

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente	:	
	:	
v.	:	C-2025-3054387
	:	
FirstEnergy Pennsylvania Electric Company	:	

INTERIM ORDER

Procedural history

On March 17, 2025, Betty and Terry Bente (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed).

Complainants do not want a smart meter installed on their house or property, arguing that they did not request a smart meter and that installing a smart meter would be in violation of Act 129 of 2008, 66 Pa.C.S. § 2807(f)(2),¹ their Constitutional Rights under the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution, and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. They further allege that utilities have not met their burden under 66 Pa. C.S. § 315 to prove that smart meters are safe and that by installing a smart meter, Met-Ed would violate other provisions of the Public Utility Code (Code) regarding terminations, safe and reasonable service, and altering the definition of service in ways not approved by statute. 66 Pa.C.S. §§ 102, 1406(a)(4), 3301(a)-(b). Complainants also contend that installing a smart meter would violate several Commission regulations related to advance metering. 52 Pa. Code §§ 57.28(a)(1), 57.251, 57.255, 57.259(b), (c).

¹ This section of the Code is part of what is commonly referred to as “Act 129.” This particular provision directs electric distribution companies to “furnish” smart electric technology to their customers. 66 Pa.C.S. § 2807(f)(2).

Complainants contend that their list of alleged violations in the instant Complaint is new and not raised in their prior complaint:

We have learned a great deal in the past eight years since our first Formal Complaint was filed. We now understand better that we must be able to demonstrate that by installing a smart meter on our home, Metropolitan Edison Company/First Energy Corp. (Met-Ed) is in violation of a Code, or a Commission Regulation or Order. We therefore file this new Formal Complaint, asking that Met-Ed not shut off our power and to not install a smart meter on our home for to do so Met-Ed will be in violation of the following (which we did not previously specify or address in our 2017 Formal Complaint and therefore are new reasons for our Complaint).

Complaint, Attachment ¶ 4.

The Complaint was served on Met-Ed on April 3, 2025.

On April 23, 2025, FirstEnergy Pennsylvania Electric Company (FirstEnergy or Respondent) on behalf of its Met-Ed Rate District filed a timely Answer with New Matter to the Complaint.² Citing to the decision in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), Respondent denied that Complainants are permitted to “opt-out” of smart meter installation at their service address. In its New Matter, Respondent asserted that Complainants already challenged Respondent’s installation of a smart meter at their address in a previous formal complaint proceeding at Docket No. C-2017-2614219 (2017 complaint). Respondent alleged that the Complaint concerns electric service at the same property under the same customer account that was the subject of the 2017 complaint. Respondent asserted that the 2017 complaint was dismissed by the Commission with prejudice. *See Terry and Betty Bente v. Metropolitan Edison Co.*, Docket No. C-2017-2614219 (Opinion and Order entered Nov. 7, 2024). Therefore, Respondent argued that Complainants are barred from filing a new formal complaint with the Commission regarding the same issues of fact and law. In this regard, Respondent in its New Matter asserts that the Complaint is barred by Section 316 of the Code, 66

² On the same date, FirstEnergy filed a corrected Answer and New Matter. The two filings are identical but for changes to the name of the Commission’s Secretary and the address for the FirstEnergy attorney.

Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel. For relief, Respondent requested that the Complaint be dismissed in its entirety and with prejudice.

The Answer and New Matter was properly endorsed with a Notice to Plead, informing Complainants that they had 20 days from the date of service of the New Matter (until May 13, 2025) to file an answer to the New Matter.

Also on April 23, 2025, Respondent filed Preliminary Objections. FirstEnergy argued that this was the second complaint that Complainants filed disputing the utility's planned smart meter installation and that Complainants are seeking to re-litigate the same factual and legal issues related to the same account holder, service location and service account, which were raised or could have been raised in the first complaint.³ As such, Respondent argued that the Complainants' claims and issues are barred by the Commission's prior Order dismissing the First Complaint, pursuant to 66 Pa.C.S. § 316. Respondent also argued that Complainants' requested relief (effectively, to opt-out of smart meter installation) cannot be granted by the Commission because Respondent is legally required to install smart meters and customers are not permitted to opt-out of installation. *See Povacz II*. Thus, Respondent argued, the Complaint is legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4).

The Preliminary Objections were properly endorsed with a Notice to Plead, which informed Complainants that they had ten days from the date of service of the Preliminary Objections (until May 5, 2025) to file a response to the Preliminary Objections.

On April 28, 2025, Complainants filed a request for extension of time to reply to FirstEnergy's Answer and New Matter and Preliminary Objections. FirstEnergy did not file any response or objection to the request.

³ Section 1501 provides, in part: "Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501.

On May 2, 2025, Complainants filed a timely response to the Preliminary Objections of FirstEnergy. On May 12, 2025, Complainants filed an amended response to the Preliminary Objections. In their responses, Complainants stated that their 2017 complaint was not dismissed with prejudice, as FirstEnergy claims. Complainants contend that the instant Complaint is not barred by 66 Pa.C.S. § 316 because they raise new and materially different facts and materially different legal theories and constitutional claims⁴ that were not previously adjudicated in *Povacz II* and their 2017 complaint.⁵ Amended Answer to Preliminary Objections ¶¶ 1-5. They state:

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.

Amended Answer to Preliminary Objections ¶ 2.

They also disagree with Met-Ed that they could have brought these matters up in their 2017 Complaint, on the basis that:

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

⁴ Complainants state that they “rescind litigation of Constitutional Amendments IV and XIV as addressed in the Rebuttal of Mr. Ahr’s testimony.” Amended Answer to Preliminary Objections ¶ 6.

⁵ Additionally, Complainants contend that a new complaint is not barred by Section 316 even after a previous dismissal where there is a valid claim of administrative abuse. They allege that the “Commission failed to rule [on their 2017 Complaint] in a fair and impartial manner due to prejudice or bias resulting from conflicts of interest.” Amended Answer to Preliminary Objections ¶ 4c.

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.

Amended Answer to Preliminary Objections ¶ 4.

On May 13, 2025, Complainants filed a timely response to the Answer and New Matter. In response to the New Matter, they deny Respondent's assertion that Act 129 mandates installation of smart meter technology. Response to the Answer and New Matter of FirstEnergy ¶¶ 3, 5. Complainants state again that the Complaint raises entirely new legal claims not previously adjudicated in their 2017 complaint or *Povacz II* and the relief sought in the instant Complaint is "new and distinct" from the relief sought in the earlier complaint. *Id.* ¶¶ 2, 4, 5.

On May 16, 2025, the Commission issued an Initial Telephonic Hearing Notice assigning this matter to me and scheduling an evidentiary hearing for July 23, 2025.

On May 28, 2025, Complainants filed a Motion to Open Discovery (Motion). The Motion did not contain a notice to plead, as required by 52 Pa. Code § 5.103(b).

Discussion

The Complainants requested an extension of time to file responses to Respondent's New Matter and Preliminary Objections. They timely filed initial responses to both. They did file an amended response to the preliminary objections on May 12, 2025. The request for extension is granted because it is unopposed and because the amended response to the preliminary objections was still filed prior to the deadline for responding to the Respondent's New Matter, and thus had no material impact on the Respondent's ability to prepare its case. Accordingly, the Complainants' request for extension of time is granted in that the Complainants' responses and amended response to the New Matter and Preliminary Objections will be deemed timely. This ruling will be reflected in the ordering paragraphs below.

As noted above, Complainants' Motion filed on May 28, 2025 did not include a notice to plead, as required by 52 Pa. Code § 5.103(b). Pursuant to Section 5.103(c) of the same regulation, "[a] party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by . . . the presiding officer." 52 Pa. Code § 5.102(c).

I recognize that the Complainants are proceeding pro se. Therefore, I will overlook their failure to comply with Section 5.103(b) and properly endorse their Motion with a notice to plead. However, in the interests of due process for all parties, I will exercise my discretion under Section 5.103(c) and cure this defect. Therefore, in the ordering paragraphs below, I will provide Respondent an additional 10 days to file a response to the Motion if they wish to timely respond.

Next, for the sake of judicial efficiency and to minimize the time and expense for the parties involved in this proceeding, I will consider the Preliminary Objections and Motion together and draft a ruling after FirstEnergy has filed a response to the Motion or the time has expired for FirstEnergy's response to the Motion. As the ruling will impact the need, scope and timing of hearings and discovery, I find it prudent at this time to cancel the hearing that is currently scheduled in this matter for July 23, 2025 until the parties' outstanding Preliminary Objections and Motion are resolved. Therefore, any hearing will be rescheduled if necessary and when appropriate by a separate hearing notice served on the parties.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainants' amended response to the Preliminary Objections of FirstEnergy filed on May 12, 2025 is deemed timely.

**C-2025-3054387 - TERRY AND BETTY BENTE v. FIRSTENERGY PENNSYLVANIA
ELECTRIC COMPANY - METROPOLITAN EDISON RATE DISTRICT**

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Served via eService June 17, 2025

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Served via eService June 17, 2025

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