

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aisulu Oruzbaeva	:	
	:	
v.	:	C-2020-3023497
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision grants PPL Electric Utilities Corporation’s Motion for Summary Judgment that seeks dismissal of the Formal Complaint filed by Aisulu Oruzbaeva because the Complainant lives in Florida and no longer owns or has an interest in the property that was the subject of the Formal Complaint.

HISTORY OF THE PROCEEDING

On December 14, 2020, Aisulu Oruzbaeva (Ms. Oruzbaeva or Complainant) filed a Formal Complaint against PPL Electric Utilities Corporation (PPL or Company). The Formal Complaint was served on PPL on December 31, 2020. Ms. Oruzbaeva alleged that the smart meter installed by PPL pollutes her property with high levels of microwave radiation and dirty electricity. Ms. Oruzbaeva asserts that this type of pollution exacerbates a disability that she has and interferes with major daily life activities. As relief, Ms. Oruzbaeva requests that PPL substitute the smart meter with an analog meter.

On January 20, 2021, PPL filed an answer to the Formal Complaint. In the answer, PPL admitted that it installed a new automated metering infrastructure (AMI) meter at Complainant's service address. PPL denied that the AMI meter poses any health hazards. PPL states that it was legally required to install the new AMI meter by the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Plan.

Additionally, PPL asserted that nothing in the Public Utility Code, the Commission's orders and regulations, or PPL Electric's Smart Meter Plan states that a customer can opt-out of a smart meter installation.

On January 27, 2021, Administrative Law Judge (ALJ) Elizabeth H. Barnes issued an order advising the parties that this matter was stayed until further direction by the Commission.¹

On June 13, 2022, the Commission issued a Judge Change Notice, changing the ALJ in this proceeding from ALJ Barnes to ALJ Charece Z. Collins.

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding ALJ.

¹ By Order entered November 4, 2020, the Commission ordered that any formal complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company's deployment of smart meter technology as being in violation of 66 Pa.C.S. § 1501 is to be stayed until the Commission takes further action to lift the stay. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 4, 2020).

On August 26, 2024, the Commission issued a Judge Change Notice, changing the ALJ in this proceeding from ALJ Collins to the undersigned.

On August 28, 2024, the Commission issued a telephonic prehearing conference notice setting a call-in telephonic prehearing conference for this matter for October 9, 2024, at 10:00 a.m. In anticipation of that prehearing conference, I issued a prehearing conference order on September 3, 2024 setting forth various rules that would govern the October 9, 2024 prehearing conference.

The October 9, 2024 prehearing conference was held as scheduled. Ms. Oruzbaeva appeared. Counsel for PPL did not appear. Ms. Oruzbaeva requested a continuance of the prehearing conference. On October 16, 2024, I issued an order granting the continuance and rescheduling the prehearing conference to November 13, 2024.

The November 13, 2024 prehearing conference was held as scheduled. Ms. Oruzbaeva and counsel for PPL appeared. During the prehearing conference, Ms. Oruzbaeva indicated she no longer resided or held any interest in the service address that was the subject of her Formal Complaint. Counsel for PPL indicated that PPL would file a motion regarding the issue of Ms. Oruzbaeva no longer residing or holding any interest in the service address that was the subject of her Formal Complaint. I continued the prehearing conference and ordered PPL to file a motion within 20 days of the November 13, 2024 prehearing conference. I also indicated that Ms. Oruzbaeva would have 20 days from the date of filing of the motion to respond. On November 14, 2024, I issued a continuance order, memorializing these instructions.

On December 3, 2024, PPL filed a motion for judgment on the pleadings (motion), requesting that Ms. Oruzbaeva's Formal Complaint be dismissed. PPL asserted that 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.

PPL argues that, 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.

On December 23, 2024, Ms. Oruzbaeva filed a response to PPL's motion for judgment on the pleadings. Ms. Oruzbaeva reiterated her assertions that the smart meter installed by PPL at the property that is the subject of the Formal Complaint causes her harm.

PPL's motion for judgment on the pleadings is procedurally ready to be ruled upon. For the reasons explained below, I am granting PPL's motion for judgment on the pleadings as a motion for summary judgment.

FINDINGS OF FACT

1. The Complainant in this case is Aisulu Oruzbaeva.
2. The Respondent in this case is PPL Electric Utilities Corporation.
3. On December 14, 2020, Complainant filed a Formal Complaint, alleging that PPL's smart meter is causing her harm, and requesting that the smart meter be replaced with an analog meter.
4. On January 20, 2021, PPL filed an answer to the Formal Complaint.
5. Ms. Oruzbaeva resides in Florida and no longer owns or has an interest in the property that was the subject of the Formal Complaint. Tr. 24-28.²

² Ms. Oruzbaeva's USPS mailing address on file with the Commission continues to be the Pennsylvania address that was listed on the Formal Complaint. On November 13, 2024, subsequent to the prehearing conference, I e-mailed Ms. Oruzbaeva, copying counsel for PPL, requesting that Complainant provide me an updated USPS mailing address. No response was received. On November 15, 2024, a legal assistant in the Office

6. On December 3, 2024, PPL filed a motion for judgment on the pleadings, requesting that Ms. Oruzbaeva's Formal Complaint be dismissed.

7. On December 23, 2024, Ms. Oruzbaeva filed a response to PPL's motion for judgment on the pleadings.

DISCUSSION

Motion for Judgment on the Pleadings

The Commission will grant a motion for judgment on the pleadings only 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. 52 Pa. Code § 5.102(d)(1). Section 5.102 of the Commission's Rules provides in relevant part:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of

of Administrative Law Judge attempted to call Ms. Oruzbaeva at the phone number that was listed on the Formal Complaint to ask for an updated mailing address. The legal assistant was unsuccessful because the phone number is no longer associated with the Complainant. Although the OALJ attempted to update Ms. Oruzbaeva's USPS mailing address, ultimately, Ms. Oruzbaeva is responsible for updating her address with the Commission's Secretary. 52 Pa. Code § 1.24(a).

service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

(d) *Decisions on motions.*

(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.

(3) *Form of decision.* The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

52 Pa. Code § 5.102(a), (b), (d)(1), (d)(3). All of the non-moving party's well-pleaded allegations must be viewed as true for purposes of deciding the motion, and only those facts specifically admitted may be considered against the non-moving party. *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. 1995). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Id.* Any doubt must be resolved in favor of the non-moving party by refusing to sustain the motion. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super 1985).

For the reasons discussed below, I agree with PPL that the Formal Complaint is moot and should be dismissed because Ms. Oruzbaeva currently lives in Florida and no longer owns or has an interest in the property that is the subject of the Formal Complaint.

However, the pleadings by themselves are not clear that relief should be granted to PPL for the reasons asserted. Specifically, when Ms. Oruzbaeva filed her Complaint in 2020, there was no assertion or indication in the pleadings that she lived in Florida and had no interest in the property at issue. The Commission may hear Complaints regarding smart meters and whether utilities are complying with Section 1501 of the Public Utility Code. *Povacz v. Pa. Pub. Util. Comm'n*, A.3d 975 (Pa. 2022) (*Povacz*). Solely based on the facts alleged in the pleadings, Ms. Oruzbaeva's Formal Complaint raises genuine issues of material fact as to the safety of a smart meter installed by PPL. Accordingly, I believe it would be inappropriate to grant PPL's motion as a motion for judgment on the pleadings.

Motion for Summary Judgment

PPL's motion does not rely on Ms. Oruzbaeva's pleadings. Instead, PPL's motion cites Ms. Oruzbaeva's admissions during the November 13, 2024 prehearing conference as a basis for its motion. Motion, ¶¶ 23, 27, 30, 38, 41, 47, 48, 49. A party may move for summary judgment relying on, among other things, admissions that 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. 52 Pa. Code § 5.102. Therefore, I find it appropriate to treat its motion for judgment on the pleadings as a motion for summary judgment. The Commission treats pleadings by what is reflected in their content instead of what they are labelled. *Mattu v. West Penn Power Co.*, C-2016-2547322 (Opinion and Order entered July 14, 2017). As long as the parties' rights are not negatively affected and due process has been provided, there is no bar to changing the designation of a document to more accurately reflect its content and purpose. *Id.* (citing 52 Pa. Code § 1.2). Ms. Oruzbaeva's due process rights have not been affected since she was provided an opportunity to respond and she did respond to PPL's motion.

Summary judgment should be granted only when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the

Commission must view the record in the light most favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983). In this proceeding, PPL bears the burden of demonstrating clearly that there is no genuine issue of material fact; however, as the non-moving party, Ms. Oruzbaeva must allege facts showing that an issue for trial exists. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Cmwlt. 1978).

Ms. Oruzbaeva clearly stated at the prehearing conference that she now resides in Florida and no longer owns or has an interest in the property that was the subject of the Formal Complaint. Tr. 24-28. I agree with PPL that these admissions serve as a valid basis to find that Ms. Oruzbaeva's Formal Complaint is both moot and that she lacks standing to pursue her Formal Complaint.

Regarding mootness, if “[i]ntervening 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. Cmwlt. 1996) (quoting *Zemprelli v. Thornburgh*, 466 A.2d 1123, 1124 (Pa. Cmwlt. 1983)). 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. Cmwlt. 2018). There are limited exceptions to the mootness doctrine, including when: “(1) the conduct complained of is capable of repetition yet evading review, or (2) involves questions important to the public interest, or (3) will cause one party to suffer some detriment without the Court’s decision.” *Driscoll v. Zoning Bd. of Adjustment*, 201 A.3d 265, 269 (Pa. Cmwlt. 2018) (quoting *Clinkscale v. Dep’t of Pub. Welfare*, 101 A.3d 137, 139 (Pa. Cmwlt. 2014)).

Ms. Oruzbaeva's Formal Complaint is moot because of the undisputed facts that Complainant now resides in Florida and no longer owns or has any interest in the property which is the subject of the Formal Complaint. Ms. Oruzbaeva seeks replacement of the smart meter with an analog meter; however, she no longer lives at the subject property, and the relief she seeks would be to replace the meter of another customer who is not a party to this proceeding.

I also agree with PPL that none of the limited exceptions to the mootness doctrine are implicated here. The issue of the safety of smart meters in Pennsylvania has been thoroughly litigated at the Commission and courts of appeal. *See Povacz*. Although Ms. Oruzbaeva has expressed a desire to litigate her Formal Complaint because she would like to return to Pennsylvania, the fact is she does not have any interest in the property that is the subject of the Formal Complaint. As PPL indicates in its motion, should Ms. Oruzbaeva have an interest in property in Pennsylvania in the future with a smart meter, she may be able to proceed with a Formal Complaint regarding a smart meter at that point. Additionally, as PPL notes in its motion, there is no certainty that Ms. Oruzbaeva would even be a PPL customer should she return to Pennsylvania. To let Ms. Oruzbaeva proceed with a Formal Complaint at this point would essentially allow her to litigate a policy question implicating all smart meters in Pennsylvania rather than the particular facts of the smart meter installed at the property that is the subject of her Formal Complaint.

The Supreme Court of Pennsylvania described the threshold requirements necessary to support standing as follows:

A party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action. . . . it is not sufficient for the person claiming to be "aggrieved" to assert the common interest of all citizens in procuring obedience to the law. . . . [W]hat is necessary to render a person aggrieved is that the party has a substantial, direct and immediate interest in the claim sought to be litigated.

A ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest. An ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it.

Bergdoll v. Kane, 731 A.2d 1261, 1268 (Pa. 1999) (citations omitted).

For similar reasons as expressed above regarding the issue of mootness, I do not find that Ms. Oruzbaeva has standing to pursue her Formal Complaint. Ms. Oruzbaeva no longer has any interest in the property which is the subject of the Formal Complaint, and is therefore complaining about the smart meter of another customer. Ms. Oruzbaeva’s interest in continuing to pursue her Complaint is to seek permission to opt-out from installation of a smart meter before her possible return to Pennsylvania. Tr. 24-25. First, the Pennsylvania Supreme Court in *Povacz* held that customers do not have the right to opt-out from installation of a smart meter in their residence. *Povacz* at 999. Second, customers may seek an accommodation by raising a claim under Section 1501 of the Public Utility Code. *Id.* However, since Ms. Oruzbaeva currently has no interest in a specific property in Pennsylvania with a smart meter, there is no basis for her to pursue a Section 1501 claim, and no clear relief that could possibly be provided. For these reasons, I find that Ms. Oruzbaeva’s interest in pursuing the Formal Complaint is not substantial, direct, or immediate.

When there are no disputed questions of fact and the case to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing. *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm’n*, 817 A.2d 593 (Pa. Cmwlth. 2003); *Diamond Energy, Inc. v. Pa. Pub. Util. Comm’n*, 653 A.2d 1360 (Pa. Cmwlth. 1995); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 557 (Pa. Cmwlth. 1989). The Commission may dismiss a complaint without a hearing if it is not necessary or in the

public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d). For the reasons discussed above, Ms. Oruzbaeva's Formal Complaint is moot, and Ms. Oruzbaeva lacks standing to pursue her Formal Complaint. Accordingly, PPL's motion for summary judgment is granted and Ms. Oruzbaeva's Formal Complaint is dismissed.

CONCLUSIONS OF LAW

1. Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101.
2. The Commission will grant a motion for judgment on the pleadings only 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. 52 Pa. Code § 5.102(d)(1).
3. As long as the parties' rights are not negatively affected and due process has been provided, there is no bar to changing the designation of a document to more accurately reflect its content and purpose. *Mattu v. West Penn Power Co.*, C-2016-2547322 (Opinion and Order entered July 14, 2017) (citing 52 Pa. Code § 1.2).
4. Commission's regulations permit a party to move for summary judgment after the pleadings are closed, but within a time so that the hearing is not delayed. 52 Pa. Code § 5.102(a).
5. The presiding officer will grant the motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).
6. 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

