

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren Zonca	:	
	:	
v.	:	C-2023-3041619
	:	
Metropolitan Edison Company	:	

INTERIM ORDER DENYING PRELIMINARY OBJECTIONS

Lauren Zonca (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent) dated July 5, 2023. Complainant averred her electric utility was threatening to shut off her service if she did not comply with having a smart meter installed at her residence. Complainant averred there are ongoing formal complaints against the installation of smart meters due to alleged well documented hazards of pulsed modulated radio frequency electromagnetic microwave radiation emanated by electric smart meters. As relief, Complainant requested that Respondent not install a smart meter and not shut off the power to her residence at 15 Sherman Road, Ottsville, Pennsylvania (service location or service address).¹

On July 26, 2023, Respondent filed an Answer and New Matter to the Formal Complaint. Respondent denied Complainant is permitted to opt-out of installation of a smart meter at her residence. Respondent further denied that the installation of a smart meter presents health, privacy, safety, or property risks to Complainant. Respondent further averred it is legally required to install and retain the smart meter by the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Deployment Plan (SMP).²

¹ Formal Complaint p.p. 2-3.

² See 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order June 9, 2010).

Respondent further averred that its Commission approved tariff allows a customer, such as the Complainant, to request that the meter be relocated to a mutually agreeable location, subject to the customer bearing the estimated expenses of relocating the Company owned facilities, including the meter, to that new location.³

In its New Matter, Respondent averred smart meter installation is required by Act 129 of 2008 (Act 129) and Respondent's SMP and that the Commission was unable to provide the requested relief sought by Complainant.

The New Matter dated July 26, 2023, included a Notice to Plead, directing Complainants to file a response within twenty days of service.

On July 26, 2023, Respondent also filed Preliminary Objections. Respondent first objects that the complaint is barred due to the pendency of the first complaint proceeding before the commission. Accordingly, Respondent argues the first complaint remains pending before the Commission and, therefore, the Complainant cannot raise the same claim(s) and issue(s) raised in the first complaint. Respondent avers the First Complaint objected to the installation of a smart meter at the Service Address. As relief in the First Complaint, the Complainant requested that she permitted to opt-out of the smart meter's installation. The instant Complaint requests that Respondent forgo installation of s smart meter at the Service Address and requests that Respondent not terminate the Complainant's electric service for refusal of the smart meter's installation.⁴ Respondent avers the First Complaint and the instant Complaint involve the same parties and involve the same alleged rights asserted (i.e., the Complainant's alleged right to opt-out of smart-meter installation at the Service Address). Respondent further avers the First Complaint and the instant Complaint involve the same requested relief (i.e., a requested opt-out of smart meter installation at the Service Address). Respondent argues because the First

³ Respondent's Answer p.p. 5-6.

⁴ Complaint ¶ 5.

Complaint remains pending before the Commission⁵ and is subject to the November 4, 2020 Stay Order, the instant Complaint is barred on account of pendency of a prior proceeding.⁶

Respondent also argues that Complaint's requested relief cannot be granted by the Commission and, therefore, is legally insufficient. Respondent argues Complaint's requested relief cannot be granted by the Commission because Met-Ed customers are not permitted to opt-out of or rescind smart meter installation. Respondent asserts it is legally required to install the smart meters by the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Deployment Plan.⁷

Respondent argues that nothing in the Public Utility Code, the Commission's orders and regulations, or Met-Ed's Smart Meter Deployment Plan states that a customer can opt-out of, or rescind, a smart meter installation and cites the Supreme Court of Pennsylvania Opinion affirming in part and reversing in part the Commonwealth Court's decision in *Povacz*⁸. Respondent asserts the Supreme Court in *Povacz* held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company (EDC) cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff."⁹ Therefore, Respondent argues, it must install the smart meter at the Complainant's Service Address.

The Preliminary Objection included a Notice to Plead, directing Complainants to file a response. Complainants did not file a response to either the New Matter or the Preliminary Objection.

⁵ On May 9, 2024, the Commission entered an Opinion and Order at Docket NO. C-2019-3007961 denying the first complaint filed by Complainant.

⁶ 52 Pa. Code § 5.101(a)(6).

⁷ See 66 Pa.C.S. § 2807(f); Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950 (Order June 9, 2010).

⁸ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020).

⁹ See *Povacz v. Pa. PUC*, 280 A.3d 975, 1012-1014 (Pa. 2022).

On August 29, 2023, this matter was assigned to Administrative Law Judge F. Joseph Brady (ALJ Brady). On September 24, 2023, the case was reassigned the undersigned presiding officer.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz, et al. v. Pa. Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129, codified at 66 Pa. C.S. § 2807(f). The Commonwealth Court, in *Povacz I*, held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers accommodations based on their health concerns.¹⁰

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.

Previously, the Commonwealth Court stayed the proceedings in several other unconsolidated appeals that raised the same, or similar, smart meter issues pending its disposition of *Povacz I*. Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court's disposition of *Povacz II*.

On August 16, 2022, the Supreme Court issued an Opinion and Order, *Povacz, et al. v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). In its Opinion in *Povacz II*, the Supreme Court affirmed the Commission's determinations in all respects. The

¹⁰ *Povacz I* at 490.

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.

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.

Legal Discussion

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). The Commission's Rules at 52 Pa.Code § 5.101(a) limit preliminary objections to the following grounds:

- (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.

For purposes of disposing of the preliminary objections, the Commission must accept as true all well-pleaded material facts of the nonmoving party, as well as every reasonable inference deducible from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa.Cmwlt. 1988). The Commission must view the Complaint in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979). “For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] ... admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts.” Marinoff v. Bell Telephone Co. of Pennsylvania, 75 Pa. PUC 489, 491 (1991).

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record and cautions against dismissing cases on a preliminary basis. In the often-cited case of Richard Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock), the Commission determined that unrepresented complainants should have an opportunity to be heard orally, and not have their case dismissed because of a preliminary pleading. Id. at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority), *citing*, Halpern v. The Bell Telephone Company of Pennsylvania, Docket No. C-00923950 (Order entered October 1992) and William Schleisher v. The Bell Telephone Company of Pennsylvania, Docket No. F-00161252 (Order entered December 17, 1992); *see also*, John M. Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657 (Opinion and Order entered November 2, 2005).

In this case, Respondent essentially avers that, in light of the Supreme Court decision in *Povacz II*, the prayer for relief for an opt-out from the installation of a smart meter is not legally recoverable in the cause of action and that Complainant has failed to allege that Respondent has alleged the violation of any Commission statute, regulation, order or tariff provision. Respondent therefore requests a dismissal of the Complaint.

Complainant averred her electric utility was threatening to shut off her service if she did not comply with having a smart meter installed at her residence. Complainant averred there are ongoing formal complaints against the installation of smart meters due to alleged well documented hazards of pulsed modulated radio frequency electromagnetic microwave radiation emanated by electric smart meters. As relief, Complainant requested that Respondent not install a smart meter and not shut off the power to her residence. In the event that Complainant would be able to meet her burden of proof, she may be entitled to an accommodation to the extent allowed by Act 129 and the Company's tariff. However, that accommodation may not rise to the level of an opt-out from smart meter installation. While the Commission is not able to allow Complainants to opt-out of smart meter installation, Complainants, if able to meet their burden of proof, may be entitled to an "accommodation." While the Supreme Court did not expound upon what such an "accommodation" may be, the fact remains that such an "accommodation" exists as a matter of law.¹¹

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record and cautions against dismissing cases on a preliminary basis. *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993). In *Carlock*, the complainant alleged, *inter alia*, the utility suspended his telephone service without prior notice. *Id.* The utility filed an answer concurrent with a Motion for Summary Judgement, averring, *inter alia*, that Mr. Carlock had made only four payments on his account during the period of time at issue, and a suspension notice was mailed in accordance with the Commission's rules and regulations. *Id.* The Administrative Law Judge recommended the utility's Motion for Summary

¹¹ Emphasis in original.

Judgement be granted and complainant's complaint be dismissed without a hearing because the complainant did not dispute any facts set forth in the utility's motion, the facts did not rise to an inference of a genuine pertinent fact being at issue (i.e. a fact tending to show that the utility had violated the law or a regulation or order of the Commission), and the complaint was not substantively directed against the utility's conduct but rather sought a change in the Commission's regulations. *Id.*

The Commission reversed the ALJ's recommendation. In its Opinion and Order, the Commission explained,

[A] Motion to Dismiss and a Motion for More Specific Pleading should not be granted against unrepresented complainants who are pursuing small claims until they have had a least an oral opportunity to explain their position. **We did not...and do not now, rule out the possibility that pretrial motions can be granted in such cases, only that such motions should not be granted on the pleadings.** The ALJ must first develop a sufficient record.

In more complex cases with counsel participating, the record is likely to include depositions, answers to interrogatories, admissions and supporting affidavits. Answers to the motion may include similar filings. Certainly, in our view, unrepresented complainants cannot be expected to navigate through such complex procedural territory. **Rather than relying on the pleadings, the ALJ has an affirmative duty to ensure the development of a record that reasonably presents the underlying grievance.**

In this case, the ALJ has recommended that we grant Respondent's Motion for Summary Judgement on the pleadings.... [T]he Complainant is unrepresented by Counsel and did not file an answer to the pre-trial motion. We recognize that unrepresented plaintiffs often are not able to file an effective response to a pre-hearing motion. Yet, in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form. Therefore, to deny unrepresented complainants a

meaningful opportunity to be heard in such cases, can be viewed as a gross abuse of our authority.

Id. at 2 (citations omitted) (emphasis added).

In the instant case, a hearing has not been held and Complainant has not had an opportunity to be heard at a prehearing conference, to develop a record or to engage fully in the discovery process.

Given the aforesaid, and given the various assertions and requests for relief set forth in the Formal Complaint, Complainant will be afforded the opportunity to proceed with her Complaint, as filed, at this stage of the proceeding. Therefore, the preliminary objections are denied at the current stage of the proceeding. I note, however, that the standard of proof at a hearing is different than the standard used to dispose of preliminary motions such as the preliminary objections in this case. In order to prevail on some or all of the assertions raised in the Complaint, Complainant must prove, by substantial evidence, that she is entitled to relief because Respondent has violated the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff of the Company concerning the service provided to her. This is a higher legal standard than that which was used to determine Respondent's preliminary objections. In addition, the Parties are cautioned to review the Public Utility Code as well as the statutes, regulations and decisions applicable to this proceeding and to comply with such legal authority.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Metropolitan Edison Company in the above-captioned proceeding at Docket No. C-2023-3041619 are denied.
2. That the Complaint filed by Lauren Zonca against Metropolitan Edison Company at Docket No. C-2023-3041619 shall proceed at this stage of the proceeding.

Date: April 3, 2025

Jeffrey A. Watson
Administrative Law Judge

C-2023-3041619 - LAUREN ZONCA v. METROPOLITAN EDISON CO

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