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**CONFIDENTIAL**

February 7, 2024

VIA CERTIFIED U.S. MAIL

Judge Mary D. Long  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
301 5<sup>th</sup> Avenue, Suite 220  
Pittsburgh, PA 15222

In Re: Jeannette and Craig Pavlick v. West Penn Power Company  
Docket No. C-2018-3002723

Dear Judge Mary D. Long:

Attached is our Brief in the above-referenced matter. This document has been served on the Respondent as shown in the Certificate of Service. Please contact us with any questions.

Sincerely,

/s/

Jeannette Pavlick

/s/

Craig Pavlick

CC:  
Certificate of Service

**CONFIDENTIAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JEANNETTE PAVLICK AND CRAIG PAVLICK :  
 :  
 v. : Docket No. C-2018-3002723  
 :  
 WEST PENN POWER COMPANY :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Brief of Jeannette Pavlick and Craig Pavlick upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Service by EMAIL and eFiling, as follows:

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Dated: February 7, 2024

\_\_\_\_\_/s/\_\_\_\_\_  
Jeannette Pavlick

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## INTRODUCTION

1. This brief is submitted by Jeannette Pavlick and Craig Pavlick (“Complainants”) to support their claim that the installation by West Penn Power Company (WPP) of an AMI smart meter at their home will adversely affect them and is neither “safe” nor “reasonable” under 66 Pa. C.S. § 1501 as to them.
2. Complainants brought their case against WPP in response to WPP threatening to shut off the electricity at the Complainants’ home if Complainants did not acquiesce to WPP’s demands to install on their home an activity-monitoring device that also carries a fire risk and potential health effects.
3. Complainants, acting pro se, attempted to submit evidence on September 29, 2020, pursuant to the Order of ALJ Jeffrey A. Watson. ALJ Watson prevented all such evidence from being submitted by Complainants during the hearing. ALJ Watson would not allow a break when the Complainants asked repeatedly. This was detrimental to their hearing.
4. At Complainants’ hearing on September 29, 2020, ALJ Watson was not acting as an impartial judge but testified for WPP.
5. Complainants assert that we have been treated unfairly in this process. Complainants are not a professional law firm, where they have specialized education, experience, significant staff, and resources. The US Supreme Court (Reference: Haines v. Kerner, 404 U.S. 520 (1971)), has ruled that people as themselves (that are, pro se) are not the same as professional attorneys, and should not be treated and judged as such. We do not have any staff or means to carry out multiple, comprehensive, detailed tasks concurrently in a rapid manner, as has been required of us.
6. By enforcing its policy of universally mandating smart meters, the Pennsylvania Public Utility Commission, most definitely a state actor, has insinuated itself directly into, and has become participatory in, the violation of the Complainants’ property rights protected under the Fifth and Fourteenth Amendments to the Constitution of the United States.
7. We want to keep the keep the robust, resilient electromechanical analog meter that West Penn Power has deployed on our home since before we purchased the home, and we object to the installation of a smart meter on our home.

8. Complainants are NOT requesting, nor have we ever requested a smart meter. I DO NOT live in new building construction – and therefore am not required to have a smart meter under any legal interpretation of Act 129. We do not have a smart meter that has exceeded its useful life; in fact, we do not have a smart meter at all. The reason that we do not have one is because we did not request one, and we do not live in new building construction. We do not want a smart meter and there is no reason under the law that we must accept one on the electric sockets of our home that we own as a condition of receiving electricity from our EDC. Section 2807(f)(2)(iii) only deals with furnishing smart meters that have exceeded their useful life (not to exceed 15 years). It does not require us or anyone else similarly situated to have a smart meter.

## **HISTORY OF PROCEEDING**

1. On June 14, 2018, Jeannette and Craig Pavlick (“Complainants”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) regarding 4200 Colonial Drive, Murrysville, Pennsylvania 15668 (Service Location) under Account No. 100094300264 (Account) that West Penn Power Company (“West Penn” or “Company” or “WPP”) threatening to turn off power if the Complainants do not allow them to replace the electromechanical analog meter with a smart meter.
2. Document dated July 5, 2018, the Company filed its Answer and New Matter denying the material allegations. On the same day, the Company also filed Preliminary Objections to the Formal Complaint. Company’s Preliminary Objections and Answer and New Matter Certificate of Service was dated July 5, 2018, with two postage meter stampings dated July 6, 2018, and July 7, 2018. Therefore, it was not served at least until after July 7, 2018.
3. On July 25, 2018, the Complainants filed a reply to Company’s Preliminary Objections.
4. By notice dated August 7, 2018, Administrative Law Judge (“ALJ”) Jeffrey A. Watson was assigned as the Presiding Officer in the above-captioned proceeding.
5. On July 31, 2018, the Complainants replied to the Company’s Answer and New Matter.
6. On August 29, 2018, an Interim Order was entered which denied the Company’s Preliminary Objections.
7. On September 14, 2018, the Company sent to Complainants “Interrogatories and Request for Production of Documents (Set I)” (“Discovery Requests”). The Complainants received this document on September 22, 2018 which is 8 days later. The information and documents the Company sought was not related to the Complainants’ Formal Complaint regarding the smart meter. The title of the Interrogatories and Request for Production of Documents (Set I) of West Penn Power request identified “Michael S. Wolfe” instead of the Complainants’ names.
8. On September 27, 2018, the Complainants mailed objections to all the Company’s Discovery Requests. Complainants objected on the grounds that: (i) the Company did not mail the Discovery Requests on the date listed on the Certificate of Service date as it is a delay of 8 days from when the document was received. (ii) the time provided was shortened by the Company’s delay in sending the document to the Complainants and not giving Complainants time to respond. (iii) the number of questions is unreasonable, (iv) questions are too broad and unrelated to the installation of a potential harmful smart meter, (v) the Company is violating §5.361 (a)(2) and (4) as the Company the discovery is

not permitted which “Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to a person or party.” number of questions would not be able to be answered in the time demanded.

9. On October 2, 2018, Company filed a Motion to Compel the Complainants to fully and completely respond to the Discovery Requests. When these questions were directed to Jeannette and Craig Pavlick. On Page 1, of the Motion of West Penn Power Company to Compel Responses to Interrogatories and Document Requests, the introductory paragraph states “hereby files this Motion to compel Jeannette and Craig Pavlick (“Complainants”) to provide full and complete responses to interrogatories and document requests issued by the Company on January 23, 2018.” Since these questions were defined in January of 2018, and Complainants did not even have a complaint until June 2018, how is it relevant to the Complainants’ case to have predetermined questions, 6 months previous to their complaint.

10. On October 9, 2018, the Complainants submitted a response to the Motion to Compel of West Penn Power Company. Complainants state that Company is in violation of 52 Pa. Code §5.361 (a)(2) and (4). The Company has not shown why the content of these questions and the huge number of questions are relevant at this time. How do questions that have been prepared in January have anything to do with Complainant’s case which was filed in June.

11. On October 15, 2018 unknown to Complainants an Interim Order Establishing Initial Litigation Schedule was issued.

12. On November 28, 2018, ALJ Watson issued an Interim Order which granted the Company’s Motion to Compel.

13. On December 11, 2018, the Complainants requested an extension.

14. On January 4, 2019, ALJ Watson issued an extension until January 17, 2019.

15. On January 10, 2019, the Company provided notice of witnesses. The Complainants reserve the right to add factual witness testimony when they become available.

16. On January 17, 2019, the Complainants requested a second extension until February 27, 2019.

17. On February 26, 2019, the Complainants requested a Clarification Request regarding the Interrogatories and Requests for Production of Documents of West Penn Power Company Set 1, in that the title of the request identifies “Michael S. Wolfe”. The Complainants addressed their concern that their confidential information was also being released. The Complainants asked for clarification

regarding confidentiality. ALJ Watson did not respond to this request for clarification and did not answer the question of why another name was on the Interrogatories.

18. On March 7, 2019, unknown to the Complainants, the Company filed a Motion to Dismiss the Formal Complaint. The Complainants have not knowledge of this Motion until West Penn stated in their Background on their letter dated June 28, 2019.

19. On April 19, 2019, the Company submitted a status report. Company did not address the Clarification Request made by the Complainants regarding the title of the Interrogatories containing the name of "Michael S. Wolfe". Along with other name entitled on the document, there were questions that did not pertain to the Complainants Formal Complaint.

20. On April 25, 2019, the Complainants submitted another Clarification Request and also made a Motion to find in favor of the Complainant. On the bases of (i) that a violation of Personally Identifiable Information (PII), (ii) that the Complainants have not received Interrogatories with their name entitled but that of "Michael S. Wolfe".

21. On May 2, 2019, an Interim Order Scheduling Prehearing Conference was issued and scheduled for June 13, 2019.

22. On May 3, 2019, unknown to the Complainants who have no knowledge of this action scheduling a Call-In Telephonic Pre-Hearing Conference Notice for June 13, 2019.

23. On May 28, 2019, The Complainants sent a third Clarification Request. The Complainants are not lawyers and feel that any legal document that has someone else's name entitled is a problem. They sent 3 requests regarding this issue and did not have it answered until after the discovery deadline had passed. When West Penn admitted that they made a typo they also accused the Complainants of using this as a ploy to delay this case when neither West Penn nor ALJ Watson responded in a timely manner. The Complainants stated that they would be out of town on the week of June 13, 2019.

24. On May 29, 2019, ALJ Watson issued an Interim Order Scheduling Prehearing Conference for June 25, 2019.

25. On May 29, 2019, the Complainants having no knowledge of this action, regarding this Notice to Cancel and Reschedule the Pre-Hearing Conference.

26. On May 28, 2019, the Complainants issued Discovery Requests to the Company. The Complainants were not aware of a discovery deadline having passed on April 5, 2019. West Penn did not respond to the Complainant's request.

27. On May 31, 2019, the Company finally answered the question asked by the Complainants on February 26, 2019, explaining that the Complainants "have correctly noted a typo on one page of those Discovery Requests which was the result of an administrative oversight." The Company removed the name of "Michael S. Wolfe" and otherwise resubmitted the same document without customizing the questions to the Complainants' case. This took West Penn 3 months to address their "typo", but the altered document was sent after the discovery deadline of April 5, 2019, had passed.

28. On June 20, 2019, the Complainants issued answers to Discovery Requests of West Penn Power Company. Even though discovery deadline had passed on April 5, 2019, the Complainants did answer all of the questions. The Complainants were out of town and were not prepared to answer some of the questions as fully in the shortened time. With regard to questions Nos. 44 and 45, the Complainants requested the text on which the Company based the question as such a position was never made by the Complainant. This goes to the question of "If this Discovery Requests are for Complainants or for Michael S. Wolfe?" The Complainants were following the Company's Instructions "(A.) In answering these Interrogatories and Request for Production of Documents, please furnish all information available to you". And, "(B.) If you consider the question to be inapplicable, "N/A" must be written in the answer."

29. On June 25, 2019, a prehearing conference was held. Complainants were not aware that they needed to provide witnesses at that date. The Complainants reserve the right to provide witnesses at a later date.

30. On June 25, 2019, ALJ issued an Interim Order Denying Complainants' Motion to Find in Favor of Complainants dated April 25, 2019.

31. On June 28, 2019, the Company issued Motion to Compel the "corrected" Discovery Request on the grounds that the Complainants did not provide non-substantive responses. The Company failed to explain why they asked questions that are not the Complainant's Formal Complaint, and "Exhibit A" is a copy of the Discovery Request again with the name of "Michael S. Wolfe" in the title.

32. On July 10, 2019, the Complainants sent the Answer to the Proposed Motion to Compel sent by the Company that was dated on June 28, 2019 and received 5 days later on July 5, 2019. The Complainants addressed (i) the delay in the Company's mail system, (ii) it took the Company 3 months to answer the

Complainant's question regarding Discovery Request's error of Michael S. Wolfe, (iii) the Company's corrected Discovery Request was issued after the discovery deadline.

33. October 4, 2019, the Company of West Penn Power or Metropolitan Edison Company sent Stipulated Protective Agreement. This was received by the Complainants on October 7, 2019 in an overnight shipping package.

34. On October 10, 2019, the Complainants sent an objection to West Penn Power's or Metropolitan Edison Company's Stipulated Protective Agreement that we received on October 7, 2019. Complainants said that "this document leaves open the possibility of unintentional disclosure of the Pavlick's confidential information." No details to rectify the disclosure of the Pavlick's confidential information were defined if or when West Penn Power discovers a breach of the Pavlick's information.

35. On October 17, 2019, the Company sent the Petition for Protective Order of West Penn Power Company.

36. On October 26, 2019, ALJ Watson sent the statement that the Complainants "requested this Protective Order" and that this Protective Order "will be filed with the Pennsylvania Public Utility Commission ("Commission")".

37. On October 22, 2019, ALJ sent a letter that he says that he is not permitted to receive ex parte communications. This was in regard to a letter sent by the Complainants on October 10, 2019.

38. On October 28, 2019, the Complainants sent a letter objecting to ALJ Watson's Protective Order in his October 26, 2019 letter. The Complainants explain that they did not request this Protective Order as it does not give them the protection at the same level of confidentiality that HIPAA does with regard to medical information for their children and themselves. In the ALJ Watson's Protective Order, Paragraph 5 precludes "the Commission and its staff" from the Protective Order. Also, on October 28, 2019 the Complainants sent a letter explaining that they had sent the letter dated October 10, 2019 to the lawyers for West Penn but did not include their names on the Certificate of Service. The Complainants attached a corrected Certificate of Service as well as a copy of the letter sent on October 10, 2019.

39. On December 20, 2019, ALJ sent the Interim Order Requiring Status Report ordering (1) Identifying one or two consecutive dates from specified March 2020 dates. (2) on or before December 31, 2019, the parties file status report.

40. On December 31, 2019, the Complainants sent a status report after speaking by phone with the Legal Specialist of FirstEnergy Service Company agreeing to the date of March 24 and 25 and telephonic

hearing. The Complainants again stated their Objection to the Protective Order which has not been recognized by ALJ. The Complainants have no assurance regarding the possibility of unintentional disclosure of their confidential information.

41. On December 31, 2019, The Company sent their status report identifying in error, March 24, 2020, as the only day that the Complainants are available. The Company also stated, "West Penn timely provided notice of its expert and factual witnesses and have failed to provide complete responses to the Company's discovery requests even after the entry of a Protective Order."

42. On January 8, 2020, a Call-Out Telephone Notice was issued for an Initial Telephonic Hearing on Tuesday, March 24, 2020.

43. On January 15, 2020, the Company sent a document. (i) The title was entitled: "MOTION OF WEST PENN POWER COMPANY TO DISMISS RESPONSES TO INTERROGATORIES AND DOCUMENT REQUESTS". This is a contradiction to the body of the document. (ii) This document was sent via email and the Complainants have not indicated that email is the reliable mode of communication. The Complainants want to make it known that using U.S. Mail is the reliable mode of communication. This document was received by U.S. Mail on January 18, 2020, which leaves little time to complete a response since given 5 days to correct the Company's motion. (iii) Included as "Exhibit A" is a copy of the Discovery Request again with the name of "Michael S. Wolfe" in the title.

44. The Complainants Object to the Protective Order in that there is no assurance regarding the possibility of unintentional disclosure of their confidential information.

45. The Complainants have responded to all of the requests from West Penn and ALJ Watson. Whereas West Penn did not answer the Complainants' question regarding a legal document from some other case being used for the Complainants in that another name was on the document until 3 months had passed, questions were asked that were not related to the Complainants case.

46. The 52 Pennsylvania Code § 5.321 Scope does allow for discovery of "any mater, not privileged, which is relevant to the subject matter involved in the pending action". The Complainants disagree as the discovery that Company wants is not relevant to the issue of the smart meter. Answering questions related to confidential information regarding medical information is protected from theft and fraud under HIPAA the Complainants have to protect their children and their own information from the chance that West Penn will not be able to keep the information confidential when they cannot even send an interrogatory to the correct complainant.

The Company is asking questions that have nothing to do with the case regarding the smart meter. These questions are not relevant to our case and the issue of the smart meter.

The Company has shown they will not be able to keep information confidential. The Complainants must be assured that their private information and that of their children will not be released or leaked to unknown predators. The Protective Order as written does not protect the Complainants and their children. The Complainants have seen proof by the errors that have been made by West Penn regarding confidentiality.

Complainants complied with all directions to answer discovery. We did respond to every single question. They just did not like the answers. Complainants were following Company's Instructions which state "(D.) These Interrogatories and Requests for Production of Documents are to be deemed continuing in nature, and you shall promptly supply by way of supplemental response, any additional responsive information that may become known to you or anyone acting on your behalf after your answers have been prepared or served."

47. Complainants supplied answers to Interrogatories and Requests for Production of Documents, Set 1 of West Penn Power Company. Even though discovery deadline had passed on April 5, 2019. Complainants did answer all of the questions.

48. On September 29, 2020, a hearing was held by telephone. ALJ Watson refused to allow briefs. ALJ Watson made rude and sarcastic comments to Complainants and badgered them on multiple occasions. They were repeatedly interrupted and harassed by ALJ. When Complainants did not answer him right away, he spoke to them in a demeaning manor. Complainants repeatedly requested a short break and he refused to allow any time. He pushed the Complainants to where they just wanted the hearing to be over and they did not present all of their arguments. We were emotionally drained due to the treatment by ALJ and not having time to eat so as a result we could hardly speak.

49. ALJ Watson, during the hearing, testified for WPP when Complainants asked about First Energy in Ohio being investigated.

50. On October 2, 2020, Complainants made a motion "that our brief be considered in this hearing and that we have time to submit our brief.

51. On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in Povacz, et al. v. Pa. Public Utility Commission, 4 (Povacz) the first several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129 of 2008

(Act 129), codified at 66 Pa. C.S. § 2807(f). In the Povacz consolidated opinion, the Commonwealth Court partially affirmed, and partially revised and remanded, PUC's March 28, 2019, and May 9, 2019, Orders in Maria Povacz, Laura Sunstien Murphy, and Cynthia Randal. Povacz at 495.

52. The Commission entered an Order and Notice, on November 4, 2020, pursuant to 66 Pa. C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (November 4, 2020, Stay Order). The November 4, 2020, Stay Order also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. The November 4, 2020, Stay Order applied to and was docketed at the instant case.

PUC, as well as all other parties in Povacz subsequently sought and were granted review of the Commonwealth Court's Povacz decision by the Pennsylvania Supreme Court.

53. On December 7, 2021, the Pennsylvania Supreme Court heard oral arguments in this case. On August 16, 2022, the Pennsylvania Supreme Court issued its opinion in this case,

The Pennsylvania Supreme Court's Opinion included a footnote on page 7: "See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). This holding does not preclude an electric utility from providing a **reasonable accommodation** to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy." (emphasis added)

In other words, the Supreme Court ruling states that utility companies can grant accommodations from smart meters according to a customer service policy even if the customer did not prove a 1501 violation.

Every state in the United States except Pennsylvania offers some form of opt out or accommodation from smart meters. This supports Complainant's position that it is reasonable for utilities to grant their customers accommodation from smart meters—regardless of Respondent's choice not to offer such accommodations to its customers.

The Supreme Court's decision in Povacz II, the PUC lifted the stay implemented by the November 4, 2020, Stay Order on November 9, 2023.

54. On November 17, 2023, ALJ Mary D. Long was assigned to Complainants' case.

55. On December 6, Complainants were served via eServe Notice an Interim Order docketed as C-2018-3002732. This Interim Order on Further Proceedings stated that "Given the passage of time and the clarification of the law, I believe it is appropriate to reconsider Judge Watson's October 20, 2020, Interim Order denying the Complainants' request to file briefs." ALJ Long gave specific instructions for Complainants' brief (file on or before February 7, 2024) and Respondent's reply brief (file on or before March 7, 2024).

## DISCUSSION

9. WPP is in violation of the law, Act 129 of 2008, and the PUC must hold them accountable for it. In accordance with Section 2807 subsection (f)(2), Complainants did not request a smart meter and did not agree to pay for one, and Complainants' house is not new construction, and the third part of the law refers to the depreciation schedule for smart meters and cannot in ANY WAY – not logically, not linguistically, not by any legal definition, and not by historical record - be construed to mean mandatory deployment of smart meters to all customers as is being done by WPP.
10. Above any Commission regulation, code, order or tariff, WPP must obey the LAW, Act 129 of 2008, and the PUC's website states on its Formal Complaints webpage, "If you provide information to prove that there has been a problem with your utility or PUC-regulated entity in violation of the law, we can hold the company accountable..." And so Complainants are saying that WPP is in violation of the Law, Act 129 of 2008 and with the comments of Senators Tomlinson, Boscola, and Fumo who specifically stated on the record in the Senate Journal (October 8, 2008, pages 2626-2631) that when they voted to pass House Bill 2200, printers number 4526, they made sure smart meters were NOT mandatory.
11. The PUC and EDCs have overridden the plain language meaning of § 2807(f)(2)(iii). The PUC interprets the language of furnishing of smart meters "in accordance with a depreciation schedule not to exceed 15 years" to mean covered EDCs must force smart meters on all customers within 15 years. In addition, the PUC conflates furnishing smart meters with removal of analog meters, when, in fact, the Act does not contain anything about analog meters.
12. This law has been interpreted incorrectly by the PUC's Implementation Order of June 2009, (Docket No. M-2009-2092655), when they use the word "depreciation" to mandate a statewide usage of smart meters. Further WPP is not following the law. The word "depreciation" is defined as a decrease in the potential of an asset over its timeline.
13. In the PUC's Implementation Order of June 2009, on page 12 states the following: "As with all equipment, meters have a useful life. EDCs determine how much to invest in meter equipment based on its useful life and have an opportunity to depreciate that investment over the useful life of the meter. In addition, EDCs have an opportunity to recover the cost of the meter from ratepayers."

14. The PUC used the words “depreciation” and “useful life” in talking about meters including smart meters and relating those terms to the meter’s cost over its useful life. In this text, the PUC is using depreciation as the accounting term that it is defined.
15. It is clear that § 2807(f)(2)(iii) establishes the maximum service life of smart meters. This paragraph of the Act makes no reference to a mandatory roll-out of smart meters by all EDCs. This section does not refer to replacing analog meters. Rather it plainly spells out that smart meters are to have a service period not to exceed 15 years.
16. The Legal use of the word “shall” in § 2807(f) (2) which states “shall furnish”, not “must furnish”. “Shall” and “must” do not mean the same thing. The legal standard is that “must” is the only word that imposes a legal obligation. “Shall” does not. “Must” is legally accepted as the only clear, valid way to express “mandatory.”
17. The Supreme Court, the highest and final judicial authority in the country, has ruled that when the word “shall” appears in statutes, it means “may.” (Gutierrez de Martinez v. Lamagno 515 U.S. 417 (1995))
18. Bryan Garner, the legal writing scholar and editor of Black's Law Dictionary, wrote that “In legal instruments, “shall” violates the presumption of consistency.
19. The Federal Register Document Drafting Handbook (Section 3) states that “must” imposes a legal obligation. “Shall” does not.
20. The Federal Plain Language Guidelines (page 25) referred to in the Federal Plain Writing Act of 2010, specifies that “must”, not “shall”, is used to indicate a requirement.
21. In legal reference books like the Federal Rules of Civil Procedure the accepted legal standard is that “must” imposes a legal mandate or obligation, “shall” does not. Nearly every jurisdiction has held that the word “shall” does not definitively mean “must”.

According to accepted legal standards and precedents that go as high as the US Supreme Court, any ruling declaring that the use of the word “shall” imposes a legal obligation or mandate, in a statute or otherwise, is in error.

The definition of Furnish is “To supply; provide; provide for use.” Section 2807 (f)(2) of Act 129 of 2008, requires EDC’s to FURNISH smart meter technology under three conditions only. It does not require the EDCs to install or deploy smart meter technology everywhere in their territories with no exceptions. Thus neither “furnish” nor “depreciation schedule” can be in any legal way

construed to mean “install” or “deploy”, much less connote “mandatory deployment and installation.”

22. In the PUC’s Public Meeting held April 15, 2010, (Docket No. M-2009-2123950), in discussing the deployment process of smart meters and related timeframes on page 10, it states that the PUC Administrative Law Judge (ALJ) “found that the *Implementation Order* is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission’s expectations about smart meter plans.”

23. Violation of the Law, Act 129 of 2008

In Act 129 of 2008 (“the Act”), PA C.S. § 2807(f)(2) states:

(f)(2) Electric distribution companies shall furnish smart meter technology as follows:

- I. Upon request from a customer that agrees to pay the cost of the smart meter at the time of request.
- II. In new building construction.
- III. In accordance with a depreciation schedule not to exceed 15 years.

24. There were two previous versions of House Bill HB 2200 that were NOT passed into law. PNs 3218 and 3233 (February 11 and 12, respectively, 2008) both stated, “Electric distribution companies shall furnish smart meter technology to: ...(C) One hundred percent of its customers within ten years after the effective date of this paragraph.”

25. The *House Journal* records numerous dissenting comments about the mandatory nature of these PNs.

- House Journal, February 11, 2008, pages 386-403 [p. 390 Mr. Hutchinson; 390-391 Mr. Godshall; p. 392 Mr. McCall; p.393 Rep. Smith and Mr. Saylor; p. 395 Mr. Benninghoff; p.397 Mr. Gabig]
- House Journal, February 12, 2008, pages 430-432 [p. 431: Mr. Hutchinson]

PN 4429 (September 23, 2008) stated, “ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS: ...(III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF EXISTING METERS.”

26. Note here, that PNs 3218 and 3233 which mandated smart meters for all customers, and PN 4429 which made reference to retiring from service and replacing existing (mostly analog) meters were NOT PASSED INTO LAW. It is also worth noting that there would be no way to logically think “depreciation” could be synonymous with “deployment” in the paragraph above from PN 4429. It simply makes no sense. Also noteworthy is that PN 4429, again – which was NOT passed into law - would have required covered EDCs to replace fully depreciated existing (presumably analog/mechanical) meters that had exceeded their useful life with smart meters.

**However, this language in PN 4429 was changed, and is in sharp contrast to the language that was passed into law.**

27. Any interpretation of §2807(f)(2)(iii) of the Act, such as the PUC and EDCs espouse, that it mandates smart meters for all customers or that it makes any reference at all to existing analog meters is erroneous, because those interpretations are based on language that the PA legislature purposefully modified and are based on language that was NOT PASSED INTO LAW. The prior PNs of the Act that were NOT passed into law should not have formed the basis for the PUC’s Implementation Order of June 2009, which the PUC and all of its Administrative Law Judge’s (ALJs) cite for the purpose of ruling against every single smart meter formal complaint to date.

28. In addition to the clear plain English understanding of Act 129 §2807(f)(2)(iii)’s reference to a 15-year depreciation schedule are the Senate Journal records of PN 4526, the version that **WAS** signed into law.

29. Discussion of PN 4526 in the Senate is recorded in the Senate Journal on October 8, 2008, pages 2626-2631, from which the following comments pertinent to smart meters and concerns about customers are taken. Here is a link:

(<https://www.legis.state.pa.us/WU01/LI/SJ/2008/0/Sj20081008.pdf#page=13>)

p 2626

Senator TOMLINSON (*Senate Legislative Journal*)

“It also contains language in there that we will have smart meters. **It is not mandated**, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to**

**purchase a smart meter which they feel will help them manage their electric load better. “**  
(emphasis added)

p. 2627

Senator BOSCOLA (*Senate Legislative Journal*)

**“We also made sure that smart meters would not be mandated for every single ratepayer.** Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.” (emphasis added)

p. 2629

Senator FUMO (*Senate Legislative Journal*)

“In addition, **we did not mandate smart meters, but we made them optional.** We did say in new construction, where they really are practical, they will be put in. “ (emphasis added)

30. The bill was then returned to the Pennsylvania House for a final vote and was passed. Governor Randell signed HB 2200 into law as Act 129.
31. It is unequivocally clear that the prevailing legislative intent enacted into law by Act 129 expresses the Pennsylvania General Assembly’s direction that smart meters were not made and would not be made mandatory.
32. The PUC Implementation Order of June 2009 (Docket No. M-2009-2092655), on page 14 states,  
“The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters systemwide when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.” (p. 7.)
33. Complainants maintain that the plain reading of Act 129, corroborated by the Legislature’s stated intent, as documented in its Legislative Record, definitively establishes that the Implementation Order of June 18, 2009, as written and enacted by the PUC, does not reflect the

intent and content of the Smart Meter Opt-In program of Act 129, as written and passed by the Legislature, and signed by Governor Randell.

**For the record, Complainants maintain that WPP is in violation of several PA codes:**

34. First, 52 PA Code Subchapter O, § 57.251(a) - which states that we are not required to participate in an advanced metering program. {§ 57.251. Purpose. (a) The purpose of this subchapter is to facilitate the deployment of advanced metering equipment and the associated development of generation services based on these technologies. This subchapter establishes a procedure for identifying and providing for customer selection of qualified advanced meters, meter-related devices or deployment of automatic meter reading network equipment from the EDC while maintaining the safety and reliability of the electric system in this Commonwealth. This subchapter does not require the public to participate in an advanced metering program.}
35. Second, 52 PA Code Subchapter O, § 57.255(a) which states that WPP only installs a smart meter on my home UPON WRITTEN request from me (the customer), and I can attest to the fact that I have never submitted any written request, so I should not have to get a smart meter installed on my home. {§ 57.255. EDC responsibilities regarding advanced metering. (a) Upon written request from both a customer and the EGS of that customer, the EDC shall make available and install for use a qualified advanced meter or meter-related device. The qualified advanced meter shall be the customer's billing meter and shall meet certain standards established by the Commission in § 57.254 (relating to advanced meter standards).}
36. Third, 52 PA Code Subchapter O, § 57.259 (b, c and d) which states that WPP was supposed to provide me with educational material on both advantages and *disadvantages* of smart metering technology, in accordance with "truth-in-advertising" requirements, but to-date, I have not received any such honest, unbiased, truthful educational information about smart meters and have had to conduct my own investigation to learn about its many pitfalls, and I learned enough to know I would not willingly put a meter like this on my home because of its many shortcomings and hazards. WPP has failed in its mandated unbiased education disclosure. {(b) The EGS shall ensure that a customer is informed as to the capabilities, advantages and disadvantages of a qualified advanced meter prior to installation or participation in a generation service program utilizing advanced metering. An EGS shall provide to the customer a terms of service disclosure statement that addresses advanced metering. (c) An EDC shall provide, as part of the customer education program, information addressing the use of an advanced meter, basic meter operations and capabilities, advantages and disadvantages of advanced metering,

including qualified advanced meter options, applicable costs/surcharges and methods to obtain additional information. (d) The informational and promotional materials are required to: (1) Comply with applicable requirements of the act and existing truth-in advertising requirements. (2) Prominently disclose that additional information is available from either the local EDC, the customer's EGS or the Commission. (3) State that the available advanced meters are qualified to meet current Commission performance and technical standards.}

37. Fourth, WPP is in violation of Section 1502 of the PA Public Utility Code (Title 66) which prohibits discrimination in service because Pennsylvania residents whose power company has fewer than 100,000 customers have not been forced to get a smart meter, and so forcing one on my home when I did not request one and am not participating in the advanced metering program, is discrimination in service. {§1502. Discrimination in service. No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.}

38. Fifth, Power Co is in violation of Section 1501 of the PA Public Utility Code (Title 66) and 52 PA Code 57.194 both of which mandate that Power Co provides "safe, and reasonable service" and "make all such ...alterations, substitution, ....and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons ... and the public." { 1501. Character of service and facilities. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any

public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.}

39. The PUC, by making the installation of Smart meters mandatory for only some of the electric utility distribution companies in Pennsylvania is giving a preference or advantage to any person who is not required to have a smart meter installed because they live in an area that has an electric utility distribution company with under 100,000 customers. Act 129 of 2008 states in Section 2807 subsection (f) (6) that "The provisions of this subsection shall not apply to an electric distribution company with 100,000 or fewer customers."
40. Since WPP is the only electric distribution company in my/our area, it is a monopoly since I do not have a choice to switch to another company. Therefore, there is Discrimination in service since not all Pennsylvania citizens are required to have these meters installed and I must, based on the geography where I own a home. I note that in Lititz Pa., for example, there are some residents who are required to have a smart meter and their neighbors across the street do not, since they are serviced by a smaller electric distribution company. I therefore object to the installation of a smart meter on my home because this is in violation of section 1502 of Title 66 because it is discrimination in service.
41. WPP is in violation of Title 52, Subchapter O, § 57.259, Customer education on advanced metering, for failure to address disadvantages of smart meter technology.

Title 52, Subchapter O, § 57.259 states:

(b) The EGS shall ensure that a customer is informed as to the capabilities, advantages and disadvantages of a qualified advanced meter prior to installation or participation in a generation service program utilizing advanced metering. An EGS shall provide to the customer a terms of service disclosure statement that addresses advanced metering.

(c) An EDC shall provide, as part of the customer education program, information addressing the use of an advanced meter, basic meter operations and capabilities, advantages and disadvantages of advanced metering, including qualified advanced meter options, applicable costs/surcharges and methods to obtain additional information.

(d) The informational and promotional materials are required to:

(1) Comply with applicable requirements of the act and existing truth-in advertising requirements. (Emphasis added.)

<https://casetext.com/regulation/pennsylvania-code-rules-and-regulations/title-52-public-utilities/part-i-public-utility-commission/subpart-c-fixed-service-utilities/chapter-57-electric-service/subchapter-o-advanced-meter-deployment/section-57259-customer-education-on-advanced-metering> )

42. Absolutely no information was provided on the short life expectancy of these meters or their greater likelihood of catching on fire, for which homeowners bear liability for all damages – which is completely unjust! No information was provided on how their design allows more surges to pass through and destroy appliances or other electrical devices, again, at the homeowner’s expense unless the homeowner can afford the new necessary and compensatory “surge protection plan”... which attests to this inferior metering technology.
43. Furthermore, no information was provided to warn customers that they would be paying more for this inferior technology that they didn’t request or agree to pay for, that it could be used to shut off your power without your knowledge or consent, or that there were issues of privacy from detailed data collection on power usage, for which misuse remains in the realm of possibility.
44. Customers were not properly informed or educated and were intentionally deceived by WPP. The scant promotional literature promulgated by WPP – if the customer even noticed it in their junk mail – was in complete violation of Title 52, Subchapter O, § 57.259 subsections (b), (c) and (d) and failed to fulfill truth-in-advertising by neglecting completely all down sides to the smart meters.

This violation also lends itself to further violation recognized under the Federal Trade Commission Act, Section 5 regarding Unfair or Deceptive Acts or Practices.

45. WPP is in violation of Title 52 Subchapter O, § 57.251(a) because the public is not required to participate in an advanced metering program.

52 PA Code states:

Section 57.251 – Purpose

(a) The purpose of this subchapter is to facilitate the deployment of advanced metering equipment and the associated development of generation services based on these technologies. This subchapter establishes a procedure for identifying and providing for customer selection of qualified advanced meters, meter-related devices or deployment of automatic meter reading network equipment from the EDC while maintaining the safety and reliability of the electric system in this Commonwealth. This subchapter does not require the public to participate in an advanced metering program.

And so, according to the PA code, the public IS NOT REQUIRED to participate in an advanced metering program. As a member of the public, I am NOT REQUIRED to participate, and I DO NOT ELECT to participate. WPP is in violation of 52 PA Code section 57.251 by trying to force my participation in their advanced meter program.

(<https://casetext.com/regulation/pennsylvania-code-rules-and-regulations/title-52-public-utilities/part-i-public-utility-commission/subpart-c-fixed-service-utilities/chapter-57-electric-service/subchapter-o-advanced-meter-deployment/section-57251-purpose> )

46. WPP is in violation of Title 52 Subchapter O, § 57.255(a) because I have not submitted a written request for the installation of an advanced meter.

52 PA Code states:

Section 57.255 - EDC responsibilities regarding advanced metering

(a) Upon written request from both a customer and the EGS of that customer, the EDC shall make available and install for use a qualified advanced meter or meter-related device. The qualified advanced meter shall be the customer's billing meter and shall meet certain standards established by the Commission in § 57.254 (relating to advanced meter standards).

According to this code, WPP will install an advanced meter – or smart meter – UPON WRITTEN REQUEST from the customer. I have not submitted any such request. Therefore, WPP is in violation of this code by trying to force a smart meter onto my home.

( <https://casetext.com/regulation/pennsylvania-code-rules-and-regulations/title-52-public-utilities/part-i-public-utility-commission/subpart-c-fixed-service-utilities/chapter-57-electric->

[service/subchapter-o-advanced-meter-deployment/section-57255-edc-responsibilities-regarding-advanced-metering](#) )

47. Smart meters and smart grid violate the 4th Amendment of the US Constitution and the CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8 by warrantless-ly searching every electrical, water or gas appliance in the home including potentially the ability to search personal computers. WPP is in violation of the U.S. 4th Amendment and Pennsylvania Constitution, Article 1, Section 8 by forcing smart meter technology on its customers, including myself.

The United States Constitution – 4th Amendment states

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

The CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8 states:  
Security From Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed by the affiant.

A primary advantageous use of smart meters and smart grid to any government entity who wishes to do so, would be spying on US citizens in the sanctity of their own homes. This sets an unprecedented level of invasion of privacy and is in fact, according to the Constitution of the United States of America, illegal.

48. There are many Court cases that confirm Electronic Surveillance as a 4th Amendment Violation which would also be a violation of the CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA – Article 1 / Section 8. Some examples are as follows:

i. *Case 1:13-cv-00851-RJL Document 48 Filed 12/16/13, Klayman V. Obama*

In this case, a federal district judge ruled that the National Security Agency program that is systematically keeping records of all Americans' phone calls most likely violates the Constitution, describing its technology as "almost Orwellian" and suggesting that James Madison would be "aghast" to learn that the government was encroaching on liberty in such a way. The judge, Richard J. Leon of the Federal District Court for the District of Columbia, ordered the government to stop collecting data on the personal calls of the two plaintiffs in the case and to destroy the records of their calling history. "I cannot imagine a more 'indiscriminate' and 'arbitrary' invasion than this systematic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without prior judicial approval," Judge Leon wrote in a 68-page ruling. "Surely, such a program infringes on 'that degree of privacy' that the founders enshrined in the Fourth Amendment," which prohibits unreasonable searches and seizures. The systematic and high-tech collection and retention of personal data on virtually every single citizen could also apply to the data that the smart meters collect.

ii. *SUPREME COURT OF THE UNITED STATES - UNITED STATES v. JONES*

In *United States v. Jones*, the police used a GPS tracking device to track Jones's movements for almost a month.<sup>183</sup> The majority, led by Justice Scalia, held that attaching a GPS device on a vehicle for the purpose of collecting information constituted a "search" under the Fourth Amendment. Justices Alito and Sotomayor both agreed that this was a search. Justice Sotomayor noted that "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about familial, political, professional, religious, and sexual associations."

"A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups—and not just one such fact about a person, but all such facts."

With smart meters, police would have a rich source of personal data that reveals far more about a person than traditional analog meters. Understanding a person's daily activities, including what appliances he is using, is a far leap from knowing his monthly energy usage. This is the difference between knowing about a single trip a person took and monitoring his movements over a month-long period.

iii. *United States v. KYLLO - certiorari to the United States court of appeals for the ninth circuit*

In 2001, the Court held that warrantless use of the technology to view inside a home was prohibited by the Fourth Amendment. Warning that use of thermal imaging could disclose intimate details about personal activities, including “at what hour each night the lady of the house takes her daily sauna and bath....”

Justice Scalia opined that the Fourth Amendment “draws ‘a Firm line at the entrance to the house.’ That line, we think, must be not only Firm but also bright.”

Justice Scalia first posited that “with very few exceptions, the question whether a warrantless search of the home is reasonable must be answered no. ” Searches of the home were historically analyzed under the common law doctrine of trespass, but during the mid-20th century the Court instead anchored the Fourth Amendment to a conception of privacy. While this test may be difficult to apply in the context of automobiles, telephone booths, or other public areas, it is made easier when concerning the home:

Given the rich detail of smart meter data, which can reveal intimate details about the electric customer’s life, and the reality that electric customers have no true choice in whether or not to give the data to the utilities, courts would find this data beyond the warrantless reach of law enforcement.

iv. *Naperville Smart Meter Awareness v. City of Naperville*

This case is the first one addressing whether the Fourth Amendment protects smart meter data. Courts have in the past held that the Fourth Amendment does not protect monthly energy usage readings from traditional, analog energy meters, the predecessors to smart meters. The lower court in this case applied that precedent to conclude that smart meter data, too, was unprotected as a matter of law. On appeal, EFF and Privacy International filed an amicus brief urging the Seventh Circuit to reconsider this dangerous ruling. And in its decision, released last week, the Seventh Circuit wisely recognized that smart meters and analog meters are different:

"Using traditional energy meters, utilities typically collect monthly energy consumption in a single lump figure once per month. By contrast, smart meters record consumption much more frequently,

often collecting thousands of readings every month. Due to this frequency, smart meters show both the amount of electricity being used inside a home and when that energy is used.”

The Seventh Circuit recognized that this energy usage data “reveals information about the happenings inside a home.” Individual appliances, the court explained, have distinct energy-consumption patterns or “load signatures.” These load signatures allow you to tell not only when people are home, but what they are doing. The court held that the “ever-accelerating pace of technological development carries serious privacy implications” and that smart meters “are no exception.”

The court did chide the city for failing to give residents the option of keeping traditional meters: “Naperville could have avoided this controversy—and may still avoid future uncertainty—by giving its residents a genuine opportunity to consent to the installation of smart meters, as many other utilities have.”

The Seventh Circuit’s decision focused only on the intrusion of smart meters’ collection of data on detailed power usage in the home and did not address the intrusion of unwanted microwave/radio frequency (MW/RF) radiation in the home or outward on the property impinging on and physically interacting with the bodies of the inhabitants of the home whether inside their home or outside it on their property.

49. The area protected [by the] Fourth Amendment includes the curtilage, which is the area immediately surrounding house, “which we have held enjoys protection as part of the home itself.” [See *Florida v. Jardine*, 569 U.S. 1, 6 (2013).] Thus, even where meters are located outside of the four walls of the home, Fourth Amendment and privacy protections apply.

50. The emission of RF waves through a governmentally mandated electronic device placed on my property for the purpose of gathering information clearly constitutes a search of my home, as well as a seizure of their persons through forced exposure to an unwanted physical force that interacts with the bodies of each and every person in my home. [ See *United States v. Karo*, 468 U.S. 705, 715 (1984).]

51. The Pennsylvania Constitution offers stronger protections with regard to the “notion of privacy” than that afforded by the Fourth Amendment. Article 1, Section 8 of the Pennsylvania Constitution states, “the people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures....”; Article 1, Section 1 of the same protects citizens’ “certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, or acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”
52. Piecing these protections together, the Fourth Amendment’s protection of the area around one’s house together with the protections afforded by the Pennsylvania Constitution means that a smart meter forcibly installed on my home would violate my right to feel safe and secure in my own home and on my property surrounding my house (a) free from unwanted government intrusion, and, (b) free from unwanted microwave radiation interference with my bodily integrity or with the bodily integrity of those in my home or on my property.
53. Therefore, the forced installation of a smart meter or other wireless device that emits microwave radiation would violate the rights and protections afforded me by the Fourth Amendment of the U.S. Constitution, by the Pennsylvania Constitution and by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.
54. The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. “

The Cornell Law School describes equal protection as follows:

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits states from denying any person within its territory the equal protection of the laws. This means that a state must treat an individual in the same manner as others in similar conditions and

circumstances. The Federal Government must do the same, but this is required by the Fifth Amendment Due Process.

The point of the equal protection clause is to force a state to govern impartially—not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. Thus, the equal protection clause is crucial to the protection of civil rights and has been violated since not all Pennsylvania citizens are required to have smart meters installed.

#### 55. Federal Trade Commission Act, Section 5: Unfair or Deceptive Acts or Practices

The Federal Trade Commission Act lists the following as unfair and deceptive practices.

##### Unfair Practices

An act or practice is unfair where it

- causes or is likely to cause substantial injury to consumers;
- cannot be reasonably avoided by consumers; and
- is not outweighed by countervailing benefits to Consumers or to competition.

##### Deceptive Practices

An act or practice is deceptive where:

- a representation, omission, or practice misleads or is likely to mislead the consumer;
- a consumer’s interpretation of the representation, omission, or practice is considered reasonable under the circumstances; and
- the misleading representation, omission, or practice is material.

“The standards for unfairness and deception are independent of each other. While a specific act or practice may be both unfair and deceptive, an act or practice is prohibited by the FTC if it is either unfair or deceptive.”

By omitting and not properly educating the customers on the shortcomings and possible hazards and dangers of smart meters WPP is guilty of both unfair and deceptive practices.

56. The Supremacy Clause of Article VI of the U.S. Constitution mandates that states must provide

hospitable forums for federal claims and the vindication of federal rights (*Felder v. Casey*, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988)).

The Supremacy Clause establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions.

In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the Supreme Court ruled: "**A state statute is void to the extent that it actually conflicts with a valid Federal statute**".

57. The inherent rights and protections as human beings, acknowledged in the Constitutions of the country and the state of Pennsylvania, are being ignored and usurped. The rights and protections defined in the Americans with Disabilities Act (ADA) are being ignored and usurped. The individual and property rights and protections of private individuals and human beings, dependent on and requiring the use of electricity for our quality of life and well-being, are being usurped by the inappropriate expansion, application, and imposition of Commercial Law to our essential use of essential utilities, such as electricity, in our homes.

58. The PUC, and now the PA Supreme Court, state that this is a "universal mandate" when they know quite well that it is not. It is not being universally applied in this state, or anywhere else for that matter, as large segments of the Pennsylvania population, those covered by EDCs with less than 100,000 customers, are immune from this "universal mandate". They have effectively and completely been "opted out" of this "universal mandate". So, does an a Smart Meter Opt-Out exist in Pennsylvania? Yes, it does. It does for this class of Pennsylvanians. This is a material fact that cannot be denied. What makes this class of Pennsylvanians any different, any more special, or any more protected, than any other segment of the population in Pennsylvania? Nothing. What makes the class of Pennsylvanians serviced by EDCs with more than 100,000 customers any less deserving of this "opt-out"? Nothing. What is sacred or special about the number "100,000"? Nothing. They have been effectively, and arbitrarily, established as a "special class" and afforded a "privilege" denied the rest of Pennsylvanians. This is nothing short of discrimination, at its core.

59. What is happening with this Smart Meter deployment is against all sound reason and judgment. It is inappropriately being forced on Pennsylvanians, in our homes. But, it is not legitimate,

equitable, adequate, safe, or effective, and it is not accommodating the needs and circumstances of elderly people, with health issues, etc. such as ourselves, at a minimum, and the public at large, in general.

CLOSING STATEMENT:

1. The Complainants simply have denied the company permission to install a powerful, FCC-regulated, RF radiation-emitting and RF signal-transmitting device which is far more than merely a meter and for which **there is no reliable medical or scientific evidence upon which to conclude that chronic, long-term exposure to the radiofrequency radiation and RF fields produced as a result of the installation of such metering devices could not, cannot, would not and will not cause, exacerbate or contribute to biological or adverse health effects.**

2. In its actions to compel the Complainants' consent by means of threats and coercion, while also acting pursuant to the Commission's policy mandating wireless smart meters, WPP has acted under color of law as an agent of the State and is, according to the U.S. Supreme Court's State Action Doctrine, a 'State actor'.

3. WPP's actions pursuant to the Commission's policy of mandating the installation of smart meters would force the Complainants' properties to be used by WPP for purposes other than the collection of the Complainants' electricity usage data. That is, the Commission's policy would allow WPP to forcibly use its AMI wireless smart meters on the Complainants' homes as "relay points to transmit data" that does not originate from the Complainants' properties. WPP , acting with the imprimatur either of the Commission or of the State itself, thus would be given usage of the Complainants' properties without such usage having been granted either by the existing easement or by the Complainants' informed consent. WPP 's actions and the Commission's policy pursuant to Act 129 therefore violate the Complainants' property rights protected under the Fifth and Fourteenth Amendments to the Constitution of the United States.

4. WPP Electric Utilities does **not** have the statutory authority or right to site powerful, radiofrequency radiation-producing, RF-transmitting, data communications devices on the

Complainants' properties and to thereby physically affect or cause physical alteration to the interior environments of the Complainants' homes by means of the production of RF electromagnetic fields, and/or conducted emissions ('high-frequency voltage transients') and/or frequent transmissions of modulated radiofrequency radiation which would add to the already-existing RF radiation burden from other outside sources including area cell phone towers and nearby meters and facilities in the utility company's AMI mesh network.

5. Without the Complainants' consent, WPP Electric Utilities does not have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to use the Complainants' homes, and by and through such direct use of the Complainants' own premises, physically alter their living environments in any way which possibly could **increase** their risk of sustaining biological or adverse health effects.

6. Without the Complainants' consent, WPP Electric Utilities does not have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to use the Complainants' homes, and from their own premises, irradiate them in perpetuity as a condition of their continuing to have access to electric service.

7. As clearly enunciated by the U.S. Supreme Court, electricity is a necessity of modern life, and WPP 's action to terminate the Complainants' access to electric service, solely on the basis of the Complainants not consenting to the installation of wireless smart meter devices on their homes or properties, would constitute a cruel and unusual punishment and would violate the Complainants' rights protected under the Eighth and Fourteenth Amendments to the Constitution of the United States.

8. WPP's collection,

at intervals of 15 minutes and through the use of smart meter technology, of aggregate quantities of more of the Complainants' usage data than is customary and minimally necessary for generating a monthly bill constitutes a search under the Fourth Amendment. WPP 's 24/7 collection of the Complainants' data, which is mandated to occur at intervals of 15 minutes or less with no lower limit, and such that, without the Complainants' consent, their data may be shared by WPP with third

parties who may de-anonymize and disaggregate that data, constitutes an abridgement and deprivation of the Complainants' Fourth Amendment right to a reasonable expectation of privacy.

## **II. Violation of PA Codes**

I briefly list the ones covered in this section:

1. Section 1501 of the PA Public Utility Code (Title 66) and 52 PA Code 57.194 – *“safe, and reasonable service”*
2. Section 1502 of the PA Public Utility Code (Title 66) – discrimination in service
3. Title 52, Subchapter O, § 57.259 (c, d) - Customer education on advanced metering
4. Title 52 Subchapter O, § 57.251(a) - which states that we are not required to participate in an advanced metering program
5. Title 52 Subchapter O, § 57.255(a) – which requires written request for an advanced meter

## PROPOSED FINDINGS OF FACTS

1. Complainants Jeannette and Craig Pavlick resides at 4200 Colonial Drive, Murrysville, PA 15668.
2. Respondent is West Penn Power (“WPP”), and electric distribution company (“EDC”) regulated by the Pennsylvania Public Utilities Commission.
3. Complainants is an electricity customer of WPP receiving residential service at the address above.
4. Complainants’ home is heated by a gas furnace that does not function without electricity. Without electricity, the house will lack heating during the cold winter months. A lack of heating would cause Complainants to suffer (potentially fatal) physical harm if they remained in their residence. A lack of heating combined with sub-freezing temperatures would cause water pipes to freeze and burst, which in turn would cause severe damage to Complainants’ home.
5. Complainants’ home is cooled by an air conditioner that does not function without electricity. Without electricity, Complainants’ home will lack cooling during the hot summer months. A lack of air conditioning could cause Complainants to suffer physical harm when temperatures become extremely high.
6. Complainants’ home contains a gas stove with electronic ignition that does not function safely without electricity. Without electricity, Complainants will be unable to cook food in their residence.
7. Complainants’ home contains a refrigerator that does not function without electricity. Without electricity, Complainants will be unable to store perishable foods in their residence.
8. Complainants’ home contains computers that Complainants uses to, among other things, perform their job duties remotely. Without electricity, Complainants will be unable to work from home. If WPP terminates Complainants’ electricity service, it will interfere with Complainants’ ability to perform their jobs.
9. Electricity is a basic utility that is essential for a reasonable quality of life in today’s world. As such, Complainants requires uninterrupted (to the extent physically possible) electricity service at their home. If WPP terminates electricity service to Complainants’ residence, this action would make it impossible for Complainants to live in their own home.
10. Complainants’ account is consistently in good standing. The only reason WPP seeks to shut off Complainants’ electricity service is that Complainants will not consent to the installation of a smart meter on their property.
11. Private property rights are a fundamental and preeminent part of citizens’ rights protected under the state and federal constitutions.
12. Neither 52 Pa.C.S. §56.81(3), nor 66 Pa.C.S. § 1406(a)(4), nor does Act 129 or any other statute, regulation or policy relevant to the matter brought forth in this Complaint preempt, supervene, supersede or take precedence over citizens’ private property rights.
13. There is no law, statute, official rule, regulation, or right of easement which permits, or would

permit, WPP to install any device other than a meter, only a meter, and nothing but a meter on the Complainants' homes or properties without their consent.

14. In their original intent and as written, 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) apply to meters, only to meters, and to nothing but meters.
15. In the instant case, 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) apply to meters, only to meters, and to nothing but meters—devices with the functional capability of doing nothing more or other than to measure electric power usage such that electric utility companies are able to bill according to the actual amount of electricity used.
16. Given the capability specified in ¶ 5, supra, no other functionality of an electric power meter is necessary in order for an electric utility company to receive full and proper remuneration for its services.
17. Given the capability specified in ¶ 5, supra, no other functionality of an electric power meter is necessary in order for WPP to enjoy fully the original single purpose for which it was granted an easement.
18. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do not apply to commercial-use, radiofrequency broadcasting antennas and transmitters.
19. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do not apply to data communications devices used as "relay points to transmit data" that does not originate from the customers' homes or properties.
20. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do not apply to computers.
21. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do not apply to devices such as 'switched mode power supplies' (SMPS) which produce high-frequency voltage transients of conducted emissions and/or which introduce, add to, or propagate such emissions through the electrical wiring of homes and buildings.
22. 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) do not apply to devices which produce and/or augment emanation of electromagnetic fields (EMFs) from the electrical wiring of homes and buildings.
23. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, WPP to install powerful, FCC-regulated, RF-radiating, radio-transmission antennas on the Complainants' homes or properties without their consent.
24. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, WPP to install FCC-regulated computer and data communications devices on the Complainants' homes or properties without their consent.
25. WPP has never been authorized or given permission or the right, either by easement or by siting license or permit, to install or operate powerful, FCC-regulated, RF radiation-emitting, radio-transmission and data communications devices on the Complainants' homes or properties.
26. "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." ... "See *United States v. Place*, 462 U.S. 696 (1983); *id.*, at 716

(BRENNAN, J., concurring in result); Texas v. Brown, 460 U.S. 730, 747 -748 (1983) (STEVENS, J., concurring in judgment); see also United States v. Chadwick, 433 U.S. 1, 13 -14, n. 8 (1977); Hale v. Henkel, 201 U.S. 43, 76 (1906). [T]his definition follows from our oft-repeated definition of the 'seizure' of a person within the meaning of the Fourth Amendment - meaningful interference, however brief " (United States v. Jacobsen 466 U.S. 109, 113.)

In Lugar v. Edmondson Oil, 457 U.S. 922, 942 (1982), the Court stated:

"[W]e have consistently held that a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment. The rule in these cases is the same as that articulated in Adickes v. S. H. Kress & Co., supra, at 152, in the context of an equal protection deprivation:

"Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents," quoting United States v. Price, 383 U.S., at 794." (See 'State Action Doctrine' (Attachment I) at the end of this document.)

The operation of an FCC-regulated, RF radiation-emitting, radio-transmission device that is owned by a party other than the owner of the home to which the device is attached is, ipso facto, a use by the operating party in the property of the homeowner. The operation of an FCC-regulated, data communications/data relay device that is owned by a party other than the owner of the home to which the device is attached is, ipso facto, a use by the operating party in the property of the homeowner.

27. There is no law, statute, official rule, regulation, or right of easement which permits, or would permit, WPP to use the Complainants' homes as sites for the company's AMI smart meters to function as "relay points to transmit data" that does not originate from the Complainants' homes or properties.
28. The Commission's policy of mandating the installation of smart meters would force the Complainants' properties to be used by WPP for purposes other than the collection of the Complainants' electricity usage data. That is, the Commission's policy would allow the electric utility to forcibly site its AMI wireless smart meters on the Complainants' homes and use them as "relay points to transmit data" that does not originate from the Complainants' properties. WPP, acting with the imprimatur either of the Commission or of the State itself, thus would be given usage of the Complainants' properties without such usage having been granted either by the existing easement or by the Complainants' informed consent. The Commission's policy pursuant to Act 129 therefore violates the Complainants' property rights protected under the Fifth and Fourteenth Amendments to the Constitution of the United States.
29. WPP does not have the statutory authority or right to site powerful, radiofrequency radiation-producing, RF-transmitting, data communications devices on the Complainants' properties and to thereby physically affect or cause physical alteration to the interior environments of the Complainants' homes by means of the production of RF electromagnetic fields, and/or conducted

emissions ('high- frequency voltage transients') and/or frequent transmissions of modulated radiofrequency radiation which would add to the already-existing RF radiation burden from other outside sources including area cell phone towers as well as nearby smart meters and wireless facilities in the utility company's AMI mesh network.

30. Without customer consent, WPP does not have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to use customers' homes in such a way as to irradiate them in perpetuity from their own premises with what has been found conclusively, on the basis of strong and clear scientific evidence, to be at least a Group 2B possible human carcinogen.
31. Without customer consent, WPP does not have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to use customers' homes, and by and through such direct use of customers' own premises, physically alter customers' living environments in any way which possibly could increase customers' risk of sustaining biological or adverse health effects.
32. Without customer consent, WPP does not have the statutory authority or right, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), to use customers' homes and from the customers' own premises, irradiate them in perpetuity as a condition of their continuing to have access to electric service.
33. Without customer consent, WPP, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, by company use of customers' homes or properties, to increase customers' risk—no matter how small—of biological or adverse health effects as a condition of their having access to electric service.
34. Without customer consent, the Pennsylvania Public Utility Commission, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, through state-regulated electricity providers' use of customers' homes or properties, to increase customers' risk— no matter how small—of biological or adverse health effects as a condition of customers having access to electric service.
35. Without customer consent, the State of Pennsylvania, acting pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), has no statutory authority or right, through state-regulated electricity providers' use of customers' homes or properties, to increase customers' risk—no matter how small—of biological or adverse health effects as a condition of their having access to electric service.
36. The Pennsylvania Public Utility Commission has jurisdiction over the state's public electric utilities.
37. The Pennsylvania Public Utility Commission does not have statutory authority or jurisdiction over the public's inherent right to deny consent.
38. The PUC has authority to mandate that the state's electric utility companies offer AMI wireless smart meters for use by the public, but the Commission cannot, especially given the absence of explicit, clear and definitive direction set forth by the Pennsylvania Legislature, mandate or require

that the utilities install smart meters on the private properties of persons who do not want or do not consent to them.

39. Act 129 does not compel citizens or the public to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.
40. Act 129 does not confer authority upon the electric utility companies to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.
41. Act 129 does not compel the state's electric utility companies to act so as to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.
42. Act 129 does not compel the state's electric utility companies to terminate electric service to customers who do not give consent to the installation of AMI wireless smart meter devices on their homes or properties.
43. 52 Pa.C.S. §56.81(3), and/or 66 Pa.C.S. § 1406(a)(4), separately or in combination, do not compel any state-regulated electric utility company to terminate customers' electric service. These regulations simply authorize such companies to do so in accordance with certain provisions.
44. 52 Pa.C.S. §56.81(3), and/or 66 Pa.C.S. § 1406(a)(4), separately or in combination, do not compel citizens or the public to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.
45. 52 Pa.C.S. §56.81(3), and/or 66 Pa.C.S. § 1406(a)(4), and/or Act 129, separately or in combination, do not confer statutory authority upon the Pennsylvania Public Utility Commission or any state-regulated electric utility company to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.
46. 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4) and/or Act 129, separately or in combination, do not compel any state-regulated electric utility company to act so as to compel persons to submit or give consent to the installation of AMI wireless smart meter devices on their homes or properties.
47. 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4) and/or Act 129, separately or in combination, do not compel any state-regulated electric utility company to terminate electric service to customers who do not give consent to the installation of AMI wireless smart meter devices on their homes or properties.
48. Neither the Pennsylvania Public Utility Commission nor the state's electric utility companies have, on the basis of a complete, objective, unbiased, non-selective accounting of the available scientific evidence, ever properly established the safety specifically of AMI wireless smart meter devices and technology with regard to their production of modulated radiofrequency radiation, RF electromagnetic fields, and conducted emissions of high-frequency voltage transients.
49. The Pennsylvania Public Utility Commission has never required or obtained, in accordance with 66 Pa.C.S. §315 (c), definitive proof, by means of the production of independent, unbiased, entirely non-selective and conclusive scientific evidence, that the modulated RF radiation, RF

electromagnetic fields and/or conducted emissions produced specifically by the operation of AMI wireless smart meters and smart meter network technologies do not, could not, cannot and will not cause biological or adverse health effects.

50. "Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety." (Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1.)
51. "Electrical service, being a necessity of life ..., is an entitlement which under our decisions may not be taken without the requirements of procedural due process. Fuentes v. Shevin, 407 U.S. 67, 80 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970); Palmer v. Columbia Gas of Ohio, Inc., 479 F.2d 153 (CA6 1973)."
52. Under 52 Pa.C.S. § 56.81(3) and 66 Pa.C.S. § 1406(a)(4), a termination of service is authorized for a customer's "[f]ailure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading."
53. WPP, pursuant to the Commission's policy-mandated, smart meter implementation orders, has threatened to terminate Complainants' access to electricity, sending a notice-of-termination letter with the "Reason for Termination" given as "Non-Access to Meter." The Complainants have never denied WPP access to the company's meter for any purpose that is properly proven to be safe and which would not be in violation of the Complainants' fundamental rights. This includes access for the purpose of replacement of the meter. The Complainants' simply have denied the company permission to install a device which is far more than merely a meter and for which there is no reliable medical or scientific evidence upon which to conclude that chronic, long- term exposure to the radiofrequency radiation and RF fields produced as a result of the installation of such metering devices could not, cannot, would not and will not cause, exacerbate or contribute to biological or adverse health effects. (See also EXCEPTION NO. 5 and Attachment III.)
54. It is not constitutionally permissible for WPP to terminate or withhold electric service or to in any way penalize the Complainants solely on the basis of the Complainants not giving consent to the company's installation of AMI wireless smart meter devices on the Complainants' homes or properties.
55. Document from First Energy, the parent company of WPP, entitled "Customer Guide for Electric Service – PA" dated September 2021  
3.6 Interruption & Liability\*  
The Company will endeavor, but does not guarantee, to furnish a continuous supply of electric energy and to maintain voltage and frequency within reasonable limits. The Company shall not be liable for any loss, cost, damage or expense that the customer may sustain by reason of damage to or destruction of any property, including the loss of use thereof, arising out of, or in any manner connected with, interruptions in service, variations in service characteristics, high or low voltage, phase failure, phase reversal, the use of electrical appliances, or the presence of the Company's property on the customer's premises, whether such damages are caused by or involve any fault or failure of the Company or otherwise except such damages that are caused by or due to the willful and wanton misconduct of the Company. The Company shall not be liable for damage to any

customer or to third persons resulting from the use of the service on the customer's premises or from the presence of the Company's appliances or equipment on the customer's premises.

\*To the extent this provision contradicts any terms in the Company's current applicable Tariff, the Tariff provision shall govern.

<https://www.firstenergycorp.com/content/dam/customer/service%20requests/files/Customer-Guide-for-Electric-Service-PA.pdf>

If First Energy and WPP "shall not be liable" for any problems that occur with their equipment, Complainants will be forced to pay for either an expensive insurance policy or pay for any possible damages that result from a new problematic smart meter. This document clearly states that First Energy will not cover any damages to Complainants' house as a result of the installation of this RF radiation-emitting smart meter and would not cover any treatments for health problems that the smart meter will cause to Complainants and their family. Complainants choose to stick with their reliable analog meter that has been on their house since before they purchased their property and at the time they agreed to accept the analog meter and WPP for their electric service provider.

## PROPOSED CONCLUSIONS OF LAW

1. An electric meter is simply a device which measures electric power usage such that electric utilities are able to bill according to the actual amount of electricity used—nothing more. No other functionality is necessary for the meter to accomplish this sole purpose. No other functionality is necessary in order for an electric utility company to receive full and proper remuneration for its services so as to enjoy fully the original single purpose for which it was granted an easement.
2. In their original intent and as written, 52 Pa.C.S. §56.81(3) and 66 Pa.C.S. § 1406(a)(4) apply to meters, only to meters, and to nothing but meters having the functionality just described. The provisions specified in these regulations do not apply to computers, and they do not apply to commercial-use radiofrequency broadcasting antennas and transmitters, and they do not apply to devices which demonstrably produce high- frequency voltage transients of RF conducted emissions and which in fact propagate such emissions into and through the electrical wiring of homes and buildings.
3. Pursuant to the Commission's policy-mandated smart meter implementation orders, the Complainants' electric service provider, nevertheless, is not seeking to replace the Complainants' present analog meter with simply another meter which likewise would be dedicated solely to the measurement of electricity usage. The company is seeking instead to install additional equipment consisting of an assemblage of other devices—euphemistically called a 'smart meter'—in the guise of a 'meter'. This composite collection of additional devices includes a computer and powerful, modulated radiofrequency radiation-producing devices—that is, dual-antenna radio receivers and transmitters. By invoking 52 Pa.C.S. §56.81(3) and/or
4. 66 Pa.C.S. § 1406(a)(4) in threatening to terminate Complainants' access to electric service, the Complainants' electric service provider, with the imperative, impetus and complicity of the PUC, is thus seeking to completely alter and misapply the very definition and original meaning of the term 'meter'.
5. Under such a broad definition of the term 'meter', a utility company could include any assortment of equipment or set of devices as long as such could be integrated, consolidated or compacted into a unitary assemblage the size of a standard analog electric meter and which

could be plugged into a standard meter socket. Indeed, WPP would be prohibited by law from installing on our properties a standalone radio transmitter, a communications antenna, a power transformer, or any other devices or equipment it utilizes in the course of conducting its business.

6. The operation of a powerful, FCC-regulated, RF radio-transmission device owned by a party other than the owner of the home to which the device is attached constitutes, and is, a use by the operating party in the property of the homeowner. WPP has never been given permission, authority or the right, by means of easement, license, permit, or any other contractual legal instrument or agreement, to install or operate such equipment on the Complainants' homes or properties. Moreover, neither Act 129, nor 52 Pa.C.S. §56.81(3), nor 66 Pa.C.S. § 1406(a)(4), separately or in combination, confer upon the electric utility the statutory authority or right to install or operate this equipment on the Complainants' homes or properties without their consent. WPP therefore is not entitled to such use of the Complainants' homes or properties without their consent.
7. Furthermore, in consequence of the fact that AMI wireless smart meter devices produce RF conducted emissions of high-frequency voltage transients and frequent, pulsed transmissions of modulated radiofrequency radiation—both of which could increase the risk of biological and/or adverse health effects even at low levels—the technology which utilizes these devices comes highly safety-impugned and therefore cannot be conclusively relied upon as a 'safe' and 'reasonable' use. (See also Attachment III.)
8. Over the Complainants' objections, WPP, pursuant to the company's acting under color of law as an agent of the State (see Attachment I), has acted in complete disregard of the original terms and intent of the existing easement, as if the company were lawfully empowered to unilaterally change these terms so as to use the Complainants' private homes and properties in the service of the company's own commercial interests, that is, to use the Complainants' homes as sites for the company's AMI smart meters to function within its mesh network as "relay points to transmit data" that does not originate from the Complainants' homes or properties.
9. The Fourteenth Amendment to the U.S. Constitution prohibits the State from enforcing Act 129 insofar as Act 129 would be used to restrict or deprive Complainants of their fundamental liberties and rights to protect themselves and their property. Even if Act 129 were a law which

had been enacted to further a compelling governmental interest, it would have to have been narrowly constructed or tailored, employing the least restrictive measures possible to achieve that interest.

10. In accordance with the Overbreadth Doctrine, a statute or statutory provision which regulates actions or activities that are not constitutionally protected must not be written or applied so broadly as to restrict or adversely impact actions, activities, rights, privileges or immunities that are constitutionally protected.
11. The Complainants' being forced to endure chronic, long-term exposure to biologically interactive, modulated radiofrequency radiation and RF electromagnetic fields, produced by the wireless devices and facilities which WPP would use on their homes, potentially could adversely impact their health and safety. Act 129, insofar as it is being construed by the Pennsylvania Public Utility Commission as a means of enforcement in compelling Complainants to give consent to WPP to so use Complainants' homes as a condition of their having access to electric service, is therefore overbroad and manifestly unconstitutional in its application.
12. No law in this nation was ever written or intended to be used to justify or permit the forcible subjection of citizens to potentially increased risk of harm as a condition of having access to a vital necessity—in this case, electricity.
13. "Certainly, an act passed by a state legislature that directs a discriminatory result is state action and would violate the first section of the Fourteenth Amendment." *United States v. Raines*, 362 U.S. 17, 25 (1960).
14. "Pennsylvania Act 129, passed into law in 2008, requires electric utilities with more than 100,000 customers to provide those customers with advanced meters that have specific capabilities."
15. Because Act 129 exempts electric distribution companies with fewer than 100,000 customers from the requirements of implementing AMI smart meter technology, the customers of these companies are protected from having to suffer abridgement and violation of their constitutionally-secured rights by the enforcement of such policy as has been mandated on the basis of the PUC's misconstruction of the law. Enforcement of Act 129, as accomplished under the Commission's policy by making smart meters mandatory and not optional, contrary to the

explicitly-expressed intent of the Pennsylvania General Assembly, and by applying this mandate to affect only select customers, denies those select citizens, including the Complainants, the equal protection of the laws as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

16. If, pursuant to Act 129 and/or 52 Pa.C.S. §56.81(3) and/or 66 Pa.C.S. § 1406(a)(4), separately or in combination, the Pennsylvania Public Utility Commission permits WPP—by means of the provider's threatening to terminate Complainants' access to electric service—to coerce the Complainants' consent to the use of their homes and property for the installation and operation of AMI wireless smart meter devices, such action, usurpation and use shall be in direct violation of the Complainants' due process and property rights established under easement and under the Pennsylvania Constitution and the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

17. The PA Supreme Court, in its ruling, stated the following:

“See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 ‘as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public’) and 1501 (requiring utility to take remedial action ‘as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public’). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.”

[J-77A-L-2021] – 7, August 16, 2022, Supreme Court Opinion and Order, Povacz, et al. v. Pa. Public Utility Commission, 280 A.3d 975 (Pa. 2022) (Povacz II).

18. Here, even the PA Supreme Court acknowledges, and has ruled, that the PUC and the EDCs, as part of their tariff, can provide, and enact, a tailored EDC Customer Service Policy that provides accommodations and relief “for the accommodation, convenience, and safety of its patrons, employees, and the public” without having to establish any violation of 66 Pa. C.S. § 501, or by extension 52 Pa. Code § 57.194.(a).

19. WPP will not cover any damages to Complainants’ house as a result of the installation of this RF radiation-emitting smart meter and would not cover any treatments for health problems that the smart meter will cause to Complainants and their family. Complainants choose to stick with

their reliable analog meter that has been on their house since before they purchased their property and at the time, they agreed to accept the analog meter and WPP for their electric service provider.

**PROPOSED IDENTIFYING THE RELIEF SOUGHT**

For the reasons set forth above, the Complainants Craig and Jeannette respectfully request that the Commission issue an order in this proceeding that states:

1. That the Commission requires West Penn Power to provide accommodations to them pursuant to 66 Pa. C.S. § 1501; and
2. That such accommodation means that West Penn Power shall provide electrical service to their home (the Service Address) without requiring the installation of any device that:
  - a. Emits radiofrequency electromagnetic energy, or
  - b. Collects or transmits any data without their consent other than the monthly electric usage information required to bill the Service Address; and
3. That West Penn Power is not precluded from providing a reasonable accommodation to Complainants per Pennsylvania Supreme Court’s Opinion in Povacz, et al. v. PUC, et al.: “See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 ‘as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public’) and 1501 (requiring utility to take remedial action ‘as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public’). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.”

Respectfully submitted.

\_\_\_\_\_/s/  
Jeannette Pavlick

\_\_\_\_\_/s/  
Craig Pavlick

Date: February 7, 2024