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March 28, 2025

VIA ELECTRONIC FILING

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

Re: Michael T. Jennings v. West Penn Power Company
Docket No. C-2018-3006031

Dear Secretary Chiavetta:

Enclosed for filing please find the Replies of FirstEnergy Pennsylvania Electric Company, ("West Penn Rate District[1]") to the Exceptions of Michael T. Jennings regarding the above-referenced matter. This document has been served on all parties as shown in the Certificate of Service.

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

Respectfully submitted,

James Austin Meehan

JAM/mlr

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

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Michael T. Jennings,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3006031
	:	
West Penn Power Company,	:	
	:	
Respondent	:	

REPLY EXCEPTIONS OF WEST PENN POWER COMPANY TO THE EXCEPTIONS OF MICHAEL T. JENNINGS

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I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company, on behalf of its West Penn Rate District[2] (the "Company"), hereby files its Replies to the Exceptions of Michael T. Jennings ("Complainant"). Through the Exceptions, the Complainant takes issue with much of the well-reasoned Initial Decision ("ID") issued by the Administrative Law Judge Gail M. Chiodo (hereinafter, the "ALJ") on February 28, 2025. The ID dismissed the Complaint, holding that Act 129 of 2008[3] mandates the systemwide installation of smart meters and does not provide opt out provisions for customers and that the Complainant failed to "carry his burden of proof establishing that West Penn Power Company violated the Code or a regulation or order of the [Pennsylvania Public Utility Commission ('Commission')]." (ID at 46.)

Additionally, the ID noted several other reasons supporting dismissal of the Complaint, including the Court's holding in *Povacz II*, which concluded that a customer may not "opt-out" of the installation of a smart meter.[4] (ID at 8.) Moreover, the ID explained the Court's holding in *Povacz II* as applied to the Complainant's alleged health concerns related to smart meters. In turn, the ID declared, "Specific to smart meters and RF emissions, the burden of proof is two-fold. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects and, second, expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm." (ID at

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

[3] 66 Pa.C.S. §§ 2806.1–2807 (the "Act" or "Act 129").

[4] *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) ("*Povacz II*").

45-46.) Further, the ID correctly explained that the Commission lacks jurisdiction to consider claims arising under the Americans with Disabilities Act ("ADA"), rejected the Complainant's constitutional and discriminatory claims, and rejected the Complainant's claim that the Company failed to comply with the Federal Communications Commission's ("FCC") regulations. (ID at 39-42.)

As explained herein, the Complainant's Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Complainant's Exceptions and adopt the ID without modification.

II. REPLIES TO EXCEPTIONS

A. REPLY TO EXCEPTION NO. 1: THE ALJ DID NOT IGNORE THE COMPLAINANT'S ARGUMENTS REGARDING MOOTNESS THAT WERE SET FORTH IN HIS JANUARY 9, 2025 PETITION TO REOPEN THE EVIDENTIARY RECORD

The Complainant erroneously argues that the ALJ "ignor[ed] the Complainant's arguments" regarding mootness that were set forth in the Complainant's January 9, 2025 Petition to Reopen the Evidentiary Record. (Exceptions at 1-5.) The ID specifically summarized and addressed the parties' arguments about whether the Complaint is moot in light of the Supreme Court's ruling in *Povacz II* and about the Complainant's Petition to Reopen the Evidentiary Record. (ID at 30-32.) As explained in the ID, "the Petition merely puts forth additional argument to consider and grant [the Complainant's] Complaint, and the Complainant does not in fact propose to present any additional evidence." (ID at 32.) Accordingly, the ID properly denied the Petition. (ID at 32.) Although the ID denied the Petition, that does not mean that the ALJ ignored the Complainant's arguments. (ID at 30-32.) Further, even though the Company maintains that the *Povacz II* decision renders the Complaint moot as explained in its Reply Brief,[5] the ALJ still

[5] *See* ID at 30.

engaged in an examination and ultimate ruling on the merits of the Complaint, including the Complainant's baseless about federal and constitutional law and about bias and prejudice toward the Complainant. (ID at 32-44.) Thus, the Complainant's Exception No. 1 has no merit and should be denied.

B. REPLIES TO EXCEPTIONS NOS. 2, 3, 4, 9, 11, AND 12: THE ALJ PROPERLY FOUND THAT THE COMPLAINANT FAILED TO MEET HIS BURDEN OF PROOF THAT THE SMART METER'S INSTALLATION WOULD VIOLATE SECTION 1501 OF THE PUBLIC UTILITY CODE

The ALJ correctly held that the Complainant failed to meet his burden of proof that the smart meter's installation would violate Section 1501 of the Public Utility Code. (ID at 32-39.) As explained by the Company in its Reply Brief, the Complainant presented no expert testimony to corroborate his health, safety, or privacy allegations contained in the Complaint. (FE PA RB at 17.) In addition, the Complainant presented no evidence that he is qualified to offer expert testimony as engineers, doctors, or other medical professionals. (FE PA RB at 17.) Consequently, the Complainant wholly failed to demonstrate that the installation of a smart meter at his service address would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code. (FE PA RB at 17.)

In trying to challenge the ALJ's well-reasoned holding that the Complainant failed to meet his burden of proof, the Complainant lodges a series of unsupported arguments in his Exceptions. (Exceptions at 5-9, 19-20, 24-26.) According the Complainant, the ALJ erred: (1) by using the terms "health situations" and "health concerns," "in her ad nauseum assessment of Dr. Semelka," and "in rendering a decision *without any proof* a 'smart' meter had not been deployed on Complainant's property"; (2) by "practicing medicine without a license" by "making medical and human health determinations in this case and ignoring the *explicit medical directives* from numerous licensed medical doctors who are trusted by the Complainant and his family"; (3) by

"relying on an electric engineer to determine biological safety of the 'smart' meters"; and (4) by "ignoring the acknowledgment of the possibility and threat of harm and liability associated with the 'smart' meter technology in FirstEnergy's *Customer Guide for Electric Service in PA*"; (5) (Exceptions at 5-9, 19-20, 24-26.) Not one of these claims has merit.

First, the ALJ correctly rejected the Complainant's arguments that the smart meter will cause or contribute to adverse health effects. (ID at 32-39.) The ALJ explained that under *Povacz II*, the Complainant's "burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions." (ID at 33.) "First, a customer a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects." (ID at 33.) "Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm." (ID at 33.) After that "[t]he utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of scientific or medical certainty, the RF emissions from smart meters did not cause the alleged harm." (ID at 33.) Lastly, "[o]nce the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm." (ID at 33.)

In this case, the Complainant failed to meet that burden. As explained by the ALJ:

> In the instant case, in addition to the absence of expert testimony presented by the Complainant, there is no evidence that the Complainant is qualified to offer scientific or medical expert opinion. While Mr. Jennings testified to the health conditions of McKenzie, himself, and his wife, there was no expert medical testimony to explain a causal connection between his health and any alleged harmful effects of a smart meter. Without expert testimony and credible evidence, Mr. Jennings' claims are reduced to

> unsubstantiated opinions. Assertions, personal opinions or perceptions do not constitute factual evidence. As the Commission explained, "opinions and conclusions cannot be relied upon as substantial evidence in a decision by this agency." *Norman* at 30.

(ID at 33.) Moreover, all the "research articles, physician visit summaries, lab work, phone call summary sheets, letters, or links to websites" offered by the Complainant were properly excluded as hearsay or irrelevant. (ID at 33-34.) Further, although the Complainant tried to present written testimony from Dr. Semelka, that evidence was excluded due to Dr. Semelka's inability to authenticate that testimony. (ID at 34-37.) Even still, the ALJ's "post-evidentiary hearing Order expressly gave the Complainant an opportunity at the post-evidentiary hearing conference to address whether he wanted an opportunity to reopen the evidentiary record to present expert testimony in light of the *Povacz II* decision." (ID at 37.) However, in his Status Report filed on April 11, 2024, the Complainant "explicitly stated that he was not requesting to reopen the evidentiary record to present expert testimony." (ID at 38.) Thus, the ALJ properly concluded that the Complainant failed to meet his burden of proof.

Second, the ALJ is not practicing medicine when adjudicating health-related claims, as alleged by the Complainant. (Exceptions at 5-7.) The ALJ properly exercised her authority as a judge to review the evidence presented by the parties, apportion the weight she saw fit to that evidence, and render a judgment on the merits. *See, e.g.*, 66 Pa. C.S. § 331(d). By the Complainant's flawed logic, no judge could render a decision in any case where health-related claims were at issue.

Third, the Complainant errs by claiming that the ALJ should not have relied on the Company's evidence. (Exceptions at 6-9.) In fact, as explained previously, the ALJ correctly determined that the Complainant failed to meet his initial burden by presenting expert testimony in support of his claims. Therefore, although the Company presented reliable and credible

evidence in support of its claims, the ALJ did not need to rely on the Company's evidence in dismissing the Complaint. (ID at 32-39.)

Fourth, the Complainant improperly attempts to introduce and rely on the "*Customer Guide for Electric Service in PA*" and other materials in support of his claims. (Exceptions at 19-20, Attachment EX-1, Attachment EX-3.) However, it is well-established that parties cannot introduce evidence for the first time at the briefing or exceptions stage. *See, e.g.*, *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *8-9 (Order entered Feb. 10, 1994) (denying party's attempt to introduce extra-record evidence in its exceptions). "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id.* (citations omitted). Therefore, any extra-record evidence that the Complainant introduces or relies on in his Exceptions should be disregarded. Furthermore, the Complainant wholly mischaracterizes the *Customer Guide for Electric Service in PA*. The guide simply points to the "Interruption & Liability" provisions of the Company's Commission-approved tariff and does not represent any admission that the smart meter "can and/or has obviously caused much property and bodily damage," as alleged by the Complainant. (Exceptions at 19.)

For these reasons, the ALJ correctly determined that the Complainant failed to meet his burden of proof that the smart meter's installation would violate Section 1501 of the Public Utility Code, and nothing in the Complainant's Exceptions warrants disturbing the well-reasoned ID. Thus, the Commission should deny Exceptions Nos. 2, 3, 4, 9, 11, and 12.

C. REPLIES TO EXCEPTIONS 5, 10, AND 13: THE ALJ CORRECTLY APPLIED THE *POVACZ II* AND REJECTED THE COMPLAINANT'S CONSTITUTIONAL AND FEDERAL LAW CLAIMS

The Complainant incorrectly asserts that the ALJ erred "by assuming the *Povacz II* SC decision rendered PUC regulations, utility codes, and other statutes null and void" and "erred by stating that '[an] ADA claim in [sic] not a cause of action over which the Commission has jurisdiction." (Exceptions at 9-17, 26-28.) As alleged support for his position, the Complainant points to various provisions of constitutional and federal law, including the Supremacy Clause of the U.S. Constitution, the ADA, the Rehabilitation Act of 1973, and the Fair Housing Amendments Act. (Exceptions at 15-17, 26-28.) The Complainant also tries to introduce and rely on various pieces of extra-record evidence. (Exceptions at 28.) These claims should be rejected.

The ALJ properly determined that the Supreme Court of Pennsylvania's decision in *Povacz II* controls here. (ID at 32.) The case revolves around the installation of a smart meter pursuant to Section 2807(f) of the Public Utility Code, which the Court in *Povacz II* held is mandatory. *Povacz II*, 280 A.3d at 1014. Specifically, the Supreme Court "conclude[d] that Act 129 does mandate that EDCs," like the Company, "furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed." *Id.* Nowhere in the ID does the ALJ characterize the *Povacz II* decision as rendering the various statutes and regulations cited by the Complainant as null and void.

Moreover, the Complainant's arguments based on constitutional and federal law should be rejected, as they were by the ALJ. (ID at 39-41.) No federal law preempts the mandatory installation of a smart meter under Section 2807(f) of the Public Utility Code. Also, the Commission lacks jurisdiction to interpret and enforce the various federal laws cited by the Complainant. The Commission is a creature of statute and only has those powers vested in it by

the General Assembly. *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted). Interpreting and enforcing these federal laws are not among the powers granted to the Commission. In fact, as the ALJ properly noted in response to the Complainant's ADA arguments, "the Commission is not the appropriate forum for this claim," for as the Commission explained in *Frompovich*:

> [I]t is beyond the jurisdiction of Commission to determine whether the Complainant has a disability or a cause of action under the American with Disabilities Act . . . If Ms. Frompovich [the customer] believes that she has a valid ADA claim against PECO, she must work through the federal courts or one of the federal enforcement agencies, which include the Department of Labor, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission or the Department of Justice, but not this Commission.

(ID at 39-40) (quoting *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, at 43 (Order entered May 3, 2018)).

In addition, the Complainant's constitutional claims must fail because the Company is not a state actor that can violate the Complainant's constitutional rights. (ID at 40.) The Commonwealth Court previously found in *Povacz I* that "[c]onstitutional protections apply against state actors," and "PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers."[6] This finding was not disturbed by the Supreme Court's *Povacz II* decision. Therefore, because PECO and the Company are similarly-situated EDCs, the ALJ correctly concluded that the Company is not a state actor that can violate the Complainant's constitutional rights. (ID at 40.)

Based on the foregoing, the Commission should deny the Complainant's Exceptions Nos. 5, 10, and 13.

[6] *Povacz v. Pa. PUC*, 241 A.3d 481, 486 n.9 (Pa. Cmwlth. 2020) ("*Povacz I*").

D. REPLIES TO EXCEPTIONS NOS. 5, 6, 8, 11, AND 12: THE COMPLAINANT WAS AFFORDED DUE PROCESS, AND HIS ALLEGATIONS OF BIAS AND COLLUSSION ARE COMPLETELY WITHOUT MERIT

The Complainant's baseless allegations of impropriety and the lack of a fair hearing should be rejected. (Exceptions at 1, 11-12, 14, 17-19, 24-26.) Nothing in the record even remotely suggests that the ALJ engaged in any unethical conduct. It appears that the Complainant believes that the ALJ is biased simply because she ruled against him. However, given the sheer lack of credible evidence presented by the Complainant, compared to the substantial, thorough, and credible evidence presented by the Company, the ALJ correctly rejected the Complainant's arguments and ruled that he did not meet his burden of proof. (ID at 46.)

Furthermore, the ALJ properly afforded the Complainant due process. "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness." *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal." *Id*. (citations omitted).

Here, the Complainant was provided with notice and an opportunity to be heard on his issues at the hearings held on July 23 and 24, 2020. He had an opportunity to cross-examine the Company's witness, review the written testimony and exhibits served by the Company on May 1, 2020 (well before the evidentiary hearing on July 23, 2020), and offer his evidence in rebuttal. In fact, as noted previously, the ALJ's post-evidentiary hearing Order" even "expressly gave the Complainant an opportunity at the post-evidentiary hearing conference to address whether he wanted an opportunity to reopen the evidentiary record to present expert testimony in light of the *Povacz II* decision." (ID at 37.) "However, by his Status Report filed on April 11, 2024, Mr.

Jennings explicitly stated that he was not requesting to reopen the evidentiary record to present expert testimony." (ID at 38.) Thus, although the Complainant may disagree with the ALJ's decision, the Complainant unquestionably was afforded a full and fair opportunity to present his case.

For these reasons, the Complainant's Exceptions Nos. 5, 6, 8, 11, and 12 should be denied.

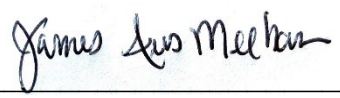
E. REPLY TO EXCEPTION NO. 7: CONTRARY TO THE COMPLAINANT'S ASSERTION, THE COMPANY TIMELY FILED ITS REPLY BRIEF ON NOVEMBER 15, 2024, NOT ON NOVEMBER 18, 2024

The Complainant incorrectly claims that the ALJ erred by relying on the Company's Reply Brief on the grounds that the Company, according to the Complainant, served its Reply Brief on November 15, 2024, but untimely filed its Reply Brief on November 18, 2024. (Exceptions at 18.) As alleged support, the Complainant attaches a copy of the Commission's online docket entries for the case, which show a "Post On Date" for the Company's Reply Brief of November 18, 2024. (*See* Exceptions Attachment EX-2.)

The Complainant's assertion has no merit. As evidence by the e-Filing confirmation attached to these Replies to Exceptions as **Appendix A**, the Company timely filed its Reply Brief on November 15, 2024, at 3:53 PM. Therefore, the Commission should reject the Complainant's meritless Exception No. 7.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision, the Exceptions of Michael T. Jennings should be denied.



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Date: March 28, 2025

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

APPENDIX A

Date Created	Filing Number
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Pennsylvania Public Utility Commission
Harrisburg, PA 17105-3265
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Jennings, Michael T. v. FE PA (West Penn) FE PA Reply Brief - 11.15.24.pdf	Briefs - Reply	11/15/2024 3:50:46 PM

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS	:	
	:	
v.	:	**Docket No. C-2018-3006031**
	:	
WEST PENN POWER COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of this document of FirstEnergy Pennsylvania Electric Company on behalf of its West Penn Rate District upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail and electronic mail as follows:

Michael Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666
lilmac2@zoominternet.net

Administrative Law Judge Gail M. Chiodo
gchiodo@pa.gov

Respectfully submitted,

Dated: March 28, 2025

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