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August 22, 2025

VIA ELECTRONIC FILING

Matthew 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:

Enclosed please find the Replies of FirstEnergy Pennsylvania Electric Company, (“Met-Ed Rate District¹”) to the Exceptions of Terry and Betty Bente regarding the above-referenced matter. This document has been served on the Complainants as shown in the Certificate of Service.

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

Respectfully submitted,

James Austin Meehan

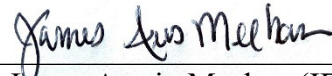
cc: Certificate of Service

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**

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

**FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY’S REPLIES TO
THE EXCEPTIONS OF TERRY AND BETTY BENTE**



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I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company² (the “Company”), hereby file its Replies to the Exceptions of Terry and Betty Bente (“Complainants”). Through the Exceptions, the Complainants dispute the well-reasoned Initial Decision (“ID”) issued by the Administrative Law Judge Erin L. Gannon (hereinafter, the “ALJ”) on July 23, 2025. The ID granted in part the Company’s Preliminary Objections and dismissed the Complaint, holding that the Complaint was an impermissible attempt to collaterally attack a Commission Order and, therefore, barred pursuant to 66 Pa.C.S. § 316. (ID at 18-19.)

As a threshold matter, the Complainants’ Exceptions do not conform with the Commission’s regulations as many are unnumbered³ and do not cite to the ID’s Findings of Fact, Conclusions of Law, or specific pages of the ID.⁴

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.

² 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 Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

³ The Exception titled “Religious Analogy—COVID Vaccine” will be referred to as Exception 9 and “Fire Safety” Exception will be referred to as Exception 10.

⁴ 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).

II. REPLIES TO EXCEPTIONS

A. REPLY TO EXCEPTION NO. 1: THE ALJ PROPERLY HELD THAT THE COMPLAINT IS BARRED BY SECTION 316 OF THE CODE

Pursuant to 66 Pa.C.S. § 316, the instant Complaint is barred by the Commission's Order in the First Complaint proceeding.⁵ Section 316 states, in relevant part:

Whenever the [c]ommission 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.

Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided.⁶ Section 316 precludes a collateral attack upon a Commission order which has not been reversed upon appeal. *See Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989) (citing 66 Pa.C.S. § 316). The *First Complaint Order* rejecting the Complainants' arguments relating to the Company's installation of a smart meter at the Service Address has not been set aside, annulled, or otherwise overturned.

In addition, the Commission should reject the Complainants' flawed claim that Section 316 of the Public Utility Code does not apply. (Exceptions at 10.) The Complainants rely on legal authorities that bear no relevance not explicitly discuss Section 316.⁷ Moreover, as clearly explained by the ALJ, Section 316 applies here:

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

⁵ *See Bente v. Metro. Edison Co.*, Docket No. C-2017-2614219 (Order entered Nov. 7, 2024) ("*First Complaint Order*").

⁶ *See Moore, Jr. v. PECO Energy Co.*, Docket No. C-2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), *adopted without modification*, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012); *see also Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Initial Decision issued Feb. 24, 2020), *adopted without modification*, Docket No. C-2019-3014786 (Order entered May 21, 2020).

⁷ *See City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. 1945); *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) ("*Povacz IF*"); *Romeo v. Pa. PUC*, 154 A.3d 422 (Pa. Cmwlth. 2017).

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

To the extent that the Complainants wanted to challenge the Commission’s *First Complaint Order*, they should have appeal that decision to the Commonwealth Court. They failed to do so and, therefore, cannot collaterally attack the Commission’s *First Complaint Order* through another Formal Complaint. That is precisely the reason why the General Assembly enacted Section 316 of the Public Utility Code.

The Complainants also dispute that the Complaint is barred by the doctrine of *res judicata*. (Exceptions at 9.) Even though all the requirements for *res judicata* apply here, the Complainants fail to recognize that the ALJ relied on Section 316 of the Public Utility Code and did not reach a finding on whether the Complaint is barred by *res judicata*. Therefore, the Complainants’ arguments centering around *res judicata* should be rejected.

Lastly, the Complainants claim that because they are now applying new laws to an identical set of facts, there has been “no adjudication on the merits of the constitutional or statutory claims,” (Exceptions at 9.) As discussed more fully in Section II.B,⁹ *infra*, the ALJ properly found that,

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.¹⁰

As such, the ID’s findings and dismissal of the Complaint pursuant to Section 316 should be adopted without modification.

Based on the foregoing, the Commission should deny the Complainants’ Exception No. 1.

⁸ *ID* at 14.

⁹ Section II.B, *infra*, is fully incorporated to the present section as though fully set forth herein.

¹⁰ *ID* at 9.

B. REPLIES TO EXCEPTIONS NOS. 2-6 AND 9: THE ALJ CORRECTLY FOUND THAT THE ISSUES RAISED IN THE SECOND COMPLAINT ARE NOT DISTINGUISHED BY ANY CHANGE IN LAW

The Complainants claim the ALJ erred by not considering legal arguments implicating state, federal, and constitutional law. (Exceptions at 10-13.) The ALJ correctly held that:

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.¹¹

Nothing in the Public Utility Code, the Commission's orders and regulations, or the Company's Smart Meter Deployment Plan states that a customer can opt-out of, or rescind, a smart meter installation. Indeed, on August 16, 2022, the Supreme Court of Pennsylvania issued its Opinion affirming in part and reversing in part the Commonwealth Court's decision in *Povacz I*.¹² Specifically, the Supreme Court in *Povacz II* held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company ("EDC") cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff."¹³

While the Complainants also refer to various cases, including *Povacz II* and *Romeo*¹⁴ as "intervening precedent" these cases were in fact cited in the Initial Decision in the First Complaint

¹¹ ID at 9.

¹² *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) ("*Povacz I*")

¹³ See *Povacz II*, at 1012-1014.

¹⁴ *Romeo*, 154 A.3d 422.

proceeding and support the proposition that relief request in this Complaint cannot be granted by the Commission. *See Bente v. Metropolitan Edison Co.*, Docket No. C-2017-2614219 (Initial Decision issued April 10, 2024). Law that was in effect at the time of the *First Complaint Order* is not, by its nature, a change in law.

Further, the Complainants' constitutional claims should be rejected. (Exceptions at 10-15.) In *Povacz I*, the Commonwealth Court previously held that "[c]onstitutional protections apply against state actors," and "PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers."¹⁵ The Pennsylvania Supreme Court did not disturb that finding in *Povacz II*. Given that both PECO and FE PA are similarly-situated EDCs, FE PA is not a state actor that can violate the Complainants' constitutional rights by installing a smart meter. As such, the Complainants' constitutional claims are without merit and should be rejected.

Equally flawed is the Complainants argument based on the Environmental Rights Amendment ("ERA") under the Pennsylvania Constitution, Pa. Const. Art. I, § 27, and related appellate court precedent. (Exceptions at 11-12.) According to the Complainants, the Commission violated the ERA by requiring the system-wide deployment of smart meters due to the "tens of thousands of pounds of toxic e-waste annually." (Exceptions at 12.) However, the Complainants improperly introduce and rely on extra-record evidence as alleged support, as explained in Section II.E, *infra*. Further, as a creature of statute, the Commission "has only those powers which are expressly conferred upon it by the Legislature, and those powers which arise by necessary implication."¹⁶ Therefore, even if the Commission must comply with its trustee obligations under the ERA, the ERA does not empower the Commission to grant relief that exceeds its powers. Here, as the Pennsylvania Supreme Court held that Act 129's plain language requires the system-wide

¹⁵ *Povacz I*, 241 A.3d 481, 486 n.9.

¹⁶ *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted).

deployment of smart meters and that even if a smart meter complainant meets their burden of proof, the complainant is only “entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”¹⁷ As such, the Complainants’ argument based on the ERA has no merit.

Finally, the Commission should reject the Complainants’ argument that the installation of a smart meter violates the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”). (Exceptions at 13.) As the Commission held in *Torakeo v. Pennsylvania American Water Company*, “it is clear under Pennsylvania law that the Commission does not have jurisdiction over such claims” alleging violations of the UTPCPL. *Torakeo v. Pa. American Water Co.*, Docket No. C-2013-2359123, at 10 (Order entered Apr. 3, 2014). Thus, the Complainants’ allegations that a smart meter’s installation would violate the UTPCPL should be denied.

For these reasons, the Commission should deny Exceptions Nos. 2-6 and 9.

C. REPLY TO EXCEPTION NO. 7: THE ALJ PROPERLY FOUND THAT NO EVIDENTIARY HEARING WAS REQUIRED

The Complainants claim their due process rights were violated because there was no evidentiary hearing. The ALJ properly found that,

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).¹⁸

The ALJ correctly applied the law to the Complainants’ case. Evidentiary hearings are not an absolute right, and the Commission has discretion under the Public Utility Code to dismiss

¹⁷ See *Povacz II* at 1012-14.

¹⁸ ID at 18-19.

Complaints not in the public interest. 66 Pa.C.S. § 703(b). Further, the ALJ correctly relied on longstanding legal authority that Commissions need not hold a hearing where the question presented is one of law.¹⁹ Here, the question at issue in the order, whether to grant the Company's Preliminary Objections, was one of law. Therefore, the ALJ properly granted the Company's Preliminary Objection and dismissed the Complaint without an evidentiary hearing.

For these reasons, the Commission deny the Complainants' Exception No. 7.

D. REPLIES TO EXCEPTIONS NOS.8 AND 10: THE ALJ PROPERLY DENIED THE COMPLAINANTS' MOTION TO OPEN DISCOVERY AS MOOT, AND THE COMMISSION SHOULD DENY THE COMPLAINANTS' REQUEST TO REOPEN THE RECORD

The ALJ correctly denied the Complainants' Motion to Open Discovery as moot, due to the dismissal of the Complaint.²⁰ (See Exceptions at 14; ID at 17.) As noted in the Company's Answer to the Complainants' Motion, the Commission has stayed discovery pending preliminary objections out of concerns for the resources involved where the status of the parties is uncertain.²¹ Thus, it is in keeping with Commission practice not to conduct discovery where a case has been dismissed, and the ALJ correctly denied the Motion to Open Discovery.

Likewise, the Complainants' request to reopen the record has no merit.²² (Exceptions at 15-16.) The ALJ granted FE PA's Preliminary Objections and dismissed the Complaint because the Complaint was barred by Section 316 of the Public Utility Code.²³ Accordingly, there is no need to reopen any evidentiary record. Furthermore, even if the Complainants prevail on their

¹⁹ *Lehigh Valley Power Comm*, 563 A.2d 548.

²⁰ ID at 17.

²¹ Answer of FirstEnergy Pennsylvania Electric Company to the Motion of Terry and Betty Bente to Open Discovery, *Terry and Betty Bente v. FirstEnergy Pennsylvania Electric Co.*, Docket No. C-2025-3054387, filed June 27, 2025.

²² The Complainants make a request to reopen the record in both their Exceptions and a separately-filed Motion to Reopen the Evidentiary Record filed on August 12, 2025. Due to the duplicative requests, FE PA will respond to their request in these Replies to Exceptions.

²³ See ID at 9-20.

Exceptions, which they should not, then the matter would be set for hearings where an evidentiary record could be developed. Additionally, as explained in the following section, the Complainants cannot introduce and rely on extra-record evidence in support of their Exceptions, nor can they, as requested in their Motion to Reopen the Evidentiary Record, have their purported “evidence” admitted into the record without providing the Company an opportunity to object, present evidence in rebuttal, and cross-examine the Complainants.²⁴

Based on the foregoing, the Commission should deny the Complainants’ Exceptions Nos. 8 and 10.

E. REPLIES TO EXCEPTIONS NOS. 1-10: THE COMPLAINANTS IMPROPERLY INTRODUCE AND RELY UPON EXTRA-RECORD EVIDENCE

The Complainants attempt to introduce and rely on various items of extra-record evidence in their Exceptions. In fact, the Complainants even separately filed an “Exhibit Packet in Support of Exceptions to Initial Decision” along with their Exceptions. According to the Complainants, they filed this “Exhibit Packet” as a “separate document” to “avoid affecting the Exceptions page limit, but are expressly incorporated by reference into the Exceptions.” (Exhibit Packet at 4.)

It is well-established that parties cannot introduce and rely on extra-record evidence at the Exceptions stage.²⁵ Therefore, the Commission should disregard any extra-record evidence submitted by the Complainants in its entirety.

²⁴ See, e.g., *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (stating that “[a]mong 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”), *appeal denied*, 2015 Pa. LEXIS 1457 (Pa. 2015).

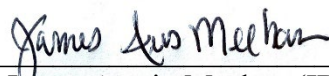
²⁵ See, e.g., *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *8-9 (Order entered Feb. 10, 1994) (denying party’s attempt to introduce extra-record evidence in its exceptions); *Arthurs v. Pa. Elec. Co.*, 2019 Pa. PUC LEXIS 197, at *14 (Order entered May 23, 2019) (“This Commission can consider only the evidence in the record before us, and we cannot consider extra record evidence or new arguments presented for the first time in the Exceptions stage of the proceeding.”).

Moreover, the Commission's regulations do not allow a party to circumvent the 40-page limit on Exceptions by filing a separate document. *See* 52 Pa. Code § 5.533(c). To permit otherwise would render the 40-page limit meaningless.²⁶

For these reasons, the Commission should disregard the Complainants' extra-record evidence and deny their Exceptions Nos. 1-10.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision, the Pennsylvania Public Utility Commission should deny the Exceptions of Terry and Betty Bente, adopt the Initial Decision without modification, and dismiss the Formal Complaint.



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Date: August 22, 2025

Counsel for FirstEnergy Pennsylvania
Electric Company

²⁶ Furthermore, legal authorities do not need to be admitted into the evidentiary record. Yet, a portion of the "Exhibit Packet" consists of supposed excerpts from legal authorities, like *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250 (1891).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TERRY AND BETTE BENTE

v.

**FIRSTENERGY PENNSYLVANIA
ELECTRIC COMPANY**

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Docket No. C-2025-3054387

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of this document of FirstEnergy Pennsylvania Electric Company, Met-Ed Rate District 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:

Terry and Betty Bente
[Sidi Ala Bahr@yahoo.com](mailto:Sidi_Ala_Bahr@yahoo.com)

Administrative Law Judge Erin L. Gannon
egannon@pa.gov

Dated: August 22, 2025



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