

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Orpheus and Kimberly Hanley	:	
		Complainants
VS	:	
FirstEnergy Pennsylvania Electric Company	:	C-2024-3051044
(FirstEnergy Corp. subsidiary)	:	
		Respondents

**EXCEPTIONS TO THE INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE ALPHONSO ARNOLD III
AND
REQUEST FOR A DE NOVO REVIEW**

I. EXCEPTIONS to the INITIAL DECISION by ALJ ARNOLD III

The Complainants hereby file the following Exceptions to the Initial Decision of Administrative Law Judge Alphonso Arnold III (“ALJ”).

By dismissing this case as it relates to the Formal Complaint at C-2024-3051044ⁱ—that the public utility company continued to issue termination notices while linked case C-2023-3041147 is under appeal— ALJ Arnold is positioning Complainants for irreparable harm, ignoring in his “Finding of Facts” the verbiage under Formal Complaint C-2024-3051044, and that C-2023-3041147 being now under appeal before the Pennsylvania Supreme Courtⁱⁱ. Complainants assert that the ALJ failed to exercise judicial discretion in light of significant concerns that, if left unaddressed, could result in irreparable harm to Petitioners in this case and the related higher-level court proceeding

ⁱ See Endnote at 3.

ⁱⁱ 52 Pa. Code § 56.151(1), Rule 1701.

by not preserving the status quoⁱⁱⁱ. Specifically, Complainants assert that the ALJ could have issued a **sua sponte** stay but instead neglected to exercise judicial discretion regarding Petitioners’ “Motion for Continuance,” despite being aware of an existing case, as detailed in the Formal Complaint, that is currently before a higher court. This case is directly linked to a previous case that is under appeal before the Pennsylvania Supreme Court (“Pa. Sup. Ct.”; C-2023-3041147)^{iv}. ALJ Arnold, who presides over both this case and the linked appeal, is aware of the pending appeal to the Pa. Sup. Ct., which may substantially affect the outcome of the current proceedings.

Despite quoting 52 Pa. Code § 56.151, which states that “*upon initiation of a dispute ... the public utility shall not issue a termination notice based on the disputed subject matter,*” the ALJ did not apply this principle to this case nor considered the linked case under appeal before a higher authority, and ruled that none of Complainants’ oral presentation at the January 9 Evidentiary Hearing was “germane” to this case, as Respondent’s Attorney Meehan suggested. Despite the preponderance of violations in upholding of a corporate assumptions plan^v above federal and state regulations^{vi}, and the heavy-handed coercion to force customer’s —without consent— into an RF meter, per contra to this assumptive goal: Complainants stand firmly on regulatory grounds that customers must first approach the public utility and request the installation of an Advance Net Meter and agree to pay the cost of that meter at the time of the request, as well as any incremental

ⁱⁱⁱ Id. at ii

^{iv} 52 Pa. Code § 56.151(1); 207 Pa. Code § 105.14; 210 Pa. Code § 1701; Commonwealth v. McGowan, 2018 Pa. Super. 164; Estate of McGowan, 2019 Pa. Super. 123; 210 Pa. Code § 1701; Rules 2301 and 213

^v Tr. Page 11, SMDP M20132341993, Assumption 1.3.2(1).

^{vi} U.S. Supremacy Clause, EISA § 3.

costs associated with the choice of wanting a smart meter.^{vii} Proceeding with this case may cause irreparable harm to both the other case and to the current proceedings.^{viii}

Furthermore, the Complainants formally requested a postponement of the proceedings; however, ALJ Arnold chose not to take action to set aside or continue the case as requested in a Motion for Continuance^{ix}. This inaction raises concerns about inequitable treatment of pro se litigants. By allowing this case to proceed without considering the implications of the pending appeal, the ALJ has potentially compromised the fairness and integrity of the judicial process. Additionally, though Complainants did not file a Reply to the New Matter due to appealing to the Pa. Supreme Court, at any time the ALJ could have issued sua sponte stay to preserve status quo and equitable treatment rules. Complainants contend that the ALJ could have exercised judicial discretion to issue a **sua sponte** stay to ensure procedural integrity and protect the rights of pro se litigants, even in the absence of a formal request for a stay from the Complainants^x, even though ALJ denied Complainants continuance request. The lack of experience on the part of the Complainants should not preclude the ALJ from taking necessary actions to safeguard their rights and the integrity of the proceedings.^{xi}

^{vii} PURPA Section 111(d)(11), (14); Customer Choice Act (aka, Act 129): § 2807(e)(1), (f)(2)(i), (f)(3); 52 Pa. Code § 57.253(b)(1)

^{viii} General rule Pa. Code § 56.151. Evidentiary Hearing (Jan. 9, 2025) Transcript Record (TR.) pages 28-30, and page 31, lines 12-25. Rule 1701.

^{ix} Motion to Request for Continuance, [1861367.pdf](#). Order Denying Motion for Continuance, [1861212.pdf](#). Id. At 1.

^x Id. at Footnote i.

^{xi} Commonwealth v. McGowan, 2018 Pa. Super. 164

In light of these concerns, Complainants respectfully request that the Commission conduct a de novo review of the ALJ's actions and Initial Decision, particularly regarding the implications of the pending appeal and the need for equitable treatment of all parties involved.

II. History of complaint

The Complainants' Formal Complaint C-2024-3051044 against FirstEnergy Pennsylvania Power Company ("FE-PP", a FirstEnergy Corp. subsidiary) was triggered by aggressive harassment from FE-PP, which included bi-monthly shut-off threats in writing and in-person^{xii}, while PUC case # C-2023-3041147 was still under appeal to the Commonwealth Court of Appeals ("CWCA", 865CD2024; now under appeal to the Pa. Sup. Ct., #2WM2025).

On August 5, 2024, the Complainants contacted former Secretary Rosemary Chiavetta while a supervisor and technician were onsite, threatening to disconnect service if Complainants did not comply with a forced installation of an advanced net meter ("ANM", also known as a smart meter) and allow the FE-PP supervisor to take their current analog meter. The supervisor even suggested a compromise: If the Complainants allowed the installation of an ANM, the supervisor and technician would take the analog meter to avoid shutting off service and, for the customer, would hold onto that very analog meter in the event the case proved that forced installation was not in compliance with PURPA, EAct, EISA, and the state's Customer Choice Act^{xiii} regarding smart meter technology.

^{xii} See Complainants' Exhibit 1 (copies of FE-PP shut-off threats from FE Co. if a smart meter was not installed).

^{xiii} Public Utility Regulatory Policies Act of 1978 ("PURPA"). Energy Policy Act of 2005, U.S. Public Law 109-58, Title 1, 16 U.S.C ("EAct"). Energy Independence and Security Act of 2007, Pub. L. No. 110-140 ("EISA"). Electric Generation Customer Choice and Competition Act ("Customer Choice Act", also known as Act 129)

If the Complainants refused to allow the removal of the analog meter on that day, the supervisor warned that the workmen would shut off Complainants' service at-the-line. The Complainants expressed their concerns about trusting FE-PP: The supervisor recounted an incident involving an Ohio customer who had received an ANM without customer consent. The Ohio man was furious when his analog meter was removed, and the Ohio subsidiary of FirstEnergy Corp. ("FE Co.") had to make significant efforts to retrieve his analog meter. The supervisor also stated that Pennsylvania mandates the installation of smart meters, leaving customers with no choice in the matter. The supervisor and technician promised that they would hold on to the Complainants' very analog meter should the appealed PUC case # C-2023-3041147 win in the higher appellate courts. The problem with that solution is the non-legally enforced term "opt-out." In order for one to "opt out," he must first opt-in (another non-legal term).¹

Secretary Chiavetta confirmed that the Complainants had filed a timely appeal with the CWCA, which should have halted FirstEnergy's ongoing shutoff threats while the case was active. The Complainants left a message with Tori Geisler, a longstanding FirstEnergy attorney involved in previous cases since 2016, and who is also now part of FE Co.'s Pennsylvania Regulatory Complaints division. Additionally, the Complainants contacted the CWCA (case #865 C.D. 2024) to verify that the appeal request was timely and that FirstEnergy should not be attempting to force installation through threats of removing the Complainants' meter during the appeals process^{xiv}.

The reason for issuing a new formal complaint (C-2024-3051044) was clearly articulated both orally and in writing on the PUC's formal intake form and to the ALJ during the January 9 Evidentiary Hearing^{xv}. The new formal complaint aimed to create a written record of the bi-

^{xiv} 207 Pa. Code § 105.14

^{xv} See [ENDNOTES](#) at 3.

monthly shut-off harassment by the utility service provider, as the customers never requested the installation of an ANM, nor has ever agreed to pay the cost of its installation, nor accepted any assessed bill surcharge to cover any incremental costs associated with the choice to use an ANM^{xvi}.

CORRECTING THE RECORD:

The Complainants requested a Continuance on December 30, 2024, due to the pending Supreme Court Case. It is concerning that until a second Informal Complaint (followed by Formal Complaint C-2024-3051044) was filed with the PUC Secretary, Respondents continued to force the installation of a smart meter, and continue to take little regard to safeguard Complainants' personal information, including probing on a "public forum" personal sensitive information, such as health (C-2016-2557487) and educational: Neither of which is germane to this or any of the other cases. Over the years ALJs have sanctioned the Complainants for objecting to irrelevant intrusion into pro se privacy, including dismissing concerns related to health issues linked to low-frequency radiation associated with ANM infrastructure.

The ALJ's denial of the Motion for Continuance on January 3 exacerbated the difficulties faced by the pro se Complainants, especially in light of the ongoing Supreme Court appeal.

The formal complaint was filed as a written record of the informal complaint first lodged with Secretary Chiavetta. The Complainants reported, not merely alleged, that while they were on the phone with the Secretary, the Respondents were continuing to threaten shutoff for refusal to install a smart meter, which was verified through the presentation of Exhibit 1—curiously missing page 6, which listed federal and state regulatory compliance codes.^{xvii} With Exhibit 1 and 2, along with

^{xvi} Id. at vii

^{xvii} See Purpa Conformance Regulations. Tr. Page 6, lines 12-25 and Page 32, lines 18-25.

the oral evidence submitted listing federal and state regulatory statutes^{xviii} 2, Complainants present an *alternative pleading* to the *burden of proof*—that, if the PUC reviewing board will review the entire record (interview former Secretary Chiavetta, the formal complaint answers at endnote 3, read afresh the regulatory statutes that are the guide bars to the ANM program): Then the board shall see that Complainants have indeed proven beyond a preponderance of evidence that Governor Rendall’s Electricity Generation Customer Choice and Competition Act is not out-of-compliance with federal guidelines, but rather Respondents are treating consumers in the state of Pennsylvania differently, as though shooting from the hip corporate catch phrases like “opt-out” to market the concept that a Pennsylvania customer is somehow different than the rest of this nation’s customers: *Without a choice.*

III. The Complaint v. Respondent

The Complainants filed a formal complaint against FirstEnergy Corp. subsidiary company Pennsylvania Power Company (“FE-PP”), and not against FirstEnergy Corp’s Pennsylvania Electric Company.³

IV. BURDEN OF PROOF: The ALJ Incorrectly Stated that Burden of Proof is on the Customer, Complainant.

The COMPLAINANTS DISAGREE with the ALJ's assertion that the burden of proof lies with the customer (ALJ Initial Decision, Page 1).⁴ The ALJ stated that he would EXCLUDE key material evidence; that is, regulatory statutes, particularly as Page 6 of Complainants’ six page Exhibit 1: Per contra to his decision, the ALJ erred by disallowing the admission of oral evidence per § 332(b) and not considering OALJ Operating Procedures Manual, page 33 [38] that states “*the burden of proof on legal or policy issues falls on the utility....*” Ladies and gentlemen: We have a legal

^{xviii} 66 Pa.C.S. § 332(b). See [ENDNOTES](#) for full text.

policy issue that is not being observed and presents an appearance of bias against Complainants. As a result, the ALJ's actions have denied the Complainants the right to present federal conformance regulations accompanied by companion state compliance regulations.

Complainant's Opening Remarks, which cites a host of federal and state regulations from publicly available official sources⁵: The language across the board is consistently clear: PER CONTRA, to corporate propaganda! Despite the body of regulatory evidence, the ALJ ruled to sustain FE-PP attorney's objection to denying the admittance into a regulatory hearing, the very page that lists Regulatory Conformance Statutes: Page 6 of Complainants' Exhibit 1^{xix} —WITHOUT REASON.

As Complainants stated at the Hearing,

Lady Justice being blind doesn't mean blind to injustices, nor blind to justice!

For this, Complainants request that the PUC Board fully reexamine the actual facts, laws, and Evidentiary Hearing transcript without relying on the ALJ's Initial Decision.

ALTERNATIVE PLEADING SHOWING CHOICE

Moreover, Complainants maintain that based on rules and regulations the Burden of Proof should *Shift* to the Respondents, based on 66 Pa.C.S. § 315(a) and 66 Pa. C.S. 332(a), (b), and (c), and the OALJ Operating Procedures Manual, 33 [38]; item G: Burden of Proof^{xx}. During the evidentiary hearing, Complainants *opening remarks* detailed a list of regulations and laws and refuted the assumptive legality of FirstEnergy's persistent attempts to illegally force the installation of an

^{xix} See Figure 1: : IMAGE OF PAGE 6 of original Exhibit 1 on page 14 and Evidentiary Hearing Transcript Record (Tr.) on Pages 31-

^{xx} 66 Pa.C.S. § 315(a) Burden of Proof --... the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a) Burden of Proof --... the proponent of a rule or order has the burden of proof. Docket No. M-2009-2123950. The OALJ Operating Procedures Manual, G. Burden of Proof – “*the burden of proof ... the burden of proof on legal or policy issues falls on the utility ...*”

ANM – this assumption is solely based on a corporation’s planned assumptions of 100% customer participation with no opt-out option. The ALJ met Complainants citing of regulatory statute by throwing it all out as irrelevant, per the request of Respondents, despite Complainants objections. This does not fall inline with “The Office of Administrative Law Judge Operating Procedures Manual, 33 [38], which states “G. Burden of Proof - ... **THE BURDEN OF PROOF ON LEGAL OR POLICY ISSUES FALLS ON THE UTILITY**”

Complainants presented a 6-page Exhibit (Exhibit 1) of copies of the utility company’s bi-monthly service shutoff threats for not accepting a forced installation of a smart meter. Pages 1-5 were copies of the utility’s threats. Page 6 listed guiding Federal Regulatory Statutes PURPA Sections 111(d)(11) and (14), EPAct Sections 1251(a)(11), (14), 1252(a)(14), (14)(C) and 14(E), EISA Section 3: All guideposts for the creation of state regulatory statute Electric Generation Customer Choice and Competition Act (“Customer Choice Act”, a.k.a. Act 129). By disallowing the Admission of “oral” Evidence per § 332(b). Procedures in general and denying Complainants the right to have any oral or documentary evidence received. Exhibit 1, page 6, lists a few federal CONFORMANCE REGULATIONS and accompanied by state compliance regulations^{xxi} that are overlooked by Respondents and ALJs: One in particular is that for the public utility can take action, the customer must initiate the action of wanting to receive an ANM, not being strong-armed into one: The truth remains that Customers never contacted the Company to request the installation of a smart meter, nor has at any time agreed to pay for the cost of such installation nor associated incremental costs for “making” a forced decision through threats of shut-off.^{xxii}

^{xxi} See Figure 1: IMAGE OF PAGE 6 of original Exhibit 1

^{xxii} Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (1978): Section 111(d)(11), (14) and U.S. Public law 109-58: Energy Policy Act of 2005 (EPAct) Title 1, 16 U.S.C.:

Moreover, per contra to the claim that Complainants did not meet burden of proof requirement, law and regulations clearly state the burden of proof is on the proponent who claims a position other than actual regulations, and that burden belongs to the Respondents as they are the only ones claiming that federal and state regulations have suddenly changed the language from customer choice to participate into a corporate assumptions plan holding a higher position than federal and state regulations. The corporate languages contradicts federal and state regulatory language: OPT-OUT VS CUSTOMER CHOICE (See SMDP Assumptions 1.3.2 (1) and (4)).

NOTE: The proponent of a new standard is the utility company, who wants every customer to mandatorily receive a smart meter: The burden of proof remains with the utility particularly since the Complainants simply want to maintain the status quo of their service.

- In Docket #M-2009-2123950: "IN COMMISSION PROCEEDINGS, the proponent of a rule or order bears the burden of proof (66 Pa. C.S. 332(a)) and "Consistent with Section 315(a), the burden of proof shall be on the EDC. (66 Pa.C.S. 315(a)).
- 66 Pa.C.S. § 332(b) **Admissibility of evidence** --*Any oral or documentary evidence may be received*, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. ***No sanction shall be imposed or rule or order be issued except upon consideration of the whole record*** or such portions thereof as may be cited by any party and as supported by and **in accordance with the reliable, probative and substantial evidence.**
- **(c) Submission of evidence.**--*EVERY PARTY IS ENTITLED TO PRESENT HIS CASE OR DEFENSE* by
- states that the proponent of a rule or order has the burden of proof, unless otherwise provided by relevant statutes. In formal complaint proceedings, the complainant seeking affirmative relief must meet this burden with substantial evidence.

Section 1251 (a)(11), (14), Section 1252 (a)(14)(C), (E); Energy Independence and Security Act of 2007. See Exhibit 1 which ALJ submitted without the list of regulatory statutes on page 6.

LEGAL REQUIREMENTS OF RESPONDENT IS TO PROTECT CUSTOMER INFORMATION AND THEY FAILED BY PRESENTING AN UNREDACTED EXHIBIT THAT EXPOSED PERSONALLY IDENTIFIABLE INFORMATION IN A PUBLIC FORUM. .

The burden of battling this case on two fronts is certainly overwhelming for pro se individuals who are generally facing generally a minimum of FIVE (5) professional attorneys and ALJs who appear to sympathize with the utility versus being neutral in reviewing evidence: Why are they so bent on forcing 100% mandatory compliance? Why did they trot their expert witness, John Ahr, out with a laundry list of degrees and regulatory experience, and who exposed our personally identifiable information in a public forum^{xxiii}: But cut Complainants' cross examination in quarters after about two minutes of questioning?^{xxiv} Why ask irrelevant educational background questions in a case involving "choice"? —Just to have justification to dismiss the pro se from quoting federal and state regulations?

THE ALJ'S INITIAL DECISION FAILED TO ADDRESS THE CONTENTS OF FILED FORMAL COMPLAINT BUT INSTEAD FOCUSED ON THE ISSUES UNDER APPEAL TO SUPREME COURT.

FORMAL COMPLAINT reads as follows:

4. Reason For Complaint: Complainants are in the middle of an appeal case before the Pennsylvania Commonwealth of Appeals, yet every 1 1/2 to 2 weeks PennPower A FirstEnergy Company (also referred to as FirstEnergy PennPower) keeps threatening to shut off power if Complainants do not accept an advanced net meter (a.k.a, a smart meter) on our property, despite never contacting the utility for such an installation, nor have Complainants ever agreed to pay for such installation, per the federal PURPA and updated regulations. Complainants are before the Appeals Court yet utility persists with shut-off threats! EPAC regulatory guidelines and per the state regulatory Electricity Generation Customer Choice and Competition Act.

5. Requested Relief Section: COMPLAINANTS HAVE AN OPEN CASE BEFORE THE COMMONWEALTH COURT OF APPEALS. Yet, the FirstEnergy Services Company, Pennsylvania Power Company continues to bully us with threats to terminate our service, either for under-payment (which Complainants made arrangements for) or for NOT REQUESTING the installation of a Smart Meter. These shut-off threats are occurring every 1 ½ to 2 weeks,

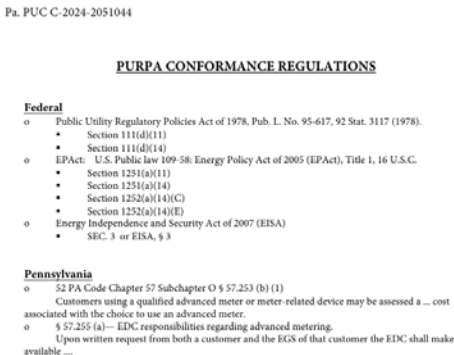
^{xxiii} See Tr. pages 51 – 60.

^{xxiv} See Tr. pages 33 – 60.

even after customers’ repeat phone calls to both the energy company, then to PUC informing them of these threats while awaiting the Appeals process. The first event was before the waiting period to appeal to a higher court had expired; then, they returned for a bill, even though Complainants have consistently paid our bills monthly, albeit, not in full; then three more times attempting to force a smart meter on our property. On the last in-person shut-off threat, Complainants informed the Complainant’s supervisor who came to the property that the case was still open and before the Commonwealth Court of Appeals. He persisted in threatening to shut off service at the road if Complainants persisted in not accepting the forced smart meter. This formal complaint serves as a formal notice that Complainants had spoken to the PUC secretary who informed us that the utility should not be attempting to shut-off service while in the midst of an appeal. Complainants would like an immediate cease to these stressful threats to shut-off service for not accepting a smart meter, particularly while in the midst of an Appeal before the Commonwealth Court. Complainants are losing count with the number of threats, including another showing on our account. (See below screenshot)

Per contra to the ALJ’s assertion, Complainants have fully proved that Complainants are in the midst of an appeal to the Supreme Court and such appeal is directly linked to the PUC case (C-2023-3041147) that triggered this Formal Complaint case C-2024-3051044. Moreover, Complainants believe that while the smart meter matter is under appeal before a higher court, that the ALJ should have through citing of Regulations, etc., that Complainants have indeed shown proof that Complainants need not request the installation of a smart meter.

Figure 1: : IMAGE OF PAGE 6 of original Exhibit 1



52 PA Code Chapter 57 Subchapter O § 57.253 (b) (1)

Customers using a qualified advanced meter or meter-related device may be assessed a bill surcharge by the EDC to cover any net incremental cost associated **with the choice to use an advanced meter.**

The ALJ Incorrectly Burden Shifted responsibility to Complainants. Stated that Burden of Proof is on the Customer, Complainant. 66 Pa.C.S. 315(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible. – Which is also noted in M-2009-2123950 “The EDC must also provide sufficient support to demonstrate that all such costs are reasonable and prudent with respect to its smart meter plan. Consistent with Section 315(a), the burden of proof SHALL BE ON THE EDC. 66 Pa.C.S. § 315(a). Pg. 24 (pg. 28 of 61, PD – 3 of the FEPP dockets from 2024 PUC case!!!!)”

Same M-2009-2123950. “The Office of Administrative Law Judge Operating Procedures Manual Procedures Manual Draft.PDF PAGE 38 of 57 (page 33) G. Burden of Proof - the burden of proof regarding the ability to pay remains on the Complainant but the burden of proof on legal or policy issues falls on the utility if the utility has raised those issues (See: Jackson v. Columbia Gas of Pa., Inc., F-00292241 (September 10, 1996)). The burden of persuasion can change. (See: Claypool v. T.W. Phillips, Z-00248730 (December 22, 1995)).

OTHER ISSUES SURROUNDING THE INITIAL DECISION

The ALJ threw out orally presented evidence that met the standards of § 332(b) and (c), which detrimentally impacts the commission’s ability to make a sound decision based that should be solely based on regulatory statutes: As material facts presented during the oral presentation do not appear, and this violates § 332. (e).

After years of defending our life, liberty, property and pursuit of happiness against what is supposed to be a “public” utility – what motive or next card will the Respondents and the next ALJ play against consumers, quoting in conjunction with y did ALJ suddenly use xxxx (LiHEAP) when this information should never have been exposed. But since exposed, the financial burdens of this case has impacted customers drastically to the point of physical and financial injury.

2. Section 1501 – Usage of Povacz v. Pennsylvania Public Utility Commission, 280 A.3d 975 (Pa. 2022) is not relevant to Complainants Formal Complaint ... never ruled but the moot point is that of Section 1501 in that the utility cannot opt out of offering to customers interested No response for the fact that Complainants are pro se who have continually states never requested!....
3. Persistent, flagrant use of a term coined from FirstEnergy Corp. and subsidiaries corporate assumptions as laid out in the organizational business plan presented to the PUC: Opt-Out. Neither Opt-Out or Opt-In are legal terms but rather terms that were injected into customers’ minds when contacting customer support that they never requested an advanced net meter
In Paragraph 2 of History of ID, addressing the Respondent’s argument that they are legally required to install They failed to include the section of the regulation that states upon request, which is when FE-PP then should step into action (see my NOTES). The term opt-out and opt-in are nowhere in the actual regulation.
4. Disputing ALJ’s “Findings of Fact”:
5. Disputing ALJ’s “Discussion”
6. Disputing “Analysis”

V. Disputing ALJ’s “Findings of Fact”

2023 DISMISSED PER ALJ ID #3

In the Commission’s Opinion and Order at Hanley v. Pennsylvania Power Co., Docket No. C-2023-3041147 (Opinion and Order entered May 9, 2024) the Commission adopted the Initial Decision issued at that docket and dismissed the Complainants’ complaint seeking to refuse the installation of a smart meter at their address.

THE ALJ WAS THE SAME AS FOR THIS CASE, ALJ ALPHONSO ARNOLD III

Petition for Stay. (#4) : Complainants as pro se are not aware of the intricacies and proper terms, but did petition for a continuance that irreparable harm would not occur during the process of appealing to the Supreme Ct., which continuance allowing for even a delay of the evidentiary hearing by two weeks vs. 3 days: Would have helped Complainants focus on one case at a time, particularly given that the ALJ for 2023 is the same as the ALJ for 2024. Unfairly penalized pro se litigants: though Complainants were forcible wrangled to divulge educational background, when even if Complainants are syvont idiots, their concerns should have been sincerely heard in the face of true regulation and not a planned assumption that has already been decided is not a legitimate reason to mandate the installation of an ANM. Moreover, for fear of a repeat incident from previous cases that retaliatorily threw out presented evidence because Respondents were again probing for irrelevant, private information that has nothing to do with a person's legal right to say NO!

Petition for stay or supersedeas. (#5): As Complainants are pro se and ALJ being one in the same for both cases, he unfairly used his office to coerce private information in a public forum.

Company's process of pursuing smart meter installation for formal complaints. (#6 - 8): All parties concerned were aware of the ongoing Appeal: phone transcripts prove discussion of mid-appeal... And Secretary Chiavetta as well as, later, Commonwealth were contacted while the Company's supervisor was at the property and getting a real-time report, and apparently relaying those reports to his supervisor. In weighing the matter, the ALJ unfairly prejudiced the Complainants, because if the Company continues to enforce coerced installation of an ANM, irreparable harm would occur at so many levels: For what would prevent the Company from using its 'opt-out' mantra once a customer is forced in. Neither opt-out or opt-in are legal regulatory terms and should not be

weighed at a higher standard than federal and state regulation. Therefore, ALJ's actions could be perceived as an abuse of prosecutorial discretion by unfairly ruling against pro se litigants and allowing Respondents to continue the harassment while a higher court review is pending. The ALJ's decision to allow the Company to continue its attempts to force installation upon its customer, even though he quoted that once a higher court has the case that the lower court shall set aside that case until a decision is made: Failure by the ALJ to preserve the status quo could irreparable harm Complainants.

Installation threats (#9 and #10): The action of a customer who desires an ANM is what is supposed to trigger the Company to provide the installation; yet, ALJ continues to side with the Respondents instead of evenly weighing federal and state regulatory statutes above corporate interests. ALJ preferred to throw out a one-page list of relevant regulatory conformance statutes at the behest of Respondent's attorneys. With this, the ALJ has violated the Constitution by not upholding the laws of the land and state above the assumptions of a corporate interest. No where in any regulation will one find a mandatory action that is required by the consumer. Instead, that mandatory action is required by the public utility. Yet, somehow, the same utility company treats its various customer classes differently and does not conform to the regulatory statutes of both federal and state acts that govern smart meter technology and installation.

Moreover, the Respondent's regulatory expert was safeguarded and protected from answering straightforward question about Zigbee technology, but instead pro se Complainant was shut down by the ALJ after Respondents protested that John Ahr's should answer our questions.

The requirement standard mentioned in #9 is a bastardization of the actual legal language, as the Customer Choice Act^{xxv} throughout requires that a customer has a choice. But the ALJ is ruling in a capacity that affects the balance of equities and harms Complainants by continuing to enforce the Respondents false-right to install an unrequested ANM and who has never agreed to pay for the cost of its installation.

Termination efforts stayed (#11): The ALJ should have penalized Respondents for continued abuse of power as all parties involved were and are aware of the case before the Supreme Court and Attorney Daniel Garcia was present to observe the proceedings for the upcoming Pa. Supreme Court case, yet more evidence of biased favor for Respondents and against pro se litigants. By not acknowledging this, it is of the opinion of the utility company's consumers, that the ALJ has shown unfair favor towards Complainants. What once was a warm and fuzzy-feeling toward FirstEnergy Penn Power, has become marred and tarnished with the over-reaching actions of both the Respondents and the ALJs that have presided over what is stretching out to be one decade long case!

VI. Complainant's Analysis

Our reasoning that the Burden Shift upon Complainants should have always been upon and should now revert back to the public utility company is because 1) forcing a rate increase upon customers who have never requested the installation of a smart meter is in violation of the Office of the ALJ Operating Procedures Manual^{xxvi}.

^{xxv} 66 Pa.C.S. §§ 2803, 2806.1, 2807, 2811, 2813-2815 ("Act 129").

^{xxvi} The Office of Administrative Law Judge Operating Procedures Manual, at page 33 [38]. See [Endnote 3](#) for more details.

Complainants have met the burden of proof as set forth in ALJ ID, pages 5-6 (1875250.pdf). However, Complainants hold little confidence in the governing system surrounding utilities.

TO FORCE THE INSTALLATION on Customers who have never requested it, results in an unjustified forced rate increase and, though we are losing confidence in this system, it is written in black and white: 52 Pa. Code § 57.253(b)(1). Approval of advanced meters. (b) **Customers ... shall be responsible for any net incremental costs** incurred by the EDC **as a result of** using a qualified advanced meter or meter-related device. (1) Customers using a qualified advanced meter or meter-related device **may be assessed a bill surcharge** by the EDC **to cover any net incremental cost ASSOCIATED WITH THE CHOICE TO USE AN ADVANCED METER.**

Why the burden of proof on customer does not work? If the customer does not want this technology, why is it being forced? Despite all regulatory statutes and case law, why is the Pa. PUC allowing ALJs to continue to pursue the interests of Respondents?

Why are you not allowing us to focus on the higher court?

EVIDENCE

(b) Admissibility of evidence --Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

(c) Submission of evidence.--Every party is entitled to present his case or defense by

Respondents argue a mandatory installation for customers who have not agreed to pay the cost of that installation, nor for incremental increases. By regulatory statute, the customer **must** request

the installation of the smart meter and agree at the time of the request to pay for it and the incremental costs associated with making that choice. The only mandate is that the public utility company present a plan to the PUC, which they fulfilled years ago.

By using judicial discretion to sustain the Respondent's rejection to strike Complainants entire legal testimony for educational reasons, is in violation of civil liberties and freedoms and the right to privacy while speaking in a public forum, as everything said is open to public inspection.

VII. Conclusion

Per § 332(b) and (c), Complainants' opening statements lays out the oral evidence of our case. The oral evidence was received at the January 9th Evidentiary Hearing: Nothing stated was irrelevant or immaterial to this case. Nothing repetitive (Although this document may have some repetition, considering the mountain Complainants defending themselves must climb. The oral remarks were directly quoted from federal and state regulatory writings. They prove whether we hold the burden of proof or if a burden shift must take place. While it is obvious to seasoned attorneys that we do not hold the same breadth and depth of knowledge as the actions of each professional has been a continual punch in the gut that will not allow us to move forward in life: these cases ignore the writings of federal and state regulations which constitute the overarching base of this case and our consumer rights, which if clearly reviewed by looking straight at the letter-of-the-law without rose-colored glasses blurring the writings of PURPA, EAct, EISA, and the Customer Choice Act: Unapologetically OFFERS CUSTOMERS A CHOICE TO DECIDE WHETHER OR NOT TO PARTICIPATE IN THE ADVANCED NET METERING PROGRAM BY REQUESTING THE INSTALLATION OF A SMART METER AND AGREEING TO PAY FOR THE COST OF ITS INSTALLATION AND ANY OTHER INCREMENTAL COSTS. The issue of this case is strictly regarding the allowance of corporate interest to use its company business plan, which they themselves have labeled as an "Assumption", to guide the state into

regulatory noncompliance with a federally issued regulatory policy that throughout its languages clearly, unambiguously puts customer choice front and center. The Respondent and its corporate interests have overreached the edict of the law, which was to present a plan of action to allow customers to make an informed decision regarding how they would like to manage their own utility usage. This certainly suggests that the Respondents are leading the way to overstepping both federal and state regulatory writings and muddle the water because a huge corporate interest doesn't care about the human experience and desires: That it only desires to over reach the supreme laws of the land and it appears that state government agencies are serving them, and not constituents, well.

Without reliance upon the actual writings of the law, the consumer's civil rights and freedoms to choose what is best for each person's individual household and business is being dashed to pieces. If the justice system is reduced to considering the direct quoting of federal and state rules and regulations – the law – as less than corporate interest assumptive plans, then justice has lost its savor.

Moreover, for the ALJ to dismiss the oral record because a pro se litigant does not hold a similar degree to himself, equates to plain social prejudice: Even someone with a kindergarten education under federal and state regulations have the right to say NO to an ANM, but with the power of the judicial branch at its “call” (or what appears to be such) – this creates an imbalance of justice for all people. Prejudicial exclusion of a consumer's evidence renders the ALJ's decision fundamentally flawed and hinders equitable justice for all consumers.

If quoting strictly federal and state regulations, and in previous cases a plethora of publically available statistical data and official concerns from such agencies as WHO – then what, other than

a corporate assumption will get more weight – certainly it should be the actual, legal statutory regulations, *right?*

The ALJ could have used his judicial discretion, knowing that a pro se does not know all the ends and outs of the legal system, yet he allowed the Respondents to grill Complainants and force them into answer non-relevant questions, knowing the answers by the “sophistication of navigating this legal system” that Complainants are traveling. Instead of dispensing JUSTICE to all, he has chosen a “JUST US” path and has set the course of possible abuse of discretion in other areas of a consumer’s life, liberty and the pursuit of happiness: All for the pursuit of corporate profit. Though we do not have the strength and weight of a government or corporate body, both should have been a service tool for people living in this country.

Complainants strongly request that the Public Utility Commission’s overseeing board members take an honest and fair look from a fresh, de novo, point of view to weight the facts against the assumptions.

What you hear now is frustration that we are unable to reach our full potential because of this battle for what is right against the strong-arms of what is wrong!

If the regulations had actually stated what the Respondents claim and all ALJs that we have faced support without, what we believe is, true legal integrity and respect for the thoughtful writers of these regulations, whose purpose was and is to make each of our lives better: Not just for those who have an abundance of “whatever one feels is abundant.” Justice is for all. But it does begin with you who have been ordained as the justice keepers.

Please note: That as we journey this legal stream, we are amazed and the sharks smelling blood from infants, and the incredible intricacies of this legal system. Our goal is to enjoy our home,

protect our health, liberty, privacy, and freedoms to choose. But, if the Povacz case has already reached the conclusion that “opt-out” is simply corporate wishful thinking – Complainants are dumbstruck as to how it is, you – who have the privilege of being the gatekeepers – are allowing a boiling cesspool to stream into the clean waters of our thoughtful forefathers.

Please, no longer allow Respondents the privilege of abusing power through the sheer force of size: NO MEANS NO, as Complainants told Attorney Meehan. No means No! We never requested the installation of a smart meter. To bully us, despite the writings of the law is simply criminal.

Can someone please tell us: Why, when the ALJ who was the presiding officer on now two of our cases knew that we were appealing his case C-2023-3041147, why wasn't he the hero of justice who would issue a sua sponte stay: Why has he withheld it?

If, even the burden of proof is on Complainants, and the ears of Justice remains deaf to the very body of federal and state regulatory statutes – and continues the bleeding process right before the eyes of the findings of Povacz case, which agrees with Complainants' opinions: OUR LADY JUSTICE IS FALLING FAST FROM GRACE!

FE Co. has allowed its subsidiaries to treat each customer class differently, which violates regulatory rules through compulsory installation that mandates service provisions differently than is the intent of both federal and state regulatory statutes. This deprives Complainants of consumer autonomy by imposing an involuntary service—a claim that defies the principles of due process or fair regulatory practices.

In summary, while utilities are bound by law to offer net metering and time-based metering when requested, these provisions empower customers by ensuring that the option is there when they

want it. This is the balance between a mandatory service-provision requirement and customer choice.

In light of the documented evidence demonstrating that a parallel or related case is pending before a higher court—and to ensure adherence to judicial standards—Complainants respectfully submit that the principles underlying 207 Pa. Code Rule 14 compel this Court to duly consider the factual record in its entirety, and not rely on a potentially biased conclusion from an ALJ who could have at any time presented an olive branch, as Complainants stretched their wings toward exercising constitutional and civil rights. This reference is not intended as an accusation of judicial misconduct but rather as a reminder that established procedural safeguards, designed to preserve the integrity of the decision-making process, may have been overlooked.

Pursuant to **52 Pa. Code § 5.533**, the undersigned respectfully submits these Exceptions to the Initial Decision and requests that the **Pennsylvania Public Utility Commission** review this matter anew -- **de novo** -- considering all relevant evidence and applicable law.



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May 19, 2025

ENDNOTES

¹ The development of this Deployment Plan was based on the following assumptions: after their grace period, the Companies will install smart meters in all new construction and upon customer request, provided that the latter pays for the incremental cost of such meters and related installation.

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² 66 Pa. C.S. § 332(b) --Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. **No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.**

(c) Submission of evidence.--Every party is entitled to present his case or defense by

....

³ PA PUC Formal Complaint form, Page 2, Item 4. Reason for Complaint

[QUESTION] "What kind of problem are you having...?"

[RESPONSE] "We are before the Appeals Court, yet utility persists with shut-off threats!"

[QUESTION] "OTHER EXPLAIN"

[RESPONSE] "We are in the middle of an appeal case before the Pennsylvania Commonwealth Court of Appeals, yet every 1 1/2 to 2 weeks, PennPower a FirstEnergy Company (also referred to as FirstEnergy PennPower) keeps threatening to shut off power if we do not accept an advanced net meter (a.k.a. smart meter) on our property, despite never contacting the utility for such an installation, nor have we ever agreed to pay for such installation, per the federal PURPA, EAct regulatory guidelines and per the state regulatory Electricity Generation Customer Choice and Competition Act."

Page 3, item 5. Requested Relief

[QUESTION] "Explain what you want the PUC to order the utility ... to do."

[RESPONSE] "WE HAVE AN OPEN CASE BEFORE THE COMMONWEALTH COURT OF APPEALS. Yet, the FirstEnergy Services Company, Pennsylvania Power Company continues to bully us with threats to terminate our service, ... for NOT REQUESTING the installation of a Smart Meter. These shut-off threats are occurring every 1 1/2 to 2 weeks, even after customers' repeated phone calls to both the energy company, then to PUC, informing them of these threats while awaiting the Appeals process. ... The first event was before the waiting period to appeal to a higher court had expired.... On the last in-person shut-off threat, we informed the [Respondent's] supervisor who came to the property that the case was still open and before the Commonwealth Court of Appeals. He persisted in threatening to shut off service at the road if we persisted in not accepting the forced smart meter. This formal complaint serves as a formal notice that we had spoken to the PUC secretary who informed us that the utility should not be attempting to shut-off service while in the midst of an appeal. Complainants would like

an immediate cease to these stressful threats to shut-off service for not accepting a smart meter, ... in the midst of an Appeal before the Commonwealth Court. ...”

4 Burden of Proof:

66 Pa. C.S. § 315(a). Reasonableness of rates.--In any proceeding ..., involving ... rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. ... [1051014.pdf](#)

66 Pa. C.S. § 332. PROCEDURES IN GENERAL (a) Burden of proof. --... the proponent of a rule or order has the burden of proof.

G. Burden of Proof - the burden of proof regarding the ability to pay remains on the Complainant but **the burden of proof on legal or policy issues falls on the utility** if the utility has raised those issues (See: Jackson v. Columbia Gas of Pa., Inc., F-00292241 (September 10, 1996)). The burden of persuasion can change. (See: Claypool v. T.W. Phillips, Z-00248730 (December 22, 1995)). -- The Office of Administrative Law Judge Operating Procedures Manual (OALJ), 33 [38]

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page 9

1) "In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. 332(a)." To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A2d 600 (Pa. Cmwlth. 1990) A preponderance of evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa PUC, 486 Pa. 109, 413 A.2d 1037 (1980).

ID, pg 7 "... the Commonwealth Court held that Act 129 does not mandate the installation of smart meters. ..." -- *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) ("*Povacz I*"), *Id.* at 490.

- Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (1978).
 - Section 111(d)(11)
 - Section 111(d)(14)
- Energy Policy Act of 2005 (EPAAct), U.S. Public Law 109-58, Title 1, 16 U.S.C.
 - Section 1251(a)(11)

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- Section 1251(a)(14)
 - Section 1252(a)(14)(C)
 - Section 1252(a)(14)(E)
 - Energy Independence and Security Act of 2007 (EISA)
SEC. 3 or EISA, § 3

⁵ PURPA § 111(d)(11) and (14). EPCA SECTION 1251(a)(11) and (14);
Section 1252(a)(14)(C) and (E); Section 1253; Section 1254. EISA § 3. Title
52 PA Code Chapter 57 Subchapter O § 57.253(b)(1).