

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

LLOYD AND SUSAN HORST

PUBLIC MEETING OF AUGUST 1, 2024

3026448-OSA

v.

DOCKET NO. C-2021-3026448

**PPL ELECTRIC UTILITIES
CORPORATION**

MOTION OF CHAIRMAN STEPHEN M. DeFRANK

On June 2, 2021, Lloyd and Susan Horst filed a formal complaint against PPL Electric Utilities Corporation alleging that PPL continually threatens to terminate the electric service to their property although they pay their electric bills in full and on time and that PPL seeks to switch their analog meter with a smart meter. In response, PPL filed an answer with new matter admitting in part and denying in part the material allegations of the complaint.

The Horst's complaint was filed after the Commonwealth Court had reversed prior Commission precedent and held that Pennsylvania law permits consumers to "opt-out" of receiving a smart meter.¹ After the filing of the complaint, however, the Pennsylvania Supreme Court reversed the Commonwealth Court and held that there is no provision in Pennsylvania law that allows consumers to "opt-out" of receiving a smart meter.² In between the Commonwealth Court decision and the Supreme Court decision, the Commission stayed all cases involving smart meters pending resolution of the appellate proceedings.³

Despite the stay, however, the presiding officer issued an Initial Decision on November 15, 2021 granting preliminary objections filed by PPL that argued that the Horst's complaint was barred by Section 316 of the Public Utility Code and the doctrines of *res judicata* and collateral estoppel. PPL argued in its preliminary objection that the Commission previously determined in response to a prior complaint filed by the Horsts that the Horsts failed to prove by a preponderance of the evidence that the installation of a smart meter violates the Public Utility Code or a Commission order or regulation. That decision regarding the Horst's first complaint became final on July 8, 2020.⁴

In addition to granting PPL's preliminary objection and dismissing the formal complaint, the presiding officer also directed the Secretary's Bureau to file the formal complaint in the docket of the Horst's first formal complaint and identify the second formal complaint as a petition for reconsideration of the Commission's final order in that prior matter.

¹ *Povacz, et al. v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth 2020)(*Povacz I*).

² *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022)(*Povacz II*).

³ *Smart Meter Procurement and Installation*, Docket Number M-2009-2092655 (Order entered Nov. 4, 2020); *see also*, *Smart Meter Procurement and Installation*, Docket Number M-2009-209655 (Order entered Nov. 14, 2023) (lifting stay).

⁴ *Horst v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3006774 (Order entered July 8, 2020).

PPL then filed an Exception in response to the determination of the presiding officer to identify the second formal complaint as a petition for reconsideration in response to the first formal complaint. PPL argued that the Commission should not refashion a formal complaint as a petition *sua sponte*, especially when it affects the legal standards by which the pleading will be adjudicated. PPL also argued that if the second complaint were a petition for reconsideration it would be exceptionally untimely. Finally, PPL argued that there is no reason to treat the second complaint as a petition for reconsideration and doing so would not be in the interest of administrative efficiency and judicial economy. PPL did not except to the underlying determination of the Initial Decision to dismiss the second complaint on the basis of Section 316, *res judicata* and collateral estoppel.

I agree with PPL and believe that its Exception should be granted. The presiding officer's *sua sponte* treatment of the second complaint as a petition for reconsideration of the first complaint was improper in these circumstances.

The standard for a petition for reconsideration is different than the preponderance of the evidence standard by which complaints are examined.⁵ In addition, I agree with PPL that PPL has already demonstrated through its preliminary objection that the second complaint should be dismissed in its entirety on the basis of Section 316, *res judicata* and collateral estoppel and that by re-docketing the second complaint as a petition for reconsideration, the same pleading may have to be responded to and addressed twice. Such efforts are inefficient.

Had the Horsts determined to seek reconsideration of the dismissal of their first complaint, they could have filed for such reconsideration. They did not do so and it was improper for the presiding officer to make that determination *sua sponte*. As a result, PPL's Exception should be granted in this case.

THEREFORE, I MOVE:

1. That the Exception filed by PPL Electric Utilities Corporation at Docket Number C-2021-3026448 is granted.
2. That the Initial Decision of Administrative Law Judge Eranda Vero in Lloyd and Susan Horst v. PPL Electric Utilities Corporation at docket number C-20213026448 is modified, consistent with this motion.
3. That the formal complaint filed in Lloyd and Susan Horst v. PPL Electric Utilities Corporation at docket number C-20213026448 is dismissed.
4. That the Office of Special Assistants prepare an Opinion and Order consistent with this motion.

August 1, 2024
Date



Stephen M. DeFrank
Chairman

⁵ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth 1990), *alloc. denied*, 529 Pa. 564, 602 A.2d 863 (1992); *see also, Duick v. Pa. Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982).