

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

Richard N. Myers

v.

PPL Electric Utilities Corporation

Public Meeting December 19, 2019

2620710-OSA

Docket No. C-2017-2620710

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 Richard N. Myers (Mr. Myers) in response to our Opinion and Order entered on August 29, 2019 (*August 2019 Order*) in the above-captioned proceeding.

In our *August 2019 Order*, the Commission denied Mr. Myers Complaint against PPL Electric Utilities Corporation (PPL) which objected to the installation of a smart meter at his residence and other rental properties for health and safety reasons.¹ The Commission found that Mr. Myers failed to meet his burden of proof that the installation of a smart meter would violate Section 1501 of the Public Utility Code (Code),² the Commission's Regulations, or any Commission order. Specifically, the Commission concluded, *inter alia*, that Mr. Myers failed to establish that the installation of a smart meter would cause any adverse health effects.

On September 3, 2019, Mr. Myers filed the instant Petition. In his Petition, Mr. Myers seeks to retain his analog meter during the pendency of his appeal of the Commission's *August 2019 Order* to the Commonwealth Court (Court).³ 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 September 26, 2019, PPL filed its Answer in response to the Petition. PPL argues that the Petition fails to satisfy the legal standards required to obtain a stay of this matter pending resolution of Mr. Myer's appeal before the Court. Accordingly, PPL requests that the Petition be denied.

In addition to the instant Petition, Mr. Myers also filed a stay request of the *August 2019 Order* with the Court. By Order dated December 2, 2019, the Court directed the Commission to issue a determination on the Petition of Mr. Myers within thirty days.

The Commission has adopted the standards set forth in *Pa. PUC v. Process Gas Consumers Group*⁴ 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;

¹ The Petition pertains solely to Mr. Myer's personal residence.

² 66 Pa. C.S. § 1501.

³ Commonwealth Court Docket No. 1337 C.D. 2019.

⁴ *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (*Process Gas*).

- (2) Show that denial of a stay will cause irreparable injury;
- (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.*

Upon review of the record in this matter, Mr. Myers has failed to establish the second criteria of *Process Gas* which requires him to demonstrate that denial of a stay will cause him irreparable injury.⁵ As previously stated, the Commission found that Mr. Myers failed to establish that the installation of a smart meter at his service address would cause any adverse health impacts. Because we found in our *August 2019 Order* that Mr. Myers 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. Myers refuses the installation of the proposed PPL smart meter, he will be at risk of termination of his PPL electric service. Although Mr. Myers 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.⁶ As such, we find that Mr. Myers has failed to establish irreparable injury.

Because Mr. Myers 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 Richard N. Myers on September 3, 2019, directed to the Opinion and Order of the Commission entered August 29, 2019, in the formal complaint of *Richard N. Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710, 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

⁵ See, *Alan Schmukler v. Pa. PUC*, No. 1102 C.D. 2019 (Pa. Cmwlth. Ct. Petition for Supersedeas denied December 16, 2019).

⁶ See *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (Order entered February 20, 2014).