

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Siddhartha Banerjee	:	
	:	
v.	:	F-2022-3032337
	:	
PECO Energy Company	:	

SCHEDULING ORDER

Background

On May 2, 2022, Siddhartha Banerjee (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (Respondent or Company) objecting to the installation of a smart meter at his residence in Chester County, Pennsylvania (service location). Mr. Banerjee alleged, *inter alia*, that the installation of a smart meter is unsafe and unhealthy.

On May 25, 2022, the Company filed an Answer and New Matter in which it denied the material allegations of the Complaint and requested that the Complaint be dismissed. Also on May 25, 2022, the Company filed a Motion to Stay the Proceedings in light of the decision of the Commonwealth Court of Pennsylvania in *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), the first of several appeals involving the deployment of smart meter technology. The Complainant did not file a response to this Motion.

On June 28, 2022, I was assigned to preside over this matter. On June 29, 2022, my Order was issued which stayed this matter pursuant to the Commission’s Order issued in 2020, which instituted a stay of proceedings before the Commission challenging smart meter deployment as being in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. *See, Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered Nov. 4, 2020) (*Stay Order*).

On November 14, 2023, the *Stay Order* was lifted by the Commission. *Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered Nov. 14, 2023). *2023 Order*.

On December 14, 2023, a Prehearing Conference Notice was issued scheduling a prehearing conference for February 20, 2024. On December 18, 2023, a Prehearing Conference Order was issued.

On February 20, 2024, a prehearing conference was held. The Complainant appeared and represented himself. The Company was represented by Khadijah Scott, Esquire. During the prehearing conference, the parties requested to hold this matter in abeyance for approximately two months to allow them time to possibly resolve this matter.

On February 23, 2024, an Order was issued which held in abeyance this proceeding to allow time for the parties to engage in discussions and exchange information on an informal basis, in an effort to determine whether this matter can be resolved between themselves. The Company was also directed to provide informally to me via email, on or before April 19, 2024, a case status update.

On March 8, 2024, I received an email from Attorney Scott, copying the Complainant, suggesting that another prehearing conference be held to discuss the Complainant's request which came up during their discussions to try to resolve this matter. PECO indicated that the Complainant wished to have PECO turn over to him the meter PECO removed from his service location so that the Complainant could have it independently tested.

After an exchange of emails to establish a mutually agreeable date, a further prehearing conference was scheduled for April 29, 2024. Further, the Complainant was directed to be prepared to discuss at this conference whether he obtained an expert to independently test the meter, and any other details that would be helpful for this discussion.

On April 25, 2024, I received an email from the Complainant, copying PECO, requesting a continuance of the further prehearing conference scheduled for April 29, 2024, due to a medical issue. Over no objection from PECO, the further prehearing conference was cancelled.

To date, it does not appear that this matter has been able to be resolved by the parties.

Therefore, in the interests of moving this matter forward, by a separate hearing notice dated August 9, 2024, this matter was scheduled for an evidentiary hearing for October 1, 2024, at 10:00 a.m. The purpose of this Scheduling Order is to provide other various procedures that will apply to the evidentiary hearing. Of note, the Complainant is directed to ordering paragraph number 12 below, which directs that if the Complainant wishes to have the meter at issue independently tested, he must make such a request in writing in accordance with the instructions below.

THEREFORE,

IT IS ORDERED:

1. **EVIDENTIARY HEARING.** Consistent with the Hearing Notice dated August 9, 2024, an evidentiary hearing will be held by telephone on:

Tuesday, October 1, 2024, beginning at 10:00 p.m.

To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing. If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

Toll-free Bridge Telephone Number: **877-929-1529**
PIN Number: **27666478**

2. **FAILURE TO APPEAR.** You must attend the hearing and present evidence on the issues raised in the pleadings. You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

3. **CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include:

- (1) The case name, case number, and hearing date;
- (2) The reason you are requesting a continuance; and
- (3) State whether the other party(s) agrees to the request (or if you do not know).

You must submit the motion to me at:

Administrative Law Judge Gail M. Chiodo
Email address: gchiodo@pa.gov

You also must submit the motion to the other party(s) at their email address.

If you do not have access to email, you must mail the motion to me at the mailing address below (see paragraph No. 5), and a copy to the other party(s) at their mailing address (see Service List attached). Said motion must be received at least five (5) days before the hearing.

4. **PRESENTING EXHIBITS.** If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to the Administrative Law Judge at gchiodo@pa.gov and one (1) copy each must be sent to every other party. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly pre-marked for identification purposes. Do not file your proposed documents with the

Secretary's Bureau. But, you should file a Certificate of Service indicating service to every other party.

Do not include account numbers or any other personally identifiable information (PII), such as social security numbers, in your documents or exhibits. It is the parties' responsibility to redact any PII contained within a document or exhibit before submitting it into the record.

Note that attachments to your Complaint or Answer are not admitted into the record unless submitted separately. You should have all pre-served exhibits with you at the time of the hearing. This hearing may be your only opportunity to present evidence in support of your complaint.

If you do not have access to email, you must mail your proposed exhibits to me at the mailing address below (see paragraph No. 5), and to every other party at their mailing address (see Service List attached). All copies must be received at least five (5) business days before the hearing.

5. **FILING AND SERVING DOCUMENTS.** When you file a document, you must provide the original to the PUC *and* serve a copy to the other party or parties. Instructions on how to file with the PUC and serve other parties are provided below.

A. FILING DOCUMENTS

(1) **E-FILING.** To file with the PUC, the PUC offers a free e-Filing Subscription Service. This service allows a user to file documents electronically and receive an automatic email notification whenever a document is added, removed, or changed on the PUC website in a specific case. For information and to subscribe to this service, visit the PUC's website at: <https://www.puc.pa.gov/filing-sources/efiling/>

(2) **PAPER FILING.** If you do not have the capability to open and use an e-Filing account, you may file paper documents with the Secretary of the Commission. Filing of paper documents may be hand delivered or sent to:

Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

(3) **CONFIDENTIAL MATERIAL.** If a filing contains confidential or proprietary material, the filing should be submitted by overnight delivery to ensure arrival. Large filings containing confidential or proprietary material may also be submitted through the Commission's Share Point File system. These filings should be followed by a hard copy with a flash drive or CD for the Commission's file. Filers should contact the Secretary's Bureau in advance to set up a Share Point File before submitting the filing.

B. SERVING DOCUMENTS

(1) **SERVING OTHER PARTIES.** When you file documents with the PUC, you must also serve a copy on the other party or parties. You may serve a copy by U.S. First-Class Mail or by hand. You may also serve a copy by eService or email, if the other party has agreed to electronic service. For your convenience, a copy of the PUC's current service list of all parties to this proceeding is enclosed with this Order.

(2) **SERVING THE PRESIDING OFFICER.** Be sure that you serve me directly with a copy of any document that you file in this proceeding at the time of its filing. You must email one (1) copy to me at gchiodo@pa.gov. **If you do not have access to email, you must serve me by mail, addressed to:**

Administrative Law Judge Gail M. Chiodo
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

If you send me any correspondence or document, you must also send a copy of that correspondence or document to every other party pursuant to paragraph 5 of this Order.

6. **DOMESTIC VIOLENCE VICTIM.** If you are a domestic violence victim and you want to be considered for protections that may be available to domestic violence victims, you must submit a copy of your Protection from Abuse (PFA) Order or other Court Order issued by a Pennsylvania court, which provides evidence that you are a domestic violence victim. You should mark this Order as “CONFIDENTIAL.” In the case of these Orders, we will take precautions to ensure that your address is not made public.

7. **REPRESENTATION.** If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.¹ And, unless you are an attorney, you may not represent someone else.

8. **BURDEN OF PROOF.** The Complainant (the one filing the Complaint) bears the burden of proof and must present evidence sufficient to demonstrate that the utility has violated the Public Utility Code, or a regulation or order of the PUC.²

9. **ACCOMMODATION.** Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Please call the PUC scheduling office at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearing, we will have an interpreter present. Please call the scheduling office at the PUC at least ten (10) business days prior to your hearing to submit your request.

¹ 52 Pa. Code §§ 1.21 & 1.22.

² 66 Pa.C.S. § 332(a).

Scheduling Office: (717) 787-1399
The AT&T Relay Service number for persons who are deaf or hearing-impaired is:
1-800-654-5988.

10. **CONTACT INFORMATION.** If your e-mail address or telephone number changes during the course of the proceeding, you must immediately update the Office of Administrative Law Judge by calling 717-787-1399.

11. **HEARING PROCEDURES.** Although the hearing is being conducted telephonically for the convenience of the parties, it is still a formal hearing and will be conducted in accordance with the PUC's Rules of Practice and Procedure at 52 Pa. Code Chapters 1, 3, and 5.

12. **MOTION FOR TESTING METER.** That, **on or before August 19, 2024, 4:00 p.m.**, the Complainant, if he wants to have the meter at issue independently tested, must make such request in writing by filing a written Motion with the Secretary's Bureau and served on the other party (PECO) and to me via email. If this Motion is timely filed, a prehearing conference will then be scheduled to discuss this request.

13. **DISCOVERY**

a. That the parties have indicated that they have been conducting informal discovery during the pending of this proceeding. To the extent that any discovery is still outstanding, I encourage the parties to continue, if necessary, to cooperate and exchange information on an informal basis. The parties are expected to cooperate rather than engage in numerous or protracted discovery disagreements that require my participation to resolve. If this process fails, the parties have recourse to the Commission's procedures for formal discovery, as herein modified by this Order. *See*, for example, 52 Pa. Code § 5.342(g) (motion to compel).

The parties must not send the undersigned Administrative Law Judge any discovery requests, responses or material or cover letters, unless attached to a motion to compel. All motions to compel must contain a certification of the party, or from counsel if represented,

regarding the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel fails to contain such certification, the undersigned will contact the parties and direct them to pursue informal discovery. The parties are reminded that there are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§ 5.361, 5.371- 5.372.

b. That, **on or before September 3, 2024**, the Complainant, if he wishes to present expert testimony, including but not limited to medical or technical testimony, must provide to the Company in writing, the name and business address of that expert and a written summary of the expected testimony of that expert. If no expert testimony will be presented, the Complainant shall provide a writing to the Company indicating this fact.

c. That, **on or before September 17, 2024**, the Company, if it wishes to present expert testimony, including but not limited to medical or technical testimony, must provide to the Complainant, in writing, the name and business address of that expert and a written summary of the expected testimony of that expert. If no expert testimony will be presented, the Company shall provide a writing to the Complainant indicating this fact.

d. That, **on or before September 17, 2024**, the parties shall conclude discovery in this proceeding.

e. That **on or before September 17, 2024**, unless required to provide such documentation by Order or pursuant to Commission discovery or other regulations, the parties shall exchange expert reports, if any, for all experts the parties intend to offer as witnesses in this proceeding, which shall include an identification of the specific materials or other documents upon which the witness will rely or reference, and setting forth the specific facts and opinions to which each such witness will testify. *See*, 52 Pa. Code § 5.324.

14. **PREHEARING CONFERENCE.** In the interests of moving this matter forward and judicial efficiency, any party may request a prehearing conference by emailing me, copying the other party, with a reason for the request. After receiving a response to the

requesting party's request, or the expiration of a reasonable time for a response, a prehearing conference may, in my discretion, be scheduled, any regardless of whether the other party agrees to one.

15. **MODIFICATION.** Any of the provisions of this Order may be modified by an order entered into the record upon motion and good cause shown by any party.

16. **FURTHER INFORMATION.** A guide to participating in a Formal Complaint proceeding is available on the PUC's website at:
<https://www.puc.pa.gov/complaints/formal-complaints>

Date: August 9, 2024

_____/s/
Gail M. Chiodo
Administrative Law Judge

F-2022-3032337 - SIDDHARTHA BANERJEE v. PECO ENERGY COMPANY

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