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May 13, 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' responses to the "Answer and New Matter 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’ RESPONSE TO THE
ANSWER AND NEW MATTER 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:

Complainants, Terry and Betty Bente, representing themselves pro se, hereby file this Reply to Respondent’s Answer and New Matter dated April 23, 2025, and respectfully state the following:

I. Preliminary Statement

As pro se litigants, we respectfully request that the Commission apply the principle of leniency as recognized in *Haines v. Kerner*, 404 U.S. 519 (1972) and *Erickson v. Pardus*, 551 U.S. 89 (2007). These cases affirm that filings by individuals without counsel must be construed liberally and held to a less stringent standard than those drafted by attorneys.

This Formal Complaint (Docket No. C-2025-3054387, hereafter referred to as 2025 Complaint) raises entirely new legal claims not previously adjudicated in Docket No. C-2017-2614219 (hereafter, 2017 Complaint). We do not seek to re-litigate health-related accommodation arguments under Section 1501, but instead assert violations of constitutional rights, consumer protection laws, code violations, and improper statutory interpretation of Act 129. Complainants rescind litigation of Constitutional Amendments IV and XIV as addressed in the Rebuttal of Mr. Ahr’s testimony.

Met-Ed's introductory statement that, "To the extent that the Complainants are seeking to relitigate the issues already disposed of in the First Complaint proceeding, those issues have already been ruled on by the Commission and, therefore, should be dismissed" has also been addressed by Complainants in our responses to Met-Ed's Preliminary Objections. Presently, our 2025 Complaint raises new issues and claims that have not been previously discussed 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*).

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

II. Response to Answers

Met-Ed proceeds to answer numbered points which Complainants are unable to correlate with items listed our 2025 Complaint. For example, Met-Ed's answer number 4 refers to a "handwritten narrative" which was not submitted in our 2025 Complaint. Their answer number 6 refers to a Protection of Abuse order that is clearly from someone else's case, not from Complainants' 2025 Complaint. Consequently, Complainants are unclear that Met-Ed's answers are actually in response to our 2025 Complaint and therefore dispute Met-Ed's Answers are relevant.

III. Response to New Matter

1. Paragraphs Admitting the Parties and Procedural History

Met-Ed's New Matter begins by referring to their Answers which are disputed by Complainants since it is not clear to whose formal complaint Met-Ed's Answers were relevant. Complainants do admit the general background of prior proceedings, including the dismissal of the 2017 complaint.

The remaining response expounds upon Met-Ed's allegation that our 2025 Complaint, "is barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel." Complainants deny these are applicable to our 2025 Complaint in large part because our 2017 Complaint was not heard in a fair and impartial manner but, instead, the administrative law court engaged in abuse of discretion which opens up the option of filing a new formal complaint on different legal grounds.

2. Bar Under 66 Pa.C.S. § 316 (Res Judicata Argument)

Denied. The doctrines of *res judicata*, collateral estoppel and specifically Section 316 of the Public Utility Code, only bar issues that were litigated or could have been raised at the time,

assuming they were discoverable and ripe. Our present Complaint raises distinct issues that:

- Were not previously raised or decided;
- Are based on new legal interpretations, regulatory evidence, and court decisions postdating the 2017 Complaint; and
- Include new legal claims under:
 - The Supremacy Clause of the U.S. Constitution;
 - Pennsylvania's Unfair Trade Practices and Consumer Protection Law;
 - 52 Pa. Code § 57.28 (duty to warn);
 - Federal administrative standards regarding abuse of discretion under 5 U.S.C. § 706(2)(A);
 - 66 Pa. C.S. § 315(c) (burden of proof regarding safety).

3. No Customer Opt-Out Allowed

Denied. Respondent, Met-Ed, argues that Act 129 mandates smart meters and denies any opt-out provision. However, the historical legislative record of Act 129 (as cited in testimony by Mr. Thomas Yewcic) shows that the law was intended to be opt-in, not mandatory. Consequently, no opt-out provision is required and Complainants uphold their right to not opt in. The Commission's 2009 Implementation Order improperly reworded Act 129 and thereby exceeded its authority, constituting an abuse of discretion.

Additionally, the Supreme Court's decision in *Povacz II*, while interpreted by Respondent as foreclosing accommodations, did not adjudicate the constitutional and consumer protection claims we raise here, nor was the decision based on the historical record clarifying non-mandatory intent of Act 129 with regard to smart meter technology.

4. Relief Outside Commission Authority

Denied. In addition to the fact that there is no legislative mandate the Commission would have to override, and *Povacz II* was decided based on a different factual record than that being put forth by the Complainants, the Commission is obliged to:

- Enforce constitutional protections;
- Enforce its own regulations requiring proof of safety and fair consumer communication;
- Enforce administrative standards of fairness and non-abuse of discretion;
- Enforce Section 315(c)'s requirement that utilities prove the safety of their services.

Thus, the Commission has jurisdiction to consider the new and distinct relief sought in this Complaint.

5. Legal Basis for Filing a New Complaint

Complainants respectfully assert that their 2025 Complaint is not barred by res judicata, collateral estoppel or 66 Pa.C.S. § 316 because it 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. 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.

These issues form a valid basis for a new and distinct complaint. Therefore, dismissal is inappropriate.

IV. Conclusion

We reiterate that the claims and issues raised in our 2025 Complaint have no bearing on the claims and issues presented and ruled upon in our 2017 Complaint. The violations cited in our 2025 Complaint have not been presented, discussed, or ruled upon in the previous initial decision or final Commission Order.

Respondent's Answer and New Matter fails to refute the novel and unadjudicated claims raised in our 2025 Complaint. These include violations of constitutional rights, of specific PA codes, of Act 129 of 2008, and including deceptive trade practices. Accordingly, we respectfully request that the Commission:

1. Overrule the New Matter of Respondent;
2. Deny the requested dismissal;
3. Proceed with evidentiary hearings on the merits of the new claims.

Respectfully submitted,

Terry Bente

Terry Bente, pro se

Betty Bente

Betty Bente, pro se

Dated: May 13, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente	:	
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	:	
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 Answer and New Matter 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:

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Respectfully submitted,

Terry Bente, pro se

Betty Bente, pro se

Dated: May 13, 2025