

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-----------------------------|---|----------------|
| Lauren Zonca | : | |
| | : | |
| v. | : | C-2023-3041619 |
| | : | |
| Metropolitan Edison Company | : | |

INTERIM ORDER SETTING DEADLINES FOR FILING RESPONSIVE PLEADINGS

Lauren Zonca (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) dated July 5, 2023.

On July 26, 2023, Respondent filed an Answer and New Matter to the Formal Complaint.

On July 26, 2023, Respondent also filed Preliminary Objections to the Complaint.

Previously, on October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz, et al. v. Pa. Public Utility Commission*,¹ (*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. *Povacz I* at 495. Specifically, the Commonwealth Court, in *Povacz I*, held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers accommodations based on

¹ *Povacz, et al. v. Pa. Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020).

their health concerns.² However, the Commonwealth Court affirmed: (1) the Commission’s application of the preponderance of evidence standard; (2) the Commission’s finding that the customers in Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall failed to sustain their burden of proof; and (3) that the Commission’s findings of fact were supported by substantial evidence.³ The Commonwealth Court also declined to find that the deployment of smart meters violated the customers’ Fourteenth Amendment liberty interests in bodily integrity.⁴

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.

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.

Previously, the Commonwealth Court stayed the proceedings in several other unconsolidated appeals that raised the same, or similar, smart meter issues pending its disposition of *Povacz I*. Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court’s disposition of *Povacz II*. Since the Supreme Court’s issuance of its *Povacz II* decision, the Commonwealth Court has lifted the stays on the remaining unconsolidated smart meter appeals and directed the parties to submit

² *Id.* at 490.

³ *Id.* at 490, 491, 493-495.

⁴ *Id.* at 487- 488.

briefs, supplemental briefs, and other appropriate filings as warranted. The Commonwealth Court has ultimately affirmed the Commission in several unpublished and published opinions.⁵

On August 16, 2022, the Supreme Court issued its Opinion in *Povacz II*, affirming the Commission's determinations in all respects. The Supreme Court reversed the Commonwealth Court's determination that Act 129 does not mandate smart meter installation and that Court's remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court did, however, affirm 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."⁶ The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.⁷ The Supreme Court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides instructions for furnishing smart meters to all customers.⁸ 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.⁹

The Supreme Court noted that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court reiterated that complainants seeking relief from the

⁵ See *Hoffman-Lorah v. Pa. Pub. Util. Comm'n*, 2023 Pa. Cmwlth. Unpub. LEXIS 325, 2023, WL 4144399; *Branagh v. Pa. Pub. Util. Comm'n*, 2023 Pa. Cmwlth. Unpub. LEXIS 352, 2023, WL 4363414; *Hess v. Pa. Pub. Util. Comm'n*, 2023 Pa. Cmwlth. Unpub. LEXIS 371, 2023, WL 4540460; *Mary Paul v. Pa. Pub. Util. Comm'n*, No. 460 C.D. 2019, 2023 Pa. Cmwlth. LEXIS 113; *Schmukler v. Pa. Pub. Util. Comm'n*, No. 1102 C.D. 2019, 2023 Pa. Commw. LEXIS 136. The following smart meter appeals were dismissed by the Commonwealth Court on procedural grounds: *Sunstein v. Pa. Pub. Util. Comm'n*, No. 1581 C.D. 2019; *Ulmer v. Pa. Pub. Util. Comm'n*, No. 967 C.D. 2020; and *Lucey v. Pa. Pub. Util. Comm'n*, No. 1212 C.D. 2020.

⁶ *Id.* at 1014.

⁷ *Povacz II* at 992.

⁸ *Id.* at 28.

⁹ *Id.*

Commission must satisfy their burden of proof by a preponderance of the evidence. The Supreme Court explained that inconclusive evidence, evidence that does not lead to a conclusion of a definite result one way or the other, does not meet even the minimal requirements of the preponderance of the evidence standard.¹⁰ The Supreme Court opined that while a customer's evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard.¹¹

The Supreme Court noted that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm.¹² Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm.¹³ The Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.¹⁴ The Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff.¹⁵

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

¹⁰ *Id.* at 1005.

¹¹ *Id.* at 1008.

¹² *Id.*

¹³ *Id.* at 1006.

¹⁴ *Id.* at 1005.

¹⁵ *Id.* at 1015.

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.

In the instant case, Complainant has not filed a response to the Preliminary Objections and New Matter filed by Respondent.

Under the circumstances, it is appropriate to provide the Complainant with an opportunity to file any appropriate responsive pleadings to the preliminary objections and new matter filed by Respondent and to proceed with the disposition of this proceeding consistent with the history of this case and the Commonwealth Court and Supreme Court rulings discussed above.

THEREFORE,

IT IS ORDERED:

1. That the Complainant's deadline to file and serve a responsive pleading to the New Matter and the Preliminary Objections filed by Respondent is hereby extended until December 20, 2024.
2. That any pleadings or responsive pleadings shall be filed with the Commission Secretary and served upon the opposing Party, or counsel if represented.
3. That any pleadings or responsive pleadings filed with the Commission Secretary, shall also be provided to the undersigned Presiding Officer in written and electronic form contemporaneously with the filing.
4. That the electronic form of any such filings shall also be submitted to the undersigned Presiding Officer in WORD format and a copy must be sent to my

legal assistant by email to Mary Swarner, Legal Assistant at mswarner@pa.gov, with a copy of the transmission to be copied to every party.

Date: November 13, 2024

_____/s/
Jeffrey A. Watson
Administrative Law Judge

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