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January 11, 2019

**VIA E-FILING**

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

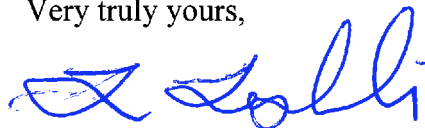
**Re: Catherine Lamagna v. Pennsylvania Electric Company**  
**Docket No. C-2017-2608014**

Dear Secretary Chiavetta:

Enclosed please find the Answer in Opposition to Petition for Reconsideration of Pennsylvania Electric Company to the Complaint of Catherine Lamagna. This document has been served on the Complainant as shown in the Certificate of Service.

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

Very truly yours,



Lauren M. Lepkoski

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CATHERINE LAMAGNA**

**v.**

**PENNSYLVANIA ELECTRIC COMPANY**

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**DOCKET NO. C-2017-2608014**

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**ANSWER IN OPPOSITION  
TO PETITION FOR  
RECONSIDERATION  
ON BEHALF OF  
PENNSYLVANIA ELECTRIC COMPANY**

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Dated: January 11, 2019

## **I. INTRODUCTION AND BACKGROUND**

On December 28, 2018, Catherine Lamagna (“Complainant”) filed a Petition for Approval of Reconsideration in the above-captioned proceeding. The Complainant’s Petition for Reconsideration follows the dismissal of her Formal Complaint in opposition to the implementation of the Pennsylvania Electric Company’s (“Penelec” or “Company”) smart meter plan. On October 30, 2018, Administrative Law Judge (“ALJ”) Jeffrey A. Watson issued an Initial Decision (“I.D.”) dismissing Ms. Lamagna’s smart meter Formal Complaint. In his decision, the ALJ concluded as follows:

Penelec presented extensive expert testimony in support of its position that its smart meter deployment is safe, reasonable and adequate. Complainant, on the other hand, failed to present any credible or relevant evidence to support her allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. In view of Complainant’s failure to support her position or to meet her burden of proof, the Complaint must be denied and dismissed with prejudice.

I.D. at 33.

The Commission issued ALJ Watson’s Initial Decision on November 19, 2018. As noted in his I.D., the Complainant did not file a Main Brief in the proceeding below for consideration. I.D. at 6. Exceptions to the Initial Decision, if any, were due on December 10, 2018. No exceptions were filed in this proceeding. On December 21, 2018, ALJ Watson’s decision became final pursuant to Section 332(h) of the Public Utility Code.

The Company files this Answer in Opposition to the Complainant’s Petition. The Complainant has not raised new or novel arguments, nor has she presented considerations in her Petition which have been overlooked that would reasonably warrant the Commission to grant reconsideration of this case. The ALJ’s decision thoroughly addressed the issues raised in the Complainant’s Petition for Reconsideration, and the petition should be denied.

## II. LEGAL STANDARD

The Complainant has filed a Petition for Reconsideration. The Commission's standard for granting clarification or reconsideration is well-established and set out in Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Duick, 56 Pa. P.U.C. at 559 (quoting Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.<sup>1</sup> In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an “act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”<sup>2</sup> Section 1501 of the Public Utility Code states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities...”<sup>3</sup> As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section

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<sup>1</sup> 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

<sup>2</sup> 66 Pa.C.S. § 701.

<sup>3</sup> 66 Pa.C.S. § 1501.

1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.<sup>4</sup> As required under Duick, the Commission's ability to grant reconsideration is discretionary. In order for the Commission to exercise its discretion here, the Complainant must have raised new and novel arguments, or present considerations which have been overlooked by the Commission. As detailed in this Answer, the Complainant has failed to meet her burden of proof in this proceeding and fails to raise any new matter that approaches the Duick standard for reconsideration.

### III. ANSWER

#### A. Introduction

The Complainant's Petition for Reconsideration completely fails to meet the Duick standard. The Complainant's Petition for Reconsideration is premised on four primary arguments. First, the Complainant argues that she did not file Exceptions because "there was enough evidence presented at the hearing" and that she "thought the judge would do the right thing." Petition at 1. As fully explained in the ALJ's decision, however, the Complainant's evidence did not meet the burden of proof in this proceeding. Second, the Complainant attempts to cite the U.S. Constitution, Pennsylvania Constitution, Federal law and Pennsylvania law to support her Petition. Petition at 1-2. The arguments made are not relevant to the issues in this proceeding. Third, the Complainant cites evidence regarding the protection of smart meter information. Petition at 2. The ALJ correctly rejected these arguments in his decision. And fourth, the Complainant challenges the

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<sup>4</sup> *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

ALJ's jurisdiction in this matter. This argument was properly rejected before the ALJ and warrants no consideration here.

The Complainant failed to meet her burden of proof that the installation of a smart meter at her service location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order. I.D. at 36. The Complainant's arguments for reconsideration are misplaced, unreasonable, ill-informed, and do not warrant Commission discretion for the granting of her Petition for Reconsideration. The Company submits that the evidence in this case fully supports the ALJ's decision and the Commission should uphold its Final Order entered December 21, 2018 that dismissed the Complaint with prejudice.

**B. The ALJ Properly Weighed the Evidence In This Proceeding.**

In the Petition, the Complainant argues that she "felt there was enough evidence presented at the hearing" and, as a result, she decided not to file exceptions to the I.D. Petition at 1. The Complainant also failed to present a Brief when given the opportunity to further her position. The Complainant has not provided any new or novel evidence in her Petition.

The ALJ properly weighed the evidence and found that the Complainant had failed to carry her burden of proof establishing that Penelec violated the Public Utility Code or a regulation or order of the Commission in requiring the installation of a smart meter at Complainant's property. I.D. at 36 (Conclusion of Law 36). The ALJ specifically held that the Complainant failed to present any credible or relevant evidence to support her allegations. I.D. at 33.

The Commission properly considered the evidence of Penelec's expert witnesses, Scott Palmquist, Senior Product Line Manager for Smart Grid Security and Networking for Itron Inc. ("Itron"), and Michael Belanger, Senior Product Line Manager for Network Communication for

Itron, provided convincing evidence that Penelec's smart meter network is safe and secure for customers. Also, on behalf of the Company, witness John Ahr provided detailed testimony related to Penelec's Act 129 compliance and the privacy safeguards applicable to Penelec's smart meters. See, I.D. at 8-14, 17, 25-30.

The Company submits that the Complainant's perception that there was "enough" evidence in her favor does not constitute grounds for the reconsideration of her complaint. Furthermore, her assertion that the ALJ would "do the right thing" by finding in her favor is belied by the overwhelming expert testimony presented by the Company. The Complainant's request should be denied.

C. **The Petition Does Not Cite Statutory or Constitutional Grounds That Warrant Reconsideration.**

In the Petition, the Complainant cites an array of constitutional, federal and state law that are not relevant to the matter here. See, Petition at 1-2. Additionally, the Complainant argues that the ALJ does not have authority to preside over the complaint and that his decision should be voided due to the theory of "Corum Non Judice". Petition at 2-3.

First, the Complainant's position that the ALJ does not have authority to preside over this case is entirely without merit and should not be considered here. The Complainant raised this same argument in the proceeding below and it was correctly dismissed. See, Tr. At 10-12. The Complainant stated her concerns regarding the ALJ's authority during the hearing below, stating that some of her testimony "maybe out of your jurisdiction." Tr. at 11. The ALJ provided the Complainant an opportunity to support this argument. Tr. at 11. When asked by the ALJ if she had any specific legal argument or authority that warranted challenging his authority in the proceeding, the Complainant said that she did not. Tr. at 11.

Second, the ALJ correctly dismissed the Complainant's remaining "broad challenge to the validity of Act 129" in the proceeding below. I.D. at 21-22. The legal materials contained in the Petition do not constitute a new or novel "argument." Rather, the Complainant dispenses with an array of out-of-context and off-topic legal concepts without grounding them in an appropriate legal context. Without a proper "argument" tying the cited legal authority to the matter below, there is no grounds to grant reconsideration on this issue. The Complainant's claims are without merit and must be denied.

**D. The Petitioner's Smart Meter Information Concerns Were Fully Considered and Rejected.**

In her Petition, the Complainant cites concerns regarding the hacking of smart meter information. Petition at 2. The Complainant's baseless statements related to privacy and radio frequency concerns were rejected by the ALJ and Commission as unsupported allegations. The Complainant offered no evidence to support her allegations in the proceeding below and offers none now.

The Company presented its Commission-approved Privacy Policy in this proceeding. The ALJ identified the key privacy protections that are a core component of the Company's smart meter plan in his decision. See, I.D. at 8-9. Importantly, the ALJ recognized in his Findings of Fact that "Penelec's smart meter privacy policy provides that Penelec will not share sensitive customer information, including the customer's name, address, usage levels, phone number, social security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's informed consent." I.D. at 8-9 (Finding of Fact #23). In addition, Penelec's smart meter network utilizes a number of cybersecurity protections to prevent against unauthorized access to customer

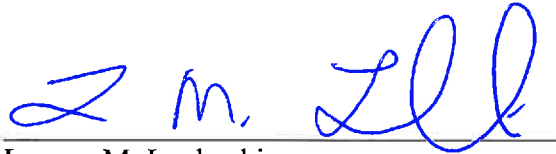
usage data. ID at 9 (Finding of Fact #25). The Company presented its Commission-approved Privacy Policy in this proceeding.

The Company presented substantial evidence demonstrating the safety and security of its smart meter network. In her Petition for Reconsideration, the Complainant argues that the evidence was not fully considered. Petition at 2. However, ALJ Watson's evidentiary rulings were well-reasoned and appropriate. See, I.D. at 31-32. As ALJ Watson explained, the "Complainant offered no evidence that the Privacy Policy and related smart meter privacy protections were unreasonable." I.D. at 31. Likewise, the Complainant's argument that she should be allowed to opt-out of smart meter implementation to alleviate her concerns was fully addressed by the ALJ. I.D. at 17, 18, 20, 22-24. The ALJ properly found that Act 129 requires the Company to adopt a smart meter deployment plan. I.D. at 7. The ALJ considered the Complainant's argument that she should be allowed to "opt-out" of the smart meter plan and rejected the argument as inconsistent with Section 2807(f) of Act 129 and prior Commission decisions addressing this issue. I.D. at 20, 22-24. The Complainant's Petition for Reconsideration offers no new, novel or overlooked arguments that warrant reconsideration of this matter.

IV. CONCLUSION

WHEREFORE, for the reasons detailed in this Answer, the Pennsylvania Electric Company respectfully requests that the Petition for Reconsideration of the Formal Complaint of Catherine LaMagna be denied.

Respectfully submitted,



Dated: January 11, 2019

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Counsel for Pennsylvania Electric Company

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**CATHERINE LAMAGNA**

**v.**

**PENNSYLVANIA ELECTRIC COMPANY**

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**Docket No. C-2017-2608014**

**CERTIFICATE OF SERVICE**

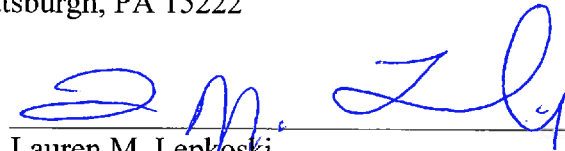
I hereby certify that I have this day served a true copy of the forgoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Catherine Lamagna  
616 Main Street  
Thompson, PA 18465

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222

Dated: January 11, 2019



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