

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Erin L. Gannon
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Betty and Terry Bente against FirstEnergy Pennsylvania Electric Company, Metropolitan Edison Rate District, because the same issues were decided in their prior complaint at *Bente v. Metropolitan Edison Co.*, Docket No. C-2017-2614219 (Opinion and Order entered Nov. 7, 2024),¹ which was dismissed and not appealed. Therefore, this second Formal Complaint challenging mandatory installation of a smart meter is barred by Section 316 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 316. This Initial Decision also denies, as moot, Complainants’ motion to open discovery.

¹ On January 1, 2024, FirstEnergy’s Pennsylvania operating companies including Metropolitan Edison 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.

PROCEDURAL HISTORY

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

Complainants do not want a smart meter installed on their house or property. They state that, in light of the dismissal of their 2017 smart meter complaint, they filed a further Complaint to protect themselves from a smart meter from being installed.² They argue that installing a smart meter is not mandatory and that, by installing a smart meter on their property, Met-Ed would violate state and federal law, specifically: Act 129 of 2008, 66 Pa.C.S. § 2807(f)(2);³ their rights under the 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 electric service in ways not approved by statute. 66 Pa.C.S. §§ 102, 1406(a)(4). Complainants also contend that installing a smart meter would violate several Commission regulations related to advance metering programs. 52 Pa. Code §§ 57.28(a)(1), 57.251, 57.255, 57.259(b), (c).

The Complaint was served on FirstEnergy on April 3, 2025.

² See *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 (Opinion and Order entered Nov. 7, 2024) (*Bente*).

³ 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).

On April 23, 2025, FirstEnergy filed a timely Answer with New Matter to the Complaint.⁴ 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. Therefore, Respondent argued that Complainants are barred from filing a new formal complaint with the Commission regarding the same issues of fact and law by Section 316 of the Code, 66 Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel. Respondent also averred that the Complaint is moot in that the relief requested – no smart meter installation – is not available. For relief, Respondent requested that the Complaint be dismissed in its entirety and with prejudice.

The Answer and New Matter were 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

⁴ 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.

complaint. As such, Respondent argued that Complainants' claims and issues are barred by the Commission's prior Order dismissing the 2017 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, citing *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 (Extension Request). FirstEnergy did not file any response or objection to the request.

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. Amended Answer to Preliminary Objections ¶ 1. Complainants contend that the instant Complaint is not barred by 66 Pa.C.S. § 316 because they raise new and materially different facts and legal theories and constitutional claims that were not previously adjudicated in *Povacz II* and their 2017 complaint. *Id.* ¶¶ 1-5.

On May 13, 2025, Complainants filed a timely response to the New Matter, in which they deny Respondent's assertion that Act 129 mandates installation of smart meter technology. Response to New Matter ¶¶ 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 (Discovery Motion). The Discovery Motion did not contain a notice to plead, as required by 52 Pa. Code § 5.103(b).

On June 17, 2025, I issued an Interim Order granting Complainants’ unopposed Extension Request, in that I deemed Complainants’ initial responses to both the New Matter and Preliminary Objections, and their amended response to the preliminary objections, as timely. Regarding the Discovery Motion, because it did not include a Notice to Plead, I provided Respondent an additional 10 days to file a response to the Discovery Motion.

In the Interim Order, I also advised the parties that I would consider the Preliminary Objections and Discovery Motion together and draft a ruling after FirstEnergy filed a response to the Discovery Motion or the time expired for FirstEnergy’s response to the Discovery Motion. Recognizing that the ruling would impact the need, scope and timing of hearings and discovery, I cancelled the hearing scheduled in this matter for July 23, 2025 until the parties’ outstanding Preliminary Objections and Discovery Motion are resolved.

On June 27, 2025, Respondent timely filed an answer to the Discovery Motion (Discovery Answer), arguing that the Discovery Motion should be denied

because discovery would be moot if the Preliminary Objections are granted and the Complaint is dismissed in its entirety. Further, Respondent contended that if, on the other hand, the Preliminary Objections are denied, the Complainants would still have ample opportunity to engage in further permissible and relevant discovery. Discovery Answer ¶¶ 10, 11, 13, 16-18. In any event, FirstEnergy requested for the Preliminary Objections to be decided first because the outcome will directly impact the proper scope of the issues to be addressed and, in turn, the scope of what discovery is relevant to the surviving issues. *Id.* ¶¶ 12, 14-15.

On July 1, 2025, Complainants filed an Answer to Met-Ed's Answer Opposing Complainants' Motion to Open Discovery and Request for Judicial Clarification (Reply to Discovery Answer). In this pleading, Complainants agreed that it was proper for the Preliminary Objections to be ruled on before proceeding with discovery and requested such ruling. Reply to Discovery Answer ¶¶ 3-4. Complainants further requested that the Respondent's Preliminary Objections and request for dismissal of the Complaint should be denied, and discovery should be opened and proceed in accordance with a new litigation schedule. *Id.* at 3-4 (Conclusion).

Respondent's Preliminary Objections and Complainants' Discovery Motion are procedurally ready to be ruled upon. For the reasons discussed below, the Preliminary Objections will be granted in part, the Complaint dismissed, and the Discovery Motion will be denied as moot.

FINDINGS OF FACT

1. The Complainants are Terry and Betty Bente, who reside at 865 Hilltown Road, Biglerville, PA 17307 (service location). Complaint ¶ 1.

2. The Respondent is FirstEnergy Pennsylvania Electric Company, Met-Ed Rate District.

3. On July 12, 2017, Complainants filed a Formal Complaint against Metropolitan Edison Company at Docket No. C-2017-2614219 wherein they disputed the mandatory installation of a smart meter for the same customer service location and same service account that is at issue in the present matter. Complaint ¶¶ 1, 4; *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 (Opinion and Order entered Nov. 7, 2024).

4. The evidentiary record in the 2017 complaint proceeding was reopened in December 2023, after the Pennsylvania Supreme Court's decision in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022), so that parties could file briefs or to supplement briefs previously filed and make appropriate requests for relief. *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219, at 7 (Initial Decision issued Apr. 10, 2024).

5. The record in the 2017 complaint proceeding was reclosed in March 2024. *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219, at 7 (Initial Decision issued Apr. 10, 2024).

6. On April 10, 2024, the Commission issued the Initial Decision of Administrative Law Judge (ALJ) Jeffrey A. Watson, which dismissed the Bentes' 2017 complaint for failing to prove by a preponderance of the evidence that that (1) smart meter installation is not mandatory or (2) the installation of a smart meter constitutes unsafe or unreasonable service under Section 1501 of the Code, or violates any other provision of the Code, Commission regulation, Commission Order, or Met-Ed's Commission-approved tariff. Complaint ¶ 4; *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 (Initial Decision issued Apr. 10, 2024).

7. On November 7, 2024, the Commission issued an Opinion and Order that adopted ALJ Watson’s Initial Decision and dismissed the 2017 complaint on the merits. *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 (Opinion and Order entered Nov. 7, 2024).

8. The Bentes did not seek review of the Commission’s dismissal of the 2017 complaint from the Commission or appellate courts. Amended Answer to Preliminary Objections ¶ 2; *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 (Opinion and Order entered Nov. 7, 2024).

9. Complainants do not consent to the installation of a smart meter at the service location, and Respondent has not installed a smart meter there. Complaint ¶ 4, 4(1).

10. On March 17, 2025, the Bentes filed the present Complaint against Met-Ed alleging that installing a smart meter is not mandatory and that, by installing a smart meter on their property, Met-Ed would violate state and federal law, provisions of the Code and Commission regulations. Complaint ¶¶ 4-5.

11. On April 23, 2025, Respondent filed an Answer and New Matter to the Complaint.

12. On April 23, 2025, Respondent also filed Preliminary Objections to the Complaint requesting that the Complaint be dismissed in its entirety because it is legally insufficient on two grounds: (1) it is barred by 66 Pa.C.S. § 316 and (2) the relief requested cannot be granted.

13. On May 2, 2025, Complainants filed a response to Respondent’s Preliminary Objections.

14. On May 12, 2025, Complainants filed an amended response to Respondent's Preliminary Objections wherein they aver that the new and different facts and legal theories they raise in the Complaint were not previously adjudicated in *Povacz II* and the 2017 complaint proceeding. Amended Response to Preliminary Objections ¶¶ 1-5.

15. The statutes, constitutional provisions and regulations that Complainants allege are violated by mandatory installation of smart meters in their Complaint hinge on the Complainants' interpretation of Act 129 and the health, safety, privacy and constitutional challenges that were already heard in the 2017 complaint proceeding.

16. The same relief is requested in the instant Complaint as was requested in the 2017 complaint, i.e. Mr. and Mrs. Bente want Met-Ed to continue providing electric service without installing a smart meter on their house or property.

DISCUSSION

Preliminary Objections

Commission regulations permit the filing of preliminary objections. 52 Pa. Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

Preliminary objections are limited to the following grounds:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a)(1-7).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Department of Auditor Gen. v. State Emps. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of

deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

As set forth in their Complaint, Complainants seek to prevent installation of a smart meter at their home. In support, they state that mandatory installation of a smart meter would be in violation of Act 129, Constitutional amendments, and additional Pennsylvania statutes and Commission regulations.

In its Preliminary Objections, FirstEnergy seeks to dismiss the present Complaint in its entirety, with prejudice, on the grounds that it is legally insufficient because (1) it is barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316⁵ and (2) the requested relief cannot be granted by the Commission. *See* 52 Pa. Code § 5.101(a)(4).

Section 316 of the Public Utility Code

As a threshold matter, FirstEnergy notes that it raised Section 316 in its New Matter to the Complaint and asks that, to the extent the Commission finds Section 316 to be an affirmative defense more appropriately addressed in a motion for judgment on the pleadings, that its Preliminary Objection be treated as a Motion for Judgment on the Pleadings “in the interest of administrative and judicial efficiency.” Preliminary Objection ¶ 21, n.3 (citing *Raintree Farm Solar v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2621826 (Initial Decision issued Nov. 9, 2017), *adopted* (Order entered Jan. 16, 2018) (*Raintree*)).

⁵ FirstEnergy raised the associated doctrines of *res judicata* and collateral estoppel as bars to the Complaint in its New Matter but not in its Preliminary Objections. For that reason, I do not address those affirmative defenses in this ruling.

In *Raintree*, the ALJ found that *res judicata* was an affirmative defense not properly raised in a preliminary objection, and treated it as a motion for judgment on the pleadings. After finding that *res judicata* was not an appropriate ground for dismissal,⁶ the ALJ considered whether Section 316 barred the Complaint (and subsequently found that it did).

In a more recent Opinion and Order, the Commission found that *res judicata* can be raised as a preliminary objection in certain circumstances. *Stillwater Lakes Coal. of Indep. Owners v. Stillwater Sewer Corp.*, Docket No. C-2022-3031532 (Opinion and Order entered Dec. 22, 2022) (*Stillwater*). The Commission stated:

It is permissible, from a procedural standpoint, to raise a Preliminary Objection to the legal sufficiency of the Complaint on the ground of *res judicata* where, as here, the Complaint references a prior proceeding and/or asserts the same facts and issues raised in that prior proceeding. *See Kelly v. Kelly*, 887 A.2d 788 (Pa. Super. 2005); *Del Turco v. Peoples Homes Sav. Ass'n.*, 478 A.2d 456 (Pa. Super. 1984). Further, where an answer is filed to a preliminary objection raising an affirmative defense of *res judicata* or collateral estoppel, the party filing the answer waives any challenge to the preliminary objects [*sic*] on the ground of procedural defect. *Button v. Button*, 548 A.2d 316 (Pa. Super. 1988).

Stillwater at 11. Applying the same reasoning to Section 316, I find that the circumstances present in *Stillwater* exist here: the instant Complaint specifically references the 2017 complaint proceeding and Complainant filed an answer to the preliminary objection raising Section 316 as a bar to the Complaint. *See* Complaint ¶ 4; Amended Answer to Preliminary Objections ¶¶ 2, 4(b), 5.

⁶ The ALJ found that the requirements for *res judicata* were not satisfied because the prior case was resolved through a certificate of satisfaction rather than a final judgment on the merits. *Raintree*.

Accordingly, to the extent that the Commission finds Section 316 to be an affirmative defense like *res judicata* or collateral estoppel, under the circumstances present here, I find Section 316 to be permissible grounds for a preliminary objection to the legal sufficiency of the Complaint. As such, I did not elect to treat the preliminary objection as a motion on the pleadings.

Turning to the substance of the preliminary objection, Section 316 of the Public Utility Code provides, in pertinent part, that “[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.” 66 Pa C.S. § 316. Section 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 548 (Pa. Cmwlth. 1989) (*Lehigh*).

Respondent avers that the Bentes’ 2017 complaint disputed the installation of a smart meter for the same customer service location and same service account. Preliminary Objections ¶¶ 17, 18. Further, in both complaints, Complainants seek the same relief – to maintain electric service at their property without having a smart meter installed. *Id.* ¶ 19. On November 7, 2024, the Commission issued a Final Order dismissing that Complaint on the merits. Complainants did not file a petition for review with the Commonwealth Court.

In their instant Complaint and answer to the Preliminary Objections, Complainants acknowledge the finality of the Commission’s action on their 2017 complaint. 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.

Amended Answer to Preliminary Objections ¶ 2. However, Complainants contend that the instant Complaint is not barred by 66 Pa.C.S. § 316 because the specific violations of statutes, Constitutional amendments, and Commission regulations they raise were not adjudicated in the 2017 proceeding.⁷ Complaint, Attachment ¶ 4; Amended Answer to Preliminary Objections ¶ 5.

I disagree with Complainants. The Complaint concerns the same property under the same customer account that was the subject of the 2017 complaint. The issues and cause of action are also the same, i.e. the propriety of the installation of a smart meter at Complainants' service address. Complainants argue in both complaints that the law does not mandate smart meter installation and request the same relief – to maintain electric service with an analog meter.⁸ While the instant Complaint discusses a list of different statutes and regulations that would be violated by mandatory smart meter installation, all of the alleged violations hinge on Complainants' interpretation of Act 129 and the health, safety, privacy and constitutional challenges heard in the 2017 complaint proceeding.⁹ Simply put, the alleged violations cannot be proven without relitigating whether installation of smart meters is mandatory and poses health and safety hazards.

⁷ As noted above, Complainants dispute Respondent's assertion that the Commission dismissed the 2017 complaint with prejudice. Complainants are correct. The 2017 complaint was simply dismissed. *Bente*.

⁸ *Bente I.D.* at 19 (“The only relief or accommodation requested by Complainants was that they be permitted to keep their analog meter in place at their residence”).

⁹ Complainants acknowledge that they presented constitutional claims in the 2017 complaint proceeding but state that they “rescind” those claims. Amended Answer to Preliminary Objections ¶ 6.

Also, contrary to Complainants' assertions, the issues raised in the second Complaint are not distinguished from those already decided by virtue of any intervening change in law. Complaint ¶ 4; Amended Answer to Preliminary Objections ¶ 4.

Complainants state:

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.

Amended Answer to Preliminary Objections ¶ 4. While the first complaint was filed in 2017, the Commission's Opinion and Order on the 2017 complaint was issued only 10 months ago.¹⁰ Both the Initial Decision and Commission's Opinion and Order were issued in 2024, well after the Pennsylvania Supreme Court's August 2022 decision in *Povacz II*. Further, after *Povacz II*, the ALJ reopened the evidentiary record and afforded Complainants an opportunity to file briefs or to supplement briefs previously filed and to make appropriate requests for relief. *Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 at 7 (Initial Decision issued Apr. 10, 2024) (*Bente I.D.*). Complainants made no additional filings before the record was reclosed in March 2024. Following the Initial Decision, Complainants filed Exceptions and Reply Exceptions that were considered by the Commission in rendering its Opinion and Order. Thus, to the extent there have been

¹⁰ This delay was due in significant part to the three-year stay of the 2017 complaint proceeding in response to the Commonwealth Court's decision in *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*) and subsequent appeal. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order issued Nov. 14, 2023).

changes in the application of Act 129 since Complainants filed their first complaint in 2017, they had the opportunity to address them during the 2017 complaint proceeding.

Then, based on a fully-developed record that included Complainants' testimony, exhibits, and arguments made on the record and in briefs and exceptions, the Commission entered its judgment on the merits of the case in an Opinion and Order that affirmed the ALJ's Initial Decision, which dismissed the First Complaint for failing to prove by a preponderance of the evidence that (1) smart meter installation is not mandatory or (2) the installation of a smart meter constitutes unsafe or unreasonable service under Section 1501 of the Code, or violates any other provision of the Code, Commission regulation, Commission Order, or Met-Ed's Commission-approved tariff. *See Bente; Bente I.D.* The Commission's order in the 2017 complaint proceeding was not appealed or otherwise set aside, annulled or overturned and, thus, bars any future suit between the same parties on the same cause of action. 66 Pa.C.S. § 316; *see also Smiles v. PPL Elec. Utils. Corp.*, Docket No. C-2021-3026268 (Opinion and Order issued Dec. 19, 2024); *Gorash III v. West Penn Power Co.*, Docket No. C-2022-3037338 (Opinion and Order entered Sept. 12, 2024).

When accepting as true all well pleaded material facts in the Complaint, as well as every reasonable inference from those facts, and viewing the Complaint in this case in the light most favorable to the Bentes, it is clear as matter of law that Complainants are not entitled to relief from the Commission for claims which have already been decided on the merits by the Commission in its Opinion and Order on the 2017 complaint. Therefore, FirstEnergy's Preliminary Objection regarding 66 Pa.C.S. § 316 is granted.

The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and

when the question presented is one of law, the Commission need not hold a hearing. *Lehigh; Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth 1993). Here, the Complainants are barred from bringing this Complaint by the Commission's final action in the 2017 complaint proceeding and thus a hearing in this matter is not necessary. The Complaint will be dismissed in the Ordering Paragraphs below.

Requested Relief Cannot Be Granted by the Commission

Because the Second Complaint will be dismissed based on the provisions of Section 316 of the Public Utility, I will not address FirstEnergy's second ground for seeking dismissal of the present Complaint.

Motion to Open Discovery

Because the Complaint is dismissed, the Discovery Motion filed by Complainants on July 1, 2025 is moot and shall be denied.¹¹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101.

¹¹ I note that Complainants filed a reply to FirstEnergy's answer to their Discovery Motion. Where, as here, the answer does not raise seek affirmative relief or raise new matter, replies are not permitted under the Commission's regulations and thus were not considered in this Decision. 52 Pa. Code §§ 5.1, 5.61, 5.63.

3. When considering preliminary objections, the Commission must determine whether the law says with certainty, based on well-pleaded factual averments of the complainant, that no recovery or relief is possible. *Department of Auditor Gen. v. State Emps. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections on the ground of legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(4).

5. Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. 66 Pa.C.S. § 316.

6. 66 Pa.C.S. § 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989).

7. The Complaint is an impermissible attempt to collaterally attack the Commission's order entered on November 7, 2024 at Docket No. C-2017-2614219.

8. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b), 52 Pa. Code § 5.21(d).

9. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing.

Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth 1993).

10. Complainants are barred from bringing this Complaint by virtue of the Commission's final action at Docket No. C-2017-2614219 and thus a hearing on this matter is not necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That FirstEnergy Pennsylvania Electric Company's Preliminary Objections, in the matter of Terry and Betty Bente v. FirstEnergy Pennsylvania Electric Company, at Docket No. C-2025-3054387, are granted in part.

2. That the Formal Complaint filed by Terry and Betty Bente at Terry and Betty Bente v. FirstEnergy Pennsylvania Electric Company, at Docket No. C-2025-3054387, is dismissed.

3. That the motion of Terry and Betty Bente to open discovery, filed on May 28, 2025, is denied.

