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April 25, 2024

VIA ELECTRONIC MAIL DELIVERY

Administrative Law Judge Mark A. Hoyer
Pennsylvania Public Utility Commission
Office of the Administrative Law Judge
801 Market Street
Philadelphia, PA 19107

Re: Eugene Bazan and Tania Slawecki v. West Penn Power Company
Docket No. C-2017-2640338

Dear Judge Hoyer:

Enclosed, please find the Answer of FirstEnergy Pennsylvania Electric Company on behalf of its West Penn Rate District to the Petition of Eugene J. Bazan and Tania M. Slawecki to Reopen the Record regarding the above-referenced matter.

Copies are being provided in accordance with the Certificate of Service. Should you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

Tori L. Giesler

TLG/mlr
Enclosures

c: Secretary Rosemary Chiavetta (via electronic filing)
As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eugene J. Bazan and Tania M. Slawecki,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2017-2640338
	:	
West Penn Power Company,	:	
	:	
Respondent.	:	

**ANSWER OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY
ON BEHALF OF ITS WEST PENN POWER RATE DISTRICT TO THE PETITION OF
EUGENE J. BAZAN AND TANIA M. SLAWECKI TO REOPEN THE RECORD**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND BACKGROUND	1
II. PROCEDURAL HISTORY	3
III. ARGUMENT	6
A. THE COMPLAINANTS' PETITION SHOULD BE DENIED AS THE COMPLAINANTS OFFER NO COMPELLING REASONS TO REOPEN THE RECORD CONSISTENT WITH THE COMMISSION'S REGULATIONS.....	6
B. IF THE COMMISSION REOPENS THE RECORD IN THIS PROCEEDING, THERE SHOULD BE SPECIFIC PROCEDURAL MANDATES PUT IN PLACE FOR PRESENTATION OF NEW EVIDENCE.....	10
IV. CONCLUSION.....	12

I. INTRODUCTION AND BACKGROUND

FirstEnergy Pennsylvania Electric Company, on behalf of its West-Penn Rate District¹ (the “Company”), pursuant to 52 Pa. Code § 5.571, hereby submits this Answer to the “Petition to Re-Open the Proceeding for the Purpose of Taking Additional Evidence” (hereinafter, the “Petition”) submitted by Eugene J. Bazan and Tania M. Slawecki (“Complainants”) in the above-referenced proceeding. In their Petition that was filed with the Pennsylvania Public Utility Commission (“Commission”) on April 15, 2024, the Complainants requested reopening of the record because: (1) it has been more than four years since the Evidentiary Hearing was held on March 10, 2020, which, according to the Complainants, has led to “new scientific evidence” that was “neither known nor addressed” by the Pennsylvania Supreme Court in *Povacz II*;² (2) to allow Dr. Tania Slawecki to offer additional evidence on: her alleged expertise on matters of human health, including providing an updated curriculum vitae (“CV”), the “legal case” that Dr. Slawecki was involved in previously, and apparent conflicts concerns related to Dr. Slawecki’s testimony; and (3) the Complainants purport to have additional evidence to offer should the record be reopened, including the testimony of three new expert witnesses.

As explained herein, the Complainants’ Petition should be denied. The Petition seeks to reopen a smart-meter related complaint proceeding that the Complainants presented a full direct case on during the March 10, 2020 Evidentiary Hearing. Indeed, the Complainants rested their

¹ On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former West-Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

² See *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (“*Povacz I*”).

case at that Evidentiary Hearing.³ (Tr. 536, 540.) Now, the Complainants are seeking a second bite at the apple premised largely on the amount of time that has passed since the March 10, 2020 Evidentiary Hearing. The amount of time that has passed between the March 10, 2020 Evidentiary Hearing is insufficient grounds to reopen the record in this proceeding. Similarly, the Complainants' apparent about-face as to the evidence they now ask to offer – including the testimony of three additional purported experts – that they failed to offer at the March 10, 2020 Evidentiary Hearing - is insufficient grounds to reopen this proceeding. The Complainants made no allegation of fact as to why those experts could not have provided testimony earlier in this proceeding. Moreover, Dr. Slawecki's up-to-date CV and Dr. Slawecki's involvement in other legal proceedings – past or present - is of no moment for resolution of this Complaint, and does not constitute a new material fact. Furthermore, to the extent that the Complainants' reasoning for reopening the record is premised on the alleged negative health effects of smart meters as applied to the Complainants, such allegations were not made in the Formal Complaint, as amended, and, thus, are outside the scope of this proceeding. For these reasons, the Complainants' Petition should be denied.

However, to the extent that the Complainants' Petition is granted, the Company respectfully submits that the reopening should be limited consistent with the following: (1) the Complainants may not present evidence or testimony upon information available to the Complainants as of the date of the first Evidentiary Hearing, *i.e.*, March 10, 2020; (2) should the record be reopened, the Company be permitted to respond to the Complainants' direct case, in full,

³ The Company notes that it did not present its Direct Case in full at the March 10, 2020 Evidentiary Hearing, and the record is not formally closed in this proceeding in order to accommodate the Company's direct case, as well as subjecting any witnesses to cross-examination and re-direct testimony, as well as the offering of closing arguments from both the Complainants and the Company.

through written testimony, including any and all supplementary evidence and testimony that the Complainants' ultimately may present if and when the record is reopened.

II. PROCEDURAL HISTORY

On December 29, 2017, the Company was served with the Formal Complaint filed by Eugene Bazan, in which he challenged, *inter alia*, the installation of a smart meter at his service address located at 244 Mary Street, Lemont, Pennsylvania 16851 ("Service Location").

The parties to this proceeding have made various filings and submissions in accordance with the Commission's regulations and the ALJ's interim orders.

On April 12, 2019, the Complainants served three pieces of Direct Testimony with no accompanying exhibits.

On April 14, 2019, the Complainants served their written testimony and exhibits, which consisted of one piece of Expert Witness Testimony and eighteen Exhibits.

On July 23, 2019, the Complainants served revised Expert Witness Testimony and eighteen Exhibits.

On June 28, 2019, Administrative Law Judge ("ALJ") Jeffrey A. Watson issued a Prehearing Order, establishing a litigation schedule for this proceeding.

On October 15, 2019, the Company served its Rebuttal Testimony and Exhibits on Eugene Bazan.

On January 3, 2020, the Complainants served a second piece of Expert Witness Testimony.

On January 7, 2020, the Complainants filed an Amended Formal Complaint.

On January 16, 2020, the Complainants re-served their Direct Testimony and Exhibits in advance of the March 10, 2020 Evidentiary Hearing.

On January 17, 2020, the Company re-served its previously served Rebuttal Testimony and Exhibits in advance of the March 10, 2020 Evidentiary Hearing.

On February 28, 2020, the Complainants filed a Second Amended Formal Complaint, adding Dr. Tania Slaweki as a co-complainant in this matter.

On March 4, 2020, the Company once again re-served its written Rebuttal Testimony and associated Exhibits in advance of the March 10, 2020 Evidentiary Hearing.

On March 10, 2020, the Evidentiary Hearing was held as scheduled. There, the Complainants presented their direct case and rested. As part of the March 10, 2020 Evidentiary Hearing, the Company was unable to present the testimony of all of its witnesses.

On March 16, 2020, ALJ Watson issued an Interim Order continuing the second day of Evidentiary Hearings scheduled for April 1, 2020.

On August 18, 2020, ALJ Watson issued an Interim Order Scheduling Telephonic Hearing and Requiring Service of Proposed Exhibits and Documents.

On October 16, 2020, the Company filed a Motion to Stay the Proceeding.

Also on October 16, 2020, the Complainants filed a letter indicating that they did not oppose the Company's Motion to Stay the Proceeding.

On October 28, 2020, ALJ Watson issued an Interim Order cancelling the October 29, 2020 Evidentiary Hearing.

On November 4, 2020, the Commission issued an Order at Docket No. M-2009-3092655, staying all smart meter related Formal Complaint proceedings, like the instant Complaint. This proceeding was stayed pending the Pennsylvania Supreme Court's disposition of the appeals concerning the Commonwealth Court's decision in *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) ("*Povacz I*").

On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion affirming in part and reversing in part the Commonwealth Court’s decision.⁴ Specifically, in *Povacz II*, the Court held that: (1) Act 129 of 2008 (“Act 129”) mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company (“EDC”) cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only “entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”⁵

On November 9, 2023, the Commission issued an Order at Docket No. M-2009-3092655, lifting the stay in certain smart meter related Formal Complaint proceedings, like the instant Complaint.

On January 17, 2024, the Commission issued a Judge Change Notice, reassigning the proceeding to Deputy Chief ALJ Mark A. Hoyer (hereinafter, the “ALJ”).

On March 25, 2024, the Commission issued a Further Call-In Telephone Hearing Notice, scheduling a second day of Evidentiary Hearings for April 25, 2024.

On April 3, 2024, the ALJ issued a Second Interim Order Rescheduling Telephonic Hearing and Requiring of Proposed Exhibits and Documents.

On April 5, 2024, the Complainants filed a Motion for Continuance, requesting that the April 25, 2024 Evidentiary Hearing be continued.

On April 11, 2024, the Company filed a letter opposing the Complainants’ requested for a continuance.

On April 12, 2024, the Company filed a Notice of Appearance.

⁴ See *Povacz II*.

⁵ *Id.* at 1014.

On April 15, 2024, the Complainants filed a Reply to the Company’s letter indicating that it opposed the Complainants’ requested continuance of the April 25, 2024 Evidentiary Hearing.

Also on April 15, 2024, the Complainants filed the Petition.

On April 16, 2024, the Commission issued a Hearing Cancellation Notice, cancelling the April 25, 2024 Evidentiary Hearing.

Also on April 16, 2024, the Complainants filed an Addendum to the Petition. Through the Addendum, the Complainants noted that they intend to present the expert testimony of three unidentified witnesses.

For the reasons explained below, the Joint Complainants’ Motion should be denied.

III. ARGUMENT

A. THE COMPLAINANTS’ PETITION SHOULD BE DENIED AS THE COMPLAINANTS OFFER NO COMPELLING REASONS TO REOPEN THE RECORD CONSISTENT WITH THE COMMISSION’S REGULATIONS

The Commission should deny the Complainants’ Petition because it fails to allege any meaningful changes in fact or law that have occurred since the conclusion of the March 10, 2020 Evidentiary Hearing. *See* 52 Pa. Code § 5.571. Indeed, in the Petition and Addendum thereto, it appears that the only purported evidence the Complainants seek to introduce should the record be reopened relate to: (1) the qualifications and experience of Dr. Slawecki; (2) the opportunity to bolster their concluded direct case with the expert of additional unidentified witnesses; and (3) “new scientific evidence” that was “neither known nor addressed” by the Pennsylvania Supreme Court in *Povacz II*. (Petition, pp. 1-2.)

(1) The Qualifications Of Dr. Slawecki To Offer Testimony Were Previously Addressed At The March 10, 2020 Evidentiary Hearing.

As to the requested additional presentation on the qualifications and legal experience of Dr. Slawecki, that presents neither new nor novel facts that justify reopening the Complainants’

direct case in this proceeding. Indeed, Dr. Slawecki testified at length during the March 10, 2024 Evidentiary Hearing. (RECORD CITE) Tr. 292-372.) Moreover, the Complainants offer no justification as to why Dr. Slawecki's experience as it relates to "matters of human health" or her updated CV are either new facts that could not have been presented at the March 10, 2020 Evidentiary Hearing, or of would be of any relevance to this proceeding. Indeed, as noted previously Dr. Slawecki testified extensively during March 10, 2020 Evidentiary Hearing, where she was she discussed referenced her background, including her education and experience. [RECORD CITE](Tr. 294.) If the record were to be re-opened to accommodate additional testimony on a previous witness's qualifications which were already spoken to during a prior hearing, it would provide the Complainants a way in which to continually delay this matter, which has been ongoing for more than six years as of the date of this writing. It would also signal, beyond this proceeding, that continually updating one's CV as a complainant or complainant's witness progresses through fluid education and employment circumstances is valid reason for a formal complaint proceeding's record to remain open indefinitely to recognize the same. The Company respectfully submits that this is inappropriate in this case, as it would be for other formal complaint cases currently and in the future before this Commission.

(2) The Complainants Have Not Offered Any Reasoning As To Why The Unidentified Witnesses That The Complainants "have in mind" To Offer Further Direct Testimony Were Not Available To Offer Testimony Earlier In This Proceeding, Or Why Their Testimony Would Be Relevant.

As to (2), and similar to the Complainants' reasoning with respect to (1), the Complainants have identified no reason to consider the testimony of additional witnesses as a "material change to fact or law." *See* 52 Pa. Code § 5.571. Indeed, the whole of the Complainants' reasoning on this point is that "they wish to take to take advantage of these judiciary rulings..." (Addendum to Petition, p. 2.) However, the Complainants fail to cite these the aforementioned judiciary rulings, and do not identify any material change to any facts or law affecting that would otherwise warrant reopening the proceeding for additional evidence on the Complainants' behalf. Critically, the Complainants argue they have "three experts in mind" and generally refer to those unidentified "experts" as having experience related to "spectral chemistry" and "the intent of the General Assembly with regard to Act 129..." respectively. (Addendum to Petition, p. 2.) On its face, the Petition is unclear as to whether the Complainants even have additional witnesses to provide testimony on their behalf. (Addendum to Petition, p. 2.) In the absence of the Complainants being

able to identify any “experts” that they intend to call as witnesses, a request to reopen the record on this ground is unfounded.

Additionally, the Complainants offer no reasoning as to why these unidentified “experts” did not offer written testimony previously, or oral testimony during the March 10, 2020 Evidentiary Hearing. In the absence of such reasoning, the Company respectfully suggests that the unidentified witnesses were likely available prior to the March 10, 2020 Evidentiary Hearing, that the Complainants did not consider calling the unidentified witnesses at the prior Hearing, or some combination of the two. In any event, the Company submits that the Complainants’ request to now introduce new witnesses after this proceeding has been ongoing for more than six years is merely an attempt to bolster their existing – and completed – direct case after review of the previously submitted testimony and exhibits. This is not grounds to reopen the proceeding, as it would effectively allow the Complainants to amend their direct case after having a full and fair opportunity to present the same.

Furthermore, to the extent that the Complainants request that they be given another chance to present testimony on the “intent” of Act 129, the Pennsylvania Supreme Court fully and finally addressed Act 129’s intent in *Povacz II*. The Court in *Povacz II* made clear that Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence should that relief be inconsistent with the utility’s Commission-approved tariff.⁶ Thus, to the extent that the Complainants seek to opine on the Court’s holding in *Povacz II* as purported support for their

⁶ *Povacz II*, at 1014 (holding that complainants challenging the installation of smart meters may only be “entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff”). The only accommodation permitted by the Company’s tariff is for the Company to relocate the smart meter at the customer’s expense. *FirstEnergy Pennsylvania Electric Company Tariff Rule 4*, Electric Pa. P.U.C. No. 1, Original Page 40 (“A Customer desiring the removal, relocation or change of Company facilities or interruption shall submit a request to the Company. The Company may accept or reject said request in its sole and exclusive discretion. If the Company accepts said request, the Customer shall pay in advance the Company’s total estimated cost for any Customer requested temporary interruption in the Customer’s service due to construction, maintenance or other activities.”)

requested opt-out of the smart meter's installation at the Service Location, such testimony is of no moment for resolution of this Complaint. Moreover, given the Court's holding in *Povacz II*, the Company respectfully submits that the Complainants' requested relief is moot.

(3) The Complainants' Petition Does Not Allege Any Specific "New Scientific Evidence" That Would Warrant Allowing Them To Present Additional Direct Testimony After Resting Their Case.

Through the Petition, the Complainants make amorphous reference to "new scientific evidence that was neither known nor addressed" by the Court's decision in *Povacz II*. (Petition, p. 1.) This reasoning as applied to the Complainants' request to get a second chance to present a rested direct case is flawed for several reasons.

First, the Complainants appear to argue that the "new scientific evidence" would be relevant to the Court's holding in *Povacz II*. This is of no importance to the Commission's resolution of this Complaint. This formal complaint proceeding is not *Povacz II*, yet the Complainants seem to wish to litigate the factual record of *Povacz II*. Such presentation is not relevant to the case *sub judice*.

Second, the Complainants make no representation of what the material changes to fact in law are that would warrant introduction of "new scientific evidence" beyond vaguely alleging that new evidence exists. As to new facts, the Complainants cite no study, peer reviewed article, no specific expert, nor any personal change in factual circumstances. As to new law, the Complainants appropriately point out the Court's holding in *Povacz II*, which is instructive in this proceeding. As noted above, *Povacz II* is determinative as to the Complainants' requested relief here: they cannot opt-out of the installation of smart meter and, should they prevail in this

proceeding, their only relief is for the Company to install the smart meter at a different location at the customer's expense, as dictated by the Company's Commission-approved tariff.⁷

Third, and importantly, whatever "new evidence" the Complainants allege to have related to the allegedly harmful effects of radio-frequency ("RF") emissions and the allegedly negative health effects that RF emissions may cause them, such concerns are well-beyond the scope of the Complaint. (Second Amended Complaint, ¶¶ 1-105.) The Complainants made no allegations related to RF emissions from smart meters negatively affecting their health in the Complaint or amended version(s) thereof. (Tr. 503.) Therefore, testimony and evidence related to the same is irrelevant to the Commission's resolution of this proceeding.

Consistent with the foregoing, the Company respectfully submits that the Complainant's Petition should be denied.

B. IF THE COMMISSION REOPENS THE RECORD IN THIS PROCEEDING, THERE SHOULD BE SPECIFIC PROCEDURAL MANDATES PUT IN PLACE FOR PRESENTATION OF NEW EVIDENCE

If the Commission does reopen the record to allow the Complainants to offer additional testimony and exhibits in their direct case, the Company submits that such additional testimony and exhibits should be limited in scope as to ensure relevance to this proceeding, and to not be cumulative with the Complainants' existing on-record evidence. Further, the Company should be permitted an opportunity to respond to the Complainants' additional testimony and exhibits in written form prior to any Evidentiary Hearing being scheduled.

First, any additional testimony offered by the Complainants and/or further "expert" witnesses should be strictly limited to the offering of information not in existence or not available to the Complainants as of the March 10, 2020 Evidentiary Hearing. *See* 52 Pa. Code § 5.571.

⁷ *See* n. 6, *supra*.

Merely giving the Complainants' a *carte blanche* opportunity to represent the entirety of the previously rested direct case, in addition to additional testimony and evidence not yet addressed in this proceeding, would unnecessarily delay this proceeding and be unreasonably burdensome to the Company and the Commission. In this vein, the Company stresses that the Complainants have not previously presented any testimony or evidence related to RF, including any specific medical concerns related to RF, thus, evidence on this point should not be permitted from the Complainants at this late stage of the proceeding. It would be inappropriate to allow them to do so now, given that the Complainants were at liberty to present evidence on the same during the March 10, 2020 Evidentiary Hearing, to the extent that such evidence was within the scope of the Complaint.

Moreover, the Complainants attempted to offer the testimonies of various "fact witnesses" at the March 10, 2020 Evidentiary Hearing that were ultimately excluded from the record in this proceeding. (Tr. 498; Tr. 514; Tr. 536.) The Company submits that, to the extent that the record is reopened to permit the Complainants to offer additional evidence, such evidence should be limited to expert testimony only, to avoid continued attempts to introduce the testimony of "fact" witnesses unrelated to this proceeding. Further, the "fact" witnesses previously offered by the Complainant that were not permitted to testify at the March 10, 2020 Evidentiary Hearing should not be permitted to offer testimony now.

Second, in the event that the Commission grants the Complainants' Petition, the Company submits that it should be afforded the opportunity to review and respond to the Complainants' additional evidence prior to a rescheduled second Evidentiary Hearing. The reasons for this are several. At the outset, the Company notes that the submission of written testimony was agreed to by both parties in this proceeding.⁸ Therefore, any future testimony – beyond cross-examination

⁸ See *Prehearing Order Establishing Litigation Schedule*, Docket No. C-2017-2640338) (Order issued Jun. 28, 2019).

– should be served on the parties in written form well-prior to any rescheduled Evidentiary Hearing. Further, the Complainants note that much of the additional evidence they may seek to introduce is expert testimony which, in the Company’s experience, takes more time to digest and meaningfully respond to than lay testimony. Again, the interests of equity for both parties, the Company submits that any additional expert or lay testimony be served in written form, whether from the Company or the Complainants, such that each party has a fulsome opportunity to review and respond to the same prior to the rescheduled Evidentiary Hearing. *See* 52 Pa. Code § 5.412.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition to Reopen the Proceeding filed by Eugene J. Bazan and Tania Slawecki or, in the alternative, limit the scope of any additional testimony and exhibits, consistent with this Answer.

Respectfully submitted,



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Date: April 25, 2024

Attorneys for FirstEnergy Pennsylvania Electric
Company (West Penn Rate District)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EUGENE BAZAN AND TANIA SLAWECKI	:	
	:	
	:	Docket No. C-2017-2640338
v.	:	
	:	
WEST PENN POWER COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the proposed exhibits of FirstEnergy Pennsylvania Electric Company on behalf of its West Penn Rate District upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic mail only as follows:

Eugene Bazan & Tania Slawecki
genebazan@aol.com

Deputy Chief Administrative Law Judge
Mark A. Hoyer
mhoyer@pa.gov

Dated: April 25, 2024



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