

865 Hilltown Road
Biglerville, PA 17307
717-372-3275

May 10, 2025

VIA ELECTRONIC FILING

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

**Re: Terry and Betty Bente v. FirstEnergy Pennsylvania Electric Company
Docket No. C-2025-3054387**

Dear Secretary Homsher:

Enclosed please find Complainants' *Amended* responses to the "Preliminary Objections of FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District to the Formal Complaint of Terry and Betty Bente" dated April 23, 2025, to be filed in the above-referenced matter. A copy of the document has also been served upon FirstEnergy Pennsylvania Electric Company (Met-Ed), as indicated by the Certificate of Service.

If you have any questions, please contact us.

Respectfully submitted,

Terry Bente

Terry Bente, pro se

Betty Bente

Betty Bente, pro se

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente	:	
	:	
v.	:	Docket No. C-2025-3054387
	:	
FirstEnergy Pennsylvania Electric	:	
Company	:	
	:	
	:	
	:	

**COMPLAINANTS’ AMENDED RESPONSE TO THE
PRELIMINARY OBJECTIONS OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY
ON BEHALF OF ITS
MET-ED RATE DISTRICT TO THE
NEW FORMAL COMPLAINT OF TERRY AND BETTY BENTE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

We, the Complainants, first invoke *pro se* leniency: As *pro se* litigants, we wish to invoke leniency in this Court as per 207 Pa. Code 33a, Rule 2.2, Impartiality and Fairness: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters heard fairly and impartially. Also, as per *Erickson v. Pardus*, 551 U.S. 89, 94 (2007): “A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers; and also *Haines v. Kerner*, 404 U.S. 520 (1971): “...[W]e hold a *pro se* complaint...to less stringent standards than formal pleadings drafted by lawyers...”

We address the main issues raised by FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District (hereafter “Met-Ed”).

1) Met-Ed alleges our 2017 Complaint (Docket No. C-2017-2614219) was dismissed with prejudice. We have examined these orders and have found no such language present. By contrast, we find other smart meter cases made clear when the final order was made with prejudice. See, for example,

- a) PUC Docket No. C-2019-3006923:
IT IS ORDERED:

1. That the Amended Complaint of Noreen McCarthy against Metropolitan Edison Company at Docket No. C-2019-3006923 is dismissed with prejudice.

b) PUC Docket No. C-2019-3007622

IT IS ORDERED:

5. That, the Formal Complaint of John M. Chenosky, PE, filed on January 25, 2019, at this docket, is dismissed, with prejudice, barring the Complainant from filing another formal complaint with the Public Utility Commission raising the same issues or claims as raised in the Formal Complaint.

Lacking such explicit language in both the initial decision and the final order of Complainants' case, we have submitted this new Formal Complaint in good faith with completely different arguments than those which were heard, ruled on and dismissed previously. To paraphrase the language in the Chenosky example above, we are not filing another formal complaint which raises the same issues or claims as our 2017 Formal Complaint.

Presently, our Docket No. C-2025-3054387 Formal Complaint raises new issues and claims that have not been previously discuss or ruled upon, and are different from the issues raised and ruled upon in the PA Supreme Court's ruling in the Povacz, et. al. case (*Povacz II*). Under 52 Pa. Code § 5.81, a complainant may file a new complaint where the facts and issues are materially different from those raised in a prior proceeding. Further, Pennsylvania law recognizes that an agency's prior determination is not binding when it is alleged to have been made in violation of due process, statutory requirements, or in abuse of discretion. As articulated in *Global TelLink Corp. v. Dep't of Corr.**, 109 A.3d 809, 817 (Pa. Cmwlth. 2015), "[a]n abuse of discretion occurs... where the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will."

Complainants allege that such abuse occurred in the prior proceeding due to conflicts of interest because (a) the PUC receives over 94% of its funding from assessments of the utilities, rendering it a "captured agency" beholden to the utilities it is charged with regulating, and (b) the Commission altered the wording and intent of Act 129 of 2008 in their 2009 Implementation Order and thus has a vested interest in preventing this matter from being corrected. Furthermore, the Commission's 2009 Implementation Order improperly reworded Act 129 and thereby exceeded its authority, thus also constituting an abuse of discretion.

2) Met-Ed's citing of 66 Pa Code Section 316 merely substantiates that our arguments regarding harm to our health and requesting accommodation under Section 1501 of the Public Utility Code in our 2017 Formal Complaint (Docket No. C-2017-2614219) have been dismissed for good. Had we been able to continue on to the Commonwealth Court, we would have, but at that time, due to a family crisis situation, we could not pursue it further. Since that time, we realized that

our 2017 case fell far short of the detailed medical evidence provided in the case of the McKnights (No. 1253 C.D. 2019 in the Commonwealth Court). Since the McKnights were not successful in their pursuit of an accommodation, clearly we would not have had sufficient grounds for succeeding either.

66 Pa.C.S. § 316 does not prohibit us from filing a new formal complaint which raises new facts, legal theories, and constitutional claims that were not previously adjudicated. Under 52 Pa. Code § 5.81, a complainant may file a new complaint where the facts and issues are materially different from those raised in a prior proceeding.

3) Met-Ed's claims (#29) that "The Second Complaint's requested relief cannot be granted by the Commission because the Company's customers are not permitted to opt-out of smart meter installation at their Service Location" and, as per (#36) regarding the PA "Supreme Court in *Povacz*", are disputed by Complainants. First, *Povacz II* does not prevent the Commission from hearing our case or granting relief because the facts presented in *Povacz II* differ from the facts presented in our new Formal Complaint (Docket No. C-2025-3054387), which opens up the possibility of a different legal conclusion. Second, Complainants are not requesting an opt-out. Complainants did not OPT-IN to the advanced metering program as per the PA codes and Act 129 of 2008 as written, as documented historically in the House and Senate Journals and as stated in the Yewcic testimony. Met-Ed's following of the PUC Implementation Orders is incongruous with the law, Act 129 of 2008, as well as with other PA Codes, as stated in our 2025 Formal Complaint. These matters were not addressed in *Povacz II*.

4) When we submitted our 2017 Formal Complaint, we knew nothing about codes or the law except for what we had learned about section 1501 of the Public Utility Code. In 2017 and for the next several years, we assumed that the PA law, Act 129 of 2008, would be properly upheld. However *Povacz II* inferred the intent of the General Assembly from various factors rather than from the as-written plain language of the law and from the historical record – the latter which made clear the ACTUAL intent of the General Assembly (hence, no inferring was needed). Thus for Met-Ed to allege we could have brought up these matters in our 2017 Formal Complaint is unreasonable. It was only in the aftermath of *Povacz II* and the decisions made against us by the PUC's administrative law court and Commission that it was clear that Act 129 of 2008 was not being upheld as per its true "opt-in" nature. Consequently, we maintain that it is legitimate for us to raise this issue as the core of our present dispute which obviates Met-Ed's "opt-out" language and necessity to install a smart meter on our home but, rather, honors our right to not opt-in to the advance metering program (or smart meters) but to keep our electromechanical analog meter: hence the basis of our 2025 Formal Complaint.

In Pennsylvania law there is both statutory and judicial justification for the principle that **a new complaint is permitted when it raises new facts, issues, or legal theories**, including claims of **abuse of discretion** by an agency such as the Public Utility Commission (PUC):

4a) 52 Pa. Code § 5.81 – *Form and content of complaints*

"A complainant may file a new complaint if the facts and issues are different from those raised in a previously adjudicated complaint."

This regulation affirms that the Commission considers **new complaints permissible when they are not duplicative** — i.e., when they contain **new or materially different facts, theories, or legal bases**.

4b) 66 Pa.C.S. § 316 – *Effect of Commission actions*

This statute is being cited to bar re-litigation of the same facts, but it explicitly allows new challenges when:

“The Commission’s rule, regulation, finding, determination or order... [is] set aside, annulled or modified on judicial review.”

So, if **a complainant alleges abuse of discretion or other reversible legal error**, and supports the claim with **new evidence, constitutional claims, or violations of statutory duty**, § 316 does not prohibit a new complaint.

4c) Abuse of Discretion Doctrine (Judicial Standard)

Although not codified in the PA Code, abuse of discretion is a well-established **judicial doctrine**. As cited in *Global TelLink v. Dept. of Corr.**, 109 A.3d 809 (Pa. Cmwlth. 2015):

“An abuse of discretion occurs not merely when an error in judgment is made, but where the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.”

Inasmuch as Complainants allege that the **Commission failed to rule in a fair and impartial manner due to prejudice or bias resulting from conflicts of interest**, then this presents a valid **claim of administrative abuse**, which justifies a new complaint even after a previous dismissal.

4d) 5 U.S.C. § 706(2)(A) (APA - federal persuasive authority)

While this is federal law, Pennsylvania courts often rely on it for **abuse of discretion** standards in administrative law:

“The reviewing court shall... hold unlawful and set aside agency action... found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

Complainants aver that the PUC altered the wording and intent of Act 129, exceeding their authority and constituting an abuse of discretion — which strengthens the basis for a **non-duplicative new complaint**.

Thus, while Complainants acknowledge that Pennsylvania law discourages **re-litigation** of identical claims (res judicata), **new complaints with new facts, new legal theories, or claims of agency misconduct are explicitly permitted as per the following:**

- **52 Pa. Code § 5.81**
- **66 Pa.C.S. § 316 (limiting only exact duplications)**
- **Global Tel*Link v. DOC, 109 A.3d 809 (Pa. Cmwlth. 2015)**
- **5 U.S.C. § 706(2)(A)** (persuasive for abuse of discretion claims)

5) When Met-Ed states, "For these reasons, the Second Complaint should be dismissed because the claims and issues raised therein are already subject to a prior Commission Order that remains conclusive and binding upon the Complainants," we reiterate that the claims and issues raised in our 2025 Formal Complaint have no bearing on the claims and issues presented and ruled upon in our 2017 Formal Complaint. The violations cited in our 2025 Formal Complaint have not been presented, discussed, or ruled upon in the previous initial decision or final Commission Order.

6) Complainants rescind litigation of Constitutional Amendments IV and XIV as addressed in the Rebuttal of Mr. Ahr's testimony.

For the foregoing reasons, we request that our new Formal Complaint (Docket No. C-2025-3054387) be sustained and permitted to move forward.

Respectfully submitted,

Terry Bente
Terry Bente, pro se

Betty Bente
Betty Bente, pro se

Dated: May 12, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente	:	
	:	
v.	:	Docket No. C-2025-3054387
	:	
FirstEnergy Pennsylvania Electric Company	:	

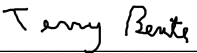
CERTIFICATE OF SERVICE

We hereby certify that we have this day served a true copy of the Complainants' Response to the Preliminary Objections of FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District to the Complaint of Terry and Betty Bente, upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

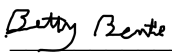
Service electronic mail, as follows:

James Austin Meehan
Tori L. Giesler
FirstEnergy Service Company (Met-Ed)
341 White Pond Drive Akron, OH 44320
(610)-921-6783
(610) 921-6658
jameehan@firstenergycorp.com
tgiesler@firstenergycorp.com

Respectfully submitted,



Terry Bente, pro se



Betty Bente, pro se

Dated: May 12, 2025