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File #: 167945

December 3, 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: Aisulu Oruzbaeva v. PPL Electric Utilities Corporation**  
**Docket No. C-2020-3023497**

Dear Secretary Chiavetta:

Attached for filing please find the Motion for Judgment on the Pleadings on behalf of PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) in the above-referenced proceeding. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Devin Ryan

DR  
Attachment

cc: Honorable John M. Coogan (w/ enc.)  
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

Aisulu Oruzbaeva  
525 Chief Tatamy Street  
Easton, PA 18045  
[aika33@gmail.com](mailto:aika33@gmail.com)

Date: December 3, 2024



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Devin Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aisulu Oruzbaeva,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2020-3023497
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

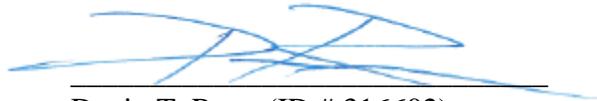
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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.102, YOU MAY FILE AN ANSWER TO THE ENCLOSED MOTION FOR JUDGMENT ON THE PLEADINGS WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully submitted,



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Date: December 3, 2024

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aisulu Oruzbaeva,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2020-3023497
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**MOTION FOR JUDGMENT ON THE PLEADINGS OF  
PPL ELECTRIC UTILITIES CORPORATION**

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**TO THE ADMINISTRATIVE LAW JUDGE JOHN M. COOGAN:**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), by and through its attorneys, Post & Schell, P.C., and files this Motion for Judgment on the Pleadings pursuant to Section 5.102 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102, and Administrative Law Judge John M. Coogan’s (“ALJ”) Continuance Order dated November 14, 2024, which directed the Company file a Motion addressing the issues raised at the November 13, 2024 prehearing conference.

As set forth in this Motion, PPL Electric respectfully requests that the above-captioned Complaint of Aisulu Oruzbaeva (“Complainant”) be summarily dismissed in its entirety. The Complainant confirmed at the prehearing conference that she currently lives in Florida and no longer owns or has any interest in the property at issue in the Complaint, where she challenged the Company’s installation of a smart meter. Therefore, the Complaint is moot, and the Complainant lacks standing to challenge PPL Electric’s installation of a smart meter at the property at issue in the Complaint.

In support of this Motion for Judgment on the Pleadings, PPL Electric states as follows:

**I. INTRODUCTION AND BACKGROUND**

1. PPL Electric is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. PPL Electric is a wholly-owned direct subsidiary of PPL Corporation.

2. PPL Electric furnishes electric distribution, transmission and default supply services to approximately 1.5 million customers throughout its certificated service territory, which includes all or portions of 29 counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

3. PPL Electric is a “public utility,” an “electric distribution company” (“EDC”) and a “default service provider” as defined in Sections 102 and 2803 of the Public Utility Code, 66 Pa. C.S. §§ 102, 2803.

4. On December 31, 2020, PPL Electric was served with the Complaint, in which the Complainant disputed the Company’s installation of a smart meter at 525 Chief Tatamy Street, Easton, PA 18045 (“Service Address”).

5. On January 20, 2021, PPL Electric timely filed its Answer to the Complaint.

6. On January 27, 2021, Administrative Law Judge Elizabeth H. Barnes (“ALJ Barnes”) issued an Order staying the proceeding pursuant to the Commission’s November 4, 2020 Order at Docket No. M-2009-2092655 (“*November 2020 Order*”). Under the *November 2020 Order*, smart meter complaints filed on or after November 4, 2020, would be stayed pending further direction by the Commission due to the then-pending appeals in *Povacz v. Pa. PUC* before the Pennsylvania Supreme Court, where the Court would decide whether Act 129 of 2008 (“Act 129”) mandates the installation of smart meters for all customers.

7. On June 13, 2022, a Judge Change Notice was issued that reassigned the case from ALJ Barnes to Administrative Law Judge Charece Z. Collins (“ALJ Collins”).

8. On August 16, 2022, the Pennsylvania Supreme Court ruled 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 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.”<sup>1</sup>

9. On November 14, 2023, in light of the Pennsylvania Supreme Court’s decision in *Povacz II*, the Commission entered an Order at Docket No. M-2009-2092655 lifting the stays imposed pursuant to the *November 2020 Order*. The Commission also issued a Notice in this proceeding to inform the parties that the stay had been lifted.

10. On August 26, 2024, a Judge Change Notice was issued that reassigned the case from ALJ Collins to the ALJ.

11. On August 28, 2024, a Notice was issued scheduling a telephonic prehearing conference for October 9, 2024, at 1:30 PM.

12. On September 3, 2024, a Prehearing Conference Order was issued.

13. On October 9, 2024, the telephonic prehearing conference was held. Due to the Complainant living in Florida and then-facing the impending impacts of Hurricane Milton, the telephonic prehearing conference was continued until November 13, 2024.

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<sup>1</sup> *Povacz v. Pa. PUC*, 280 A.3d 975, 1012-14 (Pa. 2022) (“*Povacz II*”).

14. On October 16, 2024, a Notice was issued scheduling a telephonic prehearing conference for November 13, 2024, at 1:30 PM. The ALJ also issued a Continuance Order to that effect.

15. On November 13, 2024, the telephonic prehearing conference was held as scheduled, where the parties addressed threshold questions about whether the Complainant lacked standing and whether the Complaint is moot, now that the Complainant lives in Florida and no longer owns or has any interest in the property at issue. The ALJ set a deadline of December 3, 2024, for PPL Electric to file a Motion on those issues, after which the Complainant would have an opportunity to file an Answer within 20 days.

16. On November 15, 2024, the ALJ issued a Continuance Order memorializing his directions to the parties at the prehearing conference.

## **II. STANDARD FOR JUDGMENT ON THE PLEADINGS**

17. Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for judgment on the pleadings:

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) Standard for grant or denial in part. The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2).

18. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Pa. PUC, et al. v. Holzwarth t/a K & H Bus Serv.*, 2023 PA. PUC LEXIS 94, Docket No. C-2022-3035753 (Order entered Apr. 20, 2023); *Moyer v. PPL Elec. Util. Corp.*, 2022 PA. PUC LEXIS 396, Docket No. C-2022-3031294 (Order entered Dec. 8, 2022).

19. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). When deciding whether a motion for judgment on the pleadings should be granted, the court must examine the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

20. As explained below, this case does not involve genuine disputes of material fact. Rather, the questions presented are matters of well-settled law, and a hearing in this matter would be unnecessary.

21. For these reasons and as more fully explained below, PPL Electric is entitled to judgment on the pleadings, and the above-captioned Complaint should be dismissed in its entirety.

### III. ARGUMENT

#### A. **THE COMPLAINT SHOULD BE DISMISSED AS MOOT BECAUSE THE COMPLAINANT NO LONGER RESIDES AT, OWNS, OR HAS ANY INTEREST IN THE PROPERTY AT ISSUE**

22. PPL Electric incorporates by reference Paragraphs 1 through 21, *supra*, as if fully set forth herein.

23. The Complaint should be dismissed as moot because the Complainant now lives in Florida and no longer owns or has any interest in the property at issue. (Tr. 24-25.)

24. “Where ‘intervening changes in the factual matrix of a pending case’ occur which eliminate an actual controversy and make it impossible for the court to grant the requested relief, the case will be dismissed as moot.” *Pagnotta v. Pa. Interscholastic Ath. Ass’n*, 681 A.2d 235, 237 (Pa. Cmwlth. 1996) (emphasis added) (quoting *Zemprelli v. Thornburgh*, 466 A.2d 1123, 1124 (Pa. Cmwlth. 1983)).

25. Moreover, “[a]n issue before the court is moot if, in ruling upon the issue, the court cannot enter an order that has any legal force or effect.” *Burns v. Dep’t of Human Servs.*, 190 A.3d 758, 762 (Pa. Cmwlth. 2018) (citation omitted).

26. The only “limited exceptions” to the mootness doctrine are when: (1) “the conduct complained of is capable of repetition yet evading review”; (2) the case “involves questions important to the public interest”; or (3) “one party” will “suffer some detriment without the Court’s decision.” *Driscoll v. Zoning Bd. of Adjustment*, 201 A.3d 265, 269 (Pa. Cmwlth. 2018) (quoting *Clinkscale v. Dep’t of Pub. Welfare*, 101 A.3d 137, 139 (Pa. Cmwlth. 2014)).

27. Here, the Complaint is moot due to intervening changes in undisputed facts, namely that the Complainant now resides in Florida and no longer owns or has an interest in the property at issue. (Tr. 24-25.)

28. In her Complaint, the Complainant specifically challenged PPL Electric's installation of a smart meter at the Service Address. (Complaint ¶¶ 1, 4-5.)

29. As relief, the Complainant requested that the Company replace the smart meter installed at the Service Address with an analog meter. (Complaint ¶ 5.)

30. However, the Complainant confirmed at the prehearing conference that she has since moved to Florida, sold the Service Address to another person, and has no interest in the Service Address today. (Tr. 24-25.)

31. Effectively, the Complainant is challenging the smart meter installation at the property of another customer, who is not a party to this proceeding.

32. As such, the Complainant's requested relief, if granted, would violate that customer's due process rights by failing to provide them with notice and an opportunity to be heard on the smart meter's removal. *See Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted).

33. Moreover, under the Pennsylvania Supreme Court's ruling in *Povacz II*: (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 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."<sup>2</sup>

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<sup>2</sup> *Povacz v. Pa. PUC*, 280 A.3d 975, 1012-14 (Pa. 2022) ("*Povacz II*").

34. In that respect, the Commission cannot grant the requested relief and order the removal of a smart meter, even if the Complainant had standing<sup>3</sup> and could obtain her requested relief without violating the current property owner's due process rights.

35. Finally, none of the exceptions to the mootness doctrine apply here.

36. First, the conduct complained of is not capable of repetition yet evading review. The Commission has adjudicated hundreds of smart meter complaints, many of which have gone on to be appealed to the Commonwealth Court of Pennsylvania. Also, if the Complainant were to move back to a PPL Electric service address in the future, she could try to file a formal complaint disputing the installation of a smart meter at that time.

37. Second, the case also not involve questions important to the public interest. In light of the Pennsylvania Supreme Court's holdings in *Povacz II*, the major legal questions surrounding smart meter installations have been adjudicated. All that remains to be decided in smart meter complaints now is whether the complainant meets their burden of proof and is entitled to receive the accommodation to the extent allowed under Act 129 and the utility's tariff. Those issues are focused on the individual complainants and not the broader public interest.

38. Third, no party will suffer any detriment without the Commission's decision. The Complainant confirmed at the prehearing conference that she lives in Florida and has an analog meter installed at her current residence. (Tr. 24-25.) Moreover, as noted previously, if the Complainant were to move back to a PPL Electric service address in the future, she could try to file a formal complaint disputing the installation of a smart meter at that time. Therefore, the Complainant will not be harmed if the Complaint is dismissed as moot.

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<sup>3</sup> See Section III.B, *infra*.

39. For these reasons, PPL Electric respectfully requests that the Complaint be dismissed in its entirety as moot.

**B. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF STANDING BECAUSE THE COMPLAINANT NO LONGER RESIDES AT, OWNS, OR HAS ANY INTEREST IN THE PROPERTY AT ISSUE**

40. PPL Electric incorporates by reference Paragraphs 1 through 39, *supra*, as if fully set forth herein.

41. The Complaint should be dismissed for lack of standing because the Complainant now lives in Florida and no longer owns or has any interest in the property at issue. (Tr. 24-25.)

42. Under Pennsylvania law, “[i]n seeking judicial resolution of a controversy, a party must establish as a threshold matter that he has standing to maintain the action.” *Stilp v. Commonwealth*, 940 A.2d 1227, 1233 (Pa. 2007).

43. “[T]he core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge.” *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975)).

44. To have standing, a party must establish that its interest is substantial, direct, and immediate. *See Del-Aware Unlimited. v. Commonwealth*, 551 A.2d 1117, 1121 (Pa. Cmwlth. 1988) (citation omitted); *1000 Grandview Ass’n v. Mt. Washington Assocs.*, 434 A.2d 796, 797 (Pa. Super. 1981) (citation omitted).

45. To establish a party’s interest is “substantial,” the interest must exceed the interest “of all citizens in procuring obedience to the law.” *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003). Further, the party’s interest is “direct” when “there is a causal connection between the asserted violation and the harm complained of,” and the interest is “immediate” when “that causal

connection is not remote or speculative.” *City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

46. In this case, the Complainant has no substantial, direct, or immediate interest in challenging the smart meter installed at the Service Address.

47. First, the Complainant’s interest in challenging the smart meter’s installation at the Service Address is not “substantial.” As noted previously, the Complainant now lives in Florida, sold the Service Address to another person, and no longer has any interest in the Service Address. (Tr. 24-25.) Thus, her interest in challenging the smart meter’s installation at the Service Address is the same as any other citizen procuring obedience to the law, which, in actuality, requires the installation of the smart meter.

48. Second, the Complainant’s interest is not “direct.” Due to the intervening change in facts, the Complainant currently has an analog meter at her property in Florida and is no longer experiencing the alleged impacts of the Company’s smart meter at the Service Address in Pennsylvania. (*See* Tr. 24-25.)

49. Third, the Complainant’s interest is not “immediate.” There is no guarantee that the Complainant would relocate back to Pennsylvania or even to PPL Electric’s service territory in the future. (Tr. 24-25, 28.) Therefore, any claim that the Complainant still has standing because she could move back to a property in the Company’s service territory at some undetermined point in the future should be rejected.

50. Based on the foregoing, PPL Electric respectfully requests that the Complaint be dismissed for lack of standing.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Complaint of Aisulu Oruzbaeva be dismissed in its entirety.

Respectfully submitted,



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Date: December 3, 2024

Attorneys for PPL Electric Utilities Corporation

## VERIFICATION

I, MICHAEL J. SHAFER, being Senior Counsel at PPL Services Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: December 3, 2024



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Michael J. Shafer