

July 2, 2024

VIA ELECTRONIC FILING

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

RE: **Docket No. C-2021-3026268**

Secretary Chiavetta:

Enclosed for filing are the Complainants' *Reply Exceptions*, including *Exceptions to the Initial Decision of ALJ Issued on June 12, 2024, by Administrative Law Judge Granting PPL Electric Utilities Corporation's Motion to dismiss* in the above-referenced proceeding.

Respectfully submitted,

// Jeffrey W. Smiles ,

Jeffrey W. Smiles

CERTIFICATE OF SERVICE

I, Jeffrey Smiles, hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: July 2, 2024
By: // Jeffrey W. Smiles

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Smiles

vs.

**PPL ELECTRIC UTILITIES
CORPORATION**

Docket No. C--2021-3026268

EXCEPTIONS

**INCLUDING
EXCEPTIONS
OF COMPLAINANT
BY ADMINISTRATIVE LAW JUDGE
ALPHONSO ARNOLD, III GRANTING
PPL ELECTRIC UTILITIES
CORPORATION'S PRELIMINARY
OBJECTIONS, WITHOUT A HEARING,
WITHOUT DUE PROCESS TO DISMISS
THE MATTER DATED JUNE 12, 2024**

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I. INTRODUCTION

COMPLAINANT WAS DENIED A HEARING ON THE ISSUES PRESENTED AND WAS DENIED DUE PROCESS, VIOLATING THE UNALIENABLE RIGHTS EMBODIED BY THE STATE AND NATIONAL CONSTITUTIONS AND THE PUC'S OWN PROCEDURAL DUE PROCESS CODES!

Pursuant to Section 5.533 of the Commission's regulations, 52 Pa. Code § 5.33, Complainant Jeffrey Smiles hereby submits these Exceptions to the Initial Decision of Administrative Law Judge Alphonso Arnold, III issued on June 12, 2024 ("Decision"). ALJ Arnold's Initial Decision is wrought with biases, misinformation, misleading presentation and legal irregularities as are detailed in the Exceptions presented below.

In this Decision, ALJ Arnold erred in concluding that Respondent's preliminary objections, filed on June 28, 2021, are valid without a hearing or Due Process is legally groundless, absurd and violates all procedural Due Process; the letter and spirit of the law! ALJ Watson saw no need to address these preliminary objections while acting Judge nor did the second Judge assigned to this case, ALJ Chadsworth. The issue was not even considered until Complainant received a call from PPL lawyer, Devon Ryan, who claimed he was going to help matters after he had requested a continuance for an emergency Doctor's visit for April . Esquire Ryan, as Complainant recalls was overly solicitous and eager to "fix" the problem. Complainant was asked if he would agree to allow Ryan to send a letter to the Judge on his behalf. Complainant could not consent under the circumstances of ill health and not knowing exactly what this letter would say.. But little did Complainant know that he was being stabbed in the back by Ryan to advance the interests of a multi-billion \$ Utility Corporation and their own wallets. The Complainant consequently have been unjustly deprived of fully exercising his rights under due process, with the result that the Complainants' case has suffered severe prejudice and has been obstructed and encumbered with an utterly incomplete

record, as reflected in the Initial Decision of ALJ Arnold. This is what is meant by the term, “Kangaroo Court!”

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic*, [313 U.S. 299](#), 326 (1941).

II. Exceptions

A. Exception No. 1: ALJ Arnold failed to uphold the stipulations of 66 Pa. C.S. § 701 by ignoring Complainant’s legal argument pertaining to Act 129 of 2008.

Discussion of PN 4526 in the Senate is recorded in the Senate Journal on October 8, 2008, pages 2626-2631, from which the following comments pertinent to smart meters and concerns about customers are taken. Here is a link:

<https://www.legis.state.pa.us/WU01/LI/SJ/2008/0/Sj20081008.pdf#page=13>

p 2626

Senator TOMLINSON.

It also contains language in there that we will have smart meters. **It is not mandated**, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.**

p. 2627

Senator BOSCOLA.

We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.

p. 2629

Senator FUMO

In addition, **we did not mandate smart meters, but we made them optional.** We did say in new construction, where they really are practical, they will be put in.

**581 Article 1 of the Pennsylvania Constitution is titled the Declaration of Rights. The entire Article is concerned with establishing the principle that the people are the sovereign — not the state. There are twenty-six*

sections in Article 1 and every single section is concerned with the rights of the people — not the state. To isolate one sentence out of the twenty-six sections in the Declaration of Rights and say that it should be interpreted to protect the rights of the state — not the people — is ludicrous and violates all reasonable principles of construing written language in proper context. Article 1, the Declaration of Rights, opens by stating that the purpose of the Declaration is "that the general, great and essential principles of liberty and free government may be recognized and unalterably established." Nothing is said about protecting the state. The complete Declaration — its language, tone and thrust — concerns the protection of the people — not the state.

*The Declaration speaks of the inherent and inalienable rights of people — not the state. It states that all power is inherent in the people, and all free governments are founded on their authority — not that power is inherent in the state or that government is founded on the authority of a divinity or an unwritten floating concept in a judge's mind. The Declaration states that no one can be deprived of his life, liberty, or property, unless by the judgment of his peers or the law of the land — not that the state's life, liberty or property is protected. It also says that private property shall not be taken without just compensation being first made or secured — and there is no exception for any kind of property. The people are protected from any grant of special privileges or immunities by the state. The people are given the right to the redress of grievances — no exception for tort claims or any other claim. The 582*582 Declaration ends by protecting the people in the enjoyment of all civil rights.*

The purpose of the Declaration of Rights in the Pennsylvania Constitution, all of its Sections, is to guarantee and make absolute the principle that the people are supreme — sovereign — and possess the inalienable rights which were possessed by the state prior to government under a written constitution.

...There is no sovereign in constitutional government — except the people. How can the state have any immunity if the people didn't authorize it? How could the people have authorized it if it is not in the written constitution? How can the written constitution be interpreted to contain something which it clearly does not? How can three words in the people's constitution be used to breathe life into a corpse which we buried centuries ago without shedding tears?

In the name of three misinterpreted words, we cannot allow special privileges by which some citizens injured by government shall have a remedy and not be denied right and justice (first sentence of Section 11), while other citizens are denied any remedy and are denied right and justice.

The concept that the state is sovereign has been dead for centuries. The corpse was not given any immunity by the people in the Pennsylvania Constitution. This Court should finally recognize the realities of history."

BROWN et al. v. Commonwealth, 453 Pa. 566 - Pa: Supreme Court
1973--NIX DISSENTING

It is unequivocally clear that the **prevailing legislative intent** enacted into law by Act 129 expresses the Pennsylvania General Assembly's direction that **smart meters were not made and would not be made mandatory.**

The policy of mandatory installation of AMI smart meters that has been adopted by the Pennsylvania Public Utility Commission and implemented by the electric utility companies is the product of a complete misinterpretation and misconstruction of the prevailing legislative intent of the Pennsylvania General Assembly as such was set forth and enacted into law under Act 129.

Accordingly, insofar as the enforcement of § 2807(f)(2) **and § 2807(f)(7)** under Act 129 were to have remained in keeping with the expressed, prevailing legislative intent of the General Assembly, the state's regulated electric utility companies have **no basis in law**, pursuant to Act 129 **as written**, to terminate electric service to customers who do not give consent to the installation of AMI smart meters on their homes or properties.

Furthermore, in the absence of a compelling governmental interest, the State is **prohibited** from **making or enforcing any law** such as Act 129 which would have the effect of depriving citizens of their fundamental rights protected under the Constitution of the United States. Even if the state were to have a compelling interest in having enacted Act 129, the law must be narrowly drawn such that the **least restrictive means possible** are used to achieve its objective

It is the Commission's inherently unconstitutional policy of mandating smart meters that has opened the door to the wrongful and unlawful acts committed by the state-regulated electric utility companies, enabling them as '**State actors**', or agents of the State, to implement their smart meter programs **by means of harassment, threats, intimidation and coercion—all under color of law.**

B. Exception No. 2: The ALJ Erred in treating three-year old preliminary objections as a 'motion for judgment' when he knew or should have known that a separate motion had to be filed in this case!

“If the company files either a Motion for Judgment on the Pleadings or a Motion for Summary Judgment, you have 20 days to respond in writing. If the motion is granted, you may lose all or part of your case without having a hearing. Information about these Motions and the time for responding is located in the PUC’s Regulations at 52 Pa. Code §§ 5.101 and 5.102. Also, you can find information about serving these Motions in the PUC’s Regulations at 52 Pa. Code §§ 1.54 and 1.56.”

A PRELIMINARY OBJECTION CAN NEVER BE TREATED AS A MOTION FOR JUDGMENT UNDER THE PUC'S OWN RULES!

“Judicial overreach” occurs when a court acts beyond its jurisdiction and interferes in areas which fall within the executive and/or the legislature’s mandate. [\[iii\]](#) It means the court has violated the doctrine of separation of powers by taking on the functions such as law enforcement, policy making, and law making.”

In this Decision, ALJ Arnold erred AND COLLUDED WITH RESPONDENT, PPL Electric Utilities, to deny the Rights of Complainant in concluding that Respondent's preliminary objections, filed on June 28, 2021, are valid without a hearing or Due Process and can be instantly converted into another motion to dismiss the case at whim!

It is self-evident that These judicial shenanigans are legally void, ab initio, absurd and violates all procedural and substantive Due Process rights- the letter and spirit of the law! ALJ Watson saw no need to address these preliminary objections while acting Judge nor did the second Judge assigned to this case, ALJ Chadsworth. The issue was not even considered until Complainant received a call from PPL

lawyer, Devon Ryan, who claimed he was going to help matters after he had requested a continuance for an emergency Doctor's visit for April.

The picture emerges from the pattern established by these proceedings vividly illustrates why no government, and no persons, regardless of what they may be persuaded to believe, should have the authority or wield power so profound as to have determination and control over matters of health and well-being of others so as to decide even the conditions under which they must live in their own homes. For if those with such power are wrong in their belief, they shall have been party to the commission of a terrible injustice and moral crime against their fellow human beings in the misguided exercise of that power.

“Fraud on the court occurs when the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes material misrepresentations to the court. Fraud upon the court makes void the orders and judgments of that court. “

C. Exception no. 3: The ALJ erred by acting as an attorney for PPL Electric Utilities in his wholesale conversion and dismissal of Complainant’s complaint.

The letter from Devon Ryan reads:

**“Re: Jeffrey W. Smiles v. PPL Electric Utilities Corporation
Docket No. C-2021-3026268**

Your Honor:

On or about April 8, 2024, Jeffrey W. Smiles (“Complainant”) filed a “Motion For Continuance Of The Pre-Hearing Conference Scheduled For April 15, 2024 For Good Cause” in the abovementioned proceeding. In that Motion, the Complainant requested that the telephonic prehearing conference scheduled for 10:00 AM on April 15, 2024, be continued because he has a medical appointment scheduled for 8:30 AM on April 15, 2024.

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) respectfully submits this Letter in Lieu of an Answer to the Motion.

From PPL Electric’s perspective, a telephonic prehearing conference is not necessary at this time. The Company’s Preliminary Objections to the Formal Complaint, which seek to dismiss the Complaint in its entirety, remain pending. Unless and until those Preliminary Objections are ruled on, a litigation schedule

does not need to be established.

Moreover, on April 12, 2024, counsel for PPL Electric talked with the Complainant about whether the Complainant intends to continue litigating the Formal Complaint despite the Pennsylvania Supreme Court's ruling in *Povacz v. Pa. PUC*, 280 A.3d 75 (Pa. 2022), where the Court held that Act 129 of 2008 mandates the installation of smart meters for all customers. PPL Electric's understanding is that the Complainant has not reached a decision yet.

Thus, PPL Electric respectfully requests that if the Complainant's Motion is granted, the telephonic prehearing conference not be rescheduled unless and until there is a ruling on the Company's Preliminary Objections.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,
Devin Ryan"

Unfortunately, This letter does not, in any way portray the conversation engaged in on April 12, 2024 between myself and Devon Ryan.

This is clearly a distortion of facts intended to prejudice the case against Complainant. I never indicated that I had not reached a decision concerning this case. I stated that I was very ill and could not decide ANYTHING about any matter at that moment.

That letter was entirely deceptive and yet the ALJ took that letter as an opportunity to represent PPL by acting in a manner violating DUE PROCESS and CONVERTING a three year old preliminary objection into another motion it could never be, so he could dismiss the case!

Those preliminary objections were responded to by complainant on August 8, 2021 and the concerns raised have never been addressed! Instead, they have been ignored.

"In *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), the Supreme Court unanimously reversed the application of res judicata where the lower court applied the same reasoning as the district court applied here. There, the plaintiffs brought an antitrust suit that was ultimately dismissed with prejudice. *Id* at 324. Seven years later, the plaintiffs brought a second antitrust suit against many of

the same defendants, alleging the same course of wrongful conduct, which had worsened in the interim. *Id.* at 328. The lower courts applied res judicata to bar the second suit. *Id.*

The Supreme Court reversed, explaining that even though "both suits involved essentially the same course of wrongful conduct," res judicata did not apply. *Id.* at 327 (internal quotation marks omitted). The Court noted that "such a course of conduct—for example, an abatable nuisance—may frequently give rise to more than a single cause of action." *Id.* at 327-28. The Court held that claims in the second suit based on events that had not yet occurred at the time of the first suit were not barred." -Complainant's Reply to answer and new matter dated August 8, 2021

D. EXCEPTION NO. 4: The ALJ erred in dismissing the Complainants' Complaint by largely relying upon conclusions of law that directly conflict with both the Commonwealth Court's decision in *Povacz* and the prevailing legislative intent of the Pennsylvania General Assembly and also by failing to acknowledge the full depth and scope of PPL Electric's responsibility to its customers pursuant to Pa. C.S. § 1501.

66 PA.C.S. §315(c) states: "In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility."

From the time beginning with its original smart meter implementation order, the Pennsylvania Public Utility Commission, contrary to its responsibility to the public as set forth under 66 PA.C.S. §315(c) of the Public Utility Code, has never placed 'the burden of proof' upon the electric utility companies to show that their smart meter facilities are safe and reasonable. These companies have never been required to provide definitive proof, by means of the production of independent, unbiased, entirely non-selective (non-'cherry-picked') and fully conclusive scientific evidence, that the pulse-modulated RF radiation and RF electromagnetic fields

produced specifically by the operation of wireless smart meters do not and cannot cause biological or adverse health effects.

According to **52 PA.C.S. § 57.28(a)(1)**, "An EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities."

Neither the PA PUC, nor the state's electric utility companies (EDCs), have ever properly warned the public of the safety hazards and possible increased risk of harm posed by smart meters such that customers could provide their informed consent to the installation of these devices on their homes and properties.

Under **66 PA.C.S. § 1501**, moreover, public utilities are required to maintain safe and reasonable service and facilities for their customers. Specifically: "Every public utility shall furnish and maintain adequate, efficient, **safe, and reasonable** service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public."

Incredibly, ignoring citizens' rights protected under both Pennsylvania and federal law, the PA PUC and electric utility companies are getting away with forcibly subjecting customers and the public to exposure to RF radiation and electromagnetic fields without any smart meter safety studies ever having been done and without there being any applicable safety guidelines whatsoever in place for their protection against the forms of radiation and EMFs produced these devices.

It follows that *there is no reliable medical or scientific evidence upon which to conclude* that chronic, long-term exposure to the radiofrequency radiation and RF fields produced by smart meters cannot, would not and will not *cause, exacerbate or contribute to biological or adverse health effects*.

It further follows that the PUC and electric utility companies have no basis at all upon which to argue that forcibly exposing the public in perpetuity to any levels

of RF radiation and/or RF fields produced by smart meters, and thereby possibly increasing their risks of adverse health effects and harm, is 'safe' or in any way 'reasonable'!

Hundreds of complaints have been filed with the PA PUC, but to no avail. All the while defending its absolutely tyrannical policy position on smart meters by holding up the utterly inapplicable FCC guidelines as the appropriate standard of safety, the Commission routinely has denied, blocked or ignored the mountain of medical and scientific evidence, including expert witness testimonies of medical doctors and scientists and the voluminous amount of peer-reviewed scientific research which, taken together, unequivocally impugn the safety and reasonableness of forcibly subjecting people in perpetuity to the RF radiation and electromagnetic fields produced by these devices as a condition of their having access to electricity.

Unconscionably threatened by the PUC and electric utility companies with the choice between either being forcibly irradiated in perpetuity with RF from their own homes, or being totally deprived of electricity, some PA citizens suffering severely from electro-hypersensitivity (EHS), a medically substantiated, adverse health condition, have had no other choice but to leave their homes and relocate to other states.

III. CONCLUSION

For the reasons set forth above, Jeffrey Smiles respectfully requests that the Commission grant these Exceptions on the basis that no proper motion was filed to dismiss this case and that a “judicial sleight of hand” was employed to deprive complainant of his rights and issue a Final Order that rejects the ALJ's Initial Decision of June 12, 2024 because of fraud upon the court by the court and orders PPL Electric Utilities to grant Complainant an accommodation that is in accordance with Section 1501 and which is reasonable and consistent with not only the guidance set forth by the Pennsylvania Commonwealth Court in *Povacz*, but also

the actual and true legislative intent of the Pennsylvania General Assembly as set forth in Act 129, such that the Complainant may retain the wired electric meter that is presently installed on his home.

Respectfully Submitted,

Dated July 2, 2024

By: //Jeffrey W. Smiles,

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