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File #: 167945

September 30, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: John and Janet Holder and June Maculesky v. PPL Electric Utilities Corporation
Docket Nos. F-2019-3008809 and F-2019-3008832**

Dear Secretary Chiavetta:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) respectfully submits this letter in lieu of an Answer to the letter dated August 31, 2024 (“August 31, 2024 Letter” or “Letter”), submitted by John and Janet Holder and June Maculesky (“Complainants”) in the above-referenced proceeding. In their Letter, the Complainants allege that they plan to file a Petition for Review with the Commonwealth Court *nunc pro tunc* disputing the Pennsylvania Public Utility Commission’s (“Commission”) Opinion and Order entered August 1, 2024 (“Order”), which dismissed the Complainants’ Formal Complaint disputing the Company’s planned installation of a smart meter. The Complainants request that the Commission stay its Order and that the Company be prohibited from installing the smart meter pending two cases alleging pending before the Pennsylvania Supreme Court: (1) a Petition for Allowance of Appeal in *McKnight v. Pa. PUC*; and (2) a Petition for Declaratory Judgment filed by Nancy Colbert.¹

The Complainants’ request should be denied. As an initial matter, the Complainants failed to file a formal Petition for Stay within 15 days of the Commission’s Order. *See* 52 Pa. Code § 5.572(c). On that ground alone, the Commission’s Order should not be stayed pending appeal.

¹ No docket numbers were provided by the Complainants. However, PPL Electric has identified the *McKnight v. Pa. PUC* case as Docket No. 58 MM 2024. The Company cannot locate any case pending before the Pennsylvania Supreme Court involving the Commission and Nancy Colbert.

Further, the Complainants failed to appeal to the Commonwealth Court within 30 days of the Commission's Order. Also, to the best of PPL Electric's knowledge, the Complainants have not filed a Petition for Review *nunc pro tunc*. It is axiomatic that the Complainants cannot be granted a stay pending appeal when they do not have an appeal pending. Moreover, if the Complainants ultimately do file a Petition for Review, such appeal should be quashed as untimely.

In addition, the Complainants' request for a stay fails to satisfy the *Process Gas* standard for a stay pending appeal. *Pa. PUC v. Process Gas Consumers Grp.*, 427 A.2d 805, 808-09 (Pa. 1983) ("*Process Gas*") Specifically, the Complainants fail to: (1) make a strong showing that they are likely to prevail on the merits; (b) show that without the requested relief, they will suffer irreparable injury; (c) demonstrate that the issuance of a stay will not substantially harm other interested parties in the proceeding; and (d) establish that the issuance of a stay will not adversely affect the public interest. *Id.*

First, the Complainants are not likely to prevail on the merits of any appeal. Setting aside that any appeal would be untimely, the Pennsylvania Supreme Court held in *Povacz v. Pa. PUC* that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the Commission applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company ("EDC") cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff."² *Povacz v. Pa. PUC*, 280 A.3d 975, 1012-14 (Pa. 2022). The Commonwealth Court must adhere to the Supreme Court's *Povacz* decision, rendering any appeal in this proceeding unlikely to prevail on the merits.

Second, the Complainants fail to demonstrate that they will suffer irreparable injury in their Letter. Although they assert that their granddaughter has been hospitalized with health issues in Philadelphia, it is unclear how that necessitates a stay of the smart meter's installation at the service address, or how the Complainants themselves will be irreparably harmed without a stay.

Third, a stay would prevent the Company from complying with its mandate under Act 129 to install a smart meter at the service address. These meters provide significant benefits to the planning and operation of PPL Electric's distribution system, such as outages, voltage information, heat alarms, and meter tampering alerts. Thus, a stay would substantially harm the Company and adversely affect the public interest.

Copies of this letter are being served as indicated on the enclosed Certificate of Service.

² *Povacz v. Pa. PUC*, 280 A.3d 975, 1012-14 (Pa. 2022).

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Respectfully submitted,



Devin Ryan

DR/dmc
Attachments

cc: Certificate of Service
Office of Special Assistants (*via Email ra-OSA@pa.gov*)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

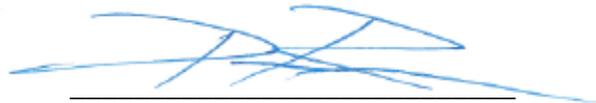
VIA ELECTRONIC MAIL

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Date: September 30, 2024



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