell v Benson*, 285 U.S. 22 (1932):

> *"When fundamental rights are in question," wrote Chief Justice Hughes, "this Court has repeatedly emphasized 'the difference in security of judicial over administrative action.'"*[15] *To protect these rights, de novo judicial review was required.*
>
> 15 Id. at 61 (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 285 (1922)).

Id. 88 Colum. L. Rev. 1483 at 1486

Shechter also refers to *Matthews v Eldridge,* 424 U.S. 319 (1976) and the requirements of due process, citing

> *the risk of an erroneous determination by reason of the process accorded and the probable value of added procedural safeguards*

as well as the applicability of other non-constitutional rights to *de novo review*:

> *it removes the requirement that the right in question be of constitutional origin, since a private interest may be quite important, yet still not constitutionally protected*

and asserts that

> "*institutional pressures or an agency's untrustworthiness may cast doubt on credibility determinations to such an extent that effective review necessarily entails a new hearing.*

I cannot find anything that better demonstrates the situation at hand. The PSC is clearly conflicted and subject to such institutional pressure that it cannot proffer basic facts or effect basic due diligence. Its insistence that utility funded science can support a point of view is pure theater of the absurd given studies to the contrary.

The rights of electrosensitive people, who are statistically significant and escalating exponentially must be protected and this Commission is inadequate to the task. The treatise, *Article 78 and Related Proceedings*, 6A N.Y. Jur. 2d Article 78 § 374 (2018) states the following:

> ....in deciding whether a determination should be reviewed at all, the court may give consideration to a subsequently occurring event which operates to destroy the finality of the determination or to make the question involved academic or abstract[4]
>
> 4 *Daub v. Board of Regents of University of State of N. Y.*, 33 A.D.2d 964, 306 N.Y.S.2d 869 (3d Dep't 1970); In re Weeks, 106 A.D. 45, 94 N.Y.S. 468 (2d Dep't 1905).

Here the fact that the NM, KY and VA have said that their utilities can and must live without wireless meters suggests that the PSC's concerns about future availability of analog meters is simply unwarranted. These rulings, which have turned the tide on electronic metering, must be taken under consideration. *De Novo Review*, supra also cites to cites to *Matthews v Eldridge,* 424 U.S. 319 (1976):

> In Mathews, the Court had to determine whether a procedure under which social security benefits could be taken away without a hearing violated due process. The Court, in articulating a framework for the requirements of due process, balanced (1) the private interests implicated, (2) *the risk of an erroneous determination by reason of the process accorded and the probable value of added procedural safeguards*, and (3) the public interest and administrative burdens, including the costs that additional procedures would involve.
>
> This sort of balancing test is also advantageous for defining the scope of judicial review of agency action.....*it removes the requirement that the right in question be of*

> *constitutional origin, since a private interest may be quite important*, yet still not constitutionally protected.

The meter issue pertains to a property issue at stake with the existence of the less-favorable opt-out meter. This treatise also address *Matthews*', supra concern about conflicted institutions:

> Given the strong public interest in the protection of certain important rights, independent review may therefore be broadly required when there is a significant risk of an erroneous determination regarding such rights....
> .... Two such situations come to mind. The first occurs when applicable law or custom prevents an administrative agency from compiling a complete record. This is likely in those states that prohibit agencies from passing on the validity of their statutes as applied. *Second, institutional pressures or an agency's untrustworthiness may cast doubt on credibility determinations to such an extent that effective review necessarily entails a new hearing.*

The untrustworthiness issue can be seen through the lens of *Grandco v. Rochford*, 536 F.2d 197, 206 (7th Cir.1976), the court noted that the "ultimate decision-maker" was not a disinterested adjudicator.

> The review article concludes by saying that courts
>
> should invoke a flexible due process formula that looks to the importance of the interest asserted and the nature of the administrative agency, particularly its degree of independence and expertise with the issue.

De Novo Judicial Review of Administrative Agency Factual Determinations Implicating Constitutional Rights, supra goes on to emphasize that agencies are self-interested in regard to how they adjudicate the record and are subject to a "legitimacy deficit" which "disable[s] them from conclusively determining constitutional facts":

> The scope of Congress's power to regulate is seldom questioned today and hence the constitutionally charged jurisdictional facts of Crowell rarely occur. The basic rationale behind Crowell, however, is still very much alive. Shed of its jurisdictional features, *the case embodies the view that some judicial tribunal must independently review facts implicating constitutional rights. Only through such heightened review can the burgeoning power of administrative agencies be limited* and "the 'appropriate' allocation of functions between agency and court" achieved.

Id. 285 U.S. 22 1932 at 1487

> *Crowell's apparent distinction between the administrative adjudication of statutory and constitutional claims has often been interpreted in terms of the "legitimacy deficit" of agencies: since agencies possess neither the electoral accountability of Congress and the Executive nor the independence of article III tribunals, they are disabled from conclusively determining constitutional facts.*
>
> (Emphasis Added)

There are Constitutional facts about notification and whether the PSC is offering due process with its inadequate internal reviews of topics which it has shown profound lack of research and comprehension about. The PSC grossly fails in standards of review: *Spaid v. Liverpool Cent. School Dist.* 169 Misc. 2d 41 (Supreme Court, Onondaga County, 1996) states:

> Arbitrary and capricious action is that which is taken without sound basis in reason and without regard to the facts

See also: *Elwood Investors Co. v Behme,* 361 N.Y.S.2d 488 Supreme Court, Special Term Part I. Suffolk County, 1974:

> A determination made by an administrative agency absent a factual rationale in the record is 'arbitrary and capricious'.

The record is undeveloped- the PSC merely says we looked at some things most of which we didn't list and they inaccurately claim that the federal government supports their position. (See affidavit point 16). That concomitant with the complete disregard for the facts presented is a textbook case of an agency acting arbitrarily and capriciously.

FIRST CAUSE OF ACTION

14. The PSC made an error in law by failing to have a notice procedure that meaningfully informs the ratepayer in violation of CPLR §7803(3)

SECOND CAUSE OF ACTION

15. The PSC made an error in law in an arbitrary and capricious way by misstating facts about electromagnetic radiation (EMR), High frequency transients/ DE, specifically as well as Radiofrequency radiation (RFR) generally and by misrepresenting the government agencies'

positions on the science and the existence of electrohypersensitivity ("EHS") and failing to acknowledge federal court holdings acknowledging the existence of EHS and by misrepresenting the relative radiation amounts implicated with an analog versus a digital meter in violation of CPLR §7803(3). They also acted arbitrarily and capriciously pursuant to this statute by failing to say which government agencies they consulted besides the FCC, which is not a health and safety agency, and by failing to say what the 100 studies they analyzed were. They also acted arbitrarily and capriciously in their incomplete and faulty analysis of the National Toxicology Program (NTP) study.

THIRD CAUSE OF ACTION

16. The PSC's behaved in an arbitrary and capricious manner in violation of CPLR 7803 (3) in its reliance upon a review of studies conducted by a scientist paid by the electric utility industry and who also later claimed that more studies were needed, not that the relationship between high frequency transients/DE does not exist and by claiming that industry funded science is equal to non- industry funded science in defense of their use of said expert.

FOURTH CAUSE OF ACTION

17. The PSC abused its discretion and behaved in an arbitrary and capricious manner in not mandating CenHud to keep analog meters as an opt-out and in enabling CenHud to charge a fee to get an opt-out meter in violation of CPLR §7803 (3).

FIFTH CAUSE OF ACTION

18. The PSC behaved in an arbitrary and capricious manner in violation of CPLR § 7803 (3) by failing to disclose what studies it read and considered in their entirety and what government agencies they relied upon (besides the FCC, which is not a health and safety agency).

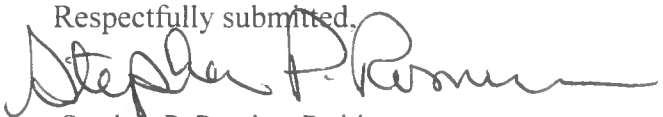
SIXTH CAUSE OF ACTION

19. The PSC violated the law by failing to give proper ubiquitous notice to the ratepayers in violation of CPLR §7803 (3)

- vacate and void the portion of the October 20, 2017 order of the New York Public Service Commission ("PSC") in case 14-M-0196 that imposes a charge to switch out an AMR meter for a solid state digital meter and that prevents the maintenance and provision of analog (aka electromechanical) meters
- annul, vacate and void the PSC's December 14, 2018 order denying the petition I filed for Stop Smart Meters Woodstock NY ("SSMWNY") in its entirety.
- stay the further removal of any analog meters in Central Hudson Gas and Electric Corp's (CenHud's) territory and stay CenHud's ability to sell, junk or otherwise dismantle meters in the service territory.
- order the PSC to order all utilities under its purview to cease and desist from selling, junking or otherwise dismantling analog meters
- rule that the Rehearing that led to the December 14, 2018 order was not properly noticed and to rule that the PSC should re-run the re-hearing.
- order the PSC s to pay utilities it regulates to put a notice in the electric bill of upcoming proceedings so that all ratepayers get full notice.
- order the rehearing that led to the December 14, 2018 order should be run *de novo* and with a public hearing
- Order the State of New York to restructure the PSC so that it has some basic competence and can serve the people of the State of New York
- Grant such other and further relief as the Court deems just and proper.

Dated: April 15, 2019

Respectfully submitted,



Stephen P. Romine, Petitioner
P.O. Box 657

GEORGENE G. FREDERICKS
Notary Public, State of New York
Reg. #01FR4799992
Qualified in Ulster County
Commission Expires 6/30/19

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

Index No: _____

----------X

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

For a Judgment pursuant to CPLR Article 78

VERIFIED PETITION

-against-

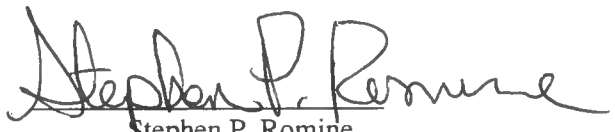
The New York Public Service Commission and
Central Hudson Gas and Electric Corp.,
Respondents

Return Date: June 29, 2019

----------X

STATE OF NEW YORK)
) SS:
COUNTY OF ULSTER)

I, Stephen P. Romine, being duly sworn deposes and states that I am the Petitioner in this Action, and that I read and signed the foregoing Petition and the allegations contained therein are true to my knowledge, except as to matters therein stated to be on information and belief, and as to those matters, I believe it to be true.



Stephen P. Romine
P.O. Box 657
Woodstock, NY 12498
(845) 532-5120

Sworn to before me this 15th day of April, 2019

Notary Public

GEORGENE G. FREDERICKS
Notary Public, State of New York
Reg. #01FR4799992
Qualified in Ulster County
Commission Expires 6/30/19