

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**Alan V. Schmukler**  
v.  
**PPL Electric Utilities Corporation**

**Public Meeting December 19, 2019**  
**2621285-OSA**  
**Docket No. C-2017-2621285**

**MOTION OF COMMISSIONER RALPH V. YANORA**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Petition for Supersedeas (or Stay) (Petition) filed by Alan V. Schmukler (Mr. Schmukler) in response to our Opinion and Order entered on July 23, 2019 (*July 2019 Order*) in the above-captioned proceeding.

In our *July 2019 Order*, the Commission denied Mr. Schmukler's Complaint against PPL Electric Utilities Corporation (PPL) which objected to the installation of a smart meter at his residence for health and safety reasons. The Commission found that Mr. Schmukler failed to meet his burden of proof that the installation of a smart meter at his residence would violate Section 1501 of the Public Utility Code (Code),<sup>1</sup> the Commission's Regulations, or any Commission order. Specifically, the Commission concluded, *inter alia*, that Mr. Schmukler failed to establish that the installation of a smart meter would contribute to, or exacerbate, any of his alleged medical symptoms.

On July 29, 2019, Mr. Schmukler filed the instant Petition. In his Petition, Mr. Schmukler seeks to retain his analog meter during the pendency of his appeal of the Commission's *July 2019 Order* to the Commonwealth Court (Court).<sup>2</sup> Ultimately, he seeks to avoid the installation of a smart meter at his residence and to avoid termination of his PPL electric service should he refuse installation of a smart meter.

On August 15, 2019, Mr. Schmukler also filed a stay request with the Commonwealth Court. On December 16, 2019, the Court denied Mr. Schmukler's stay request finding that he failed to establish that the denial of a stay would cause him irreparable injury pursuant to *Pa. PUC v. Process Gas Consumers Group*.<sup>3</sup>

The Commission has adopted the standards set forth in *Process Gas* for guidance regarding the issuance of a stay or supersedeas. In order to prevail on such a petition, the petitioner must:

- (1) Make a strong showing of the likelihood to prevail on the merits;
- (2) Show that denial of a stay will cause irreparable injury;

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<sup>1</sup> 66 Pa. C.S. § 1501.

<sup>2</sup> Commonwealth Court Docket No. 1102 C.D. 2019.

<sup>3</sup> See, *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (*Process Gas*).

- (3) Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
- (4) Show that issuance of a stay will not adversely affect the public interest.

*Id.* at 808-809. A petitioner must make a strong showing on *each* of the above criteria for a stay to be issued. *Id.*

Consistent with the Court's findings in this matter, I agree that Mr. Schmukler has failed to establish the second criteria of *Process Gas* which requires him to demonstrate that a denial of a stay will cause him irreparable injury. As previously stated, the Commission found that Mr. Schmukler failed to establish that the installation of a smart meter at his residence would contribute to, or exacerbate, any of his alleged medical symptoms. Because we found in our *July 2019 Order* that Mr. Schmukler failed to sustain his burden of proof that the installation of the PPL smart meter will cause any adverse health effects, we find that he has failed to establish irreparable injury by virtue of the installation of such meter.


If Mr. Schmukler refuses the installation of the PPL smart meter, he will be at risk of termination of his PPL electric service. Although Mr. Schmukler argues that the termination of his electric service will cause irreparable injury, such termination is within his control. Additionally, the Commission has found that the harm of electric service termination is speculative and cannot form the basis to establish irreparable injury.<sup>4</sup> As such, we find that Mr. Schmukler has failed to establish irreparable injury.

Because Mr. Schmukler failed to satisfy the second criteria of the *Process Gas* standard, there is no need to address the remaining three criteria. Accordingly, his Petition is denied.

**THEREFORE, I Move:**

1. That the Petition for Supersedeas filed by Alan V. Schmukler on July 29, 2019, directed to the Opinion and Order of the Commission entered July 23, 2019, in the formal complaint of *Alan V. Schmukler v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621285, is denied.
2. That the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**DATE: December 19, 2019**

  
**RALPH V. YANORA**  
**COMMISSIONER**

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<sup>4</sup> See *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered February 20, 2014).