

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

Public Meeting held October 10, 2024

Commissioners Present:

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

John and Janet Holder

F-2019-3008809

v.

PPL Electric Utilities Corporation

June Maculesky

F-2019-3008832

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

## **BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a document entitled “Request for Stay,” (Petition),<sup>1</sup> filed by John and Janet Holder<sup>2</sup> (the Complainants) on September 2, 2024, in response to the Commission’s Opinion and Order entered August 1, 2024 (*August 2024 Order*), which adopted the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, which was served on the Parties on October 14, 2020, in the above-captioned proceeding. The Commission’s *August 2024 Order* denied and dismissed the Amended Formal Complaint (Amended Complaint) filed by the Complainants and authorized the PPL Electric Utilities Corporation (PPL) to commence with installation of a smart meter at the Complainants’ service address. *August 2024 Order* at 35. On September 30, 2024, PPL filed a Letter in Lieu of an Answer (PPL Letter) in opposition to the Petition. PPL Letter at 1-2.

For the reasons discussed below, we shall deny the Complainants’ Petition and permit PPL to proceed with the planned smart meter installation at the Complainants’ service address.

### **I. Background**

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PPL proposes to install at the

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<sup>1</sup> As a matter within our discretion under Section 1.2 of Commission’s regulations (Regulations) at 52 Pa. Code § 1.2, in view of the fact that the Complainants appear *pro se*, we shall construe the Petition as timely-filed Petition for Stay, pursuant to 52 Pa. Code § 5.572.

<sup>2</sup> The formal complaint of John and Janet Holder was consolidated with a complaint Ms. Holder filed, as power of attorney, on behalf of her mother, Ms. June Maculesky.

Complainants' residence and use in the ordinary course of business to measure the Complainants' electricity consumption. The Complainants refused to have a smart meter installed for alleged health, safety, and privacy reasons. In their Amended Complaint, the Complainants requested, *inter alia*: (1) that the Commission allow the Complainants to opt out of the installation of a smart meter at the service address; and (2) that the Commission prevent PPL from terminating the Complainants' service as a result of their refusal of the installation of a smart meter. Amended Complaint at 386-87.

PPL is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns, and maintains the meters in its distribution system. *See*, PPL's Tariff Electric Pa. P.U.C. No. 201, Rule 8 at 12.

The Complainants, John and Janet Holder and June Maculesky, are PPL customers who have been notified of PPL's intent to install a smart meter at the service addresses. Answer to Amended Complaint at 3-4.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the 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 PPL, 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*). PPL 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 2019. *See, Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan*, Docket No. M-2014-2430781 (Opinion and Order entered September 3, 2015) (*PPL 2015 Smart Meter Order*); *see also, Petition of PPL Electric Utilities Corporation for Approval of its*

*Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2123945 (Opinion and Order entered June 24, 2010) (*PPL 2010 Smart Meter Order*).

## **II. History of the Proceeding**

On March 18, 2019, John and Janet Holder filed a formal complaint against PPL with the Commission at Docket No. F-2019-3008809 seeking to prevent the installation of a smart meter at their residence due to alleged health, safety, and privacy concerns. Also on March 18, 2019, Janet Holder, as power of attorney, filed on behalf of her mother, June Maculesky, a formal complaint against PPL at Docket No. F-2019-3008832, in which she also sought the prevention of a smart meter being installed at her residence, averring the same allegations.<sup>3</sup> The Holders and Ms. Maculesky sought to opt out of smart meter installation. I.D. at 1-2.

On March 27, 2019, PPL was served with the above-captioned formal complaints. On April 23, 2019, PPL filed a Motion to Consolidate both formal complaints. There was no objection to the consolidation. By Order dated May 14, 2019, the proceedings were consolidated pursuant to 52 Pa. Code § 5.81.

On September 4, 2019, the Holders and Ms. Maculesky (Complainants) together filed the Complaint raising the same issues in the prior formal complaints and attaching to it 389 pages of what they identified as “exhibits” to support their Amended Complaint. I.D. at 2.

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<sup>3</sup> Both formal complaints were timely appeals from informal decisions of the Commission’s Bureau of Consumer Services (BCS) which denied both informal complaints by decisions dated January 1, 2019. The Holders appeal from the decision was at BCS No. 3667431, and Ms. Maculesky’s appeal from the decision was at BCS No. 3667472. I.D. at 2, n. 1.

PPL requested and was granted an extension to file an answer to the Amended Complaint. Tr. at 4. PPL filed an answer to the Amended Complaint on January 21, 2020 (Answer). The Answer admitted that PPL provides electric service to the Complainants at the addresses shown on the respective consolidated Complaints. The Answer provided that PPL is required to install AMI, or smart meters, for all automatic meter reading customers and that it has the right to terminate service for failure of the customer to permit access to the meter. Answer at 4-7.

On February 28, 2020, PPL filed a Motion in Limine and Motion for Sanctions requesting that the Complainants be precluded from submitting hearsay evidence regarding health issues, as they indicated they would not be calling any expert witnesses and refused to answer interrogatories regarding their health issues. PPL requested a ruling that the ALJ find that the Complainants would not suffer any deleterious health effects from the AMI meter to be installed at their respective residences. I.D. at 3.

On or about April 21, 2020, the Complainants filed their response to the Motion in Limine. The Complainants argued that just because they do not have any present health conditions, they should not be precluded from submitting evidence and arguing that AMI wireless smart meter devices potentially could or would cause, contribute to, or exacerbate future biological or adverse health effects. I.D. at 3.

On May 26, 2020, an Order (*May 2020 Order*) granting PPL's Motion in Limine and Motion for Sanctions was issued. Because the Complainants failed to produce any information and documents responsive to PPL to Complainant Set I, No. 4 during the course of this proceeding, and they indicated that they did not intend to do so, the ALJ found that the Complainants had not and would not experience any medical conditions or issues from the installation of PPL's AMI meter as a sanction. Therefore, the Complainants' health allegations were not addressed in the Initial Decision. I.D. at 3.

On June 12, 2020, the Complainants filed an Exception to the *May 2020 Order* which granted PPL's Motion for Sanctions. On June 22, 2020, PPL filed a Reply to the Exceptions of John and Janet Holder and June Maculesky to the *May 2020 Order*. On June 23, 2020, an Order denying the Exceptions of John and Janet Holder and Maculesky to the *May 2020 Order* was issued.

On July 31, 2020, the Complainants filed a Main Brief. On August 5, 2020, PPL filed a Motion to Strike the Complainants' Main Brief and Motion for Sanctions. PPL argued that the Complainants' Main Brief was premature. PPL requested that the ALJ issue sanctions due to the Complainants' attempt to rely on evidence that was excluded from the record by the *May 2020 Order*. Motion to Strike Main Brief at 2-3.

The hearing was held on August 6, 2020. At the hearing, the Complainants Janet and John Holder appeared *pro se* and submitted no exhibits or expert witness testimony. PPL appeared with fifteen exhibits and four witnesses. Only the statements and exhibits of PPL witnesses Mike Asbury and Kevin Durkin were offered and admitted into the record at the hearing. A 58-page transcript of the hearing was filed on August 20, 2020, and the record closed on the same date. I.D. at 4.

The ALJ addressed the Complainants' July 31, 2020 Main Brief filing, and PPL's Motion to Strike the Main Brief, at the August 6, 2020 hearing. The ALJ approved PPL's Motion to Strike the Main Brief but did not dismiss the case, as sanction, as PPL had requested. Tr. at 5-8.

On August 25, 2020, the Complainants filed a Motion to Remove Sanctions and a Motion to File an Amended Brief. On August 28, 2020, the Complainants filed a Revised Motion to File an Amended Brief. On September 14, 2020, PPL filed an Answer to the Complainants' Motion to Remove Sanctions. The Complainants filed a Reply to

the PPL Answer on September 21, 2020. The Complainants filed a Reply to Answer in Opposition to the Motion to Remove Sanctions on September 23, 2020.

On September 25, 2020, PPL filed a Letter response to the Complainants' September 23, 2020 Reply. PPL argued that the Complainants' September 23, 2020 submittal did not constitute a permissible pleading before the Commission. PPL September 25, 2020 Letter at 1-2.

On October 14, 2020, the Commission served ALJ Barnes' Initial Decision in *John and Janet Holder v. PPL Electric Utilities Corporation*, Docket No. F-2019-3008809 and *June Maculesky v. PPL Electric Utilities Corporation*, Docket No. F-2019-3008832.

As noted above, on November 3, 2020, the Complainants filed Exceptions to the Initial Decision.

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 2020 Stay Order*). The *November 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 of the Code, 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 (*November 2023 Order Lifting 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 November 24, 2023, PPL filed Replies to Exceptions.

Also on November 24, 2023, the Complainants filed a document titled “Reply Exceptions.” The Complainants filed subsequent documents related to these “Reply Exceptions” including corrections to the Reply documents and Exhibits related to the Reply documents on November 27, 2023; December 20, 2023; December 27, 2023; and December 28, 2023.<sup>4</sup>

In the Commission’s *August 2024 Order*, the Commission denied the Complainants’ Exceptions and adopted the Initial Decision of ALJ Barnes. Based upon that Opinion and Order, PPL is now authorized to proceed with installation of a smart meter at the Complainants’ service address.

On August 1, 2024, the Complainants filed a document which *inter alia*, sought a stay of the Commission’s *August 2024 Order*.<sup>5</sup>

As previously noted, on September 2, 2024, the Complainants filed their Petition, also seeking a stay of the Commission’s *August 2024 Order*. The Petition is the

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<sup>4</sup> These documents were found to not constitute permissible pleadings before the Commission and to be improper filings. *August 2024 Order* at 8-9 (citing Section 5.535 of the Commission’s Regulations, 52 Pa. Code § 5.535, which does not permit a party to file a reply to their own exception or submit exhibits as “a reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception.” 52 Pa. Code § 5.535(a)).

<sup>5</sup> The document filed on August 1, 2024, was titled a “Certificate of Service” and purported to inform the Commission of the Complainants’ intent to appeal and seek a stay of the Commission’s *August 2024 Order*. Subsequently, on September 2, 2024, the Complainants filed their Petition also seeking a stay of the Commission’s *August 2024 Order*. The document filed on August 1, 2024 will be disregarded as redundant for purposes of our disposition in accordance with 52 Pa. Code § 1.4(e). Further, as previously noted, as a matter within our discretion under Section 1.2 of the Commission’s Regulations, we shall treat the Petition, filed on September 2, 2024, as a Petition for Stay.

subject of the present disposition. On September 30, 2024, PPL filed a letter opposing the Petition. PPL Letter at 1-2.<sup>6</sup>

### III. Discussion

#### A. Legal Standards

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. As to the Complainants' request for a stay, the burden of proof is, therefore, on the Complainants. Further, it is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The Complainants' Petition is authorized pursuant to 52 Pa. Code § 5.572 (Petitions for relief), which provides, in pertinent part: "(a) **Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like** must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired."<sup>7</sup>

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<sup>6</sup> Because it appears that the Complainants failed to properly serve the Petition on PPL, we shall accept PPL's Letter as a timely response to the Petition. *See*, Petition ("Certificate of Service" indicates service via electronic mail, however, fails to include electronic mail addresses for counsel for PPL.).

<sup>7</sup> *See also*, Pa. R.A.P. 1781(a): "[a] *Application to government unit.-* Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review or petition for specialized review shall ordinarily be made in the first instance to the government unit."

In reviewing petitions which seek to stay the effect of Commission Orders, the Commission has adopted the standards set forth in *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (*Process Gas*). The Pennsylvania Supreme Court, in *Process Gas*, adopted the standards established by the court in *Virginia Petroleum Jobbers Association v. FPC*, 104 U.S. App. D.C. 106, 259 F.2d 921 (1958), as refined by the court in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C.Cir.1977). *Process Gas*, 467 A.2d at 809.

Pursuant to the holding of *Process Gas*, for issuance of a stay and/or supersedeas, a petitioner must establish the following:

1. Make a strong showing of likelihood to prevail on the merits;
2. Show that denial of relief will cause irreparable injury;
3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings;
4. Show that the issuance of a stay will not adversely affect the public interest. *Process Gas*, 502 Pa. at 552-553, 467 A.2d at 808-09. The Supreme Court further stated: “[I]t is essential that the unsuccessful party, who seeks a stay of a final order pending appellate review, make a strong showing under the[se] criteria in order to justify the issuance of a stay.” *Id.*

The criteria for our consideration as to whether to issue a stay have been elucidated further in subsequent decisions of this Commission. *See, Application of Aqua Pennsylvania Wastewater, Inc.*, pursuant to 66 Pa. C.S. §§ 1102 and 1329, Docket No. A-2021-3027268 (Opinion and Order entered August 25, 2022) (*Application of Aqua Pa.*), discussing *Pa. PUC, et al. v. Pennsylvania Electric Company, et al.*, Docket No. M-2008-2036188, 2010 Pa. PUC LEXIS 248 (Opinion and Order entered March 25, 2010) (*Pennsylvania Electric*); *Pa. PUC v. UGI Corp.*,

57 Pa. P.U.C. 83, 88-89 (1983) (*UGI*); also *Pa. PUC v. Nat'l Fuel Gas Dist. Co.*, 65 Pa. P.U.C. 210, 213 (1987); *Re: General Elec.*, 59 Pa. P.U.C. 61, 63 (1984); see also, *Petition of Librandi Machine Shop, Inc. For Declaratory Order*, Docket No. P-2018-3000047 (Opinion and Order entered March 10, 2022) (*Opinion and Order re: Stay, March 10, 2022*).

In *Pennsylvania Electric*, certain electric utilities filed tariff revisions seeking to adjust their transmission service charges. After subsequent tariff filings and challenges to those filings, the issues were litigated before an administrative law judge resulting in the issuance of a Recommended Decision. After consideration of Exceptions filed to the Recommended Decision, the Commission adopted an order on March 3, 2010. It was this order that the utilities sought to stay, and that was ruled on in an order entered on March 25, 2010. *Pennsylvania Electric* at 1-7. Based on these facts and the procedural history, the Commission, relying on a prior decision in *Pa. PUC v. Makovsky Brothers, Inc.*, 53 Pa. P.U.C. 510 (1979) (*Makovsky*), “. . .[d]eclined to engage in a review of the case as well as any further review of substantive determinations underlying the March 3 Order.” *Id.* at 10.

It was found significant in *Pennsylvania Electric*, that a stay was requested from a Commission order where the Commission ruled after fully litigated proceedings addressing substantive determinations, which addressed facts and arguments raised by the parties during the proceeding. Such is the case in the instant matter, and we have considered the Complainants’ Petition with this scenario in mind.

#### **B. Commission’s *August 2024 Order***

The Commission’s *August 2024 Order* adopted the ALJ’s Initial Decision. *August 2024 Order* at 35. The ALJ addressed, *inter alia*, the following issues: (1) the Complainants’ request for an opt out of smart meter installation; and (2) the

Complainants' concerns regarding data privacy. I.D. at 9-14. We summarize the ALJ's findings and conclusions on these issues, below.

## **1. Act 129 and Opt-Out Programs**

In the Initial Decision the ALJ noted the Complainant's contention that over thirty other states allow customers to opt-out of smart meter installation. The ALJ noted that while other states have opt-out provisions, it is non-binding to a determination in this proceeding. The ALJ provided that the Commission has consistently held there is no opt-out provision for similarly situated Complainants. I.D. at 10-11. The ALJ concluded that EDCs such as PPL would be in violation of law if they did not install a smart meter at properties similarly situated to the Complainants' residence. I.D. at 12 (citing *Povacz 2013 Order, Frompovich* at 7-8).

## **2. Data Privacy**

As to the Complainants' arguments regarding privacy violations, the ALJ rejected the Complainants' position that installation of a smart meter at the service address would invade their privacy and violate their Fourth Amendment Rights against unreasonable search and seizure. I.D. at 12 (citing Tr. at 13, 15).

In rejecting the Complainants' privacy arguments, the ALJ relied upon PPL's detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect using the smart meter, the steps PPL will take to protect the data, and how PPL will use the data. I.D. at 13 (citing PPL Exh. MA-1). The ALJ explained that PPL uses firewalls to prevent unauthorized access to the AMI network, customer data is encrypted, and PPL's cybersecurity and data privacy policies are consistent with national policies. I.D. at 13 (citing PPL St. 4). The ALJ explained further that the Complainants can

decline to have the ZigBee radio<sup>8</sup> activated if they are concerned about the AMI meter's connection with smart appliances at the service address. I.D. at 13 (citing *Lesniewski v. PPL Electric Utilities Corp.*, C-2018-3004594 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019), wherein the Commission found in favor of PPL regarding the same data privacy issue.

The ALJ agreed with PPL, that it is not a state actor and opined that there is no evidence in the instant case that PPL is making its data easily accessible to law enforcement or other third parties. The ALJ cited to *Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. Ill. 2014) (*Naperville II*), noting that the Court found that smart meters used by the City of Naperville were constitutionally permissible and consistent with the Fourth Amendment. I.D. at 13-14.

Based on all the above, the ALJ dismissed the Complaint for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa.C.S. § 1501 or otherwise violates the Code, a Commission order or regulation or a Commission-approved tariff of the company. I.D. at 14.

### **C. Complainants' Petition and PPL's Letter**

By their Petition, the Complainants seek a stay from the *August 2024 Order*, pending the disposition of the Petition for Review they intend to file in the Commonwealth Court. The Complainants seek to preserve the *status quo* pending action by the Commonwealth Court on their intended Petition for Review or the pending similar matters before the Commonwealth Court. Petition at 1.

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<sup>8</sup> The smart meter proposed for use at the service address has a radio component to communicate with PPL and a Zigbee radio component to communicate with the customer's smart appliances if activated by the customer. PPL St. 4 at 12.

In their Petition, the Complainants fail to address the standard for granting a stay under *Process Gas*. The Complainants argue as follows:

We respectfully request that PPL Electric Utilities refrain, or be restrained, from pursuing replacement of the electric meter presently on our home with a wireless smart meter, at least until such time that decisions are rendered in each of the following cases pending before the Pennsylvania Supreme Court, namely:

*Petition for Allowance of Appeal in Alexia and Lawrence McKnight v. Public Utility Commission*

and

*Petition for Declaratory Judgment* brought forth by petitioner, Nancy Colbert.

The outcomes of these other legal actions will fundamentally impact our own case, and PPL Electric Utilities will not be harmed, given that we pay our electric utility bills faithfully and on time and will provide accurate meter readings if/as needed

*Id.*

In response to the Complainants' Petition, PPL argues that the Petition should be dismissed for, *inter alia*, the Complainants' failure to satisfy the test set forth in *Process Gas*. PPL Letter at 1-2. Specifically, PPL asserts that the Complainants are unlikely to prevail on the merits, on the basis 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.” *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.

PPL Letter at 2.

PPL also asserts that the Complainants fail to allege any irreparable harm and that, if granted, a stay would prevent PPL from complying with an affirmative duty under Act 129 to install a smart meter at the service address. PPL Letter at 2.

#### **D. Disposition**

We advise the Parties that any issue or contention that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. It is well-settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *See, Wheeling & Lake Erie Railway Co. v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001), *also see, generally, Univ. of Pa., et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984).

On consideration of the Petition, we agree with PPL that *the Complainants failed to make a showing* under the four *Process Gas* standards to justify the issuance of a stay. *Process Gas*, 467 A.2d at 808-09. While we are cognizant that the Complainants appear *pro se*, we are also required to deny the Petition where no apparent argument may be made as to the factors for the test under *Process Gas*. One point raised by the Petition is that PPL will not be substantially harmed by the preservation of the status quo because the Complainants faithfully pay their utility bill. Petition at 1. However, this argument fails to consider the harm to PPL in drawing out the process for PPL’s compliance with

the Commission's Act 129 mandate to implement smart meters. *See, Smart Meter Installation Order.*

The Complainants' other argument, that the results of their possible appeal and other pending appeals before Commonwealth Court may impact their right to refuse smart meter installation, is not an argument which addresses any of the criteria under *Process Gas*. The only potential consequence of reversal on appeal is that PPL would be required to remove the smart meter, which may constitute an inconvenience but does not constitute irreparable harm. Accordingly, the Complainants do not satisfy the "irreparable harm" prong of the *Process Gas* test.

Finally, as noted by PPL, the issues raised by the Complainants' challenges to smart meter installation, *i.e.*, opt-out and data privacy, were expressly rejected by the Supreme Court's decision in *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). Based upon *Povacz II*, it is unlikely that the Complainants' may raise any cognizable, let alone meritorious, claims on appeal. The fact that there was a Commission-imposed stay in place for smart meter cases, which was lifted upon resolution of the litigation in *Povacz II*, further illustrates that the Complainants are not entitled to a stay of the Commission's *August 2024 Order*. *See, November 2023 Order Lifting Stay; November 2020 Stay Order*. Therefore, we find that the Complainants are not able to satisfy the required balance of factors under *Process Gas* for imposing a stay.

Accordingly, because we find no merit in the Petition, we shall deny it.

#### **IV. Conclusion**

On consideration of the Petition, and on application of the criteria of *Process Gas*, the Petition is denied; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Stay, filed by John and Janet Holder and June Maculesky on September 2, 2024, to the Opinion and Order of the Pennsylvania Public Utility Commission, entered on August 1, 2024, at Docket Nos. F-2019-3008809 and F-2019-3008832, is denied, consistent with this Opinion and Order.

2. That this proceeding be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being particularly prominent.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: October 10, 2024

ORDER ENTERED: October 10, 2024