

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vaughn Wesley Zimmerman	:	
	:	
v.	:	C-2019-3007568
	:	
Metropolitan Edison Company	:	

**INTERIM ORDER EXTENDING POST HEARING FILING DEADLINE**

Vaughn Wesley Zimmerman (Complainant) filed a Formal Complaint (Complaint) dated January 30, 2019, with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) alleging that Respondent threatened to terminate his electric service and objected to a smart meter installation at his home. Complainant also attached a two-page addendum to his complaint, whereby he averred that the Commission does not require the installation of smart meters until 2023. Complainant also raised health related concerns, concern for the health of his children, concern regarding exposure to radio frequency emissions, and asserted that Act 129 of 2008 does not require the installation of smart meters. As relief, Complainant appears to be seeking the ability to opt out of the installation of a smart meter at his home or to delay such installation.

On February 20, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent admits that it provides residential retail electric service to Vaughn Wesley Zimmerman at 69 Goat Hill Road, Boyertown, Pennsylvania. Respondent further avers that Complainant has refused access for the installation of a smart meter at the service location. Respondent essentially denied the remaining material allegations set forth in the Complaint. Respondent further avers it is required by Act 129 of 2008<sup>1</sup> (Act 129), to install a smart meter. Respondent also requested that a prehearing conference be scheduled in this proceeding.

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<sup>1</sup> 66 Pa.C.S. §§ 2806.1, *et seq.*

On February 20, 2019, Respondent also filed preliminary objections to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Complainant failed to allege that Respondent violated any Commission statute, regulation, order or tariff provision with regard to the installation of the smart meter at the residential account. Respondent further averred it is required by Act 129 to install a smart meter at the service location. Finally, Respondent argued that the Complaint is legally insufficient because it failed to state a claim upon which the Commission can grant relief, that a hearing is not in the public interest, and that the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

On March 1, 2019, Complainant filed a Reply to Preliminary Objections.

On March 10, 2019, Complainant filed a Reply to the Answer and New Matter in this proceeding.

A Motion Judge Assignment Notice was issued and received by the undersigned Presiding Officer on March 15, 2019, and assigned the undersigned Presiding Officer to this proceeding.

On May 22, 2019, an interim order was entered denying the Preliminary Objections filed by Metropolitan Edison Company.

A call-out telephone hearing notice was issued on December 20, 2019, confirming that the hearing in this proceeding was scheduled for Thursday, January 30, 2020, at 10:00 a.m.

On January 28, 2020, Complainant filed a one-page Emergency Motion For Stay Due To Pending Commonwealth Court Proceedings. Complainant averred that he is aware of several cases before the Commonwealth Court of Pennsylvania “with similar arguments as mine regarding the PA PUC’s interpretation and implementation of Act 129”. Complainant averred these cases will likely be argued this year. Complainant also referenced three cases that he stated

are currently before the Commonwealth Court that he believes utilize similar arguments as those advanced by Complainant in this proceeding. Accordingly, Complainant requested that an immediate stay be granted in this proceeding until “the higher court has ruled and avenues of appeal (if applicable) are extinguished. No notice to plead directed to Respondent was attached to the Motion and the Motion was not properly verified or drafted consistent with Commission regulations.

On January 28, 2020, an Interim Order was entered denying the Emergency Motion For Stay Due To Pending Commonwealth Court Proceedings.

The telephone evidentiary hearing was held in this proceeding and concluded on January 30, 2020. At the hearing, Complainant was permitted to submit a late-filed exhibit to be considered for admission into evidence and Respondent was provided an opportunity to raise an objection.

Complainant provided a cover letter dated February 5, 2020, referencing that a copy of the late-filed exhibit, a letter from Respondent directed to Complainant, dated December 28, 2018, had been sent to counsel for Respondent. No objection was raised by Respondent. The letter from Respondent dated December 28, 2018, directed to Complainant was marked as Complainant Late-Filed Exhibit A.

On March 13, 2020, the hearing transcript was received by the Office of Administrative Law Judge and on March 16, 2020, the office of the undersigned presiding officer was closed on March 16, 2020, as a result of the corona virus pandemic.

On October 19, 2020, an Interim Order was entered admitting into evidence the letter from Respondent dated December 28, 2018, directed to Complainant and marked as Complainant Late-Filed Exhibit A. In addition, it was ordered that main briefs may be filed on or before November 20, 2020.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz, et al. v. Pa. Public Utility Commission*,<sup>2</sup> (*Povacz I*), the

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<sup>2</sup> *Povacz, et al. v. Pa. Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020).

first of several appeals involving PECO Energy Company’s (PECO) deployment of smart meter technology pursuant to Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. § 2807(f).

In light of the Commonwealth Court’s decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, 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 4, 2020, Stay Order*). *The November 4, 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. *The November 4, 2020, Stay Order* applied to and was docketed at the instant case.

The Commission, as well as all other parties in *Povacz I* subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania.

On August 16, 2022, the Supreme Court issued its Opinion in *Povacz II*<sup>3</sup>, affirming the Commission’s determinations in all respects. The Supreme Court reversed the Commonwealth Court’s determination that Act 129 does not mandate smart meter installation and that Court’s remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court did, however, affirm the Commonwealth Court’s conclusion that the “Customers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects.”<sup>4</sup> The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.<sup>5</sup> The Supreme Court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides

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<sup>3</sup> *Povacz, et al. v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

<sup>4</sup> *Id.* at 1014.

<sup>5</sup> *Povacz II* at 992.

instructions for furnishing smart meters to all customers.<sup>6</sup> The Supreme Court reversed the Commonwealth Court, and affirmed the Commission's interpretation in *Maria Povacz*, *Laura Sunstein Murphy*, and *Cynthia Randall* that Act 129 mandates universal smart meter installation.<sup>7</sup>

Given the Supreme Court's decision in *Povacz II*, the Commission lifted the stay implemented by the *November 4, 2020, Stay Order* on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

In the instant case, neither party filed briefs in this proceeding. The Commission entered an Order and Notice, at Docket No. M-2009-2092655, staying the proceeding, on November 4, 2020. The stay was lifted by Order of the Commission on November 9, 2023. Under the circumstances, it is appropriate to provide the parties with a briefing schedule to file briefs and to consider appropriate requests for relief, if any, and to proceed with the disposition of this proceeding consistent with the Commonwealth Court and Supreme Court rulings discussed above.

THEREFORE,

IT IS ORDERED:

1. That the Parties shall file their briefs and any other appropriate requests for relief, if any, on or before May 2, 2025.

2. That the Parties may, but shall not be required to, file main briefs in this matter. Any briefs filed shall also be provided to the undersigned Presiding Officer in written and electronic form on or before May 2, 2025.

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<sup>6</sup> *Id.* at 28.

<sup>7</sup> *Id.*



**C-2019-3007568 - VAUGHN WESLEY ZIMMERMAN v. METROPOLITAN EDISON COMPANY**

VAUGHN WESLEY ZIMMERMAN  
69 GOAT HILL ROAD  
BOYERTOWN PA 19512  
**610.302.3002**  
Accepts eService  
[knollk2@yahoo.com](mailto:knollk2@yahoo.com)

LAUREN M LEPKOSKI ESQUIRE  
TORI L GIESLER ESQUIRE  
FIRSTENERGY SERVICES CO  
2800 POTTSVILLE PIKE  
PO BOX 16001  
READING PA 19612  
**610.921.6203**  
**610.921.6658**  
Accepts eService  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
(*Counsel for Metropolitan Edison Company*)