

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry R. Kramer and	:	
Ellen M. Kramer	:	
	:	
v.	:	C-2017-2630621
	:	
Metropolitan Edison Company	:	

INTERIM ORDER CLOSING THE EVIDENTIARY RECORD

Larry R. Kramer and Ellen M. Kramer (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) dated October 23, 2017, alleging, *inter alia*, that Respondent threatened to shut off their service and objecting to the installation of a smart meter at their home. Complainants averred that smart meters are unsafe, present privacy concerns, are vulnerable to cyber threats and hacking, are inferior in quality to analog meters and present serious health concerns. Complainants further averred that they have concerns including radio frequency exposure from the smart meters, reliability issues, billing concerns and that the smart meter plan is being applied in a discriminatory manner. Complainants alleged a violation of their Constitutional rights and raise service concerns averring they have been bullied, harassed and bureaucratically terrorized by Respondent. Complainants averred there are legislative remedies available to them and complain about the shut-off notice and the communication from Respondent regarding the threat to terminate their service. As relief, Complainants requested, *inter alia*, that the Commission order Respondent to forego installation of a smart meter at their residence, allow Complainants to seek legislative relief, refrain from harassing and intimidating customers and refrain from charging customers for smart meters where the smart meters have not been installed.

On November 13, 2017, Respondent filed an Answer and New Matter to the Complaint, essentially admitting that Complainants' service is subject to termination for refusing to permit the exchange of their meter and denying the material allegations set forth in the Complaint. Respondent averred that Complainants have refused to permit technicians to install a smart meter in their home. Respondent further averred it is required by Act 129 of 2008,¹ to install a smart meter at Complainant's residence.

On November 13, 2017, Respondent also filed preliminary objections to the Complaint. Respondent essentially averred that Complainants' request to forego installation of a smart meter is not legally recoverable in this proceeding. Respondent also averred that holding a hearing in this proceeding is not in the public interest. Respondent averred that it is required by statute to install a smart meter at the service location. Finally, Respondent averred that Complainants failed to allege that Respondent has violated the Code, Commission regulations or orders that can be the basis of any finding against the Company, and therefore should be dismissed as being legally insufficient under 52 Pa.Code Section 5.101(a)(4).

Complainants filed a response to the preliminary objections on November 27, 2017, setting forth their arguments to support the denial of the preliminary objections filed by Respondent.

A Motion Judge Assignment Notice was issued on December 6, 2017, was received by the undersigned presiding officer on December 14, 2017, and assigned the undersigned presiding officer to this proceeding.

Respondent's preliminary objections were denied by interim order entered on December 26, 2017, and this matter was referred for mediation review.

On June 14, 2018, Respondent filed a motion to compel discovery responses. On June 27, 2018, the undersigned received a letter and two-page attachment from Complainants

¹ 66 Pa.C.S. Sections 2806.1, *et seq.*

dated June 25, 2018, requesting a reasonable extension of time to respond to the Motion to Compel.

On June 14, 2018, Respondent filed a motion to compel responses to interrogatories and requests for production of documents. This motion included a notice to plead, requiring Complainants to file a written response to the motion within five (5) days from the service of the notice dated June 14, 2018. The motion to compel averred that interrogatories and requests for production of documents were served upon Complainants on January 23, 2018. The motion further averred that Complainants did not serve responses to the discovery requests but objected that the discovery requests were not mailed to Complainants timely and that the Company had not contacted Complainants in accordance with the interim order issued January 12, 2018.

On July 18, 2018, an interim order was entered granting Complainants' request for additional time to respond to Respondent's motion to compel. On July 30, 2018, the undersigned presiding officer received a cover letter dated July 20, 2018, and Complainants' Response to Met-Ed's Motion to Compel.

On August 30, 2018, an Interim Order was entered granting the Company's Motion to Compel and ordering the Complainants to provide full, complete objections and/or responses to the Company's Discovery Requests on or before September 14, 2018. The interim order further provided that the discovery requests propounded by Respondent to Complainants were proper under the circumstances and ordered Complainants to serve full and complete responses to the discovery requests.

In a letter dated September 13, 2018, Complainants responded to the Interim Order and essentially restated their prior objections, which were already rejected in the Interim Order granting the Company's Motion to Compel entered on August 3, 2018.

On October 30, 2018, Respondent filed a Motion to Dismiss the complaint of Larry R. Kramer and Ellen M. Kramer for the failure of Complainants to comply with the Interim

Order issued in this proceeding. In the Motion to Dismiss, Respondent asserted that Complainants' failure to provide any response to the Company's Discovery Requests demonstrates their lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. Respondent argued the formal complaint in this proceeding should be dismissed in its entirety.

On November 7, 2018, the undersigned presiding officer received a "Response to Motion to Dismiss" from Complainants dated November 5, 2018. Complainants argued, in part, that Respondent incorrectly asserted that the undersigned presiding officer denied Complainants objections to Respondents discovery requests and restated their argument that a resolution conference was not held in this proceeding.

On December 5, 2018, an Interim Order was entered denying Complainants objections to Respondents discovery requests and requiring Complainants to serve full and complete responses to the interrogatories and requests for production of documents forwarded by Respondent to Complainants on January 23, 2018, and file and serve a certificate of service regarding said service, on or before December 27, 2018. The Parties were further permitted to request the scheduling of a prehearing conference in this proceeding, in writing. The Parties were also directed to comply with the terms and provisions of the interim orders previously entered in this case, including but not limited to the interim order entered on October 15, 2018.

On December 27, 2018, Complainants filed a cover letter dated December 27, 2018, indicating that their Answers to Interrogatories and Requests for Documents (Set I) were attached. The letter did not indicate that a copy of the letter was provided to the undersigned Presiding Officer and a copy of the letter was not provided to the undersigned Presiding Officer. In addition, on that date, Complainants filed a "Stipulated Protective Agreement" that was not signed by Respondent, an "Acknowledgement Of Stipulated Protective Agreement", a copy of which was provided to the undersigned Presiding Officer. In addition, on that date, Complainants filed a Certificate of Service certifying that on December 27, 2018, Complainants served a true copy of the "Response to Met-Ed's Interrogatories and Request for Documents (Set I) of Larry R. Kramer and Ellen M. Kramer and a Stipulated Protective Agreement

upon the individuals listed below, in accordance with the requirements of 52 Pa.Code § 1.54.” The undersigned Presiding Officer was listed as one of the individuals to whom copies of the documents were sent. The undersigned Presiding Officer was provided with a copy of the “Stipulated Protective Agreement”, an “Acknowledgement Of Stipulated Protective Agreement”, however the undersigned Presiding Officer was not provided with a copy of the cover letter from Complainants dated December 27, 2018, nor Complainant’s “Response to Met-Ed’s Interrogatories and Request for Documents (Set I) of Larry R. Kramer and Ellen M. Kramer”.

Based upon Complainants’ representations that Discovery responses were served upon Respondent on December 27, 2018, an Interim Order was entered on February 6, 2019, denying the Motion to Dismiss filed by Respondent for Complainants’ failure to provide responses to the Discovery Requests propounded by Respondent.

On January 25, 2019, the undersigned Presiding Officer received correspondence from Complainants dated January 23, 2019, and a Request for an Extension of Time to the Initial Litigation Schedule. The request stated, *inter alia*, that Complainants began researching and writing a book in April of 2015 regarding the 250th anniversary of the founding of Myerstown, Pennsylvania and that they needed approximately two more months to complete the book. Complainants also indicated that they lost information stored on their computer.

An Interim Order was entered on October 15, 2018, establishing a litigation schedule, and requiring the Parties to exchange the identity and written summary of the expected fact and expert witnesses not later than January 25, 2019. Furthermore, the order required the Parties to conclude discovery by April 25, 2019. On August 30, 2018, an Interim Order was entered compelling Complainants to provide responses by September 14, 2018, and a subsequent order entered on December 5, 2018, requiring Complainants to respond to the Discovery Requests and file a Certificate of Service, evidencing such service by December 27, 2018.

On January 31, 2019, an Interim Order was entered denying the Request for an Extension of Time to the Initial Litigation Schedule filed by Complainants and dated January 23, 2019.

Complainants forwarded a letter to the undersigned Presiding Officer dated February 6, 2019, once again requesting an extension of time, of at least 120 or 150 days and further provided “could we please have the time and opportunity to submit our expert witnesses and their summary of testimony.” No other specifics were provided regarding the requests for relief by Complainants. Complainants essentially raised the same arguments as were stated in their Request for an Extension of Time to the Initial Litigation Schedule filed by Complainants and dated January 23, 2019. The claims asserted by Complainants were essentially that Complainants began researching and writing a book in April of 2015 regarding the 250th anniversary of the founding of Myerstown, Pennsylvania and that they needed approximately two more months to complete the book. Complainants also indicated that they lost information stored on their computer. This request was denied by Interim Order entered on January 31, 2019. On February 15, 2019, an Interim Order was entered denying the Second Request for an Extension of Time to the Initial Litigation Schedule filed by Complainants and dated February 6, 2019.

On December 26, 2018, the Company filed its objections to the Complainants’ Set I Interrogatories and Requests for Production of Documents (Set I Discovery Requests). On December 26, 2018, the Company filed its objections to the Set I Discovery Requests. On January 22, 2019, the Complainants filed a Motion to Compel related to these objections.

On February 6, 2019, an Interim Order was entered denying the Company’s Motion to Dismiss, without prejudice. Also, on February 6, 2019, an Interim Order was entered denying the Complainants’ Motion to Compel.

On February 16, 2019, Complainants served their Set II Interrogatories and Request for Production of Documents (Set II Discovery Requests). On March 1, 2019, the Company filed its objections to Interrogatory Number 62 of the Set II Discovery Requests. On March 9, 2019, the Complainants filed their Motion to Compel related to Interrogatory No. 62. On March 18, 2019, the Company served its responses to all of the Set II Discovery Requests, with the exception of the one disputed item, Interrogatory No. 62. That same day, the Company also filed its response

to the Complainants' Motion to Compel. On April 4, 2019, an Interim Order was entered which denied the Motion to Compel of the Complainants' regarding Set II Discovery Requests.

On April 4, 2019, the Complainants served their Set III Interrogatories and Request for Production of Documents (Set III Discovery Requests). On May 7, 2019, the Company served its responses to the Set III Discovery Requests.

On May 13, 2019, the Company filed a Status Report and, on or about May 20, 2019, the Complainants submitted a Status Report in accordance pursuant to the Interim Order entered October 15, 2019.

On May 25, 2019, the Complainants served their Set IV Interrogatories and Request for Production of Documents (Set IV Discovery Requests). On June 6, 2019, the Company filed its objections to Interrogatory Numbers 1, 6-7, 15-17, 26-29, 36-37, 39, 41-42, 44 and 46 of the Set IV Discovery Requests. On June 17, 2019, the Complainants filed a Motion to Compel all responses related to the Set IV Discovery Requests, with specific arguments related to the objections raised by the Company related to Interrogatory Nos. 1, 6-7, 15-17, 26-29, 36-37, 39, 41-42, 44 and 46. On June 25, 2019, Respondent filed its Response Of Metropolitan Edison Company To The Complainants' Motion To Compel Responses To Interrogatories And Document Requests.

On July 8, 2019, Complainants filed their Response to Met-Ed's Objections to Complainants' Motion To Compel To Answer Complainants' Interrogatories and Request for Production of Documents (Set IV).

An Interim Order was entered on December 6, 2019, denying Complainants' Motion to Compel.

On December 20, 2019, the undersigned Presiding Officer received a cover letter from Complainant dated December 18, 2019, along with a document entitled "Reconsideration of Motion To Compel Met-Ed To Answer Complainants' Interrogatories and Request for Production

of Documents (Set IV)”. The document was directed to the Commission Secretary and did not include a Notice to Plead directed to Respondent. The document appeared to request the same relief that was denied by Interim Order entered on December 6, 2019 and was treated as a request for reconsideration of the Interim Order entered on December 6, 2019.

On March 6, 2020, an Interim Order was entered denying the Request for Reconsideration of Motion To Compel Met-Ed To Answer Complainants’ Interrogatories and Request for Production of Documents (Set IV), dated December 18, 2019.

On March 6, 2020, an Interim Order was entered requiring the Parties to provide status reports, no later than March 18, 2020, which was to include dates when the Parties and their witnesses would be available and proposed locations for an evidentiary hearing anticipated to be held in June 2020.

On March 18, 2020, the Parties filed their status reports. The Complainants’ status report failed to provide -any proposed dates for an evidentiary hearing. Instead, their status report set forth many of the same allegations contained in their Motion, regarding Respondents alleged failure to comply with the Interim Order Setting Resolution Conference and that the Company participated in *ex parte* communications. Accordingly, on May 26, 2020, a Notice was issued scheduling a telephonic evidentiary hearing for June 29, 2020. That same day, a Prehearing Order was entered setting forth various procedural rules and requirements for the proceeding and information about participating in the telephonic hearing. On May 26, 2020, Complainants filed a Response to Interim Order of May 26, 2020.

On May 26, 2020, an Interim Order was entered confirming that an initial telephonic hearing in this case was scheduled for Monday, June 29, 2020 and providing instructions regarding how to participate in the hearing. In addition, the Parties were advised that if they intended to present any documents or exhibits for my consideration at the hearing, or if they intended to have a witness refer to or rely upon any material of any kind, document or proposed exhibit, they must exchange copies on or before Friday, June 15, 2020.

On June 5, 2020, Complainants filed a Response to Interim Order (Motion)¹ wherein Complainants alleged that: (1) Respondent and Mediator Cynthia Lehman participated in *ex parte* communications; (2) Respondent failed to reach out to the Complainants to set a resolution conference in accordance with the Interim Order dated January 12, 2018; (3) that the undersigned presiding officer should recuse myself from this case; and (4) the June 29, 2020 hearing should be continued. On June 11, 2020, Respondent filed an Answer to the Response to Interim Order filed by Complainants on June 5, 2020.

On June 15, 2020, Complainants filed a pleading dated June 14, 2020, entitled Motion in the Case of Docket No. C-2017-2630621. Complainant essentially averred that they wanted Respondent to comply with the resolution conference as ordered on January 12, 2018; that the deadline to submit their exhibits be extended until on or after September 20, 2020; that the hearing be delayed based upon vague references to a family member being in the hospital and a child having surgery; that a different administrative law judge be assigned to the proceeding; that Complainants list of witnesses be accepted although they were not identified; and that the hearing be delayed until after September 20, 2020 when at least four of their witnesses would be available.

On June 16, 2020, an Interim Order was entered denying Complainants request for disqualification of the undersigned presiding officer; denying the request to require Respondent to participate in a resolution conference; denying the request to continue the evidentiary hearing in this proceeding; and providing that any requests to permit testimony from witnesses or to admit evidence into the record would be addressed at the evidentiary hearing.

A telephonic evidentiary hearing was held in this matter on June 29, 2020. Complainants were present and participated in the hearing. Respondent was present and was represented by counsel. At the hearing, the Parties were advised that they may, but were not required to submit briefs, and a deadline to submit briefs of September 30, 2020, was established.

On September 21, 2020, Complainants submitted an email requesting an extension of the briefing schedule.

On September 30, 2020, an Interim Order was entered extending the deadline to submit briefs from September 30, 2020, until November 9, 2020. In addition, the Parties were excused from including proposed findings of fact, conclusions of law or proposed ordering paragraphs, or references to the testimony or exhibits from the evidentiary hearing.

Povacz I, Povacz II, and The Commission's Stay Order

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz, et al. v. Pa. Public Utility Commission*,² (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. § 2807(f). In the *Povacz I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission's March 28, 2019, and May 9, 2019, Orders in Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall.³

In light of the Commonwealth Court's decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, 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. *The November 4, 2020, Stay Order* applied to and was docketed at the instant case.

² *Povacz, et al. v. Pa. Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020).

³ *Povacz I* at 495.

The Commission, as well as all other parties in *Povacz I* subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania.

Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court’s disposition of *Povacz II*.

On August 16, 2022, the Supreme Court issued its Opinion in *Povacz II*, affirming the Commission’s determinations in all respects. The Supreme Court affirmed the Commonwealth Court’s conclusion that the “Customers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects.⁴ The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.⁵ The Supreme Court reversed the Commonwealth Court, and affirmed the Commission’s interpretation in *Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall* that Act 129 mandates universal smart meter installation.⁶

Given the Supreme Court’s decision in *Povacz II*, the Commission lifted the stay implemented by the *November 4, 2020, Stay Order* on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

The Instant Case

In the instant case, the deadline to file briefs was extended by the undersigned presiding officer at Complainant’s request, until November 9, 2020. However, the Commission

⁴ *Id.* at 1014.

⁵ *Povacz II* at 992.

⁶ *Id.*

entered an Order and Notice, at Docket No. M-2009-2092655, staying the proceeding, on November 4, 2020. The stay was lifted by Order of the Commission on November 9, 2023. Under the circumstances, an Interim Order was entered on November 27, 2023, extending the deadline to file briefs and to consider appropriate requests for relief, if any, and to proceed with the disposition of this proceeding consistent with the Commonwealth Court and Supreme Court rulings discussed above. The deadline was extended to January 10, 2024.

On November 27, 2023, Complainants provided the undersigned presiding officer with a request to extend the briefing deadline, requesting an additional extension of 120 days. On December 13, 2023, the undersigned presiding officer received a response from counsel for Respondent objecting to Complainant's latest request for an additional extension.

On December 20, 2023, an Interim Order was entered requiring that the Parties file their briefs and any other appropriate requests for relief, on or before February 1, 2024. The Parties were not required to include proposed findings of fact, conclusions of law or proposed ordering paragraphs, or to include specific references to the testimony or exhibits from the evidentiary hearing. The Parties were advised that no further extensions to file briefs would be granted.

On February 1, 2024, Respondent filed its main brief. On February 6, 2024, Complainant's filed a request for an extension of the briefing schedule. Complainants explained that Mrs. Kramer was suffering from medical issues and requested an extension of 180 days to file their brief.

On June 4, 2024, an Interim Order was entered extending the deadline for Complainants to file their brief until July 1, 2024. The Order provided that Respondent may file a reply brief not later than July 31, 2024, and that no further extensions to file briefs would be granted.

No brief was filed by Complainants. Accordingly, it is appropriate to close the evidentiary record and to issue a decision in this proceeding.

Under the circumstances, the following order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the record at Docket No. C-2017-2630621 is closed.
2. That an Initial Decision will be issued in this proceeding.

Date: August 19, 2024

/s/
Jeffrey A. Watson
Administrative Law Judge

C-2017-2630621 - LARRY R AND ELLEN M KRAMER v. METROPOLITAN EDISON COMPANY

LARRY R KRAMER
ELLEN M KRAMER
101 SOUTH COLLEGE STREET
MYERSTOWN PA 17067
717.866.5425
-E-SERVE-
kramer101@comcast.net

LAUREN MARISSA LEPKOSKI ESQUIRE
TORI L GIESLER ESQUIRE
TERESA K HARROLD ESQUIRE
FIRSTENERGY SERVICE CO
2800 POTTSVILLE PIKE
PO BOX 16001
READING PA 19612
610.921.6203
610.921.6658
610.921.6783
-E-SERVE-
tgiesler@firstenergycorp.com
llepkoski@firstenergycorp.com
tharold@firstenergycorp.com