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May 28, 2025

VIA ELECTRONIC FILING

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

Re: Orpheus and Kimberly Hanley v. FirstEnergy Pennsylvania Electric Company
Docket No. C-2024-3051044

Dear Secretary Homsher:

Enclosed for filing please find the Replies of FirstEnergy Pennsylvania Electric Company, (“Penn Power Rate District¹”) to the Exceptions of Orpheus and Kimberly Hanley regarding the above-referenced matter. This document has been served on all parties as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

James Austin Meehan

JAM/mlr

Enclosures

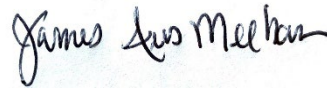
c: As Per Certificate of Service
Office of Special Assistants (via email at ra-OSA@pa.gov)

¹ On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company (“FE PA”). Due to the merger transaction, FE PA became successor in interest to all matters previously belonging to the individual Pennsylvania operating companies. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Orpheus and Kimberly Hanley,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3051044
	:	
FirstEnergy Pennsylvania Electric	:	
Company,	:	
	:	
Respondent	:	

**REPLY EXCEPTIONS OF FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY
TO THE EXCEPTIONS OF ORPHEUS AND KIMBERLY HANLEY**



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Date: May 28, 2025

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I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company on behalf of its Penn Power Rate District¹ (the “Company”), hereby file its Replies to the Exceptions of Orpheus and Kimerly Hanley (“Complainants”). Through the Exceptions, the Complainant takes issue with much of the well-reasoned Initial Decision (“ID”) issued by the Administrative Law Judge Alphonso Arnold III (hereinafter, the “ALJ”) on April 17, 2025. The ID dismissed the Complaint, holding that Act 129 of 2008² mandates the systemwide installation of smart meters and finding that the Complaints failed to satisfy their burden (ID at 19.) Additionally, the ID noted that the Company was able to move forward with termination activities following the Order disposing of the Complainants earlier Complaint, as Complainants never requested a stay or supersedeas pending appeal of the order entered disposing of the Complaint. (ID at 14-18.)

As a threshold matter, the Complainants’ Exceptions do not conform with the Commission’s regulations because they are unnumbered, and many do not cite to the ID’s Findings of Fact, Conclusions of Law, or specific pages of the ID.³ That being said, to aid in the Commission’s review of the Complainants’ Exceptions, the Company has grouped and numbered the arguments made in the Complainants’ Exceptions and will respond in kind here.

¹ On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Pennsylvania Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

² 66 Pa.C.S. §§ 2806.1–2807 (the “Act” or “Act 129”).

³ Section 5.533(b) of the Commission’s regulations provides that “[e]ach exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.” 52 Pa. Code § 5.533(b).

As explained herein, the Complainants' Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Complainants' Exceptions and adopt the ID without modification.

II. REPLIES TO EXCEPTIONS

A. REPLY TO EXCEPTION NO. 1: THE ALJ CORRECTLY APPLIED POVACZ II AND FOUND THAT FEDERAL LAW DOES NOT PREEMPT ACT 129

In their exceptions, the Complainants argue that the ruling in *Povac II*⁴ does not apply to their case and that the ALJ was incorrect in finding that federal law did not preempt the mandate of Act 129. (Exceptions at 11, 14, 19.) In his Initial Decision, the ALJ correctly found that the Public Utility Regulatory Policies Act of 1978 and Energy Policy Act of 2005 do not preempt Act 129 discussed by the Complainants did not preempt Act 129. (ID 7-14.)

The ALJ properly determined that the Supreme Court of Pennsylvania's decision in *Povac II* controls here. (ID at 19.) The case revolves around the installation of a smart meter pursuant to Section 2807(f) of the Public Utility Code, which the Court in *Povac II* held is mandatory. *Povac II*, 280 A.3d at 1014. Specifically, the Supreme Court "conclude[d] that Act 129 does mandate that EDCs," like the Company, "furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed." *Id.*

Moreover, the Complainants' arguments based on constitutional and federal law should be rejected. Federal law does not preempt the mandatory installation of a smart meter under Section 2807(f) of the Public Utility Code. *See Romeo v. Pa. PUC*, 154 A.3d 422 (2017). Also, the Commission lacks jurisdiction to interpret and enforce the various federal laws cited by the

⁴ *Povac v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) ("*Povac II*").

Complainants. The Commission is a creature of statute and only has those powers vested in it by the General Assembly. *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted). Interpreting and enforcing these federal laws are not among the powers granted to the Commission. For these reasons, the ALJ correctly rejected the Complainant’s claims regarding federal law and preemption of Act 129.

B. REPLY TO EXCEPTIONS NO. 1: THE ALJ PROPERLY FOUND THAT THE COMPLAINANTS FAILED TO MEET THEIR BURDEN OF PROOF THAT THE COMPANY VIOLATED THE PUBLIC UTILITY CODE, THE COMMISSION’S REGULATIONS, OR A COMMISSION ORDER

The ALJ correctly stated and applied the burden of proof in this case. The Complainants, in their Exceptions, insist that the burden is on the utility, pointing to provisions of the Public Utility Code that carve out specific instances where utilities do bear the burden of proof, including those covering rate cases. (Exceptions at 8-9.) The Complainants here misapply the rules.

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” Here, it is the Complainant, and not the Company, that is the proponent. It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008). However, to establish a *prima facie* case, more is required than a mere trace of

evidence or a suspicion of the existence of a fact sought to be established.⁵ Mere bald assertions, personal opinions, or perceptions, when unsubstantiated by facts, do not constitute evidence.⁶

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Here, however, Complainants never met their burden, and thus the burden did not shift.

The ALJ correctly applied the law to the Complainants' case, finding that the Complainants had the burden of proof and did not meet their burden with regard to the smart meter installation itself due to Act 129's mandate nor with regard to allegations that the Company should not have issued termination notices incident to their refusal to have a smart meter installed. (ID at 9-18.)

C. REPLY TO EXCEPTIONS 3: THE COMPLAINANTS' DUE PROCESS CONCERNS ARE MERITLESS AND SHOULD BE REJECTED

The Complainants raised a number of procedural and due process issues in their Exceptions including concerns about the ALJ bias, evidentiary rulings, failure to grant a continuance, and the ALJ failing to order a stay on the proceedings in the 2023 Complainant *sua sponte*. The Complainants' baseless allegations of impropriety and the lack of a fair hearing should be rejected. (Exceptions at 1-2, 6, 8, 11, 17, 19.)

Nothing in the record even remotely suggests that the ALJ engaged in any unethical conduct. It appears that the Complainants believe that the ALJ is biased simply because he ruled against them and presided over a previous Complaint. However, given the sheer lack of credible evidence presented by the Complainants, compared to the substantial, thorough, and credible evidence presented by the Company, the ALJ correctly rejected the Complainants' arguments and ruled that they did not meet their burden of proof.

⁵ *Lyft, Inc. v. Pa. PUC*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980)).

⁶ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Furthermore, the ALJ properly afforded the Complainants due process. “The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness.” *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted). “Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.” *Id.* (citations omitted).

Here, the Complainants were provided with notice and an opportunity to be heard on their issues at the hearings held on January 9, 2025 and had an opportunity to cross-examine the Company’s witness, subject to the rules of evidence. The Complainants contend that the ALJ improperly sustained an evidentiary objection. (Exceptions at 17-19.) However, this document, listing authorities, including irrelevant federal authorities was properly excluded. The Commission is a creature of statute and only has those powers vested in it by the General Assembly. *Feingold*, 383 A.2d at 794 (citations omitted). Interpreting and enforcing these federal laws are not among the powers granted to the Commission. Further, while the Complainants claim the ALJ “threw out orally presented evidence” (Exceptions at 13) the ALJ in fact denied the Company’s motion to strike the bulk of the Complainant’s testimony. (Tr. at 26.) Thus, although the Complainants may disagree with the ALJ’s decision, the Complainants unquestionably were afforded a full and fair opportunity to present their case.

The Complainants also argue in their exceptions that either a continuance should have been granted pending the resolution of their appeal⁷ of the Commission’s decision in their Complaint at Docket No. C-2023-3041147. (Exception at 1-2.) Requests for continuances will only be considered for “good cause shown.” 52 Pa. Code § 1.15(b). The Complainants requested a

⁷ The appeal at 865 C.D. 2024 was dismissed on November 12, 2024.

continuance on December 20, 2024. The ALJ found that the Complainants did not show good cause for a continuance request as there was no indication that the Complainants requested a stay in that case pending appeal. (Jan. 3, 2025 Order). The Complainants argue that the judge alternatively should have ordered a stay sua sponte to ensure their rights as pro se litigants were protected. (Exceptions at 1.) It is not the role of the ALJ to prosecute the Complaint for the Complainants. Further, the ALJ correctly found that the Company was authorized to proceed acting in accordance with the order at Docket No. C-2023-3041147 denying the Formal Complaint at that docket and pursuing termination in the case in the absence of a stay. (ID at 14-18.) In the absence of a stay, the Commission's order is in effect. 66 Pa.C.S. § 703(e).

The Complainants also suggest that their privacy rights have been violated through the submission of the Company's exhibits. (Exceptions at 11.) This is simply not the case. The exhibits submitted by the Company all redacted the Complainants' personally identifiable information.

It is clear from both the Initial Decision and the lengthy history of this proceeding, that the due process has not been violated and that the Complainants' procedural concerns are meritless and should be denied.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision, the Exceptions of Orpheus and Kimberly Hanley should be denied.



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Date: May 28, 2025

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Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ORPHEUS AND KIMBERLY :
HANLEY :
 : **Docket No. C-2024-3051044**
v. :
FIRSTENERGY PENNSYLVANIA :
ELECTRIC COMPANY :

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the Reply Exceptions of FirstEnergy Pennsylvania Electric Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic mail only as follows:

Orpheus and Kimberly Hanley
hanley_nomeansno_neverrequested@outlook.com

Deputy Administrative Law Judge Alphonso
Arnold III
alphonarno@pa.gov

Dated: May 28, 2025


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