

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 19, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Jeffrey W. Smiles

C-2021-3026268

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Jeffrey W. Smiles (Complainant or

Mr. Smiles), filed on July 2, 2024, in the above-captioned proceeding.¹ The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Alphonso Arnold III, which the Commission served on the Parties on June 12, 2024. On November 12, 2024, PPL timely filed Replies to Exceptions. In the Initial Decision, the ALJ recommended that the Commission deny the Formal Complaint (Complaint) filed by the Complainant on May 24, 2021. For the reasons discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Arnold, and dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Formal Complaint (Complaint) concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PPL proposes to install at the Complainant's residence and use in the ordinary course of business to measure electricity consumption. PPL, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns, and maintains the meters in its distribution system. *See*, PPL's Tariff Electric Pa. P.U.C. No. 201 (PPL's Tariff), Section 8.A at 12. The Complainant is a PPL customer who has been notified of PPL's intent to install a smart meter at his residence. Complaint at 4-5.

¹ By Secretarial Letter issued October 30, 2024 (*October 2024 Secretarial Letter*), the Commission's Secretary issued a notice to the Parties indicating, *inter alia*, that: (1) on October 28, 2024, to cure a procedural defect, the Commission served PPL Electric Utilities Corporation (PPL) with the Complainant's Exceptions, via the Commission's e-service account, in order to constitute service under 52 Pa. Code § 5.533; (2) on October 29, 2024, PPL filed a Petition for Extension of Time to File Replies to Exceptions, in which PPL stated that it received the Exceptions, for the first time, on October 28, 2024, via the Commission's e-service account; and (3) because PPL established good cause for the requested extension of time, pursuant to 52 Pa. Code § 1.15, the Commission extended the period for filing Replies to Exceptions ten days from the date of the *October 2024 Secretarial Letter*, or until November 9, 2024. *October 2024 Secretarial Letter* at 1. It is noted that November 9, 2024, was a Saturday, and the following business day, Monday November 11, 2024, was a holiday. Therefore, Replies to Exceptions were due Tuesday, November 12, 2024.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, [EDCs] shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the [EDC] proposes to install in accordance with paragraph (2).

(2) [EDCs] shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See*, H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including PPL, to universally deploy smart meter

technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Implementation Order*). PPL sought and obtained the Commission's approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by late 2019. *See Petition of PPL Electric Company for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781 (Opinion and Order entered September 3, 2015) (*2015 Smart Meter Order*).

II. History of the Proceeding

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, 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 2020 Stay Order*). The *November 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. I.D. at 1-2.

On May 24, 2021, Mr. Smiles filed the instant Complaint.² In his Complaint, Mr. Smiles claimed, *inter alia*, that on March 3, 2021, PPL threatened to terminate his electric service which, according to the Complainant, was a violation of the decision of the Commonwealth Court of Pennsylvania (Commonwealth Court) in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and the Commission’s Emergency Order, *Public Utility Service Termination Moratorium*, at Docket No. M-2020-3019244 (Emergency Order entered March 13, 2020) (*Emergency Order*).³ The Complainant further claimed that, essentially, smart meter installations on homes is not a requirement under Act 129. Complaint at 3-4; I.D. at 2. As relief, Mr. Smiles requested, *inter alia*, that PPL: (1) refrain from installing a smart meter on his property; and (2) be fined or penalized for violating the *Emergency Order*. Complaint at 5; I.D. at 3.

On June 28, 2021, PPL timely filed an Answer to the Complaint and New Matter (Answer and New Matter), which was properly endorsed with a Notice to Plead.⁴ Also, on June 28, 2021, PPL filed Preliminary Objections in response to the Complaint (Preliminary Objections), which were properly endorsed with a Notice to Plead.⁵ I.D. at 3.

² We note that the Commission’s case management system indicates the Complaint was received May 24, 2021, but was not served on the Parties until June 7, 2021. Therefore, pursuant to 52 Pa. Code § 5.61(a), PPL was provided twenty days to file an Answer to the Complaint. It is noted that June 27, 2021 was a Sunday. Therefore, an Answer to the Complaint was due Monday, June 28, 2021.

³ In his Complaint, the Complainant also referred to the *November 2020 Stay Order* to substantiate his argument. Complaint at 3 (citing *Christie Brzostowski v. PPL Electric Utilities Corporation*, Docket No. C-2021-3024568 (Initial Decision issued August 21, 2024), *made final without further Commission action* (Final Order entered September 23, 2024)).

⁴ We note that a Certificate of Service is attached to PPL’s Answer and New Matter. *See*, Answer and New Matter at 2.

⁵ We note that a Certificate of Service is attached to PPL’s Preliminary Objections. *See*, Preliminary Objections at 2.

In its Answer and New Matter, PPL admitted that the Company sent Mr. Smiles a termination notice, asserting that the Complainant repeatedly refused to provide the Company access to his property to install a smart meter. Further, PPL averred that the Complainant challenged the Company's planned installation of a smart meter at the same service location in a prior formal complaint proceeding. Specifically, PPL provided that at Docket No. C-2018-3003895, the Commission issued a Final Order dismissing the formal complaint filed by Mr. Smiles against the Company, which challenged the Company's planned installation of an AMI meter for the same customer service location and same service account (2018 Complaint). I.D. at 3; Answer and New Matter at 2 (citing *Jeffrey Smiles v. PPL Electric Utilities Corporation*, Docket No. C-2018-3003895 (Initial Decision issued July 12, 2019) (*2019 Smiles Initial Decision*), *made final without further Commission action* (Final Order entered August 23, 2019) (*2019 Smiles Final Order*)).⁶ PPL added that after the deadline to file exceptions to the *2019 Smiles Initial Decision*, the Complainant filed two separate petitions, which were both denied by the Commission. Answer and New Matter at 2 (citing *Jeffrey Smiles v. PPL Electric Utilities Corporation*, Docket No. C-2018-3003895 (Order entered August 27, 2020) (*2019 Smiles Final Order on Reconsideration*)). Therefore, PPL asserted that because the Commission dismissed the Complainant's prior complaint challenging the installation of a smart meter at the same address involved in the instant proceeding (*i.e.*, the 2018 Complaint), the Complaint in the instant proceeding is barred by Section 316 of the Code, 66 Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel. I.D. at 3; Answer and New Matter at 2.

In its Preliminary Objections, PPL argued that the instant Complaint should be dismissed based on two grounds for objection. First, PPL contended that pursuant to

⁶ On July 22, 2019, the Commission issued a one-page Errata to the *2019 Smiles Initial Decision* (Errata), correcting a typographical error and otherwise stating that “[i]n all other respects the Initial Decision remains in full force and effect in its entirety.” Errata at 1.

52 Pa. Code § 5.101(a)(4), the instant Complaint is legally insufficient because the Complaint is barred by Section 316 of the Code, 66 Pa.C.S. § 316, as this is the second formal complaint that the Complainant filed against the Company concerning the Company's planned installation of a smart meter at the Complainant's service address. I.D. at 3; Preliminary Objections at 4. Further, PPL noted that under Section 316 of the Code, a complainant is prohibited from raising the same issues that were previously decided, and a Commission order that has not been reversed upon appeal is prevented from a collateral attack. PPL continued that the *2019 Smiles Final Order* and the *2019 Smiles Final Order on Reconsideration* were not set aside, annulled, or modified by judicial review. Preliminary Objections at 6-7. PPL also argued that pursuant to 52 Pa. Code § 5.101(a)(2), the portion of the Complaint requesting damages should be dismissed because the Commission is unable to award damages. I.D. at 3; Preliminary Objections at 8-9.

On July 28, 2021, the Complainant submitted a Petition for Extension of Time to file a response to PPL's Answer and New Matter and Preliminary Objections (Petition for Extension). On July 29, 2021, ALJ Watson issued an Interim Order granting the Complainant's Petition for Extension.⁷ I.D. at 4.

On August 10, 2021, the Complainant filed a Reply to PPL's Answer and New Matter (Reply to Answer).⁸ In his Reply to Answer, Mr. Smiles argues that essentially, the instant Complaint is not a "rehash" of the 2018 Complaint based on the

⁷ On July 22, 2021, a Motion Judge Assignment Notice was issued assigning this proceeding to ALJ Jeffrey A. Watson. I.D. at 3.

⁸ The Initial Decision indicated that the Reply to Answer was received August 8, 2021. *See*, I.D. at 4. However, according to the Commission's case management system, the Reply to Answer was filed on August 10, 2021.

Commonwealth Court's ruling in *Povacz I* and a change in facts, knowledge, and information available regarding Act 129.⁹ Reply to Answer at 5-7; I.D. at 4.

On January 23, 2023, ALJ Watson issued a Stay Order staying this proceeding pursuant to the *November 2020 Stay Order*. I.D. at 4.

By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints (*November 2023 Lifting Stay Order*). The *November 2023 Lifting Stay Order* also provided, *inter alia*, that as of the date of the *November 2023 Lifting Stay Order*, EDCs may commence termination proceedings due to the customer's refusal to allow the utility access to their meter for purposes of replacement. I.D. at 4 (citing *November 2023 Lifting Stay Order* at 9, Ordering Paragraph No. 2).

On December 28, 2023, ALJ Chad Allensworth issued a Prehearing Conference Order which, *inter alia*, held the Preliminary Objections in abeyance.¹⁰ I.D. at 4.

On March 15, 2024, ALJ Arnold issued a Prehearing Conference Order.¹¹ On April 9, 2024, the Complainant filed a Motion for Continuance of the Prehearing Conference (Complainant Motion). I.D. at 5. On April 12, 2024, PPL filed a Letter in

⁹ The Complainant did not file an Answer to PPL's Preliminary Objections. I.D. at 4.

¹⁰ On November 28, 2023, the Commission issued a Prehearing Conference Notice, which scheduled a prehearing conference and reassigned the instant matter from ALJ Watson to ALJ Allensworth. Subsequently, by Hearing Cancellation Notice issued January 17, 2024, the prehearing conference was cancelled. I.D. at 4-5.

¹¹ By Judge Change – Assignment Notice dated February 29, 2024, the instant matter was reassigned from ALJ Allensworth to ALJ Arnold. Subsequently, by Prehearing Conference Notice dated March 5, 2024, a prehearing conference was scheduled for April 15, 2024. I.D. at 5.

Lieu of an Answer to the Complainant's Motion (Letter in Lieu), wherein PPL stated that, essentially, until and unless the Preliminary Objections are ruled on, a prehearing conference is not necessary. I.D. at 5; *see*, Letter in Lieu at 1. On April 15, 2024, ALJ Arnold issued an Interim Order, which granted the Complainant's Motion and cancelled the prehearing conference scheduled for April 15, 2024. I.D. at 5.

In the Initial Decision issued on June 12, 2024, the ALJ granted PPL's Preliminary Objections, which the ALJ treated as a Motion for Judgment on the Pleadings, and dismissed the Complaint, with prejudice, because the Complainant raised the same claims and issues that were previously addressed by the Commission in dismissing a prior complaint (*i.e.*, the 2018 Complaint). Therefore, the ALJ found that the Complainant was barred from bringing his Complaint by 66 Pa.C.S. § 316. I.D. at 1, 16-17, 19.

As previously noted, the Complainant timely filed Exceptions on July 2, 2024, and PPL filed Replies to Exceptions on November 12, 2024.

III. Discussion

A. Legal Standards

1. Preliminary Objections

Section 5.101(a) of our Rules of Practice and Procedure states that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). 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).

The Commission's preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994) (*Equitable Small*). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept, as true, for purposes of disposing the motion, all well-pleaded, material facts of the non-moving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Company of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). Thus, the Commission must view a complaint only in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complaint would not be entitled to relief under any circumstances as a matter of law. *Equitable Small*.

Here, PPL, in its Preliminary Objections, asserted that the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4), based upon the prior complaint predicated upon the same issues and set of facts which the Commission ultimately dismissed.

The provision at 52 Pa. Code § 5.101(a)(4): (1) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency; and (2) serves judicial economy by avoiding a hearing where no factual dispute exists, and the matter in dispute is purely a legal question. If no factual issue pertinent to the resolution of a cases exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557, 564 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006, 1008-9 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. PUC*, 103 A.2d 502, 507 (Pa. Super. 1954).

2. *Res Judicata*

Res judicata is appropriately raised as a defense if all the issues between the parties in the current proceeding have been previously decided in a prior proceeding,

where the parties had an opportunity to appear and be heard. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983) (*Day*).

3. Dismissal with Prejudice

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *see also e.g., Nichols, III v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Arnold made twelve (12) Findings of Fact (FOF) and reached thirteen (13) Conclusions of Law (COL). I.D. at 5-7, 17-18. The FOF and COL are incorporated herein by reference and are adopted, without comment, unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

At the outset, the ALJ noted that in its Preliminary Objections, PPL asserted that the instant Complaint is legally insufficient and is barred by Section 316 of the Code.¹² I.D. at 8 (citing 52 Pa. Code § 5.101(a)(4); 66 Pa.C.S. § 316). Further, the ALJ noted that under Section 316 of the Code, a complainant is prohibited from raising issues that were previously decided. I.D. at 8 (citing 66 Pa.C.S. § 316; *Moore, Jr. v. PECO Energy Company*, Docket No. C-2012-2309932 (Order entered October 24, 2012))

¹² The ALJ noted that in its Preliminary Objections, PPL also argued that a portion of the Complaint should be dismissed as impertinent matter, pursuant to 52 Pa. Code § 5.101(a)(2). The ALJ explained that this argument would not be addressed because the Initial Decision finds the Complaint is barred pursuant to Section 316 of the Code and dismisses the Complaint in its entirety. I.D. at 8.

(*Moore, Jr.*); *Denlinger v. PPL Electric Utilities Corporation*, Docket No. C-2019-3014786 (Initial Decision issued February 24, 2020), *adopted without modification* (Final Order entered May 21, 2020) (*Denlinger*)). Moreover, the ALJ noted that Section 316 precludes a collateral attack upon a Commission order which has not been set aside, annulled, or modified for judicial review. I.D. at 8 (citing 66 Pa.C.S. § 316).

The ALJ then addressed the procedural issue presented by PPL by raising its argument that the instant Complaint is barred by Section 316 of the Code in Preliminary Objections, and not in a Motion for Judgment on the Pleadings. Specifically, the ALJ explained that a preliminary objection based on legal insufficiency is referred to as a “demurrer only where it appears from the face of the complaint that recovery of the facts alleged is not permitted as a matter of law.” I.D. at 8-9 (citing *The 220 Partnership v. Philadelphia Electric Company*, 650 A.2d 1094, 1096 (Pa. Super. 1994) (*220 Partnership*)). The ALJ continued that when considering a demurrer, “a court cannot consider matters collateral to the complaint but must limit itself to such matters as appear therein.” I.D. at 9 (citing *220 Partnership*). According to the ALJ, it must be considered that the instant Complaint did not mention the 2018 Complaint for the purpose of resolving PPL’s argument raised in its Preliminary Objections. I.D. at 9.

Therefore, the ALJ reasoned that PPL’s Preliminary Objections will be treated as a Motion for Judgment on the Pleadings, pursuant to 52 Pa. Code § 5.102. I.D. at 9 (citing 52 Pa. Code § 5.102). The ALJ added that pursuant to 52 Pa. Code § 1.2(a), the issue of the previously litigated case at Docket No. C-2018-3003895 (*i.e.*, the 2018 Complaint) will be considered to secure a just, speedy, and inexpensive determination of this proceeding. I.D. at 9 (citing 52 Pa. Code § 5.102). Further, the ALJ noted that the Complainant’s substantive rights will not be affected because Mr. Smiles had notice of the issue and the opportunity to respond, given that PPL’s argument was raised in both its Answer and New Matter and Preliminary Objections, and the

Complainant acknowledged the 2018 Complaint in his Reply to Answer. I.D. at 9 (citing 52 Pa. Code §§ 1.2(a), 5.62(b)).

The ALJ highlighted that treating the Preliminary Objections as a Motion for Judgment on the Pleadings mirrors Commission decisions that treated Preliminary Objections raising the affirmative defense of *res judicata* as a Motion for Judgment on the Pleadings when the issue was raised in New Matter, in addition to the Preliminary Objections. I.D. at 9-10 (citing *Raintree Farm Solar v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621826 (Final Order entered January 16, 2018) (*Raintree*); *Spirat v. Metropolitan Edison Company*, Docket No. C-2018-3005589 (Order entered March 28, 2019) (*Spirat*); *Denlinger*). Further, the ALJ noted that the doctrine of *res judicata*, like Section 316 of the Code, acts to preclude collateral attack of final orders rendered in proceedings brought before the Commission. Moreover, the ALJ noted that under *res judicata*, when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to that case and their privies are thereafter bound “not only as to every matter which was offered and received, but also as to any other admissible matter which might have been offered.” I.D. at 10 (citing *Commission v. Sunnen*, 333 U.S. 591 (1948)). Accordingly, the ALJ noted that for the remainder of the Initial Decision and for consistency and clarity, he would refer to PPL’s Preliminary Objections as a Motion for Judgment on the Pleadings (PPL Motion). I.D. at 10.

Then, the ALJ noted that if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law, then the Commission will grant a Motion for Judgment on the Pleadings. I.D. at 10 (citing 52 Pa. Code § 5.102(d)(1)). The ALJ continued that judgment on the pleadings should be granted only in a case where the moving party’s right to prevail is so clear that a trial would be a fruitless exercise. I.D. at 10 (citing *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a/ Dominion Peoples*, Docket No. C-20028539

(Opinion and Order entered December 19, 2003)). Further, the ALJ noted that in ruling on a Motion for Judgment on the Pleadings, the tribunal must consider, as true, all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits. Moreover, the ALJ noted that judgments on the pleadings should be entered only when the case is clear and free from doubt. I.D. at 10 (citing *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985)).

As such, the ALJ reasoned that to grant a motion for judgment on the pleadings: (1) the record must show that no facts are at issue; (2) the law is so clear that a trial would be a fruitless exercise; and (3) all of the opposing party's well-pleaded allegations are viewed as true, but only those facts admitted by the opposing party may be considered against the opposing party. In short, the ALJ reasoned that to grant the Respondent's motion, no material facts may be at issue and based upon those facts, the Respondent must be entitled to a judgment as a matter of law. I.D. at 10-11 (citing *Beardell v. W. Wayne Sch. Dist.*, 496 A.2d 1373 (Pa. Cmwlth. 1985)).

The ALJ then analyzed whether there are material facts at issue in this proceeding; summarizing that: (1) Mr. Smiles seeks to prevent installation of PPL's smart meter at his service address, arguing that a smart meter installation would violate Section 1501 of the Code, the Commission's *Emergency Order*, and *Povacz I*; (2) the Complainant filed his Complaint after receiving a shut-off notice on March 3, 2021 (March 2021 Shut-off Notice), for his refusal to permit PPL access to replace the current meter with a smart meter; and (3) according to Mr. Smiles, the Complaint is based on new matter and recent court decisions that impact the Company's behavior toward homeowners and their right to decline a smart meter installation. I.D. at 11 (citing Complaint at 4).

The ALJ reasoned that the Complaint offers legal questions to the installation of a smart meter at the Complainant's service address based on the

application of the *Emergency Order* and *Povacz I*. The ALJ noted that the facts raised in the Complaint surround the Company's issuance of the March 2021 Shut-off Notice to Mr. Smiles for his refusal to provide PPL access to the meter for smart meter installation. Further, the ALJ noted that PPL, in its Answer and New Matter, admitted that it issued the March 2021 Shut-off Notice to the Complainant for his refusal to grant PPL access to the meter for smart meter installation. As such, the ALJ found that: (1) no facts are at issue between the Parties, as the only questions presented in the Complaint are those of a legal nature; and (2) there is no genuine issue as to material fact in this proceeding, pursuant to 52 Pa. Code § 5.102(d)(1). I.D. at 11-12.

Next, the ALJ addressed whether PPL is entitled to judgment as a matter of law, noting PPL's argument that the Complainant has attempted to relitigate the same issues dismissed by the Commission in the proceeding for the 2018 Complaint. Therefore, the ALJ continued, the Complaint is barred pursuant to Section 316 of the Code. I.D. at 12.

The ALJ summarized that in the 2018 Complaint, the Complainant: (1) raised health, privacy, and safety concerns in his attempt to prevent PPL's installation of a smart meter at his service address; and (2) argued that he could opt-out of smart meter installation. I.D. at 12. The ALJ noted that at the evidentiary hearing for the 2018 Complaint, the Complainant testified about his health, safety, and privacy concerns, and his belief that he could opt-out of smart meter installation. I.D. at 12 (citing the evidentiary hearing for the 2018 Complaint, Tr. at 13-14).

The ALJ then addressed the *2019 Smiles Initial Decision*, noting that: (1) ALJ Elizabeth H. Barnes, *inter alia*, found that the Complainant failed to meet his burden of proof regarding his claims and dismissed the formal complaint; and (2) it became final without further Commission action. I.D. at 12 (citing *2019 Smiles Initial Decision*; *2019 Smiles Final Order*). The ALJ added that the Commission denied

Mr. Smiles' Petition for Rehearing or Reconsideration of the 2018 Complaint matter. I.D. at 12 (citing *2019 Smiles Final Order on Reconsideration*).

The ALJ then summarized Mr. Smiles' present Complaint, noting that the Complainant again sought to prevent the installation of a PPL smart meter at the same service address that was the subject of the 2018 Complaint. Further, the ALJ noted that in his Reply to Answer, the Complainant addressed PPL's argument in its Answer and New Matter that the Complaint is barred by virtue of the Commission's dismissal of the 2018 Complaint. I.D. at 12-13. Specifically, the ALJ pointed out that Mr. Smiles argued that the present Complaint is not a rehash of the 2018 Complaint because of a change in "facts, knowledge, and information" regarding Act 129. I.D. at 13. More specifically, the ALJ referred to the Complainant's Reply to Answer to summarize Mr. Smiles' arguments that: (1) the *Emergency Order* and *Povacz I* represent a change in law regarding the installation of smart meters that warranted the filing of the instant Complaint; (2) he can opt-out of smart meter installation; and (3) installing a smart meter at his service address would violate the *Emergency Order* and *Povacz I*. I.D. at 13 (citing Reply to Answer at 3).

Next, the ALJ addressed the Complainant's legal argument regarding *Povacz I*. The ALJ noted that in resolving the 2018 Complaint, the Commission dismissed Mr. Smiles' claim that he could opt-out of smart meter installation, finding that the Complainant did not meet his burden of proof on that issue. The ALJ continued that subsequent to the Commission's resolution of the 2018 Complaint, the Commonwealth Court issued its decision in *Povacz I*, which Mr. Smiles relied on in his current Complaint to assert that he can now opt-out of smart meter installation. I.D. at 13.

The ALJ explained that *Povacz I* dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, and the Commonwealth Court held, *inter alia*, that Act 129 does not mandate the installation of smart meters, and

the Commission had the authority to grant customer accommodations based on their health concerns. I.D. at 13-14 (citing *Povacz I* at 490). However, the ALJ continued, upon review of the Commonwealth Court's decision, the Supreme Court of Pennsylvania (Supreme Court) held, *inter alia*, that: (1) there is no opt-out provision for installation of a smart meter pursuant to Act 129; and (2) a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code to raise a viable challenge to smart meter installation. I.D. at 14 (citing *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*)).

The ALJ found that the Complainant's reliance on *Povacz I*, to contend that he may now opt-out of a smart meter installation, is incorrect given the Supreme Court's reversal of the Commonwealth Court's holding that Act 129 does not mandate the installation of smart meters. Further, the ALJ found that the Commission's determination regarding that issue in the 2018 Complaint remains conclusive on the Complainant because the law concerning Mr. Smiles' ability to opt-out of smart meter installation has not changed. I.D. at 14 (citing 66 Pa.C.S. § 316).

Next, the ALJ addressed the Complainant's reliance on the *Emergency Order* to assert that PPL cannot terminate his electric service based on his refusal to permit PPL access to the current meter for smart meter installation. The ALJ noted that the Complainant indicated that he received the March 2021 Shut-off Notice for his refusal to provide PPL access to the current meter for smart meter installation. I.D. at 14.

The ALJ explained that the *Emergency Order*: (1) established an absolute moratorium on the termination of utility services; (2) was entered in response to the Proclamation of Disaster Emergency issued by then Governor Tom Wolf on March 6, 2020, in response to the COVID-19 pandemic; (3) was ratified by the Commission at its Public Meeting on March 26, 2020; and (4) was modified on October 13, 2020, when the Commission lifted the absolute moratorium on the

termination of utility services to a less restrictive phase. I.D. at 14-15 (citing *Public Utility Service Termination Moratorium – Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered October 13, 2020) (*Modification of Emergency Order*). Further, the ALJ highlighted that pursuant to the *Modification of Emergency Order*, effective November 9, 2020, utilities were permitted to terminate utility service, absent certain restrictions generally applied to customers subject to termination due to an unpaid balance, not to customers who would be subject to termination due to refusal to permit utility access to their meter. I.D. at 15 (citing *Modification of Emergency Order*). Moreover, the ALJ noted that by Order entered on March 18, 2021, the *Emergency Order* was again modified, such that: (1) the moratorium was lifted in its entirety; and (2) termination of utility services was permitted to commence effective April 1, 2021. I.D. at 15 (citing *Public Utility Service Termination Moratorium*), Docket No. M-2020-3019244 (Order entered March 18, 2021)).

The ALJ observed that Mr. Smiles filed the instant Complaint on May 24, 2021, and the shut-off notice at issue in the Complaint was issued on March 3, 2021. The ALJ rejected the Complainant’s legal argument as moot, finding that the Company would not have been in violation of the *Emergency Order*. The ALJ explained that: (1) the moratorium was in its less-restrictive phase when PPL moved to terminate the Complainant’s service for Mr. Smiles’ failure to provide access to the meter; and (2) under the assumption that the *Emergency Order* would have still applied to PPL’s actions after November 9, 2020, the moratorium was lifted in its entirety effective April 1, 2021. I.D. at 15.

The ALJ also rejected the Complainant’s argument that the smart meter installation would be a violation of the *November 2020 Stay Order*. The ALJ explained that the *November 2020 Stay Order* became effective November 4, 2020, and provided, *inter alia*, that EDCs may not terminate electric service to any customer who has a

“**pending proceeding**” before the Commission challenging an EDC’s deployment of smart meters as being in violation of 66 Pa.C.S. § 1501, due to the customer’s refusal to allow the utility company access to their meter for purposes of replacement pending a final Commission Order on that proceeding. I.D. at 15-16 (citing *November 2020 Stay Order* at 9-10, Ordering Paragraph No. 3 (emphasis added)). The ALJ observed that PPL was not in violation of the *November 2020 Stay Order* because the Complainant did not have a pending smart meter proceeding before the Commission when the March 2021 Shut-off Notice was issued. Further, the ALJ pointed out that the Complainant filed the instant Complaint on May 24, 2021, and the *November 2020 Stay Order* was lifted on November 14, 2023, by the *November 2023 Lifting Stay Order*. The ALJ continued that as of the date of the *November 2023 Lifting Stay Order*, EDCs may commence termination proceedings due to the customer’s refusal to allow the utility access to their meter for purposes of replacement, consistent with the Code, Commission Regulations and Orders, and the Commission-approved Tariff. I.D. at 16 (citing *November 2023 Lifting Stay Order* at 9, Ordering Paragraph No. 2). As such, the ALJ found the Complainant’s argument concerning a violation of the *November 2020 Stay Order* is moot. I.D. at 16.

Finally, the ALJ concluded that the Complaint is barred by virtue of the Commission’s determinations and Orders in the 2018 Complaint proceeding, pursuant to Section 316 of the Code. The ALJ explained that notwithstanding his rejection of the Complainant’s arguments that the law has changed to warrant the filing of the Complaint, the issues present in the instant Complaint are the same issues addressed and resolved by the Commission in the 2018 Complaint (*i.e.*, whether Mr. Smiles can opt-out of smart meter installation at his service address; if smart meter installation at the service address constitutes a violation of Section 1501 of the Code). Specifically, the ALJ noted that the Commission dismissed the issues raised by Mr. Smiles in the 2018 Complaint, after a full-evidentiary hearing on the merits of the Complainant’s claims. Further, the ALJ noted that the Commission concluded that the Complainant: (1) could not opt-out of

smart meter installation; and (2) failed to meet his burden of proving that smart meter installation at his service address would violate Section 1501 of the Code. Moreover, the ALJ noted that the Commission's determination and Orders in the proceeding for the 2018 Complaint have not been set aside, annulled, or otherwise overturned. I.D. at 16 (citing 66 Pa.C.S. § 316).

Accordingly, the ALJ concluded that the instant Complaint in this matter is barred by 66 Pa.C.S. § 316, and PPL's Preliminary Objections, treated as a Motion for Judgment on the Pleadings, will be granted because PPL established that: (1) there are no genuine issues as to a material fact; and (2) the Company is entitled to a judgment as a matter of law. The ALJ also found that the Complaint will be dismissed without a hearing, noting that the Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary or in the public interest. I.D. at 16-17 (citing 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d)). The ALJ added that 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. I.D. at 17 (citing *Lehigh*, 563 A.2d 548; *Edan Transp. Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth 1993) (*Edan*)).

C. Exceptions¹³

At the outset, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without

¹³ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will exercise our discretion to accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Extra-Record Material Not Considered

As a preliminary matter, we note that the Complainant has filed and made use of extra-record materials. We will disregard the extra-record materials – specifically, on pages 4 through 6 of the Exceptions, the citations identified as taken from “Discussion of PN 4526 in the Senate Journal on October 8, 2008, pages 2626-2631” – as it was submitted after the close of the record and the use of this extra-record information by the Commission would violate PPL’s due process rights. Exc. at 4-6. We reject the Complainant’s attempt to relitigate his Complaint and introduce a new issue after the close of the record.

2. Substance of the Exceptions

In his Exceptions, the Complainant expresses disagreement and discontent with the ALJ’s Initial Decision. According to the Complainant, the ALJ is biased and the Initial Decision includes “misinformation, misleading presentation[,] and legal irregularities.” Exc. at 3. Specifically, the Complainant argues that the ALJ: (1) erred by treating PPL’s Preliminary Objections as a Motion for Judgement on the Pleadings, arguing that it represents: (a) a violation of the his due process rights; and (b) evidence of collusion with PPL; (2) ignored Mr. Smiles’ argument regarding Act 129 and the “concerns raised” in his Reply to Answer;¹⁴ (3) failed to acknowledge PPL’s responsibility to its customers, pursuant to Section 1501 of the Code, 66 Pa.C.S. § 1501;

¹⁴ *See*, Exc. at 9-10 (citing Reply to Answer at 6-7; *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955) (*Lawlor*) at 324, 328).

and (4) reached COLs that conflict with the Commonwealth Court’s decision in *Povacz I* and the legislative intent of the General Assembly. Exc. at 3-4, 7-10.

The Complainant also argues, generally, that: (1) the *Smart Meter Implementation Order* and the *2015 Smart Meter Order* represent a misinterpretation and misconstruction of the legislative intent of Sections 2807(f)(2) and (7) of the Code, 66 Pa.C.S. §§ 2807(f)(2),(7), and Act 129; (2) there is no legal basis on which EDCs can terminate electric service to customers who do not consent to the installation of smart meters on their property; and (3) his rights under the U.S. Constitution are protected from enforcement of Act 129. Exc. at 6-7.

The Complainant also points to PPL’s Letter in Lieu to claim that the ALJ colluded with PPL by “acting as an attorney” for the Company. Exc. at 8-9 (citing Letter in Lieu). Further, Mr. Smiles disputes the context of the Letter in Lieu, arguing that the letter does not accurately represent his conversation with counsel for the Company on April 12, 2024. Specifically, the Complainant states that during this conversation, he did not indicate that he had not reached a decision regarding the instant matter. Rather, Mr. Smiles clarifies that he stated that he was ill and unable to decide “ANYTHING about any matter.” Exc. at 9 (emphasis in original).

The Complainant also argues that the Commission should apply the burden of proof upon the utility. Exc. at 10 (citing 66 Pa.C.S. § 315(c)). According to Mr. Smiles, utility companies should be required to provide proof that based on conclusive scientific evidence, radio frequency (RF) radiation and RF electromagnetic fields produced by smart meters do not result in adverse health effects. Exc. at 10-11 (citing 52 Pa. Code §57.28(a)(1)). Further, the Complainant states that neither the Commission nor the EDCs have warned the public of the safety hazards posed by smart meters, such that customers could provide consent to install smart meters. Exc. at 11 (citing 52 Pa. Code § 57.28(a)(1); 66 Pa.C.S. § 1501). Moreover, Mr. Smiles asserts that

the Commission and EDCs are subjecting customers and the public to RF radiation and electromagnetic field exposure without completing safety studies of smart meters or implementing safety guidelines. Furthermore, the Complainant states that there is no reliable medical or scientific evidence to conclude that long-term exposure to RF radiation and RF fields produced by smart meters “cannot, would not[,] and will not cause, exacerbate or contribute to biological or adverse health effects.” Exc. at 11. Additionally, the Complainant argues that the Commission and EDCs have no basis to argue that exposure to any level of RF radiation and/or RF fields produced by smart meters is safe or reasonable. Exc. at 11-12.

Finally, the Complainant closes his Exceptions by, essentially, criticizing the Commission based on the outcome of several unspecified complaints filed with the Commission. Exc. at 12.

D. Replies to Exceptions

In its Replies, PPL disagrees with the Complainant’s reading of Act 129 and the relief Mr. Smiles believes he is entitled to under the same reading. R. Exc. at 3 (citing Exc. at 4; *Povacz II*; *Povacz I*). PPL argues that the Complainant’s position is meritless because he relies on an incorrect reading of Act 129 and does not engage with the Supreme Court’s holding in *Povacz II*. R. Exc. at 3-4 (citing *Povacz II* at 998). Further, PPL notes that the Complainant did not prove a Section 1501 violation, but even if he had, then he would only be entitled to “an accommodation to the extent allowed by Act 129 and a utility’s tariff.” R. Exc. at 4 (citing *Povacz II* at 1014; 66 Pa.C.S. § 1501). PPL continues that nothing in the Company’s tariff provides for an opt-out of the smart meter and the only accommodation available to customers is that the meter be related to a mutually-agreeable location at the customer’s expense. R. Exc. at 4 (citing PPL’s Tariff, Tariff Rule 4(I)(2), Supp. No. 59). Moreover, PPL argues that contrary to the Complainant’s arguments otherwise, the Company is not a state actor that can violate

Mr. Smiles' constitutional rights. As such, PPL contends that the Complainant's constitutional argument(s) should be rejected. R. Exc. at 4 (citing *Povacz I*).

In response to the Complainant's argument that the ALJ's treatment of the Company's Preliminary Objections as a Motion for Judgment on the Pleadings demonstrated "judicial overreach" and "collusion," PPL points out that the ALJ addressed and explained the basis for such treatment and reasoning. R. Exc. at 5 (citing Exc. at 7; I.D. at 9). Further, PPL counters that the ALJ correctly noted that treating PPL'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 were raised in new matter, in addition to preliminary objections. R. Exc. at 5 (citing I.D. at 9-10; *Raintree*; *Spirat*; *Denlinger*). Moreover, PPL notes that the Complainant: (1) fails to acknowledge that the Preliminary Objections were served on June 28, 2021, and were accompanied by a signed Notice to Plead, consistent with 52 Pa. Code § 5.101; and (2) could have filed an Answer to PPL's Preliminary Objections but did not. R. Exc. at 5-6. Furthermore, PPL notes that the Complainant does not acknowledge that the ALJ issued a Stay Order on January 23, 2023, staying this proceeding pursuant to the *November 2020 Stay Order*. As such, PPL contends that the Complainant's various *ad hominem* arguments against the ALJ and the Company are meritless and should be rejected. R. Exc. at 6 (citing *November 2020 Stay Order*).

PPL also takes issue with the Complainant's argument that the ALJ acted as an attorney on the Company's behalf, countering that Mr. Smiles offers no support for his contention and, as such, this argument should be rejected. R. Exc. at 6-7 (citing Exc. at 8-9). Further, PPL refers to the Letter in Lieu to state that it is uncertain as to why Mr. Smiles believes that counsel for the Company's representation that "the Complainant [had] not reached a decision yet" does not agree with the Complainant's acknowledgement that he was unable to decide "anything about any matter" at that time.

R. Exc. at 7 (citing Exc. at 9; Letter in Lieu) (emphasis omitted). Moreover, PPL argues that the Complainant's reliance on *Lawlor* is inapplicable and irrelevant to the Commission's determination in this proceeding. R. Exc. at 7-8 (citing Exc. at 9-10; *Lawlor* at 328). Furthermore, PPL notes that in both the 2018 Complaint and the instant Complaint, the Complainant asserted that he can: (1) opt out of a smart meter under Act 129; and (2) prove that a smart meter installation violates the Code. PPL continues that the 2018 Complaint addressed and adjudicated both allegations and, therefore, the ALJ correctly determined that the instant Complaint is barred by Section 316 of the Code and *res judicata*. PPL added that even if the 2018 Complaint had not resolved these issues, the Commission is unable to grant Mr. Smiles the relief he is requesting under Act 129. R. Exc. at 8 (citing *Povacz II*).

PPL also highlights that: (1) the Complainant neither identifies nor excepts to any COLs; and (2) *Povacz II* held that Act 129 mandates the systemwide installation of smart meters. Further, PPL argues that the Complainant's reliance on *Povacz I* is misplaced because, with respect to the smart meter mandate of Act 129, *Povacz I* was explicitly overturned by *Povacz II*. R. Exc. at 8 (citing *Povacz II* at 998-99). Moreover, PPL states that the Complainant's attempts to levy additional allegations regarding smart meters are meritless and should be disregarded. PPL adds that Mr. Smiles' allegations neither relate to, nor render inoperative, how Section 316 of the Code and *res judicata* bar the instant Complaint in its entirety. R. Exc. at 9 (citing Exc. at 11-12).

E. Disposition

In this case, the ALJ concluded the Complainant is barred from bringing this Complaint by virtue of the Commission's final action at Docket No. C-2018-3003895 (*i.e.*, the *2019 Smiles Final Order*), addressing a prior Complaint between the same parties, raising identical issues which were finally decided against the Complainant, and dismissed. I.D. at 16. On that basis, the ALJ concluded that the Respondent's

Preliminary Objections, treated as a Motion for Judgment on the Pleadings, that the current Complaint is barred by the provisions of Section 316 of the Code, 66 Pa.C.S. § 316, should be granted and the Complaint should be dismissed. *Id.* The ALJ also rejected the Complainant's legal arguments that the *Emergency Order* and *Povacz I* represent a change in law regarding the installation of smart meters. I.D. at 13.

On Exception, the Complainant does not challenge the basis for the ALJ granting the Company's Preliminary Objections and dismissing the Complaint. Rather, the Complainant argues that the ALJ's treatment of PPL's Preliminary Objections as a Motion for Judgment on the Pleadings, and the ALJ's acceptance of PPL's Letter in Lieu, represent: (1) a violation of his due process rights; and (2) that the ALJ is biased against the Complainant and cooperated with the Company by means of collusion. Exc. at 3, 7-9. The Complainant also argues, *inter alia*, that: (1) Act 129, the *Smart Meter Implementation Order*, and the *2015 Smart Meter Order* are, essentially, illegal and not enforceable; (2) the ALJ's COLs conflict with the Commonwealth Court's decision in *Povacz I*; and (3) the Commission should apply the burden of proof upon the Company. Exc. at 6-7, 10-12. To the extent that the Complainant's Exceptions may be construed to challenge the ALJ's finding that the Complaint is barred by Section 316 of the Code, we find the Complainant's arguments to be without merit and, therefore, we shall deny the Complainant's Exceptions.

Regarding the Complainant's arguments in support of his allegations of a biased position of the ALJ, or that the ALJ colluded with the Company, we are of the opinion that these arguments are without merit and must be denied. We note that our decisions in each smart meter installation case are considered on an individual basis established on the facts in the record of each proceeding. To the extent that the Complainant claims that his due process rights were violated by the ALJ's treatment of PPL's Preliminary Objections as a Motion for Judgment on the Pleadings, we agree with the ALJ's analysis that the Complainant's substantive rights would not be affected

because Mr. Smiles had notice of the issue and the opportunity to respond, since PPL's argument was raised in its Answer and New Matter and Preliminary Objections. Indeed, the Complainant responded to PPL's Answer and New Matter, wherein he acknowledged the 2018 Complaint. *See* I.D. at 9 (citing 52 Pa. Code § 1.2(a)).

Notwithstanding the Complainant's arguments that the law has changed to warrant the filing of his Complaint, which we will address *infra*, we agree with the ALJ that the instant Complaint is barred by the *2019 Smiles Final Order* in the proceeding for the 2018 Complaint. Specifically, under Section 316 of the Code, a complainant is prohibited from raising issues that were previously decided. I.D. at 18, COL No. 8 (citing 66 Pa.C.S. § 316; *Moore, Jr.*; *Denlinger*). We also agree with the ALJ's analysis and conclusion that the issues addressed and resolved by the Commission in the 2018 Complaint (*i.e.*, whether Mr. Smiles can opt-out of smart meter installation at his service address; if smart meter installation at his service address constitutes a violation of 66 Pa.C.S. § 1501) are the same issues present in the instant Complaint. As noted by the ALJ, in the 2018 Complaint, the Commission concluded that Mr. Smiles could not opt-out of smart meter installation and he did not meet his burden of proving that smart meter installation at his service address would violate 66 Pa.C.S. § 1501. I.D. at 16; *see*, *2019 Smiles Initial Decision* at 22-23, COL Nos. 8, 13.

Further, we agree with the ALJ that Section 316 of the Code precludes a collateral attack upon a Commission order which has not been reversed upon appeal. I.D. at 18, COL No. 9 (citing 66 Pa.C.S. § 316). As argued by PPL, and noted by the ALJ, the Commission's final action in the 2018 Complaint, rejecting the Complainant's arguments relating to the Company's installation of a smart meter at the service address, has not been set aside, annulled, or otherwise overturned. Preliminary Objections at 7; Answer and New Matter at 10 (citing *2019 Smiles Final Order*; *2019 Smiles Final Order on Reconsideration*); I.D. at 16 (citing 66 Pa.C.S. § 316). We find that the ALJ correctly

held that the Complainant’s claims in the instant Complaint are barred by Section 316 of the Code. I.D. at 19 (citing 66 Pa.C.S. § 316).

We find that the ALJ properly applied the provision of Section 316 of the Code as a bar to the present Complaint and to preclude a hearing on the Complaint. As noted by the ALJ, the Commission is granted discretion to dismiss any complaint, without a hearing, if, in its opinion, a hearing is not necessary or in the public interest. *See*, I.D. at 17 (citing 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21(d)). Indeed, 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. *See*, I.D. at 17 (citing *Lehigh; Edan*). Because the Complaint was properly precluded under Section 316 of the Code, no hearing was necessary as a matter of law.

Additionally, we expressly adopt the ALJ’s analysis of the Complainant’s arguments regarding *Povacz I*, the *Emergency Order*, and the *November 2020 Stay Order*:

Given the Supreme Court’s reversal of the Commonwealth Court’s holding that Act 129 does not mandate the installation of smart meters, [the] Complainant’s reliance on *Povacz I* for the proposition that he may now “opt-out” of smart meter installation is incorrect, and his legal argument in this regard will be rejected. As the law concerning [the] Complainant’s ability to “opt-out” of smart meter installation has not changed since the resolution of his 2018 Complaint, the Commission’s determination regarding that issue in the 2018 Complaint remains conclusive on [the] Complainant. 66 Pa.C.S. § 316.

* * *

The instant Complaint was filed by [the] Complainant on May 24, 2021. The shut off notice that [the] Complainant complains of was issued on March 3, 2021. As detailed above, [the] Respondent would not have been in violation of

the Emergency Order for moving to terminate [the] Complainant's service for failure of [the] Complainant to provide access to his meter because the moratorium was in its less restrictive phase at that point. Therefore, [the] Complainant's legal argument in this regard is rejected. Even under the assumption that the Emergency Order would have still applied to Respondent's actions past November 9, 2020, the moratorium was lifted in its entirety effective April 1, 2021. Thus, [the] Complainant's argument concerning violation of the Emergency Order is also moot.

* * *

[The] Respondent was not in violation of the [*November 2020 Stay Order*] when it issued its March 3, 2021, termination notice because at the time of its issuance, [the] Complainant did not have a pending smart meter proceeding before the Commission. [The] Complainant filed the instant Formal Complaint on May 24, 2021. Furthermore, the [*November 2020 Stay Order*] was lifted on November 14, 2023, by the [*November 2023 Lifting Stay Order*], which provided that, as the date of the Order, EDCs may commence termination proceedings due to the customer's refusal to allow the utility access to their meter for purposes of replacement, consistent with the [Code], Commission Regulations, Commission Orders and [the] Commission-approved Tariff. [*November 2023 Lifting Stay Order*], Ordering Paragraph No. 2. Thus, [the] Complainant's argument concerning violation of the [*November 2020 Stay Order*] is also moot.

I.D. at 14-16.

Accordingly, for all the forgoing reasons, we shall adopt the ALJ's Initial Decision and dismiss the instant Complaint in the above-captioned proceeding.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall deny the Complainant's Exceptions, adopt the Initial Decision, and dismiss the Complaint, with prejudice, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Jeffrey W. Smiles on July 2, 2024, at Docket No. C-2021-3026268, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Alphonso Arnold III, issued on June 12, 2024, at Docket No. C-2021-3026268, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed on May 24, 2021, by Jeffrey W. Smiles against PPL Electric Utilities Corporation, at Docket No. C-2021-3026268, is denied and dismissed, with prejudice.

4. That this proceeding at Docket No. C-2021-3026268 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 19, 2024

ORDER ENTERED: December 19, 2024