

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Craig Bowes	:	
	:	
v.	:	C-2020-3020990
	:	
PPL Electric Utilities Corporation	:	

ORDER

This Order is issued pursuant to the authority granted to presiding officers (i.e. Administrative Law Judges) under the regulations of the Commission at 52 Pa. Code §5.483.

SUMMARIZED HISTORY OF THE PROCEEDING

On June 25, 2020, Craig Bowes (Complainant) filed a formal Complaint against PPL Electric Utilities Corporation (PPL or Respondent) requesting a delay in the placement of a “smart meter” as Complainant alleged potential health issues associated with the meter.

On August 12, 2020, PPL filed an Answer to the Complaint denying any violation of the Public Utility Code (Code), the regulations, or any Order of the Public Utility Commission.

Also on August 12, 2020, PPL filed Preliminary Objections to the Complaint asserting that all of the particulars of the present Complaint had been entirely resolved in an earlier proceeding at Docket No. C-2018-3000475 with the filing of a Certificate of Satisfaction. PPL moved to dismiss the present Complaint in its entirety and with prejudice pursuant to 52 Pa. Code § 5.101(a)(4).

On September 3, 2020, Complainant filed an Answer to the Preliminary Objections appearing to argue that changed circumstances (related to the Covid Pandemic) since the filing of the Certificate of Satisfaction at Docket C-2018-3000475 precluded a ruling in favor of PPL in the present matter.

By Order entered November 4, 2020, the Commission directed that the Secretary identify each “smart meter” case pending before the Commission in which the Commission issued a stay of certain formal complaint proceedings then before an Administrative Law Judge (ALJ) or before the Office of Special Assistants that involved challenges to “smart meter” technology deployment where no initial decision has yet been issued by an ALJ or where no Final Order has yet been considered by the Commission.¹ This case was among the cases so identified, and the case was stayed by the Commission.

Three years later, on November 14, 2023, the Commission again issued an Order at *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655, lifting the stay and directing the Office of Administrative Law Judge (OALJ) to proceed with the litigation of cases pending before Administrative Law Judges.

On December 15, 2023, a Notice for a telephonic prehearing conference was sent to the parties in this case setting February 20, 2024, as the date for that conference.

On February 20, 2024, the prehearing conference convened. Complainant was present as was Devin T. Ryan, Esquire, appearing on behalf of PPL. The conference was held primarily to acquaint Complainant with the fact that he has the burden of proof in this matter and that third-party hearsay documents or statements (such as those downloaded from websites purporting to be authored by medical authorities) would not be acceptable as evidence to meet that burden. See, Discussion of *Povazc II*, below.

¹ *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered November 4, 2020)

At the conclusion of the conference, the parties agreed to discuss this matter privately to determine whether a settlement of the Complaint might be possible. The parties were afforded thirty (30) days from the date of this Order to engage in those discussions and to report the outcome to the undersigned.

The parties have not apprised the undersigned of any settlement of this matter.

DISCUSSION

The filing of Preliminary Objections is allowed under the Commission's procedural rules.

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

In its Preliminary Objections, PPL requested that the Complaint be dismissed in its entirety pursuant to Section 5.101(a)(4) because the Complainant's issues and claims were fully and finally resolved in a prior Complaint proceeding by the filing of the Certificate of Satisfaction, to which the Complainant never objected.

On September 3, 2020, Complainant filed an Answer to the Preliminary Objections. I have reviewed that Answer, and it makes no response to the essential point of PPL's Preliminary Objections; that is that this matter was resolved by a settlement—unobjected to by Complainant—which Complainant is, apparently, seeking to have set aside.

On August 16, 2022, the Supreme Court of Pennsylvania (Supreme Court) issued an Opinion and Order, *Povacz, et al. v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company. In *Povacz II*, the Supreme Court reversed the Commonwealth Court's October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, C-2015-2475023 (*Maria Povacz*); *Laura Sunstein Murphy v. PECO Energy Company*, C-2015-2475726 (*Laura Sunstein Murphy*); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, C-2016-2537666 (*Cynthia Randall*).

In the time since the decision in *Povacz II*, the Commission has shown great liberality in allowing smart meter disputes filed by *pro se* litigants to be heard in any case in which potential physical harm as the result of meter placement is asserted. While this liberality does not yet extend to previously settled cases, I am well aware of the Commission's sensitivity in this regard.

It is not clear from his Answer whether Complainant fully understands the nature of PPL's Preliminary Objections. Indeed, based on that Answer it appears that Complainant thinks that his original Complaint is still justiciable even though a Certificate of Satisfaction has been filed.

On November 12, 2024, a Notice of a telephonic evidentiary hearing was sent to the parties scheduling an evidentiary hearing for December 23, 2024. That Notice incorrectly set forth the purpose of the hearing. The purpose of the hearing is in the nature of argument relative to PPL's Preliminary Objections, focused primarily on Complainant's Answer. In other words, Complainant need to explain to the undersigned the legal basis for his apparent contention that the Certificate of Satisfaction filed at in his underlying Complaint does not act as a bar to further litigation of the same issue.

THEREFORE,

IT IS ORDERED:

1. That the hearing scheduled for December 23, 2024, is changed from an evidentiary hearing to argument with respect the PPL's Preliminary Objections and Complainant's Answer thereto.

2. Failure to attend the hearing scheduled for December 23, 2024, may result in the issuance of a Decision against the non-appearing party, including potentially the dismissal of the Complaint at this docket.

Date: December 19, 2024

/s/
Dennis J. Buckley
Administrative Law Judge

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