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June 3, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Thomas and Nora Mosley v. Metropolitan Edison Company
Docket No. C-2018-3001526

Dear Secretary Chiavetta:

Enclosed for filing please find the Answer of FirstEnergy Pennsylvania Electric Company (“Met-Ed Rate District¹”) to the Petition For Rescission of Thomas and Nora Mosely regarding the above-referenced matter. This document has been served on all parties as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Tori Giesler

Enclosures

c: As Per Certificate of Service

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 Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas and Nora Mosely,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2018-3001526
	:	
Metropolitan Edison Company,	:	
	:	
Respondent.	:	

**ANSWER OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY ON BEHALF
OF ITS MET-ED RATE DISTRICT TO
THE PETITION FOR RESCISSION OF THOMAS AND NORA MOSELY**

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Date: June 3, 2024

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FirstEnergy Pennsylvania Electric Company² (“Company”), pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition for Rescission filed by Thomas and Nora Mosely (“Complainants”) on February 16, 2024, and was served on the Company by Secretarial Letter on May 22, 2024 (“Petition”). In their Petition, the Complainants requests that the Pennsylvania Public Utility Commission (“Commission”) rescind its December 18, 2023 Order dismissing their Complaint with prejudice (“December 18, 2023 Order” or “Order”).

The rescission of a Commission Order is an extreme remedy. The Commission can only rescind a prior order: (1) when there is “newly discovered evidence, a substantial change in circumstances, or an error of fact or law”³; and (2) after “conduct[ing] an evidentiary hearing” when the request to rescind or amend the order is opposed.⁴ As explained herein, the Commission should deny the Complainants’ Petition because the Petition is fatally flawed.

Foremost, the Complainants waived all of the arguments raised in their Petition. The Initial Decision of Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) dismissed the Complaint with prejudice on the merits. The Complainants wholly failed to file an Exceptions disputing ALJ Watson’s Initial Decision, which led to the Initial Decision becoming final without further Commission action (in accordance with Section 332(h) of the Public Utility Code) in the Commission’s Order. Under well-established law, a party’s failure to file Exceptions bars them from later raising any arguments that could have been presented in those Exceptions.

² 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 Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

³ *Feleccia v. PPL Elec. Utils. Corp.*, Docket No. C-20016210 (Order entered Mar. 7, 2003) (citation omitted).

⁴ *Armstrong Telecoms., Inc. v. Pa. PUC*, 835 A.2d 409, 420 (Pa. Cmwlth. 2003) (“*Armstrong*”) (citing *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002)).

Here, in their Petition, the Complainants reiterate all the same claims that they raised in their testimony and Main Brief, namely the alleged adverse health effects experienced by the Complainants when in the proximity of smart meters and their lay opinions about the effects of electromagnetic fields (“EMFs”). Therefore, the Complainants could have, but failed to, file Exceptions to preserve those arguments for subsequent stages of the proceeding. As such, the Complainants waived all of the arguments set forth in their Petition, and their Petition should be dismissed accordingly.

Even assuming *arguendo* that the Complainants’ arguments were not waived, the arguments set forth in their Petition fail to meet the strict standard for disturbing a final Commission order. The Commission’s standard for reviewing petitions for rescission following final orders was set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 1982 Pa. PUC LEXIS 4 (Order dated Dec. 17, 1982) (“*Duick*”) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

The Complainants completely fail to meet that standard in their Petition. As noted previously, the Complainants simply reiterate claims that were previously raised in the proceeding, and ultimately, examined and rejected by ALJ Watson and the Commission. Moreover, no newly discovered evidence, substantial change in circumstances, or change in law is presented in the Petition. Also, to the extent there was any change in law, the Complainants completely disregard

the Pennsylvania Supreme Court’s holding in *Povacz II*,⁵ where the Court found that: (1) Act 129 of 2008 (“Act 129”) mandates the systemwide installation of smart meters; (2) the Commission 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.”⁶ Consequently, the Court’s holding in *Povacz II* only bolsters the Commission’s decision to dismiss the Complaint with prejudice.

For these reasons, and as explained in more detail herein, the Complainants’ Petition should be denied.

I. INTRODUCTION AND BACKGROUND

1. On or about April 25, 2018, the Complainants filed a Formal Complaint with the Commission to dispute the installation of a smart meter by the Company at 197 Foreghill Road, Hamburg, Pennsylvania 19526 (“Service Location”).

2. On May 21, 2018, the Company filed its Answer denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

3. On June 26, 2018, a Motion Judge Assignment Notice was issued assigning ALJ Watson as the Presiding Officer in this proceeding.

4. On July 24, 2018, ALJ Watson issued a Preliminary Order denying the Company’s Preliminary Objections.

⁵ See *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (“*Povacz I*”).

⁶ See *id.*, at 1014.

5. On October 18, 2018, ALJ Watson issued an Interim Order Establishing Initial Litigation Schedule.

6. On November 20, 2018, the Company filed a Motion to Compel seeking an Order requiring the Complainant to respond to discovery requests issued by the Company.

7. On February 14, 2019, ALJ Watson issued an Interim Order Granting Motion of Metropolitan Edison Company to Compel Responses to Interrogatories and Document Requests, which required the Complainants to provide responses to the Company's discovery requests no later than March 8, 2019.

8. On March 13, 2019, ALJ Watson issued an Interim Order Revising Initial Litigation Schedule. On this same day, ALJ Watson issued an Interim Order Permitting Either Party to Request a Prehearing Conference.

9. On March 25, 2019, ALJ Watson issued an Interim Order Requiring Parties to Confer to Schedule Hearing Date.

10. On July 26, 2019, ALJ Watson issued an Interim Order Providing for Revised Litigation Schedule and Setting Deadline for Filing of Motions *In Limine* or Dispositive Motions.

11. On September 3, 2019, a Telephonic Hearing Notice was issued, scheduling a telephonic evidentiary hearing in this matter for November 6, 2019.

12. On October 1, 2019, ALJ Watson issued an Interim Order Confirming Requirements for Evidentiary Hearing.

13. On November 1, 2019, ALJ Watson issued an Interim Order Addressing Complainants' Request for Clarification in response to a filing made by the Complainants.

14. On November 6, 2019, a telephonic evidentiary hearing was held, during which the parties presented their testimony and exhibits.

15. On December 20, 2019, an Interim Order Setting Briefing Schedule was issued requiring the parties to submit any briefs in this matter on or before January 22, 2020.

16. On January 10, 2020, the Complainants filed their Main Brief.

17. On January 22, 2020, the Company filed its Main Brief.

18. By Secretarial Letter dated September 16, 2020, the Commission served ALJ Watson's Initial Decision dismissing the Complaint with prejudice. Under the Secretarial Letter, Exceptions were due within 20 days, *i.e.*, by October 6, 2020.

19. No Exceptions were filed by any party.

20. On November 4, 2020, the Commission issued an Order at Docket No. M-2009-2092655 staying all smart meter complaint proceedings that were then pending before the Commission.

21. On November 14, 2023, the Commission lifted the stay imposed by the November 4, 2020 Order.

22. On December 18, 2023, the Commission entered its Final Order adopting the Initial Decision and dismissing the Complaint with prejudice.

23. On January 10, 2024, the Complainants filed their Petition for Rescission. However, they failed to include a Certificate of Service or serve the Company with the filing.

24. On May 22, 2024, by Secretarial Letter, the Commission served the Company with the Petition and stated that the Company had 10 days from the date of the Secretarial Letter, *i.e.*, until June 3, 2024.

25. For the reasons explained below, the Complainants' Petition lacks merit and should be denied.

II. LEGAL STANDARDS

26. The Commission’s standard for reviewing petitions for rescission following final orders was set forth in *Duick* (emphasis added)⁷:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

27. The *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Duick*, 56 Pa. P.U.C. 553, 559.

28. In addition, for petitions for rescission specifically, the Commission has stated that “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” *Feleccia v. PPL Elec. Utils. Corp.*, Docket No. C-20016210 (Order entered Mar. 7, 2003) (citing *Duick* at 559).

29. Further, the Commonwealth Court has held that “because the relief of rescission or amendment under Section 703(g) may result in the disturbance of final orders,” a petition for rescission “should be granted judiciously and only under appropriate circumstances.” *W. Penn*

⁷ See *Petition of Elite Energy Solutions, LLC for Rescission of the Pa. PUC’s Final Order entered Aug. 25, 2020 and Reinstatement of Its License to Operate as a Broker/Marketer of Elec. Gen. Supplier Servs.*, 2021 Pa. PUC LEXIS 226, at *4-5 (Order entered June 17, 2021) (stating that the *Duick* standards govern petitions for rescission or amendment).

Power Co. v. Pa. PUC, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995) (emphasis added) (citing *City of Pittsburgh v. Pa. Dep't of Transp.*, 416 A.2d 461 (Pa. 1980)).

30. As explained below, the Complainants' Petition should be denied because: (1) the Complainants waived all of the arguments raised in their Petition because they failed to file Exceptions to the Initial Decision; and (2) even assuming *arguendo* that they did not waive their claims, none of the Complainants' arguments meet the high legal standard for rescission of a Commission order.

III. ARGUMENT

A. THE COMPLAINANTS' REQUEST FOR RESCISSION OF THE COMMISSION'S ORDER SHOULD BE DENIED

1. The Complainants Waived All of the Arguments Set Forth in their Petition Because They Failed to File Exceptions to the Initial Decision

31. The Commission should deny the Complainants' Petition outright because the Complainants waived all of the argument raised therein when they failed to file Exceptions to the Initial Decision. As noted previously, it is well-established that parties waive any arguments that they fail to raise in their Exceptions and properly preserve for appeal. *See Merritt v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at *9-10 (Order entered Mar. 31, 2011) (quoting *Generic Investigation Regarding Transp. Assessments*, Docket No. I-2008-2022003 (Order entered Aug. 26, 2008)). Indeed, "[i]n the interest of judicial economy," the Commission "will not grant reconsideration based on an argument which that same party abandoned earlier in the proceedings."⁸ *Id.*

⁸ Notably, both petitions for reconsideration and petitions for reconsideration are filed pursuant to Section 703 of the Public Utility Code and evaluated under the *Duick* standard. *See* 66 Pa.C.S. § 703(g); *Feleccia v. PPL Elec. Utils. Corp.*, Docket No. C-20016210 (Order entered Mar. 7, 2003) (citing *Duick* at 559).

32. Here, the Complainants failed to file any Exceptions to ALJ Watson’s Initial Decision dismissing their Complaint. If the Complainants disagreed with the Initial Decision, they had the opportunity to file Exceptions by October 6, 2020. In fact, only now years later, are the Complainants even disputing the Initial Decision’s findings. Therefore, the Complainants waived any arguments that were raised or could have been raised in those Exceptions and cannot re-raise them in a later stage of the proceeding, including in the Complainants’ Petition. For this reason alone, the Commission should deny the Complainants’ Petition.

2. Even if the Complainants Did Not Waive their Arguments, the Complainants’ Petition Re-Raises the Same Arguments Already Considered and Rejected by the Commission

33. The Commission also should deny the Petition because the Complainants fail to establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.⁹ In their Petition, the Complainants assert that they have “New Arguments” based around the alleged effects smart meters can have on the Complainants’ health and the general public. Petition at 1-2. For example, the Complainants aver that they “must limit other establishments and go to [their] Doctors and Hospitals only”; (2) “[t]he Smart Meter is a weaponized EMF device that emits dangerous ‘pulsed radiation’ and [is] hazardous to human health”; (3) “[f]atigue, insomnia + heart palpitations are but a few of many EMF health effects”; and the “Smart Meter would absolutely compromise [their] health even more.” *Id.*

34. However, in the Initial Decision, ALJ Watson considered and rejected the Complainants’ arguments that the installation of a smart meter would constitute unreasonable or inadequate service. *See ID* at 11-16. Relevant to the Complainants’ Petition, the Complainants’

⁹ *See Feleccia v. PPL Elec. Utils. Corp.*, Docket No. C-20016210 (Order entered Mar. 7, 2003) (citing *Duick* at 559).

arguments included the claim that the installation of a smart meter would cause, contribute to, or exacerbate adverse health effects. *See* ID at 13. Specifically, ALJ Watson observed:

Regarding her health concerns, Ms. Mosley testified she suffers from various conditions including “severe asthma” and migraines, has had operations on her spine and heart, and has artificial valves in her heart. She testified that she is sensitive to the “EMF and RF fields” emitted by smart meters and cannot go into any structure where a smart meter has been installed. She testified she fears for her health and has suffered stress and anxiety as a result this case. She offered some of her medical records into evidence. Notably, her doctor writes, “Norma mentioned that a new ‘smart meter’ instead of analog electric meter is about to be installed outside her home. She is very distressed by that thought. I have no competence to evaluate the effect of such ‘smart meter’ on people’s health. In general, however, I can see that this is very distressing for Norma generating high anxiety in her case and that could definitely affect her well-being and overall health.”

Id. (footnotes omitted).

35. In the ID, ALJ Watson rejected these claims because “much of Complainant’s testimony was related to issues outside the scope of her personal knowledge and was based on hearsay,” and “[a]ll such testimony was properly excluded upon objection.” ID at 15. “While Complainants undoubtedly suffer from various medical issues,” ALJ Watson concluded “there is insufficient evidence in the hearing record to show that the installation of a smart meter at the service location would constitute unreasonable or inadequate service under Section 1501.” ID at 16. The Commission subsequently entered its Order adopting ALJ Watson’s Initial Decision, as the Initial Decision became final without further action due to the Complainants’ failure to file Exceptions.

36. Accordingly, the Complainants’ Petition simply reiterates the same health-related arguments that were previously raised and rejected by ALJ Watson in his Initial Decision and, by extension, the Commission in its Order. Thus, the Commission should deny their Petition for

Rescission because the Complainants failed to establish the existence of newly discovered evidence, a substantial change in circumstances,¹⁰ or an error of fact or law.

¹⁰ To the extent there was any change in law, the Complainants completely disregard the Pennsylvania Supreme Court's holding in *Povacz II*, where the Court found that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the Commission applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an 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." See *Povacz II* at 1014.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, FirstEnergy Pennsylvania Electric Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Rescission filed by Thomas and Nora Mosely in its entirety.

Respectfully submitted,



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Date: June 3, 2024

Attorney for Pennsylvania Electric Company
(Met-Ed Rate District)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS AND NORA MOSLEY

v.

METROPOLITAN EDISON COMPANY

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DOCKET NO. C-2018-3001526

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the aforementioned document 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, as follows:

Administrative Law Judge Jeffrey A. Watson
Jeffwatson@pa.gov

Service by First Class Mail, postage prepaid, as follows:

Thomas Mosley and Norma Mosley
197 Foreghill Road
Hamburg, PA 19526

Dated: June 3, 2024



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