

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TERRY AND BETTY BENTE

v.

FIRST ENERGY PENNSYLVANIA

ELECTRIC COMPANY

VIA ELECTRONIC FILING

Docket No. C-2025-3054387

**SUPPLEMENTAL FILING: SUR-REPLY TO RESPONDENT’S REPLIES
TO EXCEPTIONS**

This filing is submitted under the “Reply–Exception” category in the Commission’s e-Filing system. Although styled within that category, it is expressly intended and titled as a Supplemental Sur-Reply to Respondent’s Replies to Exceptions, in support of Complainants’ pending Motion for Leave to File Sur-Reply.

(Submitted in Support of Complainants’ Motion for Leave to File Sur-Reply)

Complainants Terry and Betty Bente (“Complainants”), pro se, respectfully submit this Supplemental Filing in the above-captioned matter, styled as a Sur-Reply to Respondent’s Replies to Exceptions.

This Supplemental Filing is made in direct support of Complainants’ concurrently filed Motion for Leave to File Sur-Reply. This Sur-Reply corrects material misstatements contained in Respondent’s August 22, 2025 filing, including (1) Respondent’s inaccurate assertion that the 2017 Complaint was adjudicated on the merits, (2) Respondent’s mischaracterization of the number of Exceptions filed,

and (3) Respondent's misapplication of 66 Pa.C.S. § 316 to bar constitutional claims that have never been substantively adjudicated.

I. Procedural Clarification Regarding the 2017 Complaint:

Respondent asserts that Petitioners' present Complaint is barred under 66 Pa.C.S. § 316 by virtue of a 'prior adjudication' in the 2017 Complaint docket (C-2017-2614219). This assertion is misleading and materially incorrect. The 2017 Complaint did not result in a merits adjudication of Petitioners' constitutional or statutory claims. That case became final only because Petitioners, due to a critical family illness, were unable to pursue appellate review before the Commonwealth Court. This circumstance demonstrates that the dismissal was procedural only, not substantive, and that Petitioners were deprived of a full and fair opportunity to have constitutional claims heard. There was no Certificate of Satisfaction filed by Petitioners, and no adjudication on the merits of the constitutional questions raised. Under *Balent v. City of Wilkes-Barre*, 669 A.2d 309 (Pa. 1995), Section 316 applies only where there has been a final judgment on the merits. Because no merits determination ever occurred, Respondent's reliance on Section 316 is misplaced and must be rejected.

II. Preservation of Constitutional Claims:

Petitioners properly raised in their Exceptions claims under Article I, §§ 1, 3, and 27 of the Pennsylvania Constitution. Article I, § 1 guarantees privacy, bodily integrity, and the right to control one's personal environment. Article I, § 27 imposes upon the Commonwealth, including the Commission as trustee, a duty to conserve and maintain Pennsylvania's natural resources. The Commission has not performed the balancing test required under *Robinson Twp. v. Commonwealth*, 83A.3d 901 (Pa. 2013), and *Pa. Env'tl. Def. Found. v. Commonwealth*, 255 A.3d 289 (Pa. 2021). Additionally, Article I, § 3 and the Free Exercise Clause of the First Amendment require accommodations for sincerely held religious beliefs where comparable secular exemptions exist, as explained in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). The Commission's refusal to provide accommodations, despite granting secular technical accommodations, violates strict scrutiny. Finally, dismissal without hearing violates due process under the Fourteenth Amendment and Article I, § 1. As *Mathews v. Eldridge*, 424 U.S. 319 (1976) holds, due process

requires consideration of the private interest affected, the risk of erroneous deprivation, and the government's interest. Here, Complainants' fundamental constitutional rights outweigh any administrative convenience advanced by Respondent.

III. Denial of Hearing and Discovery:

Respondent defends the ALJ's refusal to permit an evidentiary hearing or discovery. This violates due process. Petitioners identified disputed factual issues, including safety risks, underground line faults, and adequacy of service under § 1501. Discovery was stayed pending preliminary objections and later declared moot upon dismissal, foreclosing Petitioners from developing the evidentiary record. This structural denial of discovery and hearing rights deprived Petitioners of any meaningful opportunity to be heard. As the Commonwealth Court explained in *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014), due process requires notice, an opportunity to present evidence, and an opportunity to rebut evidence offered by the opposing party. By refusing all discovery and hearing rights, the Commission deprived Petitioners of due process and insulated its decision from meaningful review.

IV. Respondent's Mischaracterizations:

Respondent's Replies mischaracterize the record in several respects. First, Respondent suggests Petitioners waived constitutional claims by not fully developing them in the 2017 Complaint. This is incorrect. Petitioners did not waive their rights; rather, due to critical family illness, they were prevented from pursuing appellate review. Constitutional rights are self-executing and cannot be waived by procedural default absent adjudication on the merits. Second, Respondent misstates the holdings of *Povacz* and *Romeo*. Neither case held that Act 129 eliminates constitutional protections. Instead, those cases addressed limited issues under § 1501 and burdens of proof. They do not bar Petitioners' privacy, ERA, or religious claims. Respondent's reliance on these cases is misplaced.

V. Clarification Regarding Number of Exceptions:

Respondent incorrectly asserts that Complainants filed '10 Exceptions.' This is false. Complainants filed 8 numbered Exceptions (I through VIII) in compliance with 52 Pa. Code § 5.533. The headings titled 'Religious Analogy — COVID Vaccine' and 'Fire Safety' were supporting arguments within those Exceptions, not stand-alone Exceptions. Respondent has artificially inflated the number of exceptions in order to manufacture a procedural defect. Even if formatting were imperfect, Pennsylvania law requires that pro se pleadings be liberally construed so that substantive rights are not lost through technical defects. See *Hess v. Pa. PUC*, 107 A.3d 246, 268 (Pa. Cmwlth. 2014). Respondent's attempt to reframe Complainants' filing is prejudicial and must be rejected.

VI. Relief Requested:

For the reasons set forth herein, and in Petitioners' Exceptions, the Commission should grant Complainants' Motion for Leave, accept this Supplemental Sur-Reply, reject Respondent's mischaracterizations, sustain Complainants' Exceptions, and remand this matter for evidentiary proceedings and constitutional balancing. Alternatively, the Commission should preserve all issues raised herein for judicial review before the Commonwealth Court.

Respectfully submitted,

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Dated: August 28, 2025

CERTIFICATE OF SERVICE

We hereby certify that we have this day served a true copy of the foregoing Supplemental Filing: Sur-Reply to Respondent's Replies to Exceptions upon the following individuals in accordance with 52 Pa. Code § 1.54:

- James A. Meehan, Esq., FirstEnergy Service Company –
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- Tori L. Giesler, Esq., FirstEnergy Service Company –
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- Administrative Law Judge Erin L. Gannon – egannon@pa.gov
- Office of Special Assistants – ra-OSA@pa.gov

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