

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held July 11, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

James Quigley and Teresa Mendez-Quigley

C-2017-2617558

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Relief filed by James Quigley and Teresa Mendez-Quigley (the Complainants or the Quigleys) on May 9, 2024 (Petition), in response to the Commission's Opinion and Order entered April 25, 2024, which denied the Exceptions filed by the Complainants to the December 31, 2018 Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Darlene Davis Heep, dismissing the Formal Complaint (Complaint) in the above-captioned proceeding (*April 2024 Order*). The *April 2024 Order* denied and dismissed the Complaint filed by the Complainants on August 1, 2017. For the reasons discussed below, we shall deny the

Complainants' Petition, consistent with this Opinion and Order. This denial does not preclude the filing of a petition for rescission or amendment under 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572(d).

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PECO proposes to install at the Complainants' residence and use in the ordinary course of business to measure the Complainants' electricity consumption. The Complainants refuse to have a smart meter installed for health reasons. In their Complaint, the Quigleys requested: (1) that the Commission establish an "opt-out" exemption from the requirement to have a smart meter installed "on the grounds of health maintenance," (2) that PECO be required to install an analog meter, and (3) that the Commission order PECO "to stop sending harassing shut-off notices." Complaint at 3.

PECO, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns, and maintains the meters in its distribution system. *See*, PECO Energy Company Tariff Electric Pa. P.U.C. No. 7, Section 6.4, page 14, effective January 1, 2022; *see also*, Section 14.1, page 24.

The Complainants, James Quigley and Teresa Mendez-Quigley are PECO customers who have been notified of PECO's intent to install a smart meter at the service address. Answer at 1-2.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Pennsylvania Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in

accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa. C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See*, H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including PECO, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See, Smart Meter Procurement and Installation,*

Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*). PECO sought and obtained the Commission's approval to complete the installation of AMI meters for substantially all customers within its service territory by the end of 2014. *See, Smart Meter Technology Procurement and Installation Plan Phase II* filed by PECO, as revised, by the Joint Petition for Settlement, Docket No. M-2009-2123944 (Order entered August 15, 2013) (*PECO Smart Meter Phase II Plan*).

II. History of the Proceeding

On August 1, 2017, the Quigleys filed a Complaint with the Commission against PECO objecting to the installation of a smart meter at the service address due to health concerns. As relief, the Quigleys requested that the Commission: (1) exempt the Complainants' residence from smart meter installation due to health concerns, (2) require PECO to install an analog meter, and (3) require PECO to stop threatening to shut off service at the service address. I.D. at 1-2.

On August 11, 2017, PECO filed an Answer to the Complaint (Answer). In its Answer, PECO denied all material allegations of fact in the Complaint. PECO also asserted that the Company was installing the smart meter in accordance with Act 129 and that the Company had the right to terminate service when a customer refuses to allow the Company access to its meters and that a ten-day termination notice was sent. PECO requested that the matter be dismissed. Answer at 1-3.

On August 20, 2017, the Complainants filed a Response to the Answer, requesting a hearing. I.D. at 2.

An Initial Hearing Notice was issued on September 1, 2017, setting the hearing for April 17-18, 2018. A prehearing order was issued on September 7, 2017, setting discovery and other deadlines. *Id.*

The hearing was held as scheduled. The Complainants represented themselves and presented no witnesses. *Id.*

PECO was represented by Ward L. Smith, Esquire, Shawane Lee, Esquire, and Thomas Carl Watson, Esquire. PECO presented the following witnesses: Mr. Bryan Uber, Mr. Glenn Pritchard, Christopher Davis, Ph.D., and Mark Israel, M.D. *Id.*

On May 30, 2018, a briefing order was issued, requiring Main Briefs to be filed by July 10, 2018 and Reply Briefs by August 7, 2018. *Id.*

On June 12, 2018, the Complainants requested an extension of time to file briefs. PECO did not object and the parties were given until August 3, 2018, to file Main Briefs and until September 7, 2018, to file Reply Briefs. *I.D. at 3.*

On July 16, 2018, PECO filed a Motion to Admit Thomas Carl Watson, Esquire *Pro Hac Vice*. The Complainants filed objections to that motion on July 26, 2018. By order issued on August 17, 2018, the motion was granted. (*August 2018 Order*). On August 27, 2018, the Complainants filed a Motion for Leave for Interlocutory Appeal of the *Pro Hac Vice* ruling. PECO filed its opposition to interlocutory review on September 9, 2018. *Id.*

By Order entered on September 20, 2018, the Commission declined the interlocutory review and returned the matter to the Office of Administrative Law Judge. *Id.*

The record closed on September 21, 2018.

On December 31, 2018, the Commission served ALJ Heep's Initial Decision in *James Quigley and Teresa Mendez-Quigley v. PECO Energy Company*, Docket No. C-2017-2617558.

As noted above, on January 19, 2019, the Complainants filed Exceptions to the Initial Decision. On January 30, 2019, PECO filed Replies to Exceptions.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, 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 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. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay. Notice was provided on November 14, 2023, informing the Complainants of the lifting of the stay and their procedural rights and obligations under the Commission's regulations.

On April 25, 2024, the Commission issued its Opinion and Order which denied the Complainants' Exceptions, adopted the ALJ's Initial Decision, and dismissed the Complaint. *April 2024 Order*.

III. Discussion

A. Legal Standards

1. Petition for Relief under Section 5.41 of Commission Regulations, 52 Pa. Code § 5.41

Section 5.41 - Petitions generally.

(a) *General requirements.* Petitions for relief under the act or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought. Petitions for relief must comply with § 1.51 (relating to Instructions for service, notice, and protest).

(b) *Service.* A copy of the petition shall be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition. Copies of the petition shall be served upon the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

(c) *Copies.* Copies shall also be served as directed by the Commission.

(d) Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally).

B. The *April 2024 Order*

The Commission's *April 2024 Order* denied the Complainants' Exceptions and adopted the ALJ's Initial Decision, adopting the ALJ Heep's seventy-three Findings of Fact (FOF) and eight Conclusions of Law (COL). *See*, I.D. at 3-11, 31-32. *April 2024 Order* at 7.

The Commission further adopted ALJ Heep’s disposition addressing:

(1) the Complainants’ refusal of the advanced metering infrastructure or smart meter and shut-off notices; (2) the Complainants’ request for an analog meter and an opt-out; (3) RFs and the health of Ms. Quigley; and (4) the Complainants’ procedural due process concerns. I.D. at 12-18; *April 2024 Order* at 7-11.

C. Petition and Disposition

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Complainants Petition¹ generally requests the following relief from the Commission’s *April 2024 Order*: (1) an extension of time in which to file a petition for relief from the Commission’s *April 2024 Order*; (2) a “supersedeas” from the Commission on any action by PECO based on the *April 2024 Order*; (3) accommodation from PECO (as an alternative to installation of a smart meter); (4) permission to file a

¹ We acknowledge that the format of the Complainants’ Petition does not strictly comply with Section 5.41(a) of our Regulations, 52 Pa. Code § 5.41(a), which requires that a petition for relief “state clearly and concisely the interest of the petitioner in the subject matter, the facts and law relied upon, and the relief sought.” Nevertheless, particularly because the Complainants are appearing *pro se*, we will accept the Petition as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), to secure a just, speedy, and inexpensive determination.

petition for relief based on PECO's action on the request for accommodation. Petition at 1, 4, 5, 6. Upon review, we shall deny the Petition.²

To the extent the Complainants' Petition includes a request for an extension of time to file a petition for relief, the request is denied. The Complainants assert several reasons for an extension of time to file a petition for relief, which include, *inter alia*, time needed to attend to personal matters, time needed to conduct legal research, time needed to file and obtain the results of other legal petitions. Petition at 1-4. The Commission's Regulations provide for the opportunity to file a petition for relief at any time following issuance of a Commission order. In this case, the *April 2024 Order* is a final Commission order. *See*, 52 Pa. Code § 5.572(d) (providing that petitions for rescission or amendment may be filed at any time). The Complainants remain free to file a petition for relief from the *April 2024 Order* at any time. Therefore, the request for an extension of time to file a petition for relief is denied as unnecessary and irrelevant.

To the extent the Petition seeks a supersedeas of the operation of the *April 2024 Order*, the Petition is denied. Petition at 4-5. The Complainants neither filed a request for reconsideration of nor an appeal from the *April 2024 Order*. Therefore, the *April 2024 Order* is final and enforceable. The Complainants chose to file the present Petition, to seek additional time for filing a petition for relief, rather than a petition for reconsideration. Therefore, the present request for extension of time, which we shall deny, provides no basis for delaying PECO's implementation of the *April 2024 Order*.

² To the extent the Petition may be construed as a Petition for Reconsideration, the Petition is denied on the grounds that we find that the Complainants assert no reason which persuades us to exercise our discretion to grant reconsideration. *See, Philip Duick, et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982).

To the extent the Petition seeks accommodation from PECO (as an alternative to installation of a smart meter), the Petition is denied. The question of whether the Complainants are entitled to accommodation was decided by the *April 2024 Order*, which denied the request for accommodation because the Complainants failed to establish a violation under Section 1501 of the Code. *April 2024 Order* at 22-23. Any consideration of a request by the Complainants for voluntary accommodation from PECO is for PECO to decide. Any voluntary accommodation by PECO must comply with PECO's tariff. *See*, PECO M.B. at 18-19 (detailing available accommodations). The Commission has already determined that the Complainants failed to establish any basis for the delay of smart meter installation. *Id.* The Petition offers no basis, new or otherwise, for reaching a different conclusion. Therefore, we find that the Petition sets forth no persuasive factual or legal basis for relief from the Commission's prior denial of the Complainants' request to avoid smart meter installation.

To the extent the Complainants' Petition seeks permission to file a petition for relief at some future date, the Petition is denied. The Complainants assert in the Petition that they need time to seek an accommodation from PECO from the installation of a smart meter and, based on PECO's action, time to determine what, if any, relief they may petition the Commission for at some future date. Pet at 6. As such, the Complainants raise a speculative basis for relief, which asserts neither a factual nor a legal ground for relief as required by Section 5.41(a). 52 Pa. Code § 5.41(a). Therefore, we shall deny the Petition. Our denial of the present Petition is without prejudice to any future petition for relief on separate grounds.

IV. Conclusion

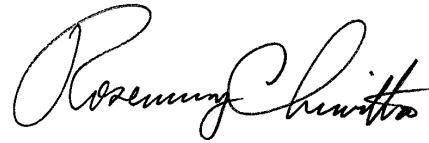
In light of the above discussion, we shall deny the Complainants' Petition, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Relief filed by James Quigley and Teresa Mendez-Quigley on May 9, 2024, to the Opinion and Order of the Commission entered on April 25, 2024, at Docket No. C-2017-2617558, is denied, consistent with this Opinion and Order.

2. That this proceeding is marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 11, 2024

ORDER ENTERED: July 11, 2024