

April 12, 2025

Terry and Betty Bente
865 Hilltown Rd
Biglerville, PA 17307
717-372-3275

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente :
 : **Docket No. C-2025-3054387**
v. :
FirstEnergy Pennsylvania Electric :
Company :

April 12, 2025

Terry and Betty Bente
865 Hilltown Rd
Biglerville, PA 17307
717-372-3275

VIA ELECTRONIC FILING

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

Re: Terry and Betty Bente v. FirstEnergy Pennsylvania Electric Company
Docket No. C-2025-3054387

Dear Secretary Homsher:

Please find our Exceptions of Terry and Betty Bente to the Initial Decision of ALJ Gannon in the above case. **Exhibits referenced herein are filed separately as *Complainants' Exhibit Packet*.** Please do not hesitate to contact us should you have any questions.

Sincerely,

Terry Bente

Terry Bente

Betty Bente

Betty Bente

cc Tori L. Giesler
FirstEnergy Service Company
341 White Pond Drive
Akron, OH 44320
(610)-921-6783
(610) 921-6658
jameehan@firstenergycorp.com
tgiesler@firstenergycorp.com
ra-OSA@pa.gov

CERTIFICATE OF SERVICE

We hereby certify that we have this day served a true copy of the Complainants' Exceptions to the Initial Decision of ALJ Erin L. Gannon, upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Terry Bente

Terry Bente

Betty Bente

Betty Bente

Service by electronic mail, as follows:

James Austin Meehan

Tori L. Giesler

FirstEnergy Service Company (Met-Ed)

341 White Pond Drive

Akron, OH 44320

(610) 921-6783

(610) 921-6658

jmeehan@firstenergycorp.com

tgiesler@firstenergycorp.com, ra-OSA@pa.gov

Note: **Exhibits referenced herein are filed separately as *Complainants' Exhibit Packet*.**

Dated: August 12, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente :
 :
 : **Docket No. C-2025-3054387**

v. :
FirstEnergy Pennsylvania Electric :
Company :

COMPLAINANTS’ EXCEPTIONS TO INITIAL DECISION

(Filed Pursuant to 52 Pa. Code § 5.533)

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.533, Complainants Terry and Betty Bente respectfully submit these Exceptions to the Initial Decision issued on July 23, 2025, by Administrative Law Judge Erin L. Gannon (“ALJ”). The Initial Decision granted Respondent’s Preliminary Objections and dismissed Complainants’ Formal Complaint under 66 Pa.C.S. § 316, primarily relying on res judicata (Initial Decision p.3,11,12,13) from prior proceedings.

This dismissal is legally and factually erroneous. The Pennsylvania Supreme Court has made clear that § 316 does not bar constitutional claims, statutory claims under distinct provisions, or new evidence demonstrating ongoing violations. See *Povacz v. Pennsylvania PUC*, 285 A.3d 542 (Pa. 2022); *Romeo v. Pennsylvania PUC*, 344 A.3d 695 (Pa. Cmwlth. 2023).

The ALJ’s decision also ignored Complainants’ constitutional claims under:

- **Article I, § 1** – inherent rights to privacy, bodily integrity, and the dictates of conscience
- **Article I, § 3** – religious freedom
- **Article I, § 8** – protection against unreasonable searches
- **Article I, § 27** – environmental rights
- **Article I, § 26** – equal protection of rights

and under the **Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL)**, 73 P.S. §§ 201-1 et seq. The PUC has an independent, non-delegable duty to balance these constitutional rights before implementing mandates such as universal smart meter installation under 66 Pa.C.S. § 2807(f)(3).

Furthermore, the ALJ’s decision failed to address undisputed evidence of:

1. Technical hazards and failures associated with smart meters, including underground wiring faults and fire risks;
2. The lack of cost-effectiveness for the program as shown in Office of Consumer Advocate (OCA) testimony; and
3. Disparate treatment between Pennsylvania customers and customers in other states served by the same corporate family (e.g., Ohio and New Jersey), where opt-outs are allowed.

Complainants also object to the failure to reopen the record to include newly-available, material evidence such as *Povacz*, *Romeo*, legislative developments (e.g., pending SB 600), and expert reports on smart meter safety, privacy risks, and environmental impact.

Finally, Complainants contend that the ALJ’s approach to bodily autonomy issues is analogous to the government mandating medical interventions, such as compulsory vaccination, without respecting individual conscience and bodily integrity. As the U.S. Supreme Court stated in *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250 (1891), “[n]o right is held more sacred...than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”

For these reasons, and as set forth in the following Exceptions, the Commission should reject the Initial Decision and remand for a full evidentiary hearing.

II. STATEMENT OF THE CASE

Complainants are residential customers of Respondent FirstEnergy Pennsylvania Electric Company d/b/a Met-Ed (“Met-Ed”) and have continuously opposed the forced installation of a wireless RF-emitting smart meter on their home due to religious, privacy, health, environmental, and safety concerns.

In 2017, Complainants filed a prior Formal Complaint (Docket No. C-2017-2614219) challenging Met-Ed’s attempted installation. That matter was resolved without an evidentiary hearing through entry of a Certificate of Satisfaction filed by Respondent, which Complainants did not oppose at the time because no meter installation was imminent. That proceeding was not decided on the merits and thus there was no factual record, constitutional analysis, or legal determination regarding the claims now presented.

In 2025, following renewed attempts by Met-Ed to install a smart meter, Complainants filed the instant Formal Complaint (Docket No. C-2025-3054387) asserting violations of:

- Article I, § 1 (right to privacy, bodily integrity, dictates of conscience);
- Article I, § 3 (religious freedom);
- Article I, § 8 (privacy and search protections);
- Article I, § 27 (Pennsylvania Environmental Rights Amendment);
- The UTPCPL;
- The federal and state Free Exercise Clauses; and
- Statutory violations under 66 Pa.C.S. §§ 1501, 2807(f)(3), and related PUC regulations.

The ALJ issued an Initial Decision on July 23, 2025, granting Met-Ed’s Preliminary Objections and dismissing the Complaint under 66 Pa.C.S. § 316 and res judicata, citing the prior 2017 case (Initial Decision p.3,11,12,13).

The ALJ did not address:

- Whether the prior proceeding barred the present claims under *Balent v. City of Wilkes-Barre*, 669 A.2d 309 (Pa. 1995);
- Whether new facts and intervening changes in law (*Povacz, Romeo, Tandon v. Newsom*, 141 S.Ct. 1294 (2021)) create exceptions to res judicata; (Initial Decision p.3,11,12,13)
- Whether the Commission performed any constitutional analysis before implementing mandatory RF-emitting meters under § 2807(f)(3); or
- Complainants’ statutory claims under the UTPCPL and 66 Pa.C.S. §§ 1501, 2807(f)(3).

The dismissal without hearing also foreclosed the introduction of expert testimony, factual evidence, or public safety records—including evidence of smart meter fires, failures in underground service installations, premature meter replacements, and cost-effectiveness data.

III. SUMMARY OF EXCEPTIONS

Pursuant to 52 Pa. Code § 5.533, Complainants file these Exceptions to the Initial Decision of ALJ Erin L. Gannon. The Initial Decision should be rejected for the following reasons, each of which is more fully developed in the numbered Exceptions that follow:

- **Misapplication of Res Judicata and 66 Pa.C.S. § 316** – The(Initial Decision p.3,11,12,13) and § 316, because the prior 2017 proceeding was not adjudicated on the merits, involved no factual record, and did not address the constitutional and statutory issues raised here.
- **Failure to Address Intervening Changes in Law and New Facts** – Decisions in *Povacz v. PPL Elec. Utils. Corp.*, 269 A.3d 1195 (Pa. 2022), *Romeo v. Pa. PUC*, 239 A.3d 611 (Pa. Cmwlth. 2020), and *Tandon v. Newsom*, 141 S.Ct. 1294 (2021) constitute intervening legal authority requiring reconsideration of universal smart meter mandates. In addition, new facts exist, including smart meter fire reports, early replacement data,

and updated cost-effectiveness studies showing failure to achieve projected savings.

- **Failure to Conduct Required Constitutional Balancing** – Under *Pennsylvania Environmental Defense Foundation v. Commonwealth* (“PEDF IV”), 255 A.3d 289 (Pa. 2021), and *Denoncourt v. State Ethics Comm’n*, 470 A.2d 945 (Pa. 1983), the Commission must balance the Commonwealth’s objectives against individual constitutional rights before authorizing universal RF-emitting meter installation under 66 Pa.C.S. § 2807(f)(3). No such analysis was conducted.
- **Violation of Article I, § 1 (Privacy and Bodily Integrity)** – The Initial Decision fails to recognize that mandatory wireless meter installation infringes the fundamental rights to privacy, bodily autonomy, and freedom from government-compelled exposure to health and safety risks. This infringement is **analogous to compelled vaccination** without consent, as prohibited by longstanding due process jurisprudence (*Union Pacific Ry. Co. v. Botsford*, 141 U.S. 250 (1891)).
- **Violation of Article I, § 3 and the Free Exercise Clause** – The Initial Decision disregards the requirement under *Tandon* that comparable secular exemptions (e.g., for technological infeasibility, remote locations, or inventory shortages) trigger strict scrutiny when religious accommodations are denied.
- **Environmental Rights Amendment Violation (Article I, § 27)** – Universal smart meter mandates without environmental review violate Article I, § 27 by failing to protect Pennsylvanians from foreseeable harms including RF emissions, toxic e-waste generation, and fire hazards, contrary to the Commission’s trustee duties.
- **Statutory Violations** – The Initial Decision fails to address Complainants’ statutory claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §§ 201-1 et seq., and 66 Pa.C.S. §§ 1501, 2807(f)(3), as well as related PUC safety regulations.
- **Premature Dismissal Without Hearing** – Dismissing without hearing deprived Complainants of the opportunity to introduce expert testimony,

factual evidence, and public safety records—including evidence of smart meter fires, premature replacements, underground wiring failures, and alternative technologies.

- **Need for Limited Discovery** – At minimum, the record should be reopened for limited discovery into smart meter fire incidents, lifespan, cost-effectiveness, and feasibility of non-transmitting meters. Such discovery is narrowly tailored and essential for a fair adjudication.

Complainants respectfully request that the Commission:

1. Sustain these Exceptions;
2. Vacate the Initial Decision; and
3. Remand for an evidentiary hearing with discovery as set forth herein.

IV. EXCEPTIONS

Exception 1 – Misapplication of Res Judicata and 66 Pa.C.S. § 316

The Initial Decision incorrectly concluded that Complainants' claims are barred by res judicata (Initial Decision p.3,11,12,13) and § 316 based on the prior proceeding at Docket No. C-2017-2614219.

Key Points:

- The 2017 matter was resolved **without a full evidentiary hearing**, based solely on preliminary pleadings.
- No **adjudication on the merits** of constitutional or statutory claims occurred.
- **Henion v. PUC**, 856 A.2d 95, 100 (Pa. Cmwlth. 2004) holds that res judicata applies only when there is:
 1. Identity of the thing sued upon;
 2. Identity of the cause of action;
 3. Identity of the parties; and

- 4. Identity of the capacity of the parties.
 - The “cause of action” in the prior case did **not** include present claims under:
 - **PA Const. Art. I, §§ 1, 3, 8, 27**
 - **UTPCPL**
 - Intervening precedent (*Povacz, Romeo, Tandon*).
 - **City of Pittsburgh v. Pa. PUC**, 43 A.2d 348 (Pa. 1945) confirms § 316 bars collateral attacks **only** on matters actually adjudicated.
-

Exception 2 – Violation of Article I, § 1: Privacy and Bodily Integrity

Constitutional Protection:

- **Pennsylvania Constitution, Article I, § 1** – Inherent rights to life, liberty, privacy, and the pursuit of happiness.
- **U.S. Constitution, 14th Amendment** – Due process includes protection for bodily integrity.
- **Union Pacific Ry. Co. v. Botsford**, 141 U.S. 250, 251 (1891) – “No right is held more sacred... than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”

Application:

- Mandatory wireless smart meter installation without consent intrudes upon the **fundamental right** to control one’s own body and home.
- The Commission’s universal mandate is **analogous to a compulsory medical procedure** — comparable to a government-imposed vaccination — where bodily integrity and autonomy are overridden without adequate constitutional justification.

- Continuous RF emissions from meters constitute an ongoing physical and informational intrusion.
-

Exception 3 – Failure to Conduct Required Constitutional Balancing (PSEA and Article I, §§ 1 & 27)

Balancing Requirement:

- **Pennsylvania Environmental Defense Foundation v. Commonwealth** (PEDF IV), 255 A.3d 289 (Pa. 2021) – Government must balance environmental trustee obligations with competing actions.
- **Denoncourt v. State Ethics Comm’n**, 470 A.2d 945 (Pa. 1983) – Constitutional balancing must occur before implementing programs affecting fundamental rights.

Application:

- The Commission approved a universal meter rollout without:
 - Balancing **privacy and bodily integrity rights** under **Art. I, § 1**;
 - Balancing **environmental rights** under **Art. I, § 27** (Environmental Rights Amendment).
 - The program generates **polycarbonate and metal e-waste**; poses fire risks from underground arcing; and intrudes upon informational privacy via granular data collection.
 - No record evidence shows the Commission performed the constitutionally required **PEDF balancing** prior to rollout.
-

Exception 4 – Violation of Article I, § 3 and the Free Exercise Clause (Tandon Standard)

Legal Standards:

- **Article I, § 3** of the Pennsylvania Constitution – Freedom of conscience and religion.

- **First Amendment, U.S. Constitution** – Free Exercise Clause.
- **Tandon v. Newsom**, 141 S.Ct. 1294 (2021) – Where comparable secular exemptions exist, denial of religious exemptions must satisfy **strict scrutiny**.

Application:

- FirstEnergy subsidiaries in **Ohio** and **New Jersey** allow opt-outs for secular reasons (technical infeasibility, inventory shortages, or rural dead zones).
 - Pennsylvania customers are denied similar accommodations for religious objections — a **clear disparate treatment** under Tandon.
 - Strict scrutiny requires the mandate be narrowly tailored to serve a compelling interest — a standard the Commission has **not met**.
-

Exception 5 – Violation of Article I, § 27: Environmental Rights Amendment

Constitutional Duty:

- **Article I, § 27** – “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”
- The Commonwealth is a **trustee** of these resources and must conserve and maintain them for future generations.

Application:

- Mass replacement of functional analog meters creates **tens of thousands of pounds of toxic e-waste** annually.
 - RF emissions contribute to environmental electromagnetic pollution.
 - The Commission did not conduct an environmental review or implement a recycling plan before approving the rollout — violating trustee obligations under **PEDF** and **Robinson Twp. v. Commonwealth**, 83 A.3d 901 (Pa. 2013).
-

Exception 6 – Statutory Violations and Failure to Address UTPCPL Claims

Statutory Basis:

- **73 P.S. § 201-1 et seq.** – Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL).
- **66 Pa.C.S. § 1501** – Public utilities must provide safe, reasonable, and adequate service.
- **PUC Safety Regulations:** 52 Pa. Code §§ 57.28, 57.251, 57.255, Ch. 56.

Application:

- Misrepresentations about the safety, lifespan, and necessity of smart meters constitute deceptive trade practices under UTPCPL.
 - Evidence exists of **fires, early meter failures, and underground line arcing** directly linked to smart meter installations.
 - Failure to address these hazards violates § 1501’s safe-service mandate.
-

Exception 7 – Premature Dismissal Without Hearing (Due Process Violation)

Due Process Standard:

- **Mathews v. Eldridge**, 424 U.S. 319 (1976) – Due process requires notice and a meaningful opportunity to be heard before deprivation of protected interests.

Application:

- Complainants were denied the chance to present expert testimony, cross-examine witnesses, or introduce evidence on safety, environmental impact, and reasonable alternatives.
 - A ruling on preliminary objections without hearing **short-circuited the factual record** and deprived Complainants of their rights under both the Pennsylvania and U.S. Constitutions.
-

Exception 8 – Need for Limited Discovery and Record Reopening

Authority:

- **52 Pa. Code § 5.571(b)** – Records may be reopened for additional evidence when necessary for a complete record.

Discovery Scope Requested:

- Incident reports of **smart meter fires** and electrical arcing.
- Data on **average meter lifespan** and **premature replacement rates**.
- **Cost-effectiveness analysis** versus original Act 129 projections.
- Feasibility studies for **non-transmitting meters** or **manual-read options**.

Application:

- Such discovery is narrowly tailored, directly relevant, and essential to resolving disputed safety, environmental, and constitutional issues.
- Denying discovery perpetuates an incomplete and misleading record.

EXCEPTION [Religious Analogy – COVID Vaccine] – Mandated Smart Meter Installation Analogous to Government-Imposed Medical Interventions

Complainants except to the Initial Decision’s failure to apply strict scrutiny to **religious objections to government-mandated technology**, analogizing to judicial treatment of **COVID-19 vaccine mandates**.

- **Comparable Secular and Religious Burden Analysis**
In *Tandon v. Newsom*, 141 S.Ct. 1294 (2021), the U.S. Supreme Court held that where the government treats any comparable secular activity more favorably than religious exercise, **strict scrutiny applies**. Like vaccination mandates, smart meter installation **forces a physical intrusion into the home environment** and compels compliance despite sincerely held religious beliefs about bodily integrity and stewardship of the home.

- **Analogy to COVID-19 Cases**

Courts in vaccine mandate cases recognized that the **intrusion upon the body or home environment**—where religious doctrine prohibits certain interventions—requires the least restrictive means of achieving the government’s interest. In both scenarios:

- The government asserts a public benefit (public health or energy efficiency).
- The affected individual asserts a religiously grounded refusal.
- Alternatives exist that can achieve the same objective with less burden (manual-read analog meters, non-transmitting endpoints).

- **Pennsylvania Constitutional Protection**

Article I, § 3 of the Pennsylvania Constitution explicitly protects the free exercise of religion. Pennsylvania courts (see *Hughes v. PUC*, 2021 Pa. Commw. LEXIS 769) have held that even generally applicable laws are subject to heightened scrutiny when religious burdens are at stake.

- **Requested Relief**

Complainants request that the Commission sustain this Exception, apply the **Tandon strict scrutiny framework**, and order an accommodation equivalent to those offered for technical or network reasons in other states, including **opt-outs in New Jersey and Ohio**.

EXCEPTION [Fire Safety] – Smart Meter Installation Poses Significant Fire and Safety Hazards

Complainants except to the Initial Decision’s failure to address substantial and credible evidence that **smart meter installations—particularly in older or underground-wired residential neighborhoods—create a heightened risk of electrical arcing, equipment overheating, and fires**. These hazards are well-documented in both Pennsylvania and other jurisdictions.

- **Historical and Technical Evidence**

Reports from utility safety advisories, fire marshal investigations, and prior PUC complaints (e.g., *Romeo v. PUC*, 154 A.3d 422 (Pa. Cmwlth. 2017)),

and testimony in *Bente v. Met-Ed*, C-2017-2614219) describe incidents of **electrical failures** including aging underground laterals, water seepage, and incompatibility with legacy equipment. In our case, several small appliances and an **electric stove malfunctioned following utility outages**—further confirming the **real-world, personal safety impact** on our household.

- **Applicable Law**

Under **52 Pa. Code § 57.28(a)(1)** and **§ 57.259(b)-(c)**, utilities must maintain safe facilities and correct conditions that pose a danger to life or property. The **Pennsylvania Supreme Court in Povacz v. PUC** emphasized that safety concerns warrant full factual development and cannot be dismissed at the preliminary stage.

- **Requested Relief**

Complainants request the Commission sustain this Exception, reopen the evidentiary record for hazard reports, fire incident logs, and underground wiring fault data, and prohibit installation until a safety clearance is established for our property.

Respectfully submitted,

Terry and Betty Bente, Complainants, Pro Se
865 Hilltown Road
Biglerville, PA 17307
Complainants, Pro Se

Terry Bente
Terry Bente

Betty Bente
Betty Bente

Dated: August 12, 2025