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Dated: August 8, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
rchiavetta@pa.gov

Re: Jeffrey W. Smiles v. PPL Electric Utilities Corporation

Docket No. C-2021-3026268

Dear Secretary Chiavetta:

Please accept this reply to PPL's Answer and New Matter filed on June 28, 2021.

The extensive length of the PPL Document, its myriad of legal references, and aggressive assertions could not properly be addressed within the brief period PPL allotted in its Notice to Plead.

As my request for additional time was granted by Judge Watson, the reply follows this letter.

Sincerely,



Jeffrey Smiles

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Smiles

vs.

**PPL ELECTRIC UTILITIES
CORPORATION**

Docket No. C--2021-3026268

**REPLY TO ANSWER AND NEW MATTER OF
PPL ELECTRIC UTILITIES CORPORATION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Section 5.101(f) of the Commission's regulations, 52 Pa. Code §5.101(f), Complainant, Jeffrey W. Smiles, hereby submits His response to the Answer and New Matter of PPL Electric Utilities or "Respondent") to his Complaint in the above-referenced proceeding.

In support of this Reply, Complainant respectfully submit the following.

I. INTRODUCTION

On or about March 3, 2021 Complainant made an informal complaint to the P.U.C. Regarding PPL Electric Utilities because they left a threatening shut-off notice on

his door stating that a shut-off had been scheduled for March 8, 2021 due to “no access to change old meter,” despite the fact that Complainant was home the whole time and there was no knock at the door, phone call or any attempt to contact him that day.

Communications directly to PPL Electric Utilities to resolve the matter were futile as the PPL Electric Utilities personnel had no knowledge of the P.U.C.'s standing Order prohibiting termination of services during the pendency of the pandemic emergency.

As the P.U.C. Monitored the informal complaint, no resolution was forthcoming from PPL Electric Utilities and it was at the urging of an Official of the State of Pa that Complainant filed his formal Complaint dated May, 24, 2021.

Complainants' case rests on the Commonwealth Court's finding last October in *Povacz et.al.* that § 2807(f)(2)(iii), which does not require every customer to avail himself of every aspect of that technology. Notably, several provisions of Act 129 contemplate customer choice in the degree to which the smart meter technology is used. (No. 492 C.D. 2019, p. 34) It also involves PPL Electric Utilities' violation of Emergency Order M-2020-3019244.

II. REPLY TO ANSWER AND NEW MATTER

Admitted. It is admitted that PPL Electric Utilities filed a Answer and New Matter to the formal complaint on June 28, 2021.

Item # 4: Denied. PPL Electric Utilities insists that “...*Complainant has repeatedly refused PPL Electric's representatives access to the premises to replace its meter. It is denied that the Company's issuance of the termination notice is in any way unlawful*”

under the applicable laws and regulations. It is further denied that the Company's issuance of a termination notice contained false claims or that it was issued to "inflict emotional distress" or to "create fear and panic."

This is a bold-faced lie.

In as much as it is common knowledge that the State of Pennsylvania as well as the entire Country was placed into a "lockdown" in March of 2020, due to an extreme public health emergency, never before seen, the P.U.C. issued Emergency Order No. M-2020-3019244 . In that Order the PUC stated:

"THEREFORE, IT IS ORDERED:

That all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency consistent with this Emergency Order."

Early during the pandemic emergency Complainant had an interaction with a PPL Electric employee, whom was shown Order No. M-2020-3019244 and promptly contacted their supervisor for advice. To the best of Complainant's recollection, it was reported to him by the same employee the they would abide by the PUC's Emergency Order and not proceed with shutting off my power or replacing my analog meter with a mesh smartmeter.

The incident of March 3, 2021, as reported in the formal complaint, was just another dishonest, disreputable and deliberate attempt to violate the PUC's Emergency Order and it was clearly designed to inflict fear and panic in Complainant resulting in

severe emotional distress impacting his health.

In no way was anyone denied access to my meter as no one associated with PPL Electric Utilities had the simple decency to ring my doorbell, call on the phone or do anything before leaving the hang tag on the door. Phone calls to PPL were futile.

All other answers are denied by Complainant because PPL Electric Utilities has resorted to repetitious harping on 'Res Judicata', when they knew or should have known that Res Judicata is not applicable to this complaint because there is new information and new facts revealing a new basis for his complaint which did not exist at the time of the first complaint. In no way, size, shape or form was Complainants complaint a rehash of his earlier complaint.

III. DISCUSSION

Now, as the Supreme Court explained it more than 60 years ago in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), res judicata does not bar a second suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions. That is precisely the case here. Pretty straight forward, I'd say. Furthermore, Complainant's second complaint bears no resemblance to the first complaint against PPL Electric Utilities. So what is PPL Electric Utilities trying to accomplish here?

1. This Case Involves the Same Parties As in the prior complaint but entails newly discovered facts.

The dismissal of the earlier complaint was clearly based on a misguided, pre-determined and pre-existing, misapplication of Act 129 by incorrectly assuming that the Act was mandatory, and worse - this misguided interpretation resulted in a pre-determined and biased decision detrimental to the rights and well-being of Complainant.

The Povacz et. al. decision represents a new fact and this decision clearly states that Act 129 does not mandate that all customers have smart meters. Had Act 129 been correctly applied from the start, Complainant would never have had to file the first complaint.

2. The Current Complaint Raises New Facts That Do Not Arise Out of The Same “Transaction Or Occurrence.”

In *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), the Supreme Court unanimously reversed the application of res judicata where the lower court applied the same reasoning as the district court applied here. There, the plaintiffs brought an antitrust suit that was ultimately dismissed with prejudice. *Id.* at 324. Seven years later, the plaintiffs brought a second antitrust suit against many of the same defendants, alleging the same course of wrongful conduct, which had worsened in the interim. *Id.* at 328. The lower courts applied res judicata to bar the second suit. *Id.*

The Supreme Court reversed, explaining that even though “both suits involved essentially the same course of wrongful conduct,” res judicata did not apply. *Id.* at 327 (internal quotation marks omitted). The Court noted that “such a course of conduct—for example, an abatable nuisance—may frequently give rise to more than a single cause of

action.” *Id.* at 327–28. The Court held that claims in the second suit based on events that had not yet occurred at the time of the first suit were not barred.

3. The New Complaint Raises Claims That Could Not Have Been Raised in the Prior Litigation.

On October 8, 2020 the Commonwealth Court (CC) ruled in *Povacz et. al. vs. PECO and the PUC* that smart meters were not mandated by Act 129, interpreting correctly the plain English reading of § 2807(f)(2).

While PPL mentions this case as only a footnote, they do not acknowledge that Act 129 does not mandate that all customers get smart meters. Obviously then, this simple statement of law by the Commonwealth Court renders moot the Answers PPL Electric Utilities has submitted. That is, without the mandate, the Complainants’ case never would have been filed, as the Complainant would have been able to retain his analog meter.

The Commonwealth Court’s decision in *Povacz et. al.* constitutes new grounds on which a new formal complaint was entered. As this decision could not have been anticipated in the first formal complaint, it changed the facts, knowledge and information available regarding Act 129 by clarifying the proper usage of words and their legislative intent, rendering PPL’s claims under *res judicata* and *collateral estoppel*. just plain frivolous and dilatory.

CONCLUSION

The Commonwealth Court has ruled that there is no mandate. Therefore, I and all

other Complainants past and present, and in effect all private utility customers in PA could not be forced against their will have a smart meter installed on their home. There is not much else that needs to be stated at this time.

PPL Electric Utilities' attempt to switch out my analog meter violates the Commonwealth Court's decision in Povacz et.al. As the PUC and utilities have appealed this decision to the Supreme Court, I request that I be allowed to keep the present meter at least until the Supreme Court rules on this case.

Contrary to PPL's assertions, the present Formal Complaint is not a rehash of the previous formal complaint. and § 316 is not relevant. I request, therefore, to contact PPL to make sure they do not switch out my meter or turn off power, especially in these uncertain times of a raging pandemic.

Dated August 8, 2021

Respectfully Submitted by:



Jeffrey Smiles
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CERTIFICATION OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Rosemary Chiavetta, Secretary
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Dated: August 8 2021

By:



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