

DATE OF DEPOSIT

AUG 5 - 2021

August 2, 2021

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Ph: 717-772-7777

**Re: REPLY TO ANSWER AND NEW MATTER in the case of Lloyd and Susan Horst v. PPL  
Electric Utilities Corporation Docket No. C-2021-3026448**

Dear Secretary Chiavetta:

We are responding to PPL's Answer and New Matter filing of July 6, 2021. We were overwhelmed again by the length of the PPL Document, its numerous legal references, and long-winded argumentation and could not reply within the brief 20 days PPL allotted in its Notice to Plead. May we assume we have until August 9 to reply, as indicated to us when we received clarification from Toya Toro that we had until August 9 to enter our reply to the Preliminary Objections filed by PPL?

Following is our reply.

Sincerely,

*Lloyd Horst*  
*Susan Horst*

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Lloyd & Susan Horst  
2151 Thoroughbred Lane  
Lancaster, PA 17601  
E-mail: [hjer2911@comcast.net](mailto:hjer2911@comcast.net)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

LLOYD AND SUSAN HORST	:	
	:	
Complainant	:	<b>C-2021-3026448</b>
	:	
Vs	:	
	:	
PPL ELECTRIC UTILITIES CORPORATION	:	
	:	
Respondent	:	
	:	

**RESPONSE TO ANSWER AND NEW MATTER OF  
PPL ELECTRIC UTILITIES CORPORATION IN THE  
COMPLAINT OF LLOYD AND SUSAN HORST**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

**Essence of this Case**

The basis of Complainants' case rests on the Commonwealth Court finding last October in Povacz et.al. that

§ 2807(f)(2)(iii), but does not require every customer to avail himself of every aspect of that technology. Notably, several provisions of Act 129 seem to contemplate customer choice in the degree to which the smart meter technology is used. (No. 492 C.D. 2019, p. 34)

The Complainants reliance on Povacz distinguishes this present Complaint from the earlier one, thereby invalidating PPL's claim that our present Complaint is a rehash of the earlier one. By contrast, PPL's filing contains only the briefest reference to Povacz consisting of a footnote on page 4 and a repetition of this footnote as text on the next page. Since Povacz is the elephant in the room, it draws one to ask if PPL will not, and perhaps cannot engage with or rebut the implications of the Court's finding on smart meter mandates.

Instead, PPL attempts to prevent Complainants from presenting their case by invoking at great and tedious length § 316, res judicata and estoppel, and calling on the PUC to dismiss our complaint with prejudice – all without addressing the relevant findings in Povacz.

**Part A: Responses to ANSWERS**

We limit ourselves to those items for which we offer clarification.

**Item 4:** PPL admits “that the currently-installed meter is no longer remotely transmitting meter readings to PPL Electric.” While this may be true, the meter is still recording electricity use. Under the Commonwealth Court’s decision in Povacz et.al. declaring that Act 129 does not mandate that all customers accept a smart meter, we propose that alternative arrangements be made for billing complainant’s electricity use. One of these PPL is apparently currently using – estimating billing with occasional actual readings of the meter. Another alternative is for the customer to call in or send images of the meter face by a certain date each month. A third alternative is for PPL to replace the existing meter with a functioning electromechanical analog meter, but not a smart meter.

PPL continues to belabor 66 Pa. C.S. § 316 which we have addressed in our reply to Preliminary Objections and repeat here: the arguments put forth in this present Formal Complaint are not a rehash of arguments in the prior complaint. The Povacz et. al. decision is a new fact and this decision alters the playing field. Act 129 does not mandate that all customers get smart meters, Absent the mandate, we would never have had to file the first complaint, as we would have been able to retain our current meter.

Neither res judicata nor estoppel applies. We are not raising earlier claims or fact of law. Nor could we have raised the possibility of the Povacz et. al. decision, as this occurred after our earlier complaint.

While “PPL Electric is legally required to install the new AMI meter by the Public Utility Code, the Commission’s orders, and the Company’s Commission-approved Smart Meter Plan,” that mandate asserts that PPL must offer such meters to customers; Act 129 does not assert that customers have to accept smart meters. More strongly, customers only get a smart meter if they request one and are willing to pay for one. This is classic opt-in legislation. PPL can legally satisfy the requirements of the Public Utility Code to which it refers by both offering smart meters and continuing to serve customers who do not want such a meter. We remained puzzled why PPL cannot seem to grasp this distinction between offering and accepting. This is how our market system works: vendor offers items for sale, but customer is not forced to buy.

Farther down in the text PPL writes, “In addition, nothing in the Public Utility Code, the Commission’s orders and regulations, or PPL Electric’s Smart Meter Plan states that a customer can opt-out of, or rescind, a smart meter installation.” PPL’s attorneys have not learned anything new since this spate of smart meter complaints began years ago, namely that the repeated assertion that there is no opt-out provision is only true because it is logically superseded by the simple fact that § 2807(f)(2) is opt-in legislation. We remained puzzled why PPL, and by extension to the PUC itself in Starr v. PECO, continue to repeat this fabricated illogical statement.

**Item 5.** We have replied to this in Item 4 above.

**Item 7.** We misunderstood the process. We perhaps should have checked off “no”.

## **Part B. Responses to NEW MATTER**

As above, we limit ourselves to those items on which we offer clarification.

Item 2. See our reply under Part A, Item 4 above, paragraphs 3-4.

Item 3 and Item 5. Here PPL misstates the language and logic of both Act 129 and the Povacz decision. Under Part A, Item 4 paragraph 5 above we distinguished between Act 129 mandating that utilities including PECO offer smart meters, and customers only getting a smart meter if they request one and pay for it. The mandatory part of this section weighs on the utility, not on the customer. This distinction is in keeping with that great American principle of consumer sovereignty and consumer choice.

Items 6 through 14 summarize the administrative record, on which we have no comments at this time.

Item 15-26. Here PPL slides back into and repeats its earlier arguments. It writes, "Through the instant Complaint, the Complainants are seeking to litigate the same factual and legal issues that were raised or could have been raised in the First Complaint." We have already covered this under Part A, Item 4 paragraph 3-4 above, and earlier in our Reply to Preliminary Objections.

In particular, Item 18 interprets § 316 as if the Commonwealth Court's decision in Povacz et.al. had never taken place. The attorney for PPL goes so far to quote this section as follows, without seeming to realize that the Commonwealth Court did in fact set aside, on judicial review in Povacz et.al. the utility-PUC interpretation of the very section of Act 129 in question in the present complaint:

Whenever the [c]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

Item 27. Here PPL asserts incorrectly that both the First and Second Complaints covered the same ground. In particular, PPL writes "the issues are whether PPL Electric's planned installation of an AMI meter at 2151 Thoroughbred Lane, Lancaster, PA 17601 (i) is mandatory under Act 129 of 2008 ...."

In our July 27 Response to PPL's Preliminary Objections we have already recalled for PPL and for the Commission the six grounds on which we objected to the installation of an AMI smart meter in our First Formal Complaint:

1. Violation of 4<sup>th</sup> amendment
2. Health reasons
3. Dirty electricity
4. Radiation

5. Violation of our rights against mandated purchases
6. We prefer keeping our analog meter

Additionally, the PUC, in its Protective Order of August 2, 2019, affirmed this set of objections:

Complainants allege: 1) that installation of a smart meter is a violation of their Fourth Amendment rights; 2) radiofrequency fields from the smart meter could have adverse health effects; 3) AMI meters emit "dirty electricity" and radiation; and 4) forcing people to have installation is a violation of property and personal rights.

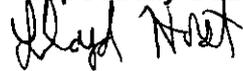
Note that an objection to mandatory installation of an AMI meter under Act 129 of 2008 is not one of these objections.

We assert, therefore, that the Commonwealth Court's decision in Povacz et. al. constitutes new grounds on which we entered our Second Formal Complaint, rendering PPL's claims under res judicata inapplicable. That PPL goes on about this page after page suggests they (and their attorneys) are hoping repetition translates to truth. It doesn't. Povacz et. al. allows us to enter a Second Formal Complaint whose objection to installation of a smart meter is based on the Commonwealth Court's plain English reading of § 2807(f)(2), namely, that Act 129 does not mandate that all customers must accept a smart meter.

Items 28-30 treating estoppel are similarly inapplicable for the reasons described above: the decision in Povacz et. al. introduces new facts and law.

THEREFORE, We direct you to contact PPL to make sure they do not switch out our meter or turn off our power, and to cease harassing us with filings. We further wish written confirmation of this directive and the affirmative reply from PPL. We remain open to an accommodation based on our suggestions under Item 4 paragraph 1 above.

Respectfully Submitted,



All Rights Reserved  
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Lloyd & Susan Horst  
2151 Thoroughbred Lane  
Lancaster, PA 17601  
E-mail: hjer2911@comcast.net

August 2, 2021

DATE OF DEPOSIT

AUG 5 - 2021

PA PUBLIC UTILITY COMMISSION  
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## CERTIFICATE OF SERVICE

We 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).

We believe we have served all necessary parties, but if we have erred, please notify us so we can rectify any omissions.

### VIA Fax and FIRST CLASS MAIL

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August 2, 2021

*Lloyd Horst*

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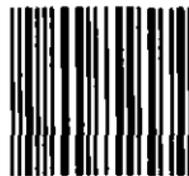
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**CERTIFIED MAIL**



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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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