

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Michael W. Chattin, et al.
vs. Pennsylvania Electric Company,
Metropolitan Edison Company and
West Penn Power Company

Public Meeting held February 22, 2024
2630649-OSA
Docket No. C-2017-2630649
C-2018-3001563 et al.

STATEMENT OF VICE CHAIR KIMBERLY BARROW

Before us for consideration are several cases where customers filed complaints that the smart meters to be installed were unsafe.

While I agree with the result in each case, in some of the cases, I believe the standards applied were incorrect. For example, in *Toth v. Met-Ed*, C-2018-3001563, exceptions filed five days late were treated as a petition for rescission and *Duick*¹ standard was applied. Instead of treating the late-filed exceptions as a petition for rescission, I would have addressed them as exceptions. Notwithstanding that distinction, the application of *Duick* was incorrect. *Duick* does not require new or novel arguments to be made, but merely advises that if they are not, then the reconsideration would likely be denied. The Commission must instead address the persuasiveness of the reasons for reconsideration.

Further, I believe that our disposition misstates the nature of dismissal for failure to prosecute. *Jacobs v. Halloran*, 710 A.2d 1098, 1099 (Pa. 1998) establishes the proposition that actual prejudice must be shown to dismiss a case for failure to prosecute, beyond the mere time of delay. In *Jacobs*, the Court held that was true even after a six-year delay. The instant dismissals with prejudice for failure to prosecute, have not demonstrated the actual prejudice required by *Jacobs*.

February 22, 2024
DATE


Kimberly Barrow, Vice Chair

¹ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 1982 WL 993413 (1982).