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November 12, 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: Jeffrey W. Smiles v. PPL Electric Utilities Corporation
Docket No. C-2021-3026268

Dear Secretary Chiavetta:

Attached for filing are the Replies of PPL Electric Utilities Corporation to the Exceptions of Jeffrey W. Smiles in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/dmc
Attachments

cc: The Honorable Arnold Alphonso III (*via email; w/attachments*)
Office of Special Assistants (*via email; w/attachments*)
Certificate of Service

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 E-MAIL & FIRST-CLASS MAIL

Jeffrey Smiles
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Sinking Spring, PA 19608
E-mail: jeffrsmil@peoplepc.com

Date: November 12, 2024



Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey W. Smiles,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026268
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent	:	

**REPLY EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE
EXCEPTIONS OF JEFFREY W. SMILES**

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Date: November 12, 2024

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I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby file its Replies to the Exceptions of Jeffrey W. Smiles (“Complainant”). The Complainant filed his Exceptions on July 2, 2024, in response to the Initial Decision (“ID”) issued by Administrative Law Judge Alphonso Arnold III (the “ALJ”) on June 12, 2024.¹ The ID dismissed the Complaint (“*Second Complaint*”), holding that the issues raised in the *Second Complaint* were previously fully litigated before the Commission and, therefore, the Complaint was barred by Section 316 of the Public Utility Code (“Code”), 66 Pa.C.S. § 316. (ID, at pp. 1, 16-17.)

The ID correctly concluded that the issues in this proceeding were already fully litigated before the Commission. (ID, at p. 12.) Indeed, the Complainant filed a similar smart-meter related complaint in 2018 at Docket No. C-2018-3003895 (“*First Complaint*”). In the *First Complaint*, the Complainant sought to prevent installation of PPL Electric’s smart meter at his service address at 3049 Octagon Avenue, Sinking Spring, PA 19608 (“Service Address”), raising health, safety, and privacy concerns, as well as arguing that he could “opt-out” of smart meter installation. An evidentiary hearing was held concerning the *First Complaint*, where the Complainant had full opportunity to present evidence in support of his claims. Indeed, the Complainant presented testimony addressing his health concerns (*First Complaint*, Tr. 14), safety concerns (2018 Complaint, Tr. 13), privacy concerns (*First Complaint*, Tr. 14), and his belief that he could “opt-out” of smart meter installation (*First Complaint*, Tr. 14). Following the *First Complaint*’s evidentiary hearing, an Initial Decision was issued, making 51 findings of fact and 16 conclusions

¹ Counsel for PPL Electric was not served with the Complainant’s Exceptions until October 28, 2024, via the Pennsylvania Public Utility Commission’s (“Commission”) e-service system. Thereafter, on October 29, 2024, PPL Electric filed a letter with the Commission explaining that it was not served with the Complainant’s exceptions on July 2, 2024, thus, had missed the original Replies to Exceptions deadline of July 12, 2024. As such, PPL Electric requested an extension until November 7, 2024, to file Replies to the Complainant’s Exceptions. On October 30, 2024, the Commission’s Secretary’s Bureau issued a letter granting an extension for PPL Electric to submit Replies to Exceptions, until November 12, 2024.

of law, finding that the Complainant failed to meet his burden of proof in regard to his claims and dismissing the *First Complaint*. *Smiles v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003895 (Initial Decision issued July 12, 2019). The Initial Decision became final without further Commission action. *Smiles v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003895 (Final Order entered Aug. 23, 2019). The Complainant filed a petition for rehearing or reconsideration of the *First Complaint*, which was denied by the Commission. *Smiles v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003895 (Opinion and Order entered Aug. 27, 2020).

In the *Second Complaint*, the Complainant once again seeks to prevent the Company from installing a smart meter at the Service Address subject to the dispute in the *First Complaint*. In Exceptions, the Complainant does not grapple with the ID's reasoning for dismissal of the Complaint; rather, he raises various meritless and futile concerns with the procedure and due process afforded to him in this proceeding.

As a preliminary matter, the Complainant's Exceptions fail to adhere to the Commission's regulations governing the content of Exceptions.² The Commission requires that each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite to relevant pages of the decision.³ The Complainant does not cite a single finding of fact or conclusion of law with which he takes issue in the ID. As such, PPL Electric submits that the Complainant's Exceptions should be disregarded in their entirety for failure to conform with the Commission's regulations.

To the extent the Exceptions are considered and as explained herein, the Complainant's Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission adopt the ID without modification.

² See 52 Pa. Code § 5.533.

³ 52 Pa. Code § 5.533 (b).

II. REPLY TO EXCEPTION 1: THE COMPLAINANT’S ARGUMENTS WITH RESPECT TO THE INTENT OF ACT 129 WERE EXPRESSLY REBUFFED BY THE PENNSYLVANIA SUPREME COURT

In Exception No. 1, the Complainant contends that the ALJ “failed to uphold the “stipulations of 66 Pa. C.S. § 701 by ignoring Complainant’s legal argument pertaining to Act 129 of 2008.”⁴ (Complainant’s Exception No. 1, at p. 4.) This argument has no merit.

The Complainant’s reading of Act 129 and the relief he believes he is entitled to under the same reading is expressly forbidden by the Court’s holding in *Povacz II*⁵ and should be rejected. On August 16, 2022, the Supreme Court of Pennsylvania issued its Opinion affirming in part and reversing in part the Commonwealth Court’s decision in *Povacz I*.⁶ Specifically, the Supreme Court in *Povacz II* held 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 Code; (3) an Electric Distribution Company (“EDC”) 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.”⁷

The Complainant does not engage with the Court’s holding in *Povacz II* in his Exceptions. Rather, he relies on an incorrect reading of Act 129, partially premised on the Pennsylvania State Constitution and other sources. This position is meritless. As clearly explained by the Court in *Povacz II*:

Considering the overall goal of Act 129 to promote energy efficiency and conservation in Pennsylvania, the plain language of Section 2807(f)(2) mandates

⁴ Act 129 of 2008, 66 Pa.C.S. § 2806.1, *et seq.* (“Act 129”).

⁵ *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (“*Povacz II*”).

⁶ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (“*Povacz I*”).

⁷ *See Povacz II*, 280 A.3d 975, 1012-1014 (Pa. 2022).

the system-wide installation of smart meter technology, including smart meters, with no opt-out provision.⁸

Therefore, the Company must install the smart meter at the Service Address. Moreover, even if the Complainant were to prove a Section 1501 violation – which he has not – he would only be entitled to “an accommodation to the extent allowed by Act 129 and a utility’s tariff.”⁹ Nothing in PPL Electric’s tariff provides for an opt-out of the smart meter. Rather, the only accommodation that is available to customers is that the meter be relocated to a mutually-agreeable location at the customer’s expense.¹⁰ This option has been available to the Complainant throughout this proceeding.

Furthermore, the *Povacz II* decision resolved the Complainant’s claim that the Company would violate his constitutional rights by installing the smart meter at the Service Address. The Commonwealth Court previously found that “[c]onstitutional protections apply against state actors,” and “PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers.”¹¹ This finding was not disturbed by the Supreme Court’s *Povacz II* decision. Therefore, because PECO and the Company are similarly-situated EDCs, the Company is not a state actor that can violate the Complainant’s constitutional rights. As such, the Complainant’s constitutional argument(s) should be rejected.

⁸ *Povacz II*, at 998.

⁹ *Povacz II*, at 1014; *See* 66 Pa. C.S. § 1501.

¹⁰ Tariff Rule 4(I)(2), Supp. No. 59 to Electric Pa. P.U.C. No. 201, Third Revised Page No. 8E (Effective Jan. 1, 2008) (“The relocation of Company facilities, when done at the request of others, is at the applicant’s expense and payment of the Company’s estimated cost of the relocation is required in advance of construction. When the request is from an affected property owner and the facilities are on the customer’s property, the charges for relocation of distribution system facilities are limited to estimated contractor costs, estimated direct labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation.”).

¹¹ *Povacz I*, 241 A.3d 481, 486 n.9.

III. REPLY TO EXCEPTION 2: THE ID PROPERLY TREATED PPL ELECTRIC'S PRELIMINARY OBJECTION AS A MOTION FOR JUDGMENT ON THE PLEADINGS

The Complainant argues that the ALJ's treatment of PPL Electric's June 28, 2021 Preliminary Objection for legal insufficiency as a Motion for Judgment on the Pleadings was "judicial overreach" and "collusion." (Complainant's Exception No. 2, at p. 7.) This argument fails, as the ID addressed and explained the basis for treating PPL Electric's Preliminary Objection for legal insufficiency as a Motion for Judgment on the Pleadings. Indeed, the ID reasoned that:

A preliminary objection based on legal insufficiency is referred to as a demurrer. "A court should sustain preliminary objections in the nature of a demurrer only where it appears from the face of the complaint that recovery upon the facts alleged is not permitted as a matter of law." *220 Partnership v. Phila. Elec. Co.*, 650 A.2d 1094, 1096 (Pa. Super. 1994). "When considering a demurrer[,] a court cannot consider matters collateral to the complaint but must limit itself to such matters as appear therein." *Id.* The Formal Complaint did not make mention of the 2018 Complaint, which must be considered for the purpose of resolving Respondent's argument raised in its Preliminary Objections.

(ID, at p. 9.)

Further, the ID correctly noted that treating PPL Electric's Preliminary Objection as a Motion for Judgment on the Pleadings mirrors past Commission decisions that treated preliminary objections raising the affirmative deference of *res judicata* as a Motion for Judgment on the Pleadings when the issues was raised in New Matter in addition to preliminary objections. *See, e.g., Raintree Farm Solar v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2621826 (Order entered Jan. 16, 2018); *Spirat v. Metro. Edison Co.*, Docket No. C-2018-3005589 (Order entered Mar. 28, 2019); *Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Order entered May 21, 2020). (ID, at pp. 9-10.)

Importantly, the Complainant sidesteps the fact that: (1) he was served with the Company's Preliminary Objections on June 28, 2021; (2) the Company's Preliminary Objections were

accompanied by a signed Notice to Plead consistent with 52 Pa. Code § 5.101; and (3) the Complainant could have filed an Answer to the Company's Preliminary Objections but did not.¹² Furthermore, the Complainant does not acknowledge that the Commission stayed this proceeding on January 23, 2023, consistent with the directives of *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered November 4, 2020) ("*November 2020 Stay Order*"). *See Stay Order*, Docket No. C-2021-3026268 (Order issued January 23, 2023). Indeed, the *Second Complaint* was filed after the *November 2020 Stay Order* was issued, thus, the Complainant's concerns regarding inaction on the Company's Preliminary Objections until June 12, 2024, miss the mark. Approximately 10 months passed between when the *Second Complaint* was formally stayed and when a Prehearing Conference Notice was issued in this proceeding.

Rather than engage with clear Commission precedent on this point, or the procedural posture of this proceeding, the Complainant instead avoids both issues and levies various *ad hominem* attacks against both PPL Electric and the ALJ. These arguments are meritless and should be rejected.

IV. REPLY TO EXCEPTION 3: THE ALJ DID NOT ACT AS AN ATTORNEY ON BEHALF OR PPL ELECTRIC, NOR DID PPL ELECTRIC MISREPRESENT ANYTHING TO THE ALJ

The Complainant argues that the ALJ acted as an attorney on PPL Electric's behalf. (Complainant's Exception No. 3, at p. 9.) Nothing supports this claim. The only supposed basis for this contention that the Complainant levels is a reproduction of a letter sent by PPL Electric's Counsel, Attorney Devin Ryan, on April 15, 2024, to the ALJ and Complainant, and filed with the Commission. The letter explained that PPL Electric did not believe a Prehearing Conference was

¹² PPL Electric notes that the Complainant did file an Answer to PPL Electric's New Matter on August 8, 2021, after requesting and receiving an extension until August 13, 2021, to do so. *See Interim Order Granting Complainant's Request For Extension Of Time To File A Responsive Pleading To Respondent's Preliminary Objections, Answer and New Matter*, Docket No. C-22021-3026268 (Interim Order issued July 29, 2021).

necessary because the Company’s Preliminary Objections were still outstanding at that time. (Complainant’s Exception No. 3, at pp. 8-9.) Moreover, the Complainant takes issue with Mr. Ryan’s characterization in the letter that the Company understood that the Complainant had “not reached a decision yet” as to whether he would continue to pursue the *Second Complaint* in light of *Povacz II*. (Complainant’s Exception No. 3, at p. 9.)

The Complainant’s argument that the ALJ acted as PPL Electric’s attorney is baseless. The Complainant offers zero support for this contention and, as such, it should be summarily rejected.

As to the Complainant’s concerns with respect to Attorney Ryan’s April 15, 2024 letter filed with the Commission, the Complainant acknowledges that he “could not decide ANYTHING about any matter at that moment.” (Complainant’s Exception No. 3, at p. 9.) It is uncertain as to why the Complainant believes that Mr. Ryan’s representation that “the Complainant [had] not reached a decision yet” as to whether to pursue the *Second Complaint* fails to comport with the Complainant’s acknowledgement that he could not decide anything at that time. As such, this argument should be soundly rejected.

Similarly, the Complainant’s reliance on *Lawlor v. National Screen Service Corp.*, 329 U.S. 322 (1955) (“*Lawlor*”) is irrelevant to the Commission’s determination in this proceeding. First, the *Second Complaint* was dismissed pursuant to Section 316 of the Code, 66 Pa.C.S. § 316, not only on *res judicata* grounds as evaluated in *Lawlor*. (ID, at p. 18; Findings of Fact ¶ 13.) Thus, the Complainant’s reliance on *Lawlor* is inapplicable here. Second, even if *Lawlor* were applicable, the facts underlying its reasoning are not. Indeed, *Lawlor* examined conduct that was “all subsequent to the 1943 judgement.”¹³ Further, *Lawlor* explained that *res judicata* cannot be

¹³ *Lawlor*, at 328.

“given the effect of extinguishing claims which did not even then exist and which could not possible have been sued upon in the previous case.”¹⁴

Here, the Complainant’s claims and requested relief in the *Second Complaint* are the same as the *First Complaint*. In both cases, the Complainant asserted that he can: (1) opt-out of a smart meter altogether under Act 129; and (2) prove that installation of a smart meter violates the Code. The *First Complaint* addressed and adjudicated both of these allegations. Thus, as correctly decided in the ID, the *Second Complaint* is barred by Section 316 of the Public Utility Code and *res judicata*. Also, even if the *First Complaint* had not resolved those issues, *Povacz II* renders each contention toothless because the Commission cannot grant the Complainant the relief he is requesting under Act 129.

V. REPLY TO EXCEPTION 4: POVACZ II EXPLICITLY REJECTS THE COMPLAINANT’S ARGUMENTS RELATED TO POVACZ I AND ACT 129

The Complainant argues that the Commonwealth Court’s holding in *Povacz I* and the “legislative intent” of the Pennsylvania General Assembly in enacting Act 129 conflict with the ID’s Conclusions of Law. (Complainant’s Exception No. 4, at p. 10.) This argument was addressed in Section II, *supra*, and it will not be restated in full here.

However, it is important to note that: (1) the Complainant does not identify a single conclusion of law that he specifically excepts to; and (2) *Povacz II* held that Act 129 mandates the systemwide installation of smart meters.¹⁵ The Complainant’s reliance on *Povacz I* is entirely misplaced, as *Povacz I* was explicitly overturned by *Povacz II* with respect to Act 129’s smart meter mandate.¹⁶ Therefore, the Complainant’s arguments on this point are incorrect and should be disregarded.

¹⁴ *Id.*

¹⁵ *Povacz II*, at 998.

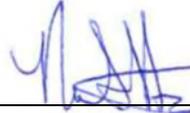
¹⁶ *Id.*, at 998-999.

Moreover, the Complainant's continued attempts to levy additional allegations regarding smart meters should be disregarded. (Complainant's Exception No. 4, at pp. 11-12.) These allegations are meritless and, even if they were not, do not relate to – and certainly do not render inoperative – how Section 316 of the Public Utility Code and *res judicata* bar the *Second Complaint* in its entirety.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision, the Exceptions of Jeffrey W. Smiles should be denied.

Respectfully submitted,



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