

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darlene Shedlock	:	
	:	
v.	:	C-2018-3001414
	:	
Pennsylvania Electric Company	:	

**INTERIM ORDER
CLOSING THE HEARING RECORD**

A telephonic evidentiary hearing was held in this proceeding as scheduled on September 4, 2020.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz, et al. v. Pa. Public Utility Commission*,¹ (*Povacz I*), the first of 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 I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission’s March 28, 2019, and May 9, 2019, Orders in Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall. *Povacz I* at 495.²

In light of the Commonwealth Court’s decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, 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

¹ *Povacz, et al. v. Pa. Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020).

² *Id.* at 490.

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.

The Commission, as well as all other parties in *Povacz I* subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania.

On August 16, 2022, the Supreme Court issued its Opinion in *Povacz II*, affirming the Commission’s determinations in all respects. The Supreme Court reversed the Commonwealth Court’s determination that Act 129 does not mandate smart meter installation and that Court’s remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court did, however, affirm the Commonwealth Court’s conclusion that the “Customers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects.”³ The Supreme Court noted that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code, 66 Pa.C.S. § 1501.

Given the Supreme Court’s decision in *Povacz II*, the Commission lifted the stay implemented by the *November 4, 2020, Stay Order* on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

³ *Id.* at 1014.

The Commission entered an Order and Notice, at Docket No. M-2009-2092655, staying the proceeding, on November 4, 2020. The stay was lifted by Order of the Commission on November 9, 2023.

On November 27, 2023, an interim order was entered permitting the parties to file main briefs and any other appropriate requests for relief, on or before January 17, 2024. The order further provided that a copy of all briefs, documents or requests for relief must be sent to the legal assistant for the undersigned presiding officer, by email, to every party.

On January 16, 2023, Complainant provided an email to the legal assistant of the undersigned presiding officer along with a one-page letter and a two-page attachment. The one-page letter appeared to be a summary of the argument to support Complainant's Complaint. The two-page article attached to the letter appears to be a newspaper or magazine article entitled "EMF The Invisible Hazard." The documents were provided by email directed to the legal assistant to the undersigned presiding officer and does not indicate that the attachments were filed or that a copy was provided to counsel for Respondent.

On January 17, 2024, Respondent filed its main brief.

On January 17, 2024, an interim order was entered concluding that the one-page letter from Complainant provided by Complainant to the office of the undersigned presiding officer on January 16, 2024, would be treated as the main brief for Complainant and the two-page article will be treated as an attachment to the main brief of Complainant. The email message was treated as a cover letter from Complainant. The interim order provided that Respondent may file any appropriate motions or objections to the main brief and attachment to the main brief on or before February 5, 2024. Complainant was permitted to file any response to the objections or motion of Respondent, on or before February 12, 2024.

On February 5, 2024, Respondent filed a Motion to Strike the Entirety of Darlene Shedlock's Main Brief (Motion to Strike). Complainant did not file a response to the Motion to Strike. Respondent argued that Complainant's Main Brief should be stricken because it failed to

conform to the Commission’s governing regulations at 52 Pa. Code § 5.501(a) and the directive of the ALJ’s November 27, 2023, Interim Order. Respondent further argued that the Main Brief of Complainant should be stricken as: (1) portions of the Complainant’s Main Brief and attachment thereto rely on or introduce extra record evidence; (2) the attachment to the Complainant’s Main Brief is inadmissible hearsay; (3) portions of the attachment to the Complainant’s Main Brief constitute inadmissible hearsay within hearsay; and (4) the attachment to the Complainant’s Main Brief, to the extent it is considered, lacks authentication and foundation.

On November 27, 2023, the ALJ issued an Interim Order Setting Briefing Schedule, dictating that Main Briefs, if any, were due on or before January 17, 2023. On January 16, 2024, the Complainant sent, via email, to the legal assistant of the undersigned presiding officer, a one-page letter and two-page attachment. The letter and attachment, considered as Complainant’s Main Brief, was not served on the Company by the Complainant.

On March 22, 2024, an Interim Order was entered granting the Motion of Respondent to Strike the Entirety of Darlene Shedlock’s Main Brief and attachment and striking the email provided to the legal assistant of the undersigned presiding officer on January 16, 2023, along with a one-page letter and a two-page attachment entitled “EMF The Invisible Hazard, considered as Complainant’s Main Brief and attachment.

No additional requests for relief were filed since the issuance of the Interim Order entered on March 22, 2024. Under the circumstances, the following order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the record at Docket No. C-2018-3001414 is closed.

2. That an Initial Decision shall be prepared in this proceeding.

Date: June 3, 2024

_____/s/
Jeffrey A. Watson
Administrative Law Judge

C-2018-3001414 - DARLENE SHEDLOCK v. PENNSYLVANIA ELECTRIC COMPANY

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