
Devin Ryan

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

December 6, 2021

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: Lloyd and Susan Horst v. PPL Electric Utilities Corporation
Docket No. C-2021-3026448

Dear Secretary Chiavetta:

Enclosed for filing is the Exception of PPL Electric Utilities Corporation to the Initial Decision in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DTR/dmc
Enclosures

cc: Honorable Eranda Vero
Office of Special Assistants (*via e-mail*)
Certificate of Service

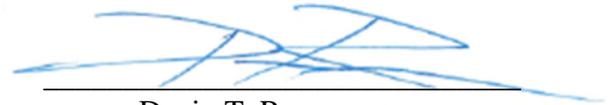
CERTIFICATE OF SERVICE

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

Lloyd and Susan Horst
2151 Thoroughbred Lane
Lancaster, PA 17601
E-mail: hjer2911@comcast.net

Date: December 6, 2021



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lloyd and Susan Horst,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026448
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**EXCEPTION OF PPL ELECTRIC UTILITIES CORPORATION TO THE
INITIAL DECISION**

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

Curtis S. Renner (ID # 326488)
Watson & Renner
1901 Pennsylvania Ave., NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737 6302
E-mail: crenner@w-r.com

Date: December 6, 2021

Attorneys for PPL Electric Utilities Corporation

TABLE OF CONTENTS

	Page
I. BACKGROUND	1
II. EXCEPTION	3
III. ARGUMENT	3
A. EXCEPTION NO. 1: THE ID ERRED BY INSTRUCTING THE SECRETARY’S BUREAU TO DOCKET THE SECOND COMPLAINT AS A PETITION FOR RECONSIDERATION IN THE FIRST COMPLAINT PROCEEDING	3
IV. CONCLUSION.....	6

I. BACKGROUND

On June 14, 2021, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) was served with the above-captioned Formal Complaint filed by Lloyd and Susan Horst (“Complainants”) with the Pennsylvania Public Utility Commission (“Commission”). This was the second Formal Complaint (“Second Complaint”) filed by the Complainants, in which they challenged PPL Electric’s planned installation of a new automated metering infrastructure (“AMI”) meter at their property located at 2151 Thoroughbred Lane, Lancaster, PA 17601. Previously, on December 27, 2018, the Complainants filed their first Formal Complaint (“First Complaint”) disputing the AMI meter’s planned installation. The First Complaint was fully litigated before the Commission and was eventually dismissed. *See Horst v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3006774 (Order entered July 8, 2020) (“*First Complaint Order*”). The Complainants did not: (1) file Exceptions to the Administrative Law Judge’s Initial Decision in the First Complaint proceeding; (2) file any petition for reconsideration of the *First Complaint Order*; or (3) file a petition for review with the Commonwealth Court.

On July 6, 2021, PPL Electric filed an Answer and New Matter as well as Preliminary Objections to the Second Complaint. In its Preliminary Objections, PPL Electric argued that the Second Complaint was barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, as well as the doctrines of *res judicata* and collateral estoppel, because the Complainants’ challenge to the AMI meter’s installation was previously litigated. Therefore, the Second Complaint was legally insufficient and should be dismissed. *See* 52 Pa. Code § 5.101(a)(4).

On July 27, 2021, the Complainants filed an Answer to PPL Electric’s Preliminary Objections.

On August 2, 2021, the Complainants filed a “Response” to PPL Electric’s Answer and New Matter.

On November 16, 2021, the Commission issued Administrative Law Judge Eranda Vero's ("ALJ") Initial Decision ("ID"), which: (1) granted PPL Electric's Preliminary Objections; (2) dismissed the Second Complaint; and (3) instructed the Secretary's Bureau to file the Second Complaint at the First Complaint proceeding's docket and identify the pleading as a petition for reconsideration of the Commission's *First Complaint Order*. On the latter finding, the ID stated that "[t]o the extent that the present Complaint seeks only a temporary stay of the Commission's First Complaint Order, the cause of the Complainants should not be hindered by the filing of the wrong form, i.e., a formal complaint instead of a petition for relief." ID at 8.

PPL Electric fully supports the ID's well-reasoned dismissal of the Second Complaint with prejudice.

However, the Company is filing a limited Exception to the ID due to its instruction for the Secretary's Bureau to docket the Second Complaint at the First Complaint proceeding's docket and identify the pleading as a petition for reconsideration of the Commission's *First Complaint Order*. The Complainants' filed a Formal Complaint, and the Commission should treat it as such, instead of a petition for reconsideration, rehearing, reargument, clarification, or supersedeas under Section 5.572(c) of the Commission's regulations. *See* 52 Pa. Code § 5.572(c). Even if the Second Complaint were such a petition, it would be approximately 11 months overdue and should be dismissed on that ground alone. Furthermore, no reason exists to treat the Second Complaint as a petition for reconsideration. The ID solely based that decision on a mischaracterization of the relief sought in the Second Complaint. Although the ID found that the Complainants are requesting a stay of the *First Complaint Order*, their Second Complaint actually requests a stay of the AMI meter's installation, as the Complainants did in their First Complaint. Also, PPL Electric already demonstrated through its Preliminary Objections that the Second Complaint, including all

relief requested therein, is legally insufficient and should be dismissed in its entirety. Thus, in the interests of administrative efficiency and judicial economy, the Commission should not re-docket the Second Complaint as a petition for reconsideration in the First Complaint proceeding.

For these reasons, and as explained in more detail below, PPL Electric respectfully requests that the Commission grant this limited Exception and modify the ID accordingly.

II. EXCEPTION

Exception No. 1: The ID erred by instructing the Secretary's Bureau to docket the Second Complaint at the First Complaint proceeding's docket and identify the pleading as a petition for reconsideration of the Commission's *First Complaint Order*. ID at 1, 8-9, 11.

III. ARGUMENT

The ID correctly dismissed the Second Complaint, finding, among other things, that the Second Complaint was barred by Section 316 of the Public Utility Code as well as the doctrines of *res judicata* and collateral estoppel. ID at 1, 9-12. Notwithstanding, the ID directed the Secretary's Bureau to "file the present formal Complaint under Docket No. C-2018-3006774 and identify it as a petition for reconsideration of the Commission's Final Order in that matter." ID at 11.

A. EXCEPTION NO. 1: THE ID ERRED BY INSTRUCTING THE SECRETARY'S BUREAU TO DOCKET THE SECOND COMPLAINT AS A PETITION FOR RECONSIDERATION IN THE FIRST COMPLAINT PROCEEDING

In its Final Order, the Commission should remove the instruction for the Secretary's Bureau to docket the Second Complaint at the First Complaint proceeding's docket as a petition for reconsideration. ID at 18-19.

First, the Complainants' filed a Formal Complaint, not a petition for reconsideration, rehearing, reargument, clarification, or supersedeas under Section 5.572(c) of the Commission's

regulations. *See* 52 Pa. Code § 5.572(c). The Commission should not refashion a Formal Complaint as a petition *sua sponte*, especially when it affects the legal standards by which the pleading will be adjudicated.¹

Second, even if the Second Complaint were a petition for reconsideration, it would be exceptionally untimely and should be dismissed on that ground alone. Section 5.572(c) of the Commission’s regulations states that such a petition is due “within 15 days after the Commission order involved is entered or otherwise becomes final.” 52 Pa. Code § 5.572(c). Here, the Second Complaint, which the ID instructed the Secretary’s Bureau to docket as a petition for reconsideration, was filed on June 1, 2021, *i.e.*, 328 days after the *First Complaint Order* was entered on December 27, 2018.²

Third, no reason exists to treat the Second Complaint as a petition for reconsideration. The ID solely based this finding on a mischaracterization of the relief requested in the Second Complaint. The ID concluded that “[t]o the extent that the present Complaint seeks only a temporary stay of the Commission’s First Complaint Order, the cause of the Complainants should not be hindered by the filing of the wrong form, *i.e.*, a formal complaint instead of a petition for relief.” ID at 8. However, in their Second Complaint, the Complainants seek a stay of PPL Electric’s AMI meter installation, not the *First Complaint Order*. Specifically, they ask that they

¹ *See Mattu v. West Penn Power Co.*, Docket No. C-2016-2547322, pp. 17-18 (Order entered Oct. 25, 2018) (granting West Penn Power Company’s petition for reconsideration and reversing the Commission’s *sua sponte* conversion of the formal complaint to a petition for relief), *rev’d on other grounds*, *West Penn Power Co. v. Pa. PUC*, 2019 Pa. Commw. Unpub. LEXIS 532 (Pa. Cmwlth. 2019).

² Even the Commonwealth Court’s decision in *Povacz v. Pa. PUC*, which the Complainants cite in the Second Complaint as support for their requested relief, was issued on October 8, 2020. *See Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (“*Povacz*”), *allocatur granted*, 253 A.3d 220 (Pa. 2021). Yet, the Complainants filed their Second Complaint on June 1, 2021, *i.e.*, 236 days after the *Povacz* decision.

“be allowed to keep [their] analog meter at least until the Supreme Court rules” on the consolidated appeals in *Povacz*. (Second Complaint ¶ 5.) In the First Complaint, the Complainants essentially requested the same relief, stating “We want to keep our Analog meter!!!” (First Complaint ¶ 5.) Thus, the Second Complaint, including all of the relief requested therein, is barred by Section 316 of the Public Utility Code as well as the doctrines of *res judicata* and collateral estoppel.

Finally, in the interest of administrative efficiency and judicial economy, the Commission should not separately docket the Second Complaint as a petition for reconsideration at the First Complaint proceeding’s docket. PPL Electric already demonstrated through its Preliminary Objections that the Second Complaint, including all relief requested therein, should be dismissed in its entirety. Yet, by re-docketing the Second Complaint as a petition for reconsideration, PPL Electric may be forced to incur the undue time and expense of having to respond to the same meritless pleading twice. Such an outcome contravenes the interests of administrative efficiency and judicial economy. Accordingly, the Commission should simply dismiss the Second Complaint in its entirety and not re-docket the Second Complaint as a petition for reconsideration in the First Complaint proceeding.³

Based on the foregoing, PPL Electric fully supports and is not contesting the ID’s dismissal of the Second Complaint; however, the Company respectfully requests that the ID be modified to remove the ID’s instruction for the Secretary’s Bureau to re-docket the Second Complaint as a petition for reconsideration in the First Complaint proceeding.

³ Notwithstanding, the ID is unclear as to whether PPL Electric must file another answer to the Second Complaint, within 10 days after it is re-docketed as petition for reconsideration in the First Complaint proceeding. *See* 52 Pa. Code § 5.572(e). Therefore, if the Commission decides to adopt the ID’s instruction to re-docket the Second Complaint as a petition for reconsideration in the First Complaint proceeding, the Commission should clarify in its Final Order whether PPL Electric must file another answer to the Second Complaint at the First Complaint proceeding’s docket.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Public Utility Commission should grant PPL Electric Utilities Corporation's limited Exception and enter a Final Order consistent with this Exception that adopts the Initial Decision, as modified to remove the instruction for the Secretary's Bureau to docket the Second Complaint as a petition for reconsideration in the First Complaint proceeding at Docket No. C-2018-3006774.

Respectfully submitted,



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

Curtis S. Renner (ID # 326488)
Watson & Renner
1901 Pennsylvania Ave., NW
Suite 1005 - ENS
Washington, DC 20006
Phone: 202-737 6302
E-mail: crenner@w-r.com

Date: December 6, 2021

Attorneys for PPL Electric Utilities Corporation