



76 South Main Street  
Akron, OH 44308

Tori L. Giesler, Esq.  
(610) 921-6658

November 18, 2024

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Gregory and Donna Kollmar v. West Penn Power Company**  
**Docket No. C-2019-3014650**

Dear Secretary Chiavetta:

Enclosed for filing please find the Replies of FirstEnergy Pennsylvania Electric Company, (“West Penn Rate District<sup>1</sup>”) to the Exceptions of Gregory and Donna Kollmar regarding the above-referenced matter. This document has been served on all parties as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

Tori L. Giesler

TLG/mlr

Enclosures

c: As Per Certificate of Service  
Office of Special Assistants (via email at [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))

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<sup>1</sup> On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company (“FE PA”). Due to the merger transaction, FE PA became successor in interest to all matters previously belonging to the individual Pennsylvania operating companies. As such, the customers of the former West Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                            |   |                           |
|----------------------------|---|---------------------------|
| Gregory and Donna Kollmar, | : |                           |
|                            | : |                           |
| Complainants,              | : |                           |
|                            | : |                           |
| v.                         | : | Docket No. C-2019-3014650 |
|                            | : |                           |
| West Penn Power Company,   | : |                           |
|                            | : |                           |
| Respondent                 | : |                           |

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**REPLY EXCEPTIONS OF WEST PENN POWER COMPANY TO THE  
EXCEPTIONS OF GREGORY AND DONNA KOLLMAR**

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Tori L. Giesler (ID # 207742)  
Daniel Alonso Garcia (ID # 311503)  
James Austin Meehan (ID # 310442)

FirstEnergy Service Company  
2800 Pottsville Pike  
PO Box 16001  
Reading, PA 19612-6001  
(610) 931-6783  
(610) 921-6203  
(724) 838-6416  
tgiesler@firstenergycorp.com  
dagarcia@firstenergycorp.com  
jameehan@firstenergycorp.com

Date: November 18, 2024

Counsel for FirstEnergy Pennsylvania  
Electric Company (West Penn Rate District)

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## I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company, on behalf of its West Penn Rate District<sup>1</sup> (the “Company”) hereby file its Replies to the Exception of Gregory and Donna Kollmar (“Complainants”). The Company was served with the Complainants’ Exceptions on November 7, 2024.<sup>2</sup> Through their Exceptions, the Complainants do not take particular issue with any of the well-reasoned Initial Decision (“ID”) issued by the Administrative Law Judge Emily I. DeVoe (hereinafter, the “ALJ”) on May 21, 2024. The ID granted the Company’s Motion for Summary Judgment filed on January 10, 2024, and dismissed the Complaint, holding that the Complainants failed to identify any expert witness testimony that they planned to offer at an Evidentiary Hearing in this matter in light of the Supreme Court of Pennsylvania’s decision in *Povacz II*<sup>3</sup> and in contravention of the ALJ’s November 28, 2023, Interim Order, which directed:

In this case, Complainants must present expert medical and/or scientific evidence to meet their burden of proof. If they are able to meet their burden of proof, they may be entitled to an accommodation to the extent allowed by Act 129 and the Company’s tariff. However, that accommodation may not rise to the level of an opt-out from smart meter installation. While the Commission is not able to allow Complaints to opt-out of smart meter installation, Complainants, if able to meet their burden of proof, may be entitled to an “accommodation.” While the Supreme Court did not expound upon what such an “accommodation” may be, the fact remains that such an “accommodation” exists as a matter of law.<sup>4</sup>

(ID, at p. 6.)

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<sup>1</sup> On January 1, 2024, FirstEnergy Corp.’s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies’ tariffs were consolidated into a single tariff, with each former operating company’s rates becoming its own rate district. As such, the customers of the former West Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

<sup>2</sup> The Exceptions were served upon the Company via Secretarial Letter on November 7, 2024, as the Complainants did not serve the Company upon filing the Exceptions in June of 2024.

<sup>3</sup> *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022) (“*Povacz II*”)

<sup>4</sup> *Interim Order*, Docket No. C-2019-3014650 (Interim Order issued Nov. 28, 2023) (“*Interim Order*”).

The Complainants did not identify any expert witnesses that they intended to present at an evidentiary hearing in this proceeding, thus, violated the *Interim Order*. Moreover, the ID correctly noted that in order to present a *prima facie* case in this proceeding, provision of expert witness information “is required...as a matter of law.” (ID, at p. 15.)

Additionally, and as a preliminary matter, the Complainants’ Exceptions fail to adhere to the Pennsylvania Public Utility Commission (“Commission”)’s regulations governing the content of Exceptions.<sup>5</sup> 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.<sup>6</sup> The Complainants do not cite a single finding of fact or conclusion of law with which they take issue in the ID. Nor are the Exceptions numbered. As such, the Company submits that the Complainants’ Exceptions should be disregarded in their entirety for failure to conform with the Commission’s regulations.

Assuming, *arguendo*, that the Complainants’ Exceptions are procedurally sound – which they are not – the Complainants’ Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Complainants’ Exceptions and adopt the ID without modification.

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<sup>5</sup> See 52 Pa. Code § 5.533.

<sup>6</sup> 52 Pa. Code § 5.533 (b).

**II. REPLY TO EXCEPTION 1: THE COMPLAINANTS DO NOT AND CANNOT DISPUTE THE BASIS FOR THE COMPLAINT'S DISMISSAL**

In their Exceptions, the Complainants express “shock” over the ID’s dismissal of the Complaint. (Complainants’ Exception No. 1, p. 1.) However, the Complainants sidestep the basis for the Complaint’s dismissal: failure to adhere to the directive of the *Interim Order*. (ID, at pp. 15-16.) Indeed, as appropriately noted by the ALJ in the ID, “[t]he Commission has held that parties must comply with the orders of an administrative law judge, and a complainant’s failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).” (ID, at p. 13.) The ID goes on to explain that the “Complainants have failed to comply with two of [the ALJ’s] Orders.” (ID, at p. 13.)

The Complainants’ Exceptions do not identify a reason for their failure to adhere to the ALJ’s Order(s). As the ID correctly explained:

To proceed to a hearing in this case, where Complainants have repeatedly failed to identify expert witnesses, when expert witness testimony is required as a matter of law, would require Respondent expend time and resources in a case where Complainants could not meet their burden of proof, violating Respondent’s due process rights. The case cannot move forward at this juncture because Complainants have failed to identify their expert witnesses as they were repeatedly ordered to do.

(ID, at p. 15.)

Therefore, the Company respectfully submits that the Complainants’ due process rights have been protected, in spite of their repeated failures to adhere to orders of the ALJ. As such, the Company submits that the ID should be adopted without modification.

### **III. REPLY TO EXCEPTION 2: THE COMMISSION CANNOT GRANT THE COMPLAINANTS' REQUESTED RELIEF**

In the Complaint, the Complainants request that they be permitted to opt-out of smart meter installation. This requested relief cannot be granted by the Commission.

The Complainants' requested relief is expressly forbidden by the Court's holding in *Povacz II* 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*.<sup>7</sup> 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."<sup>8</sup>

The Complainants do not engage with the Court's holding in *Povacz II* in their Exceptions.

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 the system-wide installation of smart meter technology, including smart meters, with no opt-out provision.<sup>9</sup>

Therefore, the Company must install the smart meter at the Complainants' Service Address at 1749 Freeport Road, Arnold, PA 15068 ("Service Address"). Moreover, even if the

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<sup>7</sup> *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) ("*Povacz I*")

<sup>8</sup> *See Povacz II*, 280 A.3d 975, 1012-1014 (Pa. 2022).

<sup>9</sup> *Povacz II*, at 998.

Complainants were to prove a Section 1501 violation – which they have not and cannot<sup>10</sup> – they would only be entitled to “an accommodation to the extent allowed by Act 129 and a utility’s tariff.”<sup>11</sup> Nothing in the Company’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.<sup>12</sup> This option has been available to the Complainants throughout this proceeding.

The Company has an absolute obligation to install smart meters at all of its customers’ service locations under Act 129 and *Povacz II*. Neither Act 129 nor *Povacz II* permit customers to opt-out from smart meter installation. Further, both Act 129 and the Commission’s Implementation Order<sup>13</sup> require that electric distribution companies (“EDC”) like the Company to install wireless smart meters with specific functionality. The Company is legally required to install the smart meters by the Public Utility Code, the Commission’s orders, and the Company’s Commission-approved Smart Meter Deployment Plan.<sup>14</sup> On June 24, 2009, the Commission issued its Smart Meter Implementation Order, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans.<sup>15</sup>

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<sup>10</sup> As the ID correctly explained, “[i]n smart meter cases such as this one, the Supreme Court, in *Povacz II*, made clear that 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, as well as 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 or would cause them harm.” (ID, at p. 11.)

<sup>11</sup> *Povacz II*, at 1014; See 66 Pa. C.S. § 1501.

<sup>12</sup> FirstEnergy Pennsylvania Electric Company Tariff Rule 4, Electric Pa. P.U.C. No. 1, Original Page 40 (“A Customer desiring the removal, relocation or change of Company facilities or interruption shall submit a request to the Company. The Company may accept or reject said request in its sole and exclusive discretion. If the Company accepts said request, the Customer shall pay in advance the Company’s total estimated cost for any Customer requested temporary interruption in the Customer’s service due to construction, maintenance or other activities.”)

<sup>13</sup> See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“*Implementation Order*”).

<sup>14</sup> See 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order June 9, 2010).

<sup>15</sup> See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

On December 31, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, “the Companies”) filed their Joint Petition for Approval of their Smart Meter Deployment Plan in compliance with the *Implementation Order*, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order; (2) approve the Companies’ proposed procurement and deployment of approximately 2.1 million smart meters, over 98.5% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.<sup>16</sup>

On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which, *inter alia*, accelerated the smart meter deployment schedule laid out in their original Deployment Plan. Under the Revised Deployment Plan, the Companies proposed to deploy 170,000 smart meters by the end of 2015.<sup>17</sup> The Commission entered its Opinion and Order approving the Revised Deployment Plan on June 25, 2014.<sup>18</sup>

Here, the Complainants’ various requests for relief directly conflict with the Public Utility Code, the Commission’s regulations, the *Implementation Order*, the Revised Deployment Plan, and the Court’s holding in *Povacz II*. As such, to the extent that the Complainants succeed in

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<sup>16</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

<sup>17</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, p. 8 (Order entered June 25, 2014) (“*2014 Smart Meter Order*”).

<sup>18</sup> See *2014 Smart Meter Order*.

proceeding to an Evidentiary Hearing in this matter, their requested relief is moot, and the Company submits that the ID should be affirmed without modification.

**IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision, the Exceptions of Gregory and Donna Kollmar should be denied.



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Tori L. Giesler (ID # 207742)  
Daniel Alonso Garcia (ID # 311503)  
James Austin Meehan (ID # 310442)

FirstEnergy Service Company  
2800 Pottsville Pike  
PO Box 16001  
Reading, PA 19612-6001  
(610) 931-6783  
(610) 921-6203  
(724) 838-6416  
tgiesler@firstenergycorp.com  
dagarcia@firstenergycorp.com  
jameehan@firstenergycorp.com

Date: November 18, 2024

Counsel for FirstEnergy Pennsylvania  
Electric Company (West Penn Rate District)

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|                            | : |                           |
| West Penn Power Company,   | : |                           |
|                            | : |                           |
| Respondent                 | : |                           |

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic mail only as follows:

Gregory & Donna Kollmar  
[Dkollmar77@gmail.com](mailto:Dkollmar77@gmail.com)

Administrative Law Judge Emily I. DeVoe  
[edevoe@pa.gov](mailto:edevoe@pa.gov)

Dated: November 18, 2024



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Tori L. Giesler (ID # 207742)  
Lauren M. Lepkoski (ID # 94800)  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
Phone: 610-921-6658  
610-921-6203  
E-mail: [tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)