

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held November 6, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Michael T. Jennings

C-2018-3006031

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the “PETITION FOR SUPERSEDEAS NOTICE THAT COMPLAINANT WILL APPEAL TO THE COMMONWEALTH COURT OF PENNSYLVANIA AND AFFIRMATION THAT THE CURRENT ANALOG METERS REMAIN IN PLACE DURING ONGOING LEGAL PROCEEDINGS” (Petition) of Michael T. Jennings (Mr. Jennings or Petitioner), appearing *pro se* in this matter, filed on September 11, 2025, in the above-captioned proceeding. The Petition requests that the Commission “stay the effectiveness” of the Opinion and Order of the Commission

entered September 11, 2025 (*September 2025 Order*).¹ Therein, the Commission, *inter alia*: (1) denied the Exceptions filed by Mr. Jennings on March 18, 2025 (Exceptions), to the Initial Decision of Administrative Law Judge (ALJ) Gail M. Chiodo, issued on February 28, 2025 (Initial Decision), wherein the ALJ denied the Formal Complaint (Complaint) filed by Mr. Jennings on November 15, 2018; (2) adopted the Initial Decision; (3) denied and dismissed the Complaint, with prejudice; (4) denied the Motion to Strike Reply Exceptions, filed by Mr. Jennings on June 13, 2025 (Motion to Strike);² and (5) denied the Motion to Stay Proceedings, filed by Mr. Jennings on August 8, 2025 (Motion to Stay). No Answer to the Petition has been filed.

For the reasons discussed below, when we disregard the form of the Petition, given the Petitioner’s *pro se* status, and construe the pleading in a light most favorable to Mr. Jennings, we shall deny the Petition. We find that the pleading does not establish any of the essential criteria for issuance of a stay and/or supersedeas of a Commission Opinion and Order under the standards of *Pa. PUC v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (*Process Gas*).

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that West Penn proposes to install at the Petitioner’s residence for use in the ordinary course of business to measure the Petitioner’s electricity consumption. West Penn, now a part of FirstEnergy Pennsylvania Electric Company (FirstEnergy PA), is an electric distribution company (EDC) subject to

¹ Because the Petition requests that the Commission stay the *September 2025 Order* “pending resolution of an appeal to the Commonwealth Court of Pennsylvania,” we shall regard the Petition as a Petition seeking a stay or supersedeas from the Commission’s *September 2025 Order*, pursuant to 52 Pa. Code § 5.572(a). Petition at ¶ 1.

² On March 28, 2025, West Penn Power Company (West Penn or the Company) filed Replies to Exceptions.

the jurisdiction of the Commission, and furnishes, owns, and maintains the meters in its distribution system.³ The Petitioner is a West Penn customer who has been notified of West Penn's intent to install a smart meter at his residence that provides the function of automatic meter reading (AMR). Mr. Jennings requested that West Penn not install a smart meter at his home due to health and safety concerns. Complaint at 3-4.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, [EDCs] shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter

³ See FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at Original Page No. 44, effective January 1, 2024. We clarify that at the time of initiation of the instant proceeding, FirstEnergy PA consisted of four separate companies: Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company. See *Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid- Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et al.*, Docket Nos. A-2023-3038771, *et al.* (Final Order entered December 7, 2023). Nonetheless, in this Opinion and Order, we shall refer to the Company as West Penn.

technologies the [EDC] proposes to install in accordance with paragraph (2).

(2) [EDCs] shall furnish Smart Meter technology as follows:

- (i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See* H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including West Penn, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Implementation Order*). West Penn sought and obtained the Commission’s approval to complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Its Smart Meter Deployment Plan*, Docket Nos.

M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding⁴

On November 15, 2018, Mr. Jennings filed the instant Complaint, seeking to prevent the installation of a smart meter at his home due to alleged health and safety concerns. Mr. Jennings posited that West Penn's attempt to install a smart meter at his home constitutes unsafe and unreasonable service, in violation of Sections 1501 and 1502 of the Code, 66 Pa.C.S. §§ 1501, 1502, and Section 57.194 of the Commission's Regulations, 52 Pa. Code § 57.194. As relief, Mr. Jennings requested, *inter alia*, that the Commission force the Company to cease all attempts to install a smart meter on his property. I.D. at 1-2; Complaint at 2-4.

On December 5, 2018, West Penn timely filed an Answer and New Matter to the Complaint (Answer and New Matter), denying the material allegations in the Complaint. West Penn argued that: (1) the Company is required by Act 129 to deploy smart meters, consistent with 66 Pa.C.S. § 2807; and (2) neither the Company's Commission-approved Smart Meter Deployment Plan nor the law permit the Company to refrain from the smart meter installation requirement or allow for an opt-out from smart meter installation. I.D. at 2; Answer and New Matter at 2-5, 9-10 (citing 66 Pa.C.S. §§ 1406(a)(4), 2806.1, 2807; 52 Pa. Code § 56.81(3)).

Also, on December 5, 2018, West Penn filed a Preliminary Objection in response to the Complaint (Preliminary Objection). On December 15, 2018, Mr. Jennings filed an Answer to West Penn's Preliminary Objection. I.D. at 2.

⁴ See *September 2025 Order* at 5-15 for a comprehensive summary describing the procedural history of this proceeding, which is incorporated herein by reference.

On January 25, 2019, ALJ Watson issued an Interim Order Denying West Penn’s Preliminary Objection.⁵ On July 5, 2019, ALJ Watson issued an Interim Order granting, in part, and denying, in part, Mr. Jennings’ Motion to Compel Discovery Responses (*July 2019 Interim Order*).⁶ In the *July 2019 Interim Order*, ALJ Watson sustained West Penn’s objections to, *inter alia*, Interrogatory No. 2 of Mr. Jennings’ Set II Discovery Requests.⁷

On November 22, 2019, Mr. Jennings filed a Revised Identification of Factual and Expert Witnesses and Expected Testimony.⁸ On November 25, 2019, Mr. Jennings filed a Certificate of Service (COS) indicating that he served on West Penn: (1) his own direct testimony (November 2019 Direct Testimony) and exhibits; and (2) the written testimony and exhibits of his expert and factual witnesses. I.D. at 3.

On March 16, 2020, a prehearing conference was held as scheduled.⁹ Mr. Jennings appeared *pro se* and the Company was represented by counsel. During the prehearing conference, the Company argued that Mr. Jennings’ written testimony and exhibits were due on September 19, 2019, but were not submitted until

⁵ On January 3, 2019, a Motion Judge Assignment notice was issued, assigning this matter to ALJ Watson. I.D. at 2.

⁶ On June 12, 2019, Mr. Jennings filed a Motion to Compel Discovery Responses (Motion to Compel). I.D. at 3. On June 17, 2019, West Penn filed a timely Answer to the Motion to Compel (Answer to Motion), pursuant to 52 Pa. Code § 5.61(a).

⁷ In its Answer to Motion, West Penn objected to No. 2 of Mr. Jennings’ Set II Discovery Requests, arguing that it sought “information related to customers who are not parties to this proceeding.” Answer to Motion at 3-4.

⁸ On April 1, 2019, Mr. Jennings filed an Identification of Factual and Expert Witnesses and Expected Testimony (Identification of Witnesses).

⁹ By Prehearing Conference Notice dated March 5, 2020, a Call-Out Prehearing Conference was scheduled for March 16, 2020.

November 22, 2019.¹⁰ ALJ Watson permitted the late submission and stated that he would allow Mr. Jennings to offer his submitted testimony, subject to any other evidentiary objections at the time of the hearing. Consequently, ALJ Watson granted West Penn’s request to extend the discovery and rebuttal deadlines. I.D. at 4 (citing March 2020 Tr. at 7-8, 14, 27-28, 40).

On July 7, 2020, ALJ Watson issued an Interim Order converting the in-person hearing scheduled for July 23-24, 2020, to a telephonic hearing and directing the Parties how to participate in the telephonic hearing (*July 2020 Interim Order*).¹¹ I.D. at 4. The *July 2020 Interim Order* directed, *inter alia*, that “[a]ny communications as well as documents and proposed exhibits provided to [ALJ Watson], must be emailed to [the legal assistant’s email address] with a copy of the email transmission and attachments copied by email to every other party on or before July 20, 2020 by 4:00 p.m.” *July 2020 Interim Order* at 2-3, Ordering Paragraph No. 3.

On or about July 11, 2020, Mr. Jennings filed, via the United States Postal Service, a revised version of his direct testimony dated July 1, 2020 (July 2020 Revised Testimony), and two flash drives.¹² I.D. at 5 (citing July 2020 Tr. at 158-59).

¹⁰ On August 12, 2019, ALJ Watson issued an Interim Order Providing for Third Revised Initial Litigation Schedule, which directed that Mr. Jennings submit direct testimony and all expert and fact witnesses, including all exhibits, on or before September 20, 2019.

¹¹ By Hearing Notice dated February 3, 2020, an in-person hearing was scheduled for July 23-24, 2020. Subsequently, by Corrected Hearing Notice dated July 7, 2020, the in-person hearing scheduled for July 23-24, 2020, was converted to a telephonic hearing on the same dates. I.D. at 3-5. We note that on or about March 16, 2020, the Commission’s offices were closed due to the Coronavirus pandemic (COVID-19 pandemic).

¹² Upon review of the Commission’s case management system, on July 15, 2020, Mr. Jennings filed two COSs indicating that he served his July 2020 Revised Testimony and exhibits on the Company and ALJ Watson.

On July 23, 2020, ALJ Watson issued an Interim Order denying the Motion *in Limine*.¹³ I.D. at 5.

On July 23 and 24, 2020, ALJ Watson convened the evidentiary hearing, as scheduled. West Penn was represented by counsel and offered the Rebuttal Testimony of one witness, Mr. John Ahr (Exhibit ALJ-5), who was present at the hearing and sponsored his own exhibit (Exhibit JCA-1).¹⁴ Both Mr. Ahr's rebuttal testimony and his exhibit were admitted into the record as evidence.¹⁵ I.D. at 6; July 2020 Tr. at 364-65. Mr. Jennings appeared *pro se, i.e.*, without legal counsel.¹⁶ Mr. Jennings also offered the direct testimony of Dr. Michael Semelka (Exhibit ALJ-4, confidential), who was present at the hearing. However, Dr. Semelka's testimony was not admitted upon the objection of West Penn.¹⁷ Mr. Jennings' November 2019 Direct Testimony was admitted into

¹³ On March 9, 2020, Mr. Jennings filed a Motion to Compel Rebuttal Testimony of West Penn's Expert Witnesses. On May 1, 2020, West Penn filed a COS indicating that the Company served on Mr. Jennings the rebuttal testimony of its expert witnesses. On July 1, 2020, Mr. Jennings filed a Motion *in Limine*, seeking to strike West Penn's Rebuttal Testimony. On July 22, 2020, West Penn filed a timely Answer to the Motion *in Limine*. I.D. at 4-5.

¹⁴ West Penn pre-marked Mr. Ahr's rebuttal testimony as "WPP Statement No. 1R." We note that herein, this rebuttal testimony will be cited as "WPP St. 1R." See I.D. at 12, 19, Finding of Fact No. 32.

¹⁵ We note that in the July 2020 Hearing Transcript, Exhibit JCA-1 is mislabeled as "JC8-1." I.D. at 9; see July 2020 Tr. at 361, 364-65. As discussed, *infra*, Exhibit JCA-1 was not received into the record until February 19, 2025. We further note that although the Hearing Transcript identified Exhibit ALJ-5 as the Direct Testimony of Mr. Jennings, the record shows that Exhibit ALJ-5 is actually the Rebuttal Testimony of Mr. Ahr. I.D. at 9; see July 2020 Tr. at 264.

¹⁶ At the hearing, ALJ Watson denied Mr. Jennings' request that his wife, Susan Jennings (Mrs. Jennings, collectively, the Jennings) serve as co-counsel. However, the ALJ permitted Mrs. Jennings to assist her husband during the hearing. See July 2020 Tr. at 22-32.

¹⁷ See July 2020 Tr. at 153-55.

evidence (Complainant Exhibit C-1, confidential).¹⁸ However, ALJ Watson struck portions of the testimony upon the objection of West Penn.¹⁹ I.D. at 5-6, 12-13 (citing July 2020 Tr. at 231-32, 234, 237-39, 243, 245-46, 249-53). Mr. Jennings also offered the following exhibits, which were admitted into the record as evidence: (1) Complainant Exhibit A, with the exceptions of: (a) request and response to Set I, Nos. 32, 50, and 51; and (b) all instructions, requests, and responses regarding Set II, except No. 34; and (2) Complainant Exhibit LL.²⁰ I.D. at 12; July 2020 Tr. at 278, 305, 365. ALJ Watson also admitted the following into the record as evidence: (1) two email chains regarding Dr. Semelka (Exhibits ALJ-1 and ALJ-2); and (2) an email chain between Mr. Jennings and the Office of Administrative Law Judge regarding service of proposed exhibits (Exhibit ALJ-3). ALJ Watson also took judicial notice of several Codes and Laws. I.D. at 6, 11; July 2020 Tr. at 307-08.

On August 24, 2020, a 291-page Hearing Transcript was filed. On September 3, 2020, pages 262 through 369 of the Hearing Transcript were filed.²¹ I.D. at 6.

¹⁸ As discussed, *infra*, Exhibit C-1 was not received into the record until February 19, 2025. We note that in the July 2020 Hearing Transcript, Complainant Exhibit C-1 is mislabeled as West Penn Exhibit ALJ-5. *See* July 2020 Tr. at 272. As discussed, *supra*, Exhibit ALJ-5 is the Rebuttal Testimony of Mr. Ahr. I.D. at 11-12.

¹⁹ During the hearing, Mr. Jennings moved to admit his July 2020 Revised Testimony, in place of his November 2019 Direct Testimony. ALJ Watson excluded the July 2020 Revised Testimony on the basis that: (1) neither West Penn nor the ALJ received the July 2020 Revised Testimony; and (2) it was submitted past the deadline for submitting testimony. I.D. at 12, n.10 (citing July 2020 Tr. at 167, 177).

²⁰ At the hearing, Mr. Jennings offered several exhibits which were not admitted into evidence or were withdrawn. I.D. at 13; *See* July 2020 Tr. at 287, 293-94, 301-02, 304, 310, 312-17, 319-20, 322-37, 339-56.

²¹ Although the Initial Decision indicated that a hearing transcript of 369 pages was filed on September 3, 2020, the Commission's case management system indicates that the first 291 pages of the hearing transcript (representing the evidentiary hearing held on July 23, 2020) was filed on August 24, 2020, and pages 262 through 369

On October 9, 2020, the Complainant filed a Main Brief.²² Also, on October 9, 2020, West Penn filed a Main Brief. I.D. at 6.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501 (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. Notice was provided on November 14, 2023, informing Mr. Jennings of the lifting of the stay and his procedural rights and obligations under the Commission's Regulations. I.D. at 7.

On December 12, 2023, ALJ Chiodo issued an Order directing that a post-evidentiary hearing conference be held to discuss whether the Parties seek an opportunity to re-open the evidentiary record to present additional evidence.²³ I.D. at 7.

of the hearing transcript (representing the continuation of the evidentiary hearing, held on July 24, 2020) was filed on September 3, 2020. *See* I.D. at 6.

²² On October 12, 2020, the Petitioner filed a single-page correction to his Main Brief. I.D. at 6.

²³ By Motion Judge Change Notice dated November 27, 2023, the instant matter was reassigned from ALJ Watson to ALJ Chiodo. I.D. at 7.

On March 20, 2024, ALJ Chiodo convened the post-hearing conference, as scheduled.²⁴ West Penn was represented by counsel. The Jennings appeared *pro se*. On March 21, 2024, ALJ Chiodo issued an Order Following Post Evidentiary Hearing Conference (*March 2024 Order*). I.D. at 8. In the *March 2024 Order*, ALJ Chiodo, *inter alia*, ruled that Mr. Jennings’ proposed post-hearing conference exhibits, which Mr. Jennings emailed to the ALJ and counsel for West Penn in anticipation of the post-hearing conference, would not be admitted into the record.²⁵ *March 2024 Order* at 1, Ordering Paragraph No. 4. On April 10, 2024, a 38-page transcript of the post-hearing conference was filed.

On May 14, 2024, counsel for West Penn emailed a letter to ALJ Chiodo and Mr. Jennings stating that the record was missing West Penn’s Exhibit JCA-1 (*i.e.*, the sponsored exhibit of Mr. Ahr) and Mr. Jennings’ Exhibit C-1 (*i.e.*, the Direct Testimony of Mr. Jennings).²⁶ Counsel for West Penn attached both exhibits to the email. Consequently, ALJ Chiodo forwarded the email and the two exhibits to the Commission’s Secretary’s Bureau for filing. On February 19, 2025, Exhibits JCA-1 and C-1 were filed with the Commission.²⁷ I.D. at 9-10.

²⁴ On January 22, 2024, Mr. Jennings filed a request to delay the post-hearing conference. Consequently, by Cancelled/Rescheduled Post-Hearing Conference Notice dated January 24, 2024, a post-hearing conference previously scheduled for February 12, 2024, was rescheduled for March 20, 2024. I.D. at 8.

²⁵ During the post-hearing conference, ALJ Chiodo explained to the Jennings that Mr. Jennings’ proposed exhibits would not be admitted into the hearing record because the purpose of the post-hearing conference is not to submit proposed exhibits for the record. *See* *March 2024 Tr.* at 34-35.

²⁶ As noted, *supra*, both West Penn’s Exhibit JCA-1 and the Mr. Jennings’ Exhibit C-1 (which are mislabeled in the July 2020 Hearing Transcript as “JC8-1” and “ALJ-5,” respectively) were admitted into the record at the evidentiary hearing. *See* I.D. at 6, 9, 11-12; *July 2020 Tr.* at 264, 272, 364.

²⁷ Upon review of the Commission’s case management system, Mr. Jennings’ Exhibit C-1 is saved as Confidential. *See* I.D. at 10, n.7.

On October 1, 2024, ALJ Chiodo issued an Order Permitting the Filing of Reply Briefs (*October 2024 Order*).²⁸ On November 15, 2024, West Penn timely filed a Reply Brief. Also, on November 15, 2024, Mr. Jennings timely filed a Reply Brief. I.D. at 10.

In the Initial Decision, issued on February 28, 2025, ALJ Chiodo, *inter alia*, denied and dismissed the Complaint.²⁹ The ALJ found that Mr. Jennings failed to meet his burden of proof evidencing that: (1) West Penn violated the Code or a Commission Regulation or Order; or (2) Mr. Jennings is entitled to the relief he requested. I.D. at 1, 31, 46.

As noted, *supra*, Mr. Jennings filed Exceptions on March 18, 2025, and West Penn filed Replies to Exceptions on March 28, 2025. As also noted, *supra*, Mr. Jennings subsequently filed: (1) the Motion to Strike on June 13, 2025; and (2) the Motion to Stay on August 8, 2025.³⁰

As discussed, *supra*, on September 11, 2025, the Commission entered the *September 2025 Order*, wherein the Commission, *inter alia*: (1) denied Mr. Jennings' Exceptions to ALJ Chiodo's Initial Decision; (2) adopted the Initial Decision; (3) denied and dismissed the Complaint, with prejudice; (4) denied the Motion to Strike; and (5) denied the Motion to Stay. *September 2025 Order* at 53-54.

²⁸ The *October 2024 Order*, *inter alia*, permitted the filing of reply briefs by no later than 4:30 p.m. on November 15, 2024. See *October 2024 Order* at Ordering Paragraph Nos. 1, 2.

²⁹ In the Initial Decision, the ALJ also denied a Petition to Re-open the Proceeding for the Purpose of Taking Additional Evidence, filed by Mr. Jennings on January 9, 2025. I.D. at 31-32.

³⁰ On August 11, 2025, Mr. Jennings filed corrections to pages 2 and 3 of the Motion to Stay. West Penn did not file an Answer to the Motion to Strike or an Answer to the Motion to Stay.

Also, on September 11, 2025, Mr. Jennings filed the instant Petition. No Answer to the Petition has been filed.

III. Discussion

Pursuant to Commission Regulations and administrative precedent, the Commission often engages in a liberal interpretation of our Rules of Practice in recognition of *pro se* participants. See 52 Pa. Code § 1.2(a). Section 1.2(a) of the Commission’s Regulations requires a liberal construction in order to accomplish the “just, speedy and inexpensive” determination of applicable matters. Pennsylvania courts have sustained the Commission’s authority under Section 1.2(a) to disregard an error or defect of procedure which does not affect the substantive rights of the parties. See *In Re: Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology and Installation Plan*, Docket No. M-2009-2123951 (Opinion and Order entered July 21, 2010), citing *Big Apple Dinner Theater, Inc. v. Bell of Pennsylvania*, Docket No. C-00934817 (Opinion and Order entered on April 30, 1993); also *AT&T Communications of Pennsylvania v. Pa. PUC*, 568 A.2d 1362, 1364 (Pa. Cmwlth. 1990).

We shall, according to our rules of practice, engage in a liberal construction of the Petition.³¹

³¹ Our Regulations at 52 Pa. Code § 1.2(a) provide that the rules of procedure may be “liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable” and that “[t]he . . . presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.” We apply this portion of the Code especially in cases that involve *pro se* complainants. 52 Pa. Code § 1.2(d).

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Code, 66 Pa.C.S. § 332(a), provides, in pertinent part, that “[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.” It is axiomatic that “[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). In this proceeding, Mr. Jennings, as the Petitioner, is the proponent of a rule or Order from the Commission pertaining to the issuance of a stay and/or supersedeas regarding the *September 2025 Order*. Therefore, Mr. Jennings has the burden to establish the requisite elements in support thereof.

2. Standards for Granting a Stay/Supersedeas

Petitions for supersedeas (or stay) must “specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.” 52 Pa. Code § 5.572(a).

The Commission has adopted the standards set forth in *Process Gas* for guidance regarding the issuance of a stay or supersedeas.³² In order to prevail on such a petition, the petitioner must:

1. Make a strong showing of likelihood to prevail on the merits;
2. Show that denial of relief will cause irreparable injury;
3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. Show that the issuance of a stay will not adversely affect the public interest.

Process Gas, 467 A.2d at 808-809.

Process Gas also provides that, when the second through fourth factors strongly support the grant of a stay, a petitioner may succeed by establishing a substantial case on the merits. *Process Gas*, 467 A.2d at 809. A petitioner must make a *strong* showing on *each* of the above criteria for a stay/supersedeas to be issued. *Id.*

³² The Pennsylvania Supreme Court concluded that the standards set forth in *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958) as refined by the holding of *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) provide a rational basis for the issuance of a stay pending appeal and are the criteria to be followed by the courts of the Commonwealth. *Process Gas*, 467 A.2d at 809.

B. The *September 2025 Order*³³

In the *September 2025 Order*, we, *inter alia*, denied Mr. Jennings' Exceptions to the ALJ's Initial Decision, adopted the ALJ's Initial Decision, and dismissed the Complaint.³⁴ In pertinent part, we agreed with ALJ Chiodo's analysis and conclusions that: (1) under the provision of Act 129, West Penn is required to deploy smart meters, consistent with 66 Pa.C.S. § 2807(f)(2); (2) Mr. Jennings presented no evidence to support the conclusion that West Penn, which is required to comply with Act 129 and 66 Pa.C.S. § 2807 by installing smart meters at his residence, violated the Code, a Commission Regulation, or a Commission Order; (3) there is no specific provision in the Code or the Commission's Regulations or Orders that provides for customers to opt-out of smart meter installation; and (4) Mr. Jennings presented no evidence or expert testimony to support his allegations that West Penn's smart meter deployment constitutes a violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. We also agreed with ALJ Chiodo's reasoning and determinations that: (1) ALJ Watson properly excluded several of Mr. Jennings' proposed exhibits from the record as hearsay and/or irrelevant; (2) Mr. Jennings was provided an adequate due process opportunity to present expert testimony as part of the evidentiary record; (3) West Penn is not a state actor that can violate Mr. Jennings' constitutional rights; and (4) the Commission does not have jurisdiction to hear claims brought under the Americans with Disabilities Act (ADA). *September 2025 Order* at 47-51.

³³ See *September 2025 Order* at 40-51 for a comprehensive analysis and description of our disposition of Mr. Jennings' Exceptions to the ALJ's Initial Decision in this proceeding, which is incorporated herein by reference.

³⁴ We also denied Mr. Jennings' Motion to Strike, as no credible, factual, or legal basis was shown for striking West Penn's Replies to Exceptions. Additionally, we denied Mr. Jennings' Motion to Stay, as it was not properly before the Commission and no good cause was shown to stay the proceedings at the Exceptions stage of the proceeding. *September 2025 Order* at 33, 53.

Accordingly, we found nothing in Mr. Jennings' Exceptions to refute ALJ Chiodo's conclusion that Mr. Jennings failed to demonstrate that the installation of a smart meter at his home constitutes unsafe or unreasonable service, in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. Therefore, we denied Mr. Jennings' Exceptions, adopted the Initial Decision, and dismissed Mr. Jennings' Complaint, with prejudice. *September 2025 Order* at 51-52.

C. Petition for Supersedeas

Mr. Jennings, in his Petition, requests that the Commission "stay the effectiveness" of the *September 2025 Order* "pending resolution of an appeal to the Commonwealth Court of Pennsylvania" (Commonwealth Court). The Petitioner also requests that "[a] stay be granted prior to the filing of the appeal in order to eliminate the need to file an Emergency Application for Stay Pending Appeal/Supersedeas" with the Commonwealth Court. Moreover, the Petitioner avers that his current analog meter will remain in-place and no changes shall be made to the meter while his case remains active and until a "final disposition is reached," including any appeals to the Commonwealth Court and the Supreme Court of Pennsylvania (Supreme Court). Petition at ¶¶ 1-4 (citing Pa. Code § 5.572; Pa. R.A.P., Rule 1781).

The Petitioner also notes that an appeal will be filed within thirty (30) days and that granting the Petition "will avoid the need for an emergency action by the appellate court." Further, the Petitioner avers that a stay will ensure that: (1) a smart meter is not installed "on the property during this appeal process;" and (2) his electric service is not terminated "for refusing the smart meter while legal proceedings are ongoing." Moreover, the Petitioner states that protections are necessary due to "the documented harm" suffered by his son after a smart meter was installed on his prior residence. Furthermore, the Petitioner states that smart meter installation or service

termination would result in “further harm and unnecessary financial strain.” Petition at ¶¶ 5-6 (citing 210 Pa. Code § 903).

The Petitioner also requests that his current analog meter remain in-place during the pendency of his case and several active appeal cases with the Commonwealth Court and Supreme Court that involve “similar legal and factual issues.” Further, the Petitioner states that West Penn “will not be harmed by this request.” Moreover, the Petitioner notes that he “continues to be billed based on the analog meter, pays all charges faithfully, and can submit meter readings if required.” Petition at ¶¶ 7-9.

Mr. Jennings closes his Petition by, essentially, repeating his requests that: (1) the Commission grant his Petition; (2) his current electric meter remain in place until “a final disposition” is made in his case and final decisions are rendered in related Commonwealth Court and Supreme Court cases; and (3) the Commission “ensure” that smart meter deployment and service termination not take place while the instant matter is under appeal. Petition at ¶ 10.

D. Disposition

In considering the instant Petition, we note that we are not required to consider, expressly or at length, each and every contention raised by a party to our proceedings. *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Upon review of the record, we find that the Petitioner has failed to satisfy the standards of *Process Gas, supra*.³⁵ At the outset, while we afford the Petition a liberal construction, we must also acknowledge that the Petitioner's failure to comply with our Regulations at 52 Pa. Code § 5.572(a) constrained our review by limiting it to the general allegations included in the Petition. Specifically, pursuant to 52 Pa. Code § 5.572(a), petitions for supersedeas and/or stay must "specify, in numbered paragraphs, *the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.*" 52 Pa. Code § 5.572(a) (emphasis added). Because the Petitioner failed to identify the findings involved, the points he relied upon, and any appropriate record references, such support is unavailable to inform our review.

On review of the Complaint proceedings and the instant Petition, we have considered the Petitioner's contentions, and we find that Mr. Jennings has failed to satisfy *any* of the standards of *Process Gas*.

First, the Petitioner has not made a strong showing that he is likely to prevail on the merits because he has not engaged with the law and findings set forth in our *September 2025 Order*. In our *September 2025 Order*, we explained *inter alia*, that West Penn is required to install smart meters in accordance with Act 129, and that electric customers are not permitted to opt-out of smart meter installation. *September 2025 Order* at 43 (citing *Povacz v. Pa. PUC* (241 A.3d 481); 66 Pa.C.S. §§ 2806.1-2807). We further explained that the Pennsylvania Supreme Court has affirmed that while customers do not have the ability to opt-out of smart meter installation, a customer may seek an accommodation to smart meter installation, provided that the customer first established a violation under Section 1501 of the Code.

³⁵ As noted, *supra*, the Commission has adopted the standards set forth in *Process Gas* for guidance regarding the issuance of a stay or supersedeas of a Commission Opinion and Order. See *Process Gas*, 467 A.2d at 808-09.

September 2025 Order at 43 (citing *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). As noted in our *September 2025 Order*, the Supreme Court identified the burden of proof that customers must meet to prevail in Section 1501 claims involving the safety of smart meters, as set forth below:

[i]n order to prevail in a Section 1501 claim involving the safety of smart meters, and specifically, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter.

September 2025 Order at 45 (citing *Povacz II* at 999-1000).

In our *September 2025 Order*, we determined that Mr. Jennings failed to present credible evidence or expert testimony to support his allegations that West Penn’s smart meter deployment violated Section 1501 of the Code, and he also failed to provide evidence to establish the requisite casual connection. *See September 2025 Order* at 43-45. Once again, in his Petition, Mr. Jennings fails to cite any evidence or expert testimony that is alleged to establish a conclusive causal connection between harm to his and his family members’ health and RFs from an AMI meter; accordingly, the Petitioner has failed to make any showing that he is likely to prevail on the merits.

Next, the Petitioner failed to show that denial of relief will cause irreparable injury. The Petitioner alleges that a stay of enforcement of the *September 2025 Order* is necessary: (1) “due to the documented harm suffered by the Complainant’s [Petitioner’s] son following the installation of a smart meter on a prior residence”; and (2) because “[f]orcing installation of a smart meter or threatening service termination would cause further harm and unnecessary financial strain.” Petition at ¶ 6. The Petitioner did not identify any supporting basis for his allegations, nor did he supply any record references

to provide evidentiary support for his claims. Accordingly, we find that the Petitioner failed to demonstrate that a denial of relief will cause irreparable injury.

Additionally, the Petitioner failed to show that the issuance of a stay will not substantially harm other interested parties in the proceedings. While the Petitioner claims that West Penn Power will not be harmed because “the Complainant [Petitioner] continues to be billed based on the analog meter, pays all charges faithfully, and can submit meter readings if required” these claims appear to be limited to the Petitioner’s perspective of West Penn’s billing capability. *See* Petition at ¶ 9. We disagree with the Petitioner. First, West Penn’s billing capability alone is not determinative. Assuming that West Penn would have the continued ability to bill based on the analog meter, which has not been established, billing capability is only one consideration.

Beyond billing considerations, it is important to recognize that granting the Petition would frustrate West Penn’s ability to comply with Act 129’s universal smart meter requirements for an indeterminate amount of time, pending final rulings in all ten cases that the Petitioner alleges to be similarly situated to this proceeding. *See* Petition at ¶¶ 7-8, 10. In short, as we conclude that West Penn and its ratepayers may be substantially harmed by the requested stay of our *September 2025 Order*, we conclude that the Petitioner has failed to show that interested parties would not be harmed by the issuance of a stay.

Finally, the Petitioner has failed to show that the issuance of a stay will not adversely affect the public interest. As explained above, we have determined that West Penn, and potentially its ratepayers, may be substantially harmed by the indeterminate stay resulting from a grant of the Petition; therefore, we are unable to conclude that granting the Petition would not adversely affect the public interest. In summary, as the Petitioner has failed to make a strong showing on *any* of the above criteria, the Petition fails to satisfy the standards of *Process Gas* and it must be denied.

As an additional matter, because the Petition includes an “Affirmation” indicating that “the current electric meter will remain in place during ongoing legal proceedings,” we wish to clarify that neither the Affirmation nor the Notice of Appeal itself operates as an automatic stay of proceedings. *See* Petition at 2. We note that the mere filing of a Notice of Appeal, or more properly labelled, a Petition for Review of a Commission Opinion and Order under the Pennsylvania Rules of Appellate Procedure, does not authorize a stay of action against the utility regarding deployment of smart meters. Further, the mere filing of an appeal does not result in a stay of other proceedings, including the possible termination of utility service in accordance with the company’s approved tariff provisions, in the event of a failure of a customer to permit access to the meter for purposes of meter replacement. *See Richard N. Myers v. PPL Electric Utilities Corporation*, Docket No. C-2017-2620710 (Opinion and Order entered December 30, 2019), *petition for supersedeas denied*, December 19, 2019; *Evangeline Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Opinion and Order entered January 2, 2020), *petition for supersedeas denied*, December 19, 2019, *Evangeline Hoffman-Lorah v. Pa. PUC*, 301 A.3d 492 (Pa. Cmwlth. 2019); *Alan V. Schmukler v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621285 (Opinion and Order entered January 2, 2020), *petition for supersedeas denied*, December 19, 2019, *Alan Schmukler v. Pa. PUC*, 302 A.3d 247 (Pa. Cmwlth. 2019).

For the foregoing reasons, we find that the Petition does not provide any support or basis for the issuance of a stay and/or supersedeas, in accordance with the considerations of *Process Gas*.

IV. Conclusion

Based upon our review of the Petition and applicable law, we shall deny the Petition for Supersedeas filed by Mr. Jennings, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the “PETITION FOR SUPERSEDEAS NOTICE THAT COMPLAINANT WILL APPEAL TO THE COMMONWEALTH COURT OF PENNSYLVANIA AND AFFIRMATION THAT THE CURRENT ANALOG METERS REMAIN IN PLACE DURING ONGOING LEGAL PROCEEDINGS,” filed by Michael T. Jennings on September 11, 2025, seeking relief from the Commission’s Opinion and Order entered on September 11, 2025, at Docket No. C-2018-3006031, is denied, consistent with this Opinion and Order.
2. That this proceeding, at Docket No. C-2018-3006031, be marked closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: November 6, 2025

ORDER ENTERED: November 6, 2025