
Devin Ryan

dryan@postschell.com
717-612-6052 Direct
717-731-1985 Direct Fax
File #: 167945

October 27, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: John Kline v. PPL Electric Utilities Corporation
Docket No. C-2017-2621072**

Dear Secretary Chiavetta:

Enclosed please find the Motion to Stay the Proceeding for filing on behalf of PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) in the above-referenced proceeding.

In the enclosed Motion, PPL Electric requests that the Pennsylvania Public Utility Commission (“Commission”) consider and rule on the Motion on an expedited basis because the Company’s Answer to the Petition for Reconsideration filed by John Kline (“Complainant”) is due by Monday, November 2, 2020.

Therefore, to facilitate a decision on the Motion to Stay in sufficient time before the November 2, 2020 due date, PPL Electric respectfully requests that the Commission: (a) require any Answers to the enclosed Motion be filed within two (2) calendar days; and (b) rule on the Motion on an expedited basis by close of business Friday, October 30, 2020.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/jl

Rosemary Chiavetta, Secretary
October 27, 2020
Page 2

Enclosures

cc: Office of Special Assistants
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & OVERNIGHT DELIVERY

John Kline
5611 Stradford Drive
Harrisburg, PA 17112
Jack.Kline@ecolab.com



Date: October 27, 2020

Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kline,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2621072
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS GENERALLY ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. **IN THE INSTANT MOTION, THE COMPANY REQUESTS AN EXPEDITED RESPONSE PERIOD OF TWO (2) CALENDAR DAYS TO FACILITATE A RULING ON THE MOTION IN SUFFICIENT TIME BEFORE PPL ELECTRIC UTILITIES CORPORATION MUST FILE ITS ANSWER TO THE PETITION FOR RECONSIDERATION FILED BY JOHN KLINE.** YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR ANSWER SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-5696
Phone: 610-774-2599
Fax: 610-774-4101
Fax: 610-774-4102
E-mail:kklock@pplweb.com
E-mail:mjshafer@pplweb.com

Of Counsel:

Post & Schell, P.C.

Date: October 27, 2020



Devin T. Ryan (ID # 316602)
Garrett P. Lent (ID #321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail:dryan@postschell.com
E-mail:glent@postschell.com

Curtis S. Renner (DC ID # 446187)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005-ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail:crenner@w-r.com
Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kline,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2017-2621072
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

MOTION TO STAY THE PROCEEDING

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Motion to Stay the Proceeding pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code §§ 1.15(a)(1) and 5.103 and respectfully requests that the Commission stay the instant proceeding and extend all applicable deadlines. Good cause for the requested stay exists due to the Commonwealth Court of Pennsylvania’s recent decision in *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* (Slip. Op. dated Oct. 8, 2020) (“*Povacz*”).¹

In *Povacz*, the Commonwealth Court squarely addressed whether the Commission properly interpreted Act 129 of 2008 (“Act 129”) as mandating the installation of smart meters for all customers served by the electric distribution companies (“EDCs”) subject to Act 129, such

¹ The Opinion issued by the Commonwealth Court in *Povacz* considered three consolidated appeals from orders of the Commission regarding certain smart meter complaints: *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, 2019 Pa. PUC LEXIS 102 (Order entered Mar. 28, 2019), *Sunstein Murphy v. PECO Energy Co.*, C-2015-2475726, 2019 Pa. PUC LEXIS 159 (Order entered May 9, 2019), and *Randall & Albrecht v. PECO Energy Co.*, Docket No. C-2016-2537666, 2019 Pa. PUC LEXIS 160 (Order entered May 9, 2019).

as PPL Electric. The Commonwealth Court held that the Commission’s interpretation was incorrect and found that the Commission possesses the authority to grant “reasonable” and “appropriate” accommodations to customers’ smart meter installations “without proof of harm.” *Povacz*, pp. 17, 21-22. However, the Commonwealth Court remanded the matter to the Commission to determine what, if any, accommodations should be granted. *Id.*, p. 22.

The 30-day appeal period for this decision has not expired, and it is unknown at this time whether any of the parties to *Povacz* will file a petition for allowance of appeal with the Supreme Court of Pennsylvania. Regardless of whether the Supreme Court declines to review the case or grants discretionary review and upholds the *Povacz* decision, substantial uncertainty exists regarding how the Commission will dispose of each of the applicable complaints on remand.

The Company submits that until further guidance from the Pennsylvania Supreme Court, the Commission, or both is provided, it would be imprudent and ineffective to spend the time and resources to continue litigating this case, which will likely be substantially affected by the ultimate outcome of the *Povacz* proceeding. Indeed, until further guidance from the Supreme Court or the Commission is received, it is unclear what evidence or issues the parties will need to address in this proceeding to fully dispose of all issues raised in the Complaint.

Thus, the Company respectfully requests that the instant proceeding be stayed and that all deadlines in this matter be extended until 60 days after (a) the Supreme Court of Pennsylvania issues a final order reversing the Commonwealth Court’s order in *Povacz* or (b) the Commission issues final orders on remand in each of the dockets underlying *Povacz*,² whichever occurs first.

In support thereof, the Company states as follows:

² See footnote 1, *supra*.

I. BACKGROUND

1. On August 24, 2017, PPL Electric was served with the Formal Complaint filed by John Kline (“Complainant”), in which the Complainant *inter alia* challenged the planned installation of a new automated metering infrastructure (“AMI”) meter (also called a smart meter) at the Complainant’s service location.

2. The parties to this proceeding have made various filings and submissions in accordance with the Commission’s regulations and the ALJ’s orders.

3. On October 8, 2020, the Commonwealth Court of Pennsylvania issued its order in *Povacz*.

4. That same day, the Commission entered its Opinion and Order in this proceeding, which granted PPL Electric’s Exceptions, denied the Complainant’s Exceptions, and adopted the Initial Decision dismissing the Formal Complaint as modified.

5. On October 23, 2020, the Complainant filed a Petition for Reconsideration of the Commission’s October 8, 2020 Order.

6. In that Petition, the Complainant heavily focused on the Commonwealth Court’s decision in *Povacz*.

7. Notably, the Complainant stated that “if it is the intention of the PUC to request review” of the *Povacz* decision, the Commission “should stay all current smart meter cases and not rule on them until that process is completed.” (Petition, p. 13.)

8. PPL Electric’s Answer to the Petition for Reconsideration is due within 10 days of service, *i.e.*, by November 2, 2020.

9. The deadline for parties to file petitions for allowance of appeal challenging the Commonwealth Court’s *Povacz* decision with the Pennsylvania Supreme Court is November 9, 2020.

10. Thus, PPL Electric's Answer to the Petition for Reconsideration currently must be filed before the filing of petitions for allowance of appeal challenging the *Povacz* decision and well before the Pennsylvania Supreme Court will grant or deny any such petitions.

II. MOTION

11. Pursuant to 52 Pa. Code § 1.15(a)(1):

[W]henever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended.

52 Pa. Code § 1.15(a)(1).

12. Section 1.15 of the Commission's regulations does not define the "good cause" requirement.

13. However, the Commission has previously recognized the Pennsylvania Supreme Court's definition of good cause as "conduct which is reasonable under all of the circumstances, thereby justifying the [c]laimant's actions." *See In re Application of Penn Access Corporation and Digital Direct of Pittsburgh, Inc.*, Docket No. A-310006, 1992 Pa. PUC LEXIS 56, at *9 (1992) (citing *Frumento v. Unemployment Comp. Bd. of Review*, 466 Pa. 81, 351 A.2d 631 (Pa. 1976)).

14. Good cause exists for granting the requested stay of the instant proceeding and extending all applicable deadlines.

15. The rights and obligations of the parties to this proceeding to address specific issues and present specific evidence will be affected by the ultimate disposition of the Commonwealth Court's order in *Povacz*.

16. As explained previously, the Commonwealth Court’s decision in *Povacz* squarely addressed whether the Commission properly interpreted Act 129 as mandating the installation of smart meters for all customers served by the EDCs subject to Act 129, such as PPL Electric. The Commonwealth Court held that the Commission’s interpretation was incorrect and found that the Commission possesses the authority to grant “reasonable” and “appropriate” accommodations to customers’ smart meter installations “without proof of harm.” *Povacz*, pp. 17, 21-22. However, the Commonwealth Court remanded the matter to the Commission to determine what, if any, accommodations should be granted. *Id.*, p. 22.

17. Importantly, at this time, the Commonwealth Court’s order in *Povacz* remains subject to appeal. *See* Pa.R.A.P. 1113(a) (stating that a petition for allowance of appeal is due within 30 days after the Commonwealth Court’s order is entered).

18. It is unknown whether any of the parties to that proceeding will appeal the order. Further, the Pennsylvania Supreme Court’s review of the *Povacz* decision “is not a matter of right, but of sound judicial discretion.” Pa.R.A.P. 1114(a). Therefore, even if an appeal of the *Povacz* decision is sought, there is no guarantee that the Supreme Court will exercise its discretion to review the Commonwealth Court’s order.

19. In addition, the Commonwealth Court’s order in *Povacz* directs the consolidated proceedings to be remanded to the Commission for further consideration of several issues. On remand, the Commission will address what “reasonable” and “appropriate” accommodations, if any, should be granted to the customers. Such guidance from the Commission would be invaluable to the instant proceeding.

20. Indeed, due to the *Povacz* decision, it is currently unknown what issues and evidence will need to be addressed in this proceeding in order to dispose of all issues consistent

with *Povacz*. Therefore, if the case were to proceed at this time, a substantial risk exists that the Commission would ultimately remand the case to develop the record further.

21. Furthermore, the guidance provided by the Supreme Court or the Commission on remand may even obviate the need for this entire proceeding.

22. Or, alternatively, it may necessitate larger proceedings by the Company and other Pennsylvania EDCs to modify and revise their existing smart meter deployment plans and tariffs. To the extent that such larger proceedings may be required, the Company submits that resolving any issues raised by the *Povacz* decision in the context of those proceedings, prior to the resolution of this individual Complaint proceeding, may also obviate the need for this entire proceeding.

23. As such, it would be a waste of the parties' and the Commission's time and resources to continue litigating the instant proceeding until additional guidance from the Supreme Court and the Commission is obtained regarding the *Povacz* order.

24. In addition, the Company's request to extend all applicable deadlines for this proceeding will protect the due process rights of the parties.

25. Even if the case is not mooted by the Supreme Court's decision or the Commission's final orders on remand, staying the instant proceeding would enable the parties to tailor their arguments in light of the Supreme Court's decision, the Commission's final orders on remand, or both.

26. For example, the Complainant may need or want to amend his Petition for Reconsideration to reflect the guidance provided by the Supreme Court or the Commission, and PPL Electric could tailor its arguments in the Company's Answer to the Petition for Reconsideration to reflect the Supreme Court's and the Commission's latest pronouncements.

27. In sum, the Company's Motion to Stay should be granted because it will obtain the most efficient and prompt resolution of this proceeding in light of the *Povacz* decision, while also efficiently balancing the parties' and the Commission's time and resources.

28. Now, PPL Electric fully recognizes that the Commission will need to grant the Complainant's Petition for Reconsideration pending further review of the merits, in order to retain jurisdiction over the matter, within 30 days of the October 8, 2020 Order. *See* Pa.R.A.P. 1701.

29. However, for the reasons outlined above, the Commission should stay all deadlines in the proceeding and the Commission's review of the merits of the Complainant's Petition for Reconsideration until the Supreme Court reverses the *Povacz* decision or the Commission issues its final orders on remand, whichever occurs first.

30. Thus, the Company respectfully requests that the instant proceeding be stayed and that all deadlines in this matter be extended until 60 days after (a) the Supreme Court of Pennsylvania issues a final order reversing the Commonwealth Court's order in *Povacz* or (b) the Commission issues final orders on remand in each of the dockets underlying *Povacz*,³ whichever occurs first.

III. REQUEST FOR EXPEDITED CONSIDERATION

31. PPL Electric further respectfully requests that the Commission consider and rule on the Company's Motion on an expedited basis by no later than Friday, October 30, 2020.

32. As mentioned previously, PPL Electric's Answer to the Complainant's Petition for Reconsideration is due by Monday, November 2, 2020.

33. Therefore, the Company needs to know by close of business on Friday, October

³ *See* footnote 1, *supra*.

30, 2020, whether the instant Motion will be granted or not.

34. Moreover, in the Complainant's Petition for Reconsideration, the Complainant stated his support for staying the instant proceeding if the Commission intends to appeal the Commonwealth Court's *Povacz* decision. (See Petition, p. 13.)

35. Specifically, the Complainant averred that "if it is in the intention of the PUC to request review or appeal of the CWC Opinion, they should stay all current smart meter cases and not rule on them until that process is completed." (Petition, p. 13.)

36. Therefore, the Complainant should not need much time to determine whether he supports the stay requested by PPL Electric's Motion.

37. For these reasons, the Commission should grant PPL Electric's request for expedited consideration of this Motion and establish an answer period of no more than two (2) calendar days.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission grant this Motion on an expedited basis, such that all deadlines in this matter are extended until 60 days after (a) the Supreme Court of Pennsylvania issues a final order reversing the Commonwealth Court's order in *Povacz* or (b) the Commission issues final orders on remand in each of the dockets underlying *Povacz*, whichever occurs first.

Respectfully submitted,



Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Phone: 610-774-5696
Phone: 610-774-2599
Fax: 610-774-4101
Fax: 610-774-4102
E-mail:kklock@pplweb.com
E-mail:mjshafer@pplweb.com

Devin T. Ryan (ID # 316602)
Garrett P. Lent (ID #321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
Fax: 717-731-1985
E-mail:dryan@postschell.com
E-mail:glent@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: October 27, 2020

Curtis S. Renner (DC ID # 446187)
Watson & Renner
1901 Pennsylvania Avenue, NW
Suite 1005-ENS
Washington, DC 20006
Phone: 202-737-6302
E-mail:crenner@w-r.com

Attorneys for PPL Electric Utilities Corporation