

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Smiles	:	
	:	
v.	:	C-2021-3026268
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Jeffrey Smiles challenging PPL Electric Utilities Corporation’s installation of a smart meter at his service address. The Formal Complaint raises the same issues that have been fully litigated previously before the Pennsylvania Public Utility Commission which dismissed Jeffrey Smiles’ prior complaint. Therefore, Jeffrey Smiles is barred by Section 316 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 316, from relitigating the same claims in the instant Formal Complaint.

HISTORY OF THE PROCEEDING

On November 4, 2020, the Pennsylvania Public Utility Commission (“Commission”) entered an Order at Docket No. M-2009- 2092655 staying certain Commission proceedings involving challenges to the deployment of smart meter technology by an electric distribution company (“EDC”). *See Smart Meter Procurement and Installation*, M-2009-2092655 (Order entered Nov. 4, 2020) (“2020 Stay Order”). More specifically, the 2020 Stay Order directed the stay of all active formal complaint proceedings before the Commission

involving challenges to an EDC's deployment of smart meter technology as being in violation of Section 1501 of the Pennsylvania Public Utility Code ("Code"). 2020 Stay Order, Ordering Paragraph No. 1. The 2020 Stay Order additionally provided that any Formal Complaints filed with the Commission on or after the entry date of the Order challenging an EDC's deployment of smart meter technology as being in violation of Section 1501 of the Code are to be stayed. 2020 Stay Order, Ordering Paragraph No. 2. Further, the 2020 Stay Order provided that EDC's may not terminate electric service to any customer who has a pending proceeding before the Commission challenging an EDC's deployment of smart meter technology as being in violation of Section 1501 of the Code due to the customer's refusal to allow the utility access to their meter for purposes of replacement pending a final Commission Order on that proceeding. 2020 Stay Order, Ordering Paragraph No. 3.

On May 24, 2021, Jeffrey W. Smiles ("Complainant") filed a Formal Complaint with the Commission against PPL Electric Utilities Corporation ("Respondent" or "PPL"), seeking to prevent the installation of a smart meter at his service address. Complainant stated that Respondent issued him a shut off notice on March 3, 2021, for his refusal to allow Respondent access to his meter for the purposes of smart meter replacement. Complainant attached the March 3, 2021, shut off notice to his Complaint. Complainant argued that installation of a smart meter at his service address would be in violation of Section 1501 of the Code,¹ the Commission's Emergency Order at *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Emergency Order entered Mar. 13, 2020) ("Emergency Order") and the decision of the Commonwealth Court of Pennsylvania ("Commonwealth Court") in *Povacz v. Pennsylvania Public Utility Commission.*, 241 A.3d 481 (Pa. Cmwlth. 2020) ("*Povacz I*").² As it relates to *Povacz I*, Complainant argued that Act 129³ does not mandate the installation of smart meters.

¹ Section 1501 of the Code provides that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S § 1501.

² Complainant also mentioned the 2020 Stay Order in his Formal Complaint, although based on my reading of his Complaint, Complainant seems to believe that the 2020 Stay Order and the Emergency Order are one in the same.

³ 66 Pa.C.S. §§ 2806.1–2807 ("Act 129").

As to the requested relief, Complainant requested that Respondent be ordered to comply with the Orders of the Commission and that Respondent continue measuring his electric use with the current electromechanical analog meter or by replacing it, if necessary, with an analog meter of similar design, build and operation. Complainant additionally seeks the imposition of a fine or penalty for Respondent's alleged violation of the Emergency Order and compensation for his suffering caused by the intentional infliction of emotional distress and physical abuse allegedly caused by Respondent.

The Formal Complaint was served on Respondent on June 7, 2021.

On June 28, 2021, Respondent filed its Answer with New Matter to the Formal Complaint. In its Answer, Respondent admitted that it sent Complainant a termination notice for failure to provide Respondent access to his property to install a smart meter. Respondent further argued that Complainant's reliance on *Povacz I* is misplaced, as the Commonwealth Court's decision is under review by the Supreme Court of Pennsylvania. In its New Matter, which was properly endorsed with a Notice to Plead, Respondent argued that the Formal Complaint is barred by Section 316 of the Code and the doctrines of *res judicata* and collateral estoppel because the Commission dismissed Complainant's prior complaint at Docket No. C-2018-3003895 ("2018 Complaint") challenging the installation of a smart meter at the same service address involved in the instant proceeding.

Also, on June 28, 2021, Respondent filed Preliminary Objections to the Formal Complaint arguing that the Complaint was legally insufficient under 52 Pa. Code § 5.101(a)(4) because the Commission dismissed the 2018 Complaint, barring Complainant from filing the Formal Complaint under Section 316 of the Code. Respondent also argued that the Formal Complaint included impertinent matter under 52 Pa. Code § 5.101(a)(2) based on the Complaint's request for damages. The Preliminary Objections were endorsed with a Notice to Plead.

On July 22, 2021, Administrative Law Judge ("ALJ") Jeffrey A. Watson was assigned as Presiding Officer to this proceeding.

On July 28, 2021, Complainant submitted a Petition for Extension of Time to file a response to Respondent's New Matter and Preliminary Objections.

On July 29, 2021, ALJ Watson granted Complainant's Petition.

On August 8, 2021, Complainant filed his Response/Reply to Respondent's New Matter. In his Response, Complainant argued that the Formal Complaint is not a rehash of the 2018 Complaint because of a change in "facts, knowledge, and information" regarding Act 129.

Complainant did not file an Answer to Respondent's Preliminary Objections.

On January 23, 2023, the Commission issued ALJ Watson's Order staying this proceeding pursuant to the 2020 Stay Order.

On November 11, 2023, the Commission lifted its 2020 Stay Order. *Smart Meter Procurement and Installation*, M-2009-2092655 (Order entered Nov. 11, 2023) ("Order Lifting Stay"). The Order Lifting Stay also provided that, as the date of the Order, EDCs may commence termination proceedings due to the customer's refusal to allow the utility access to their meter for purposes of replacement, consistent with the Code, Commission Regulations, Commission Orders and Commission-approved Tariff. Order Lifting Stay, Ordering Paragraph No. 2.

On November 28, 2023, the Commission issued a Notice reassigning this matter from ALJ Watson to ALJ Chad Allensworth and scheduling a prehearing conference for January 22, 2024.

On December 6, 2023, ALJ Allensworth issued a prehearing conference Order, holding the Preliminary Objections in abeyance and establishing the rules for the prehearing conference.

On January 17, 2024, the Commission issued a Notice cancelling the January 22, 2024, prehearing conference.

On February 29, 2024, the Commission issued a Judge Change Notice reassigning this matter from ALJ Allensworth to the undersigned ALJ.

On March 5, 2024, the Commission issued a Notice scheduling this matter for a prehearing conference on April 15, 2024.

On March 15, 2024, the Commission issued my prehearing conference Order establishing the rules for the prehearing conference.

On April 9, 2024, Complainant filed a Motion for continuance of the prehearing conference.

On April 12, 2024, PPL filed a Letter in lieu of answer to the Motion for continuance. In its Letter, Respondent asked that the undersigned rule on its Preliminary Objections.

On April 15, 2024, I issued an Interim Order granting Complainant's Motion for continuance. The prehearing conference was formally cancelled via a Notice issued on the same date.

Respondent's Preliminary Objections, which will be treated as a Motion for Judgement on the Pleadings, are procedurally ready to be ruled upon and, for the reasons discussed below, will be granted.

FINDINGS OF FACT

1. Complainant in this proceeding is Jeffrey Smiles.

2. Respondent in this proceeding is PPL Electric Utilities Corporation.

3. On May 24, 2021, Complainant filed a Formal Complaint with the Commission, wherein he challenged the installation of a smart meter at his service address, arguing that installation of a smart meter would be in violation of Section 1501 of the Code, the Commission's Emergency Order, and *Povacz I*.

4. In his Complaint, Complainant also stated that he received a shut off notice from Respondent on March 3, 2021, for his refusal to grant Respondent access to his meter for smart meter installation.

5. On June 28, 2021, Respondent filed an Answer with New Matter to the Complaint.

6. In its New Matter, Respondent argued that the Complaint is barred by Section 316 of the Code and the doctrines of *res judicata* and collateral estoppel because Complainants already challenged smart meter installation at his service address in a prior proceeding at Docket No. C-2018-3003895 wherein the Commission dismissed his complaint.

7. Also, on June 28, 2021, Respondent filed Preliminary Objections to the Complaint arguing that the Complaint was legally insufficient under 52 Pa. Code § 5.101(a)(4) because the Commission dismissed Complainant's prior complaint challenging installation of a smart meter thereby barring the current Complaint under Section 316 of the Code. Respondent also argued that the Complaint included impertinent matter under 52 Pa. Code § 5.101(a)(2) based on the Complaint's request for damages.

8. On August 8, 2021, Complainant filed his Response to Respondent's New Matter, arguing that the Formal Complaint is not a rehash of his prior complaint because of a change in "facts, knowledge, and information" regarding Act 129.

9. In the Complaint filed at Docket No. C-2018-3003895, Complainant sought to prevent smart meter installation at the same service address that is the subject of the Formal Complaint proceeding at Docket No. C-2021-3026268, raising health, safety, and privacy concerns, and arguing that he could “opt-out” of smart meter installation.

10. On July 12, 2019, the assigned ALJ’s initial decision was issued dismissing the Complaint at C-2018-3003895, finding that Complainant did not meet his burden of proof regarding the issues that he raised in his complaint.

11. On August 23, 2019, the ALJ’s initial decision dismissing Complainant’s complaint filed at C-2018-3003895 became final without further Commission action.

12. On August 27, 2020, the Commission entered an Opinion and Order at Docket No. C-2018-3003895 denying Complainant’s petition for rehearing or reconsideration of the complaint filed at that docket.

DISCUSSION

Legal Standards

Respondent in this matter filed Preliminary Objections to the Formal Complaint. The Commission’s regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.

- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

In its Preliminary Objections, Respondent asserted that the Formal Complaint is barred by Section 316 of the Code and is therefore legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4).⁴ Section 316 of the Code, 66 Pa.C.S. § 316, expressly establishes the finality of Commission action stating in relevant part, the following:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316. Under Section 316 of the Code, a complainant is prohibited from raising issues that were previously decided. 66 Pa.C.S. § 316; *Moore, Jr. v. PECO Energy Co.*, Docket No. C-2012-2309932 (Opinion and Order entered Oct. 24, 2012); *Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Order entered May 21, 2020) (“*Denlinger*”). As such, Section 316 of the Code precludes a collateral attack on Commission orders which have not been set aside, annulled, or modified on judicial review. 66 Pa.C.S. § 316.

Procedural issue

Before I address Respondent’s argument that the Formal Complaint is barred by Section 316 of the Code, I will first address the procedural issue presented by Respondent in

⁴ Respondent also asserted in its Preliminary Objections that a portion of the Formal Complaint should be dismissed as impertinent matter, pursuant to 52 Pa. Code § 5.101(a)(2). As this Initial Decision finds that the Formal Complaint is barred pursuant to Section 316 of the Code and dismisses the Formal Complaint in its entirety, this argument will not be addressed.

raising this argument in Preliminary Objections and not in a Motion for Judgment on the Pleadings.

A preliminary objection based on legal insufficiency is referred to as a demurrer. “A court should sustain preliminary objections in the nature of a demurrer only where it appears from the face of the complaint that recovery upon the facts alleged is not permitted as a matter of law.” *220 Partnership v. Phila. Elec. Co.*, 650 A.2d 1094, 1096 (Pa. Super. 1994). “When considering a demurrer[,] a court cannot consider matters collateral to the complaint but must limit itself to such matters as appear therein.” *Id.* The Formal Complaint did not make mention of the 2018 Complaint, which must be considered for the purpose of resolving Respondent’s argument raised in its Preliminary Objections.

Therefore, I will treat Respondent’s Preliminary Objections as a Motion for Judgment on the Pleadings, filed pursuant to 52 Pa. Code § 5.102, and I will consider the issue of the previously litigated case at C-2018-3003895. Pursuant to Section 1.2(a) of the Commission’s regulations, a presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties in order to secure a just, speedy and inexpensive determination of a proceeding. 52 Pa. Code § 1.2(a). Here, Complainant’s substantive rights will not be affected since Complainant had notice of the issue and the opportunity to respond because Respondent’s argument was raised in its New Matter⁵ and Preliminary Objections. Complainant did in fact respond to Respondent’s New Matter, wherein he acknowledged the 2018 Complaint.

Further, treating Respondent’s Preliminary Objections as a Motion for Judgment on the Pleadings mirrors Commission decisions that treated Preliminary Objections raising the affirmative defense of *res judicata* as a Motion for Judgment on the Pleadings when the issue was raised in New Matter in addition to the Preliminary Objections. *See, e.g., Raintree Farm Solar v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2621826 (Order entered Jan. 16, 2018);

⁵ (b) *Answers raising new matter.* An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of “New Matter.” A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading. 52 Pa. Code § 5.62(b).

Spirat v. Metro. Edison Co., Docket No. C-2018-3005589 (Order entered Mar. 28, 2019); *Denlinger*. The doctrine of *res judicata*, like Section 316 of the Code, acts to preclude collateral attack of final orders rendered in proceedings brought before the Commission.⁶ For consistency and clarity, I will refer to Respondent’s Preliminary Objections as a Motion for Judgment on the Pleadings for the remainder of this Initial Decision.

Motion for Judgment on the Pleadings

The Commission’s Regulations at 52 Pa. Code § 5.102 governs Motions for Judgment on the Pleadings. 52 Pa. Code § 5.102. The Commission will grant a Motion for Judgment on the Pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). Only in a case where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Serv. Emps. Int’l Union, Local 69, AFL-CIO v. The Peoples Nat. Gas Co., d/b/a Dominion Peoples*, Docket No. C-20028539 (Opinion and Order entered Dec. 19, 2003). In ruling on a Motion for Judgment on the Pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits. Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O’Brien*, 496 A.2d 913 (Pa. Super 1985).

Thus, to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. All of the opposing party’s well-pleaded allegations are viewed as true but only those facts admitted by him may be considered against him. *Beardell v. W. Wayne Sch. Dist.*, 496 A.2d 1373 (Pa. Cmwlth. 1985). In short, in order for Respondent’s motion to be granted, no material facts may

⁶ Under *res judicata*, when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to that case and their privies are thereafter bound “not only as to every matter which was offered and received, but also as to any other admissible matter which might have been offered.” *Commission v. Sunnen*, 333 U.S. 591 (1948).

be at issue and based upon those facts Respondent must be entitled to a judgment as a matter of law. *Id.*

Analysis

The question of whether there are material facts at issue in this proceeding will be addressed first.

In the Formal Complaint, Complainant seeks to prevent installation of a Respondent smart meter at his service address. Complainant filed his Formal Complaint after receiving a shut off notice on March 3, 2021, for his refusal to permit Respondent access to his meter for smart meter installation. In explaining his basis for filing the Formal Complaint, Complainant explained as follows:

This complaint is based on New Matter and recent court decisions that impact PPL's aggressive and recalcitrant behavior toward private homeowners and their right to decline the installation of a wireless smartmeter.

Complaint, p. 4. Complainant went on to argue in his Formal Complaint that installation of a smart meter at his service address would be in violation of Section 1501 of the Code, the Commission's Emergency Order, and *Povacz I*.

The Formal Complaint presents legal questions regarding the application of the Emergency Order and *Povacz I* to the installation of a smart meter at Complainant's service address. The facts raised in the Formal Complaint surround Respondent's issuance of the March 3, 2021, shut off notice to Complainant for Complainant's refusal to provide Respondent access to his meter for smart meter installation. In its Answer, Respondent admits that it issued Respondent a March 3, 2021, shut off notice to Complainant for his refusal to grant Respondent access to his meter for smart meter installation. Therefore, there are no facts at issue between the parties as the only questions presented in the Formal Complaint are those of a legal nature.

There is no genuine issue as to material fact in this proceeding, pursuant to 52 Pa. Code § 5.102(d)(1).

Having determined that there is no genuine issue as to material fact in this proceeding, the question that remains with respect to whether Respondent's Motion for Judgment on the Pleadings should be granted is whether Respondent is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). In that regard, Respondent argued that the Formal Complaint attempts to relitigate the same issues dismissed by the Commission in the 2018 Complaint proceeding. Therefore, Respondent argued, the Formal Complaint is barred pursuant to Section 316 of the Code.

In the 2018 Complaint, Complainant sought to prevent installation of a Respondent smart meter at his service address, raising health, safety, and privacy concerns, and arguing that he could "opt-out" of smart meter installation. An evidentiary hearing was held concerning the 2018 Complaint, where Complainant had full opportunity to present evidence in support of his claims. Indeed, Complainant presented testimony addressing his health concerns (2018 Complaint, Tr. 14), safety concerns (2018 Complaint, Tr. 13), privacy concerns (2018 Complaint, Tr. 14), and his belief that he could "opt-out" of smart meter installation (2018 Complaint, Tr. 14). Following the hearing the assigned ALJ issued an Initial Decision, making 51 findings of fact and 16 conclusions of law, finding that Complainant failed to meet his burden of proof in regard to his claims and dismissing the Complaint. *Smiles v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003895 (Initial Decision issued July 12, 2019). The Initial Decision became final without further Commission action. *Smiles v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003895 (Final Order entered Aug. 23, 2019). Complainant filed a petition for rehearing or reconsideration of the 2018 Complaint matter, which was denied by the Commission. *Smiles v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003895 (Opinion and Order entered Aug. 27, 2020).

In the instant Formal Complaint, Complainant again seeks to prevent installation of a Respondent smart meter at the same service address that was the subject of the 2018 Complaint. In reply to Respondent's argument in its New Matter that the Formal Complaint is

barred by virtue of the Commission’s dismissal of the 2018 Complaint, Complainant argued that the Formal Complaint is not a rehash of the 2018 Complaint because of a change in “facts, knowledge, and information” regarding Act 129. Complainant explains the change in “facts, knowledge, and information” regarding Act 129 as follows:

Complainants’ case rests on the Commonwealth Court’s finding that last October in *Povacz, et. al.* that § 2807(f)(2)(iii), which does not require every customer to avail himself of every aspect of [smart meter] technology. Notably, several provisions of Act 129 contemplate customer choice in the degree to which smart meter technology is used. It also involves PPL Electric Utilities’ violation of Emergency Order M-2020-3019244.

Reply to Answer and New Matter, p. 3.

In sum, Complainant’s argument is that the Emergency Order and *Povacz I* represent a change in law regarding the installation of smart meters that warranted the filing of the instant Formal Complaint. Complainant argues that he can “opt-out” of smart meter installation, and that installing a smart meter at his service address would violate the Emergency Order and *Povacz I*. I will address and reject Complainant’s legal arguments below, and conclude that Complainant’s Formal Complaint is indeed barred by Section 316 of the Code.

The Povacz decisions

The Commission in resolving the 2018 Complaint dismissed Complainant’s claim that he could “opt-out” of smart meter installation, finding that he did not meet his burden of proof as it relates to that issue. The Commonwealth Court issued its decision in *Povacz I* following the Commission’s resolution of the 2018 Complaint. In his current Complaint, Complainant relies on *Povacz I* for the proposition that he can now “opt-out” of smart meter installation.

Povacz I dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company. In its holding, the Commonwealth Court held, amongst other things, that Act 129 does not mandate the installation of smart meters, and that the

Commission had the authority to grant customers accommodations based on their health concerns. *Povacz I* at 490. However, upon review of the Commonwealth Court’s decision, the Supreme Court of Pennsylvania held, amongst other things, that there is no “opt-out” provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz v. Pa. Pub. Util. Comm’n.*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

Given the Supreme Court’s reversal of the Commonwealth Court’s holding that Act 129 does not mandate the installation of smart meters, Complainant’s reliance on *Povacz I* for the proposition that he may now “opt-out” of smart meter installation is incorrect, and his legal argument in this regard will be rejected. As the law concerning Complainant’s ability to “opt-out” of smart meter installation has not changed since the resolution of his 2018 Complaint, the Commission’s determination regarding that issue in the 2018 Complaint remains conclusive on Complainant. 66 Pa.C.S. § 316.

*Emergency Order, M-2020-3019244*⁷

Complainant relies on the Emergency Order for the proposition that Respondent cannot terminate his service based on his refusal to permit Respondent access to his meter for smart meter installation. Complainant indicated that he received a shut off notice on March 3, 2021, for his refusal to provide Respondent access to his meter for smart meter installation.

On March 13, 2020, the Commission’s Emergency Order was entered establishing an absolute moratorium on the termination of utility services. The Emergency Order was entered in response to the March 6, 2020, Proclamation of Disaster Emergency issued by then Governor Tom Wolf in response to the COVID-19 pandemic. The Emergency Order was ratified by the Commission at its March 26, 2020, Public Meeting. On October 13, 2020, the Commission modified its Emergency Order, lifting the absolute moratorium on the termination of utility

⁷ See n.2 supra.

services to a less restrictive phase. *See Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered Oct. 13, 2020). Pursuant to this modification of the Emergency Order, utilities were permitted to terminate utility service, absent certain restrictions, effective November 9, 2020. *Id.* These restrictions generally applied to customers who would be subject to termination due to an unpaid balance, not to customers who would be subject to termination due to refusal to permit utility access to their meter. *Id.* By Commission Order entered on March 18, 2021, the Emergency Order was again modified, and the moratorium was lifted in its entirety. *See Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Order entered Mar. 18, 2021). Pursuant to this modification of the Emergency Order, termination of utility services was permitted to commence effective April 1, 2021. *Id.*

The instant Complaint was filed by Complainant on May 24, 2021. The shut off notice that Complainant complains of was issued on March 3, 2021. As detailed above, Respondent would not have been in violation of the Emergency Order for moving to terminate Complainant's service for failure of Complainant to provide access to his meter because the moratorium was in its less restrictive phase at that point. Therefore, Complainant's legal argument in this regard is rejected. Even under the assumption that the Emergency Order would have still applied to Respondent's actions past November 9, 2020, the moratorium was lifted in its entirety effective April 1, 2021. Thus, Complainant's argument concerning violation of the Emergency Order is also moot.

2020 Stay Order, M-2009-2092655

To the extent that Complainant in his pleadings additionally argues that smart meter installation would be in violation of the 2020 Stay Order, this argument will also be rejected. The 2020 Stay Order, effective November 4, 2020, amongst other things provided that EDCs may not terminate electric service to any customer who has a **pending proceeding** before the Commission challenging an EDC's deployment of smart meter technology as being in violation of Section 1501 of the Code, due to the customer's refusal to allow the utility access to their meter for purposes of replacement pending a final Commission Order on that proceeding.

2020 Stay Order, Ordering Paragraph No. 3 (emphasis added). Respondent was not in violation of the 2020 Stay Order when it issued its March 3, 2021, termination notice because at the time of its issuance, Complainant did not have a pending smart meter proceeding before the Commission. Complainant filed the instant Formal Complaint on May 24, 2021. Furthermore, the 2020 Stay Order was lifted on November 14, 2023, by the Order Lifting Stay, which provided that, as the date of the Order, EDCs may commence termination proceedings due to the customer's refusal to allow the utility access to their meter for purposes of replacement, consistent with the Pennsylvania Public Utility Code, Commission Regulations, Commission Orders and Commission-approved Tariff. Order Lifting Stay, Ordering Paragraph No. 2. Thus, Complainant's argument concerning violation of the 2020 Stay Order is also moot.

Section 316 of the Code

Having rejected Complainant's arguments that the law has changed to warrant the filing of the Formal Complaint, I conclude that the Formal Complaint is barred, by virtue of the Commission's determinations and Orders in the 2018 Complaint proceeding, pursuant to Section 316 of the Code. Setting aside the legal arguments addressed and rejected above, the issues present in the Formal Complaint are the same issues addressed and resolved by the Commission in the 2018 Complaint, i.e., whether Complainant can "opt-out" of smart meter installation at his service address and if smart meter installation at the service address constitutes a violation of Section 1501 of the Code. After a full evidentiary hearing on the merits of Complainant's claims, the Commission dismissed Complainant's issues raised in the 2018 Complaint. In that matter, the Commission concluded that Complainant could not "opt-out" of smart meter installation, and that he did not meet his burden of proving that smart meter installation at his service address would violate Section 1501 of the Code. The Commission's determination and Orders in the 2018 Complaint proceeding have not been set aside, annulled, or otherwise overturned. 66 Pa.C.S. § 316.

I therefore conclude that the Formal Complaint in this matter is barred by 66 Pa.C.S. § 316. As Respondent has established that there are no genuine issues as to a material fact, and that it is entitled to a judgment as a matter of law, Respondent's Motion for Judgment

on the Pleadings will be granted. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth 1993). The Formal Complaint will be dismissed without a hearing in the Ordering paragraphs, below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a).
3. The Commission's regulations permit the filing of preliminary objections on the ground of legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(4).
4. A presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties in order to secure a just, speedy and inexpensive determination of a proceeding. 52 Pa. Code § 1.2(a).
5. Section 5.102 of the Commission's Regulations permit the filing of Motions for Judgment on the Pleadings. 52 Pa. Code § 5.101.
6. The Commission will grant a Motion for Judgment on the Pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

7. Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. 66 Pa.C.S. § 316.

8. Under Section 316 of the Code, a complainant is prohibited from raising issues that were previously decided. 66 Pa.C.S. § 316; *Moore, Jr. v. PECO Energy Co.*, Docket No. C-2012-2309932 (Opinion and Order entered Oct. 24, 2012); *Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Order entered May 21, 2020).

9. 66 Pa.C.S. § 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. 66 Pa.C.S. § 316.

10. There is no “opt-out” provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz v. Pa. Pub. Util. Comm’n.*, 280 A.3d 975 (Pa. 2022); 66 Pa.C.S. § 2807.

11. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21(d).

12. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n.*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n.*, 623 A.2d 6 (Pa. Cmwlth 1993).

13. The instant Formal Complaint is barred by 66 Pa.C.S. § 316.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's Preliminary Objections, treated as a Motion for Judgement on the Pleadings, in the matter of Jeffrey Smiles v. PPL Electric Utilities Corporation, Docket No. C-2021-3026268, are granted.

2. That the Formal Complaint filed by Jeffrey Smiles at Jeffrey Smiles v. PPL Electric Utilities Corporation, Docket No. C-2021-3026268 is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2021-3026268 as closed.

Date: June 12, 2024

/s/
Alphonso Arnold III
Administrative Law Judge