

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrea Fenimore	:	C-2023-3030605
	:	
v.	:	
	:	
Pennsylvania Electric Company	:	

**INTERIM ORDER
DIRECTING THAT A HEARING BE SCHEDULED**

On January 12, 2022, Andrea Fenimore (Complainant) filed a formal complaint against Pennsylvania Electric Company (Penelec or Respondent). She checked the box noting that she is having a reliability, safety or quality problems and alleged, among other things, that the smart meter installed at her home is causing her to have insomnia. As relief, she requests that Penelec remove the smart meter and restore her analog meter.

On November 4, 2020, in view of the appellate court litigation surrounding smart meters, the Commission issued a general stay of all smart meter proceedings pending before it. By letter dated February 11, 2022, Penelec noted that the Commission stay was in place and that it would file an answer to the complaint when the stay was lifted by the Commission.

On August 16, 2022, the Pennsylvania Supreme Court issued a decision in *Povacz v. Pa. Public Utility Commission*.¹ In *Povacz*, the Pennsylvania Supreme Court resolved many of the outstanding legal issues in smart meter complaint cases. The court held, among other things, that pursuant to Act 129, customers have no right to refuse smart meter installation.² The court further clarified the burden of proof required to support a claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility

¹ *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022).

² *Id.* at 997.

Code.³ Specifically, the court held that to prove that a smart meter is unsafe service under Section 1501, a complainant must support that allegation with medical or expert testimony.⁴

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.

By notice dated November 17, 2023, the Office of Administrative Law Judge assigned this matter to me.

On December 4, 2023, Penelec filed an Answer and New Matter denying the material allegations of the complaint and averring that it is required by Act 129 to install a smart meter. Penelec also noted that it willing to relocate the Complainant's meter subject to the customer bearing the expense of relocation as provided in its tariff.

Normally, it is Commission practice to schedule a consumer complaint for a hearing once the utility has filed an answer to the complaint. Yet, I believed it was prudent to provide the Parties with an opportunity to develop their cases since the Complainant would be required to provide expert testimony to support her claim. Therefore, by interim order dated December 12, 2023, I established a litigation schedule which directed the parties to identify their expert witnesses by February 12, 2024, and agree on potential hearing dates by status report filed by March 29, 2024. That order also provided a link to the *Povacz* decision so that the Complainant could review it for herself, and also notified the Parties that they were authorized to exchange discovery. The interim order was served on the Complainant by First-class mail.

Penelec filed a statement on February 12, 2024, which identified their expert witness. That statement was served on the Complainant by First Class Mail. The Complainant did not file a statement which identified any medical or technical expert or fact witnesses.

³ 66 Pa. C.S. § 1501.

⁴ *Povacz* at 1006.

On March 29, 2024, as directed by the December 12, 2023, Interim Order, Penelec filed a status report. The status report noted that Penelec had attempted to communicate with the Complainant regarding potential hearing dates, but that the Complainant had not responded to Penelec. Penelec also provided information regarding potential hearing dates. The Complainant did not file a status report, or respond to the status report filed by Penelec.

THEREFORE,

IT IS ORDERED:

That this case shall be set for a one-day hearing by telephone on an available date in June 2024.

Date: April 8, 2024

/s/
Mary D. Long
Administrative Law Judge

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