
APPENDIX A

Orders of the Supreme Court of Pennsylvania

Docket No. 2 WM 2025

Dated: June 23, 2025 and July 31, 2025

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ORPHEUS HANLEY AND KIMBERLY HANLEY, Petitioners v. PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	No. 2 WM 2025

ORDER

PER CURIAM

AND NOW, this 23rd day of June, 2025, the Petition for Leave to File Petition for Allowance of Appeal *Nunc Pro Tunc* is DENIED.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ORPHEUS HANLEY AND KIMBERLY HANLEY, Petitioners v. PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 2 WM 2025

ORDER

PER CURIAM

AND NOW, this 31st day of July, 2025, the Application for Reconsideration is DENIED.

A True Copy Nicole Traini
As Of 07/31/2025

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX B

Orders of the Commonwealth Court of Pennsylvania

Docket No. 865 CD 2024

Dated: November 12, 2024 and December 05, 2024

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orpheus Hanley and Kimberly Hanley, Petitioners	:	
v.	:	
Pennsylvania Public Utility Commission, Respondent	:	No. 865 C.D. 2024

PER CURIAM **MEMORANDUM AND ORDER**

NOW, November 12, 2024, upon consideration of the Pennsylvania Public Utility Commission's (PUC) September 20, 2024 Application for Relief in the Form of a Motion to Dismiss the Petition for Review (Motion to Dismiss),[1] the October 7, 2024 Letter of FirstEnergy Pennsylvania Electric Company (Intervenor) in support of the Motion to Dismiss, and Orpheus Hanley and Kimberly Hanley's (Petitioners) October 18, 2024 Response to Application to Dismiss (Response), the Motion to Dismiss is GRANTED, and the petition for review is QUASHED for lack of jurisdiction.

The PUC informs in its Motion to Dismiss that its order denying Petitioners' exceptions to an administrative law judge's dismissal of Petitioners'

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[1] Per Pennsylvania Rule of Appellate Procedure 3707, Pa.R.A.P. 3707, the PUC was required to contact Orpheus Hanley and Kimberly Hanley (Petitioners) to determine their position before filing the Motion to Dismiss with the Court and indicate whether Petitioners concurred with the relief sought. Although the PUC has not complied with this requirement, the Court nevertheless rules on the Motion to Dismiss because Petitioners have filed an answer in opposition thereto. The PUC must be mindful of Rule 3707's requirements in filing any future applications or motions with the Court or risk having such future applications or motions denied for noncompliance.

complaint was issued on May 9, 2024, that the last day to petition for review of that order was June 10, 2024, and that Petitioners untimely filed their initial *pro se* communication with this Court on June 13, 2024. (Motion to Dismiss (Mot.) ¶¶ 1-11, 22-23.) The Prothonotary then issued a Notice on June 17, 2024, informing Petitioners that June 13, 2024, would be preserved as the date of filing of their appeal and instructing Petitioners to file a conforming petition for review within 30 days of the Notice, that is, by July 17, 2024, or the Court would take no further action in the matter. Petitioners timely filed their conforming petition for review on July 5, 2024. *See* Pa.R.A.P. 1512(a)(1); 210 Pa. Code § 69.211 (providing that written communication that evidences an intention to appeal will suffice to preserve the date of filing, provided that a proper petition for review is filed within 30 days of the date of a letter from the Prothonotary, advising of the procedures necessary to perfect the appeal). This Court thereafter issued a Memorandum and Order on September 11, 2024, observing that Petitioners' appeal may be untimely and directing the parties to address whether the appeal is untimely in their principal briefs on the merits or in an appropriate application for relief, thus prompting the PUC to file the instant Motion to Dismiss on September 20, 2024. (Mot. ¶¶ 12-15, 24.)

In the Motion to Dismiss, the PUC asserts that Petitioners' initial *pro se* communication was untimely filed, thus depriving this Court of jurisdiction such that the appeal should be dismissed. (Mot. ¶¶ 20-21, 24, 28, 30.) In so asserting, the PUC notes that where a petition for review is sent by first-class, express, or priority United States (U.S.) Postal Service (USPS) mail, the petition is deemed received for the purposes of Pa.R.A.P. 121(a) on the date the petition was deposited in the mail. (*Id.* ¶¶ 25-28 (citing Pa.R.A.P. 1512(a)(2)).) Because Petitioners' *pro se* communication was postmarked on June 11, 2024, the PUC contends that it was untimely filed one day after the 30-day deadline. (*Id.* ¶ 27.) Intervenor supports the PUC's relief requested. *See* 10/7/2024 Letter.

In their Response, Petitioners acknowledge that their initial *pro se* communication may have been untimely filed and request that the Court not dismiss their appeal due to it "being submitted two business days later (Monday, May [sic] 13) than the" PUC stated. (Response at 1.) Petitioners explain that they "believed that [they] had more time to file the appeal, as it took [them] some time to understand that the case had been officially closed on the PUC side that Thursday (May 9)."[2] (*Id.*) They also inform that they were out of town on family business, further contributing to "the misunderstanding and delay[,]" that they are *pro se*, and that any delay in mailing "was certainly unintentional." (*Id.*) Petitioners also argue the merits of their appeal, claiming that despite that they have appealed the PUC's order, two of Intervenor's workmen came to their door and tried to install a smart meter on their property. (*Id.* at 1, 3.)

The only issue here is whether Petitioners timely filed their initial *pro se* communication with the Court. The Court first observes that the PUC's assertion that a petition for review sent by first-class, express, or priority USPS mail is deemed received on the date it was deposited in the U.S. Mail as indicated by the postmark on the envelope is not entirely correct. To the contrary, under Pa.R.A.P. 1512(a)(2), a petition for review filed by first-class, express, or priority USPS mail shall be deemed received by the Prothonotary for the purposes of Pa.R.A.P. 121(a) on the date deposited in the U.S. mail **only if it is accompanied by a USPS Form 3817 Certificate of Mailing, Form 3800 Receipt for Certified Mail, Form 3806 Receipt for Registered Mail, or other similar USPS form from which the date**

[2] Notably, the PUC's May 9, 2024 order explicitly directed "[t]hat this proceeding at Docket No. C-2023-3041147 be marked closed." *See Pro Se* Commc'n at 39.

of deposit can be verified. The PUC does not address this part of the rule in its Motion to Dismiss.

Notwithstanding this apparent oversight, the Court observes that the envelope in which Petitioners mailed their *pro se* communication to this Court contains **retail** USPS postage indicating that the communication was sent by "U.S. POSTAGE PAID FCM LG ENV" (i.e., by First-Class Mail), on June 11, 2024, and that Petitioners therefore placed the envelope in the mail on that date. *See Pro Se* Commc'n at 42 (envelope). However, because Petitioners did not utilize a USPS Form 3817 Certificate of Mailing, Form 3800 Receipt for Certified Mail, Form 3806 Receipt for Registered Mail, or other similar USPS form from which the date of deposit can be verified, **the date of actual receipt controls**. *See* Pa.R.A.P. 1514(a). This Court received Petitioners' *pro se* communication on June 13, 2024, as indicated by the timestamped date on page 1 thereof, which was three days after the June 10, 2024 appeal deadline prescribed by Pa.R.A.P. 1512(a)(1).

Because Petitioners filed their initial *pro se* communication more than 30 days after the PUC's May 9, 2024 order, it was untimely filed, and Petitioners have not alleged any basis for *nunc pro tunc* relief, as this is not a case of fraud, breakdown in the processes of the Court, or **non-negligent circumstances** that prevented Petitioners from timely filing a petition for review. *See* Pa.R.A.P. 1512(a)(1); *Thorn v. Newman*, 538 A.2d 105, 107-08 (Pa. Cmwlth. 1988) (noting that "[t]he timeliness of an appeal is jurisdictional" and that "[a]n untimely appeal must be quashed absent a showing of fraud or a breakdown in the court's operation"); *Cook v. Unemployment Comp. Bd. of Rev.*, 671 A.2d 1130, 1131 (Pa. 1996); *Murph v. Pa. Bd. of Prob. & Parole*, 641 A.2d 1275 (Pa. Cmwlth. 1994) (quashing as untimely petition for review filed 1 year and 8 months after entry of board's order, rather than within 30 days as required by Pa.R.A.P. 1512(a)). To the contrary, Petitioners admit that their *pro se* communication was not timely filed with this Court due to their own negligence. *See Best Courier v. Dep't of Lab. & Indus., Off. of Unemployment Comp. Tax Servs.*, 220 A.3d 696, 701-02 (Pa. Cmwlth. 2019) (citing various cases holding that being out of town and failing to make arrangements for retrieval of mail do not constitute non-negligent circumstances to justify a late appeal); *see also Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081, 1086 (Pa. Cmwlth. 1985) (observing that "any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing").

Accordingly, for these reasons, the Court grants the PUC's Motion to Dismiss and quashes[3] the petition for review for lack of jurisdiction.

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[3] Although the Motion to Dismiss seeks dismissal of the appeal, quashal is appropriate in this context. *See* Pa.R.A.P. 1972(a)(7); *see also Sahutsky v. H.H. Knoebel Sons*, 782 A.2d 996, 1001 n.3 (Pa. 2001) (observing that quashal is appropriate where the order below is unappealable, the appeal is untimely, or the court otherwise lacks jurisdiction).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orpheus Hanley and Kimberly Hanley, Petitioners v. Pennsylvania Public Utility Commission, Respondent	:	No. 865 C.D. 2024

PER CURIAM **MEMORANDUM AND ORDER**

NOW, December 5, 2024, upon consideration of Orpheus Hanley and Kimberly Hanley's (Petitioners) November 21, 2024 Application to Reconsider (Application), to which no answers have been filed, the Application is DENIED, and this Court's November 12, 2024 Memorandum and Order (November 12 Order or Order) is confirmed, as follows. *See* Pa.R.A.P. 2543 (providing that "reargument will be allowed only when there are compelling reasons therefor").

Petitioners seek reconsideration of this Court's November 12 Order, which granted Respondent Pennsylvania Public Utility Commission's (PUC) September 20, 2024 Application for Relief in the Form of a Motion to Dismiss the Petition for Review (Motion to Dismiss) and quashed the petition for review for lack of jurisdiction based on Petitioners' failure to timely file their *pro se* communication with this Court, indicating their intent to appeal the PUC's May 9, 2024 order, or sufficiently allege a basis for *nunc pro tunc* relief under *Cook v. Unemployment Compensation Board of Review*, 671 A.2d 1130, 1131 (Pa. 1996) (providing that "an appeal *nunc pro tunc* may be allowed when a delay in filing the appeal is caused by extraordinary circumstances involving" fraud, a breakdown in the processes of the Court, or non-negligent circumstances that prevented the petitioner from timely filing a petition for review).

In their Application, Petitioners lodge four primary objections to the Court's November 12 Order. First, they claim they are "at a deficit" because they only had 12 days to file an application for reconsideration. Second, pointing to footnote 1 of the Court's November 12 Order, Petitioners complain that the PUC never informed them of its intent to file its Motion to Dismiss and that this Court's leniency toward the PUC in nevertheless ruling on the Motion to Dismiss is unfair. Third, Petitioners claim they never admitted their *pro se* communication was untimely but only stated that it "may have been" untimely filed. Fourth, pointing to page 3 of the Court's November 12 Order, Petitioners inform that they contacted the Court regarding their concern that including a United States Postal Service (USPS) Form 3817 Certificate of Mailing (Form 3817) with their October 18, 2024 Response to the PUC's Motion to Dismiss would result in them losing that proof of the mailing date of their appeal. They claim that a Court representative told them to keep such proof and provide it if needed. Petitioners attached to their Application a partial photocopy of a Form 3817 addressed to this Court with a postmark date of June 11, 2024, and request that the Court consider the Form 3817 as proof their appeal was timely filed and reconsider the quashal of their case. They also ask for a 30-day extension of time to file their appellate brief. Neither the PUC nor Pennsylvania Power Company (Intervenor) filed an answer to Petitioners' Application.

As to their first objection, Pa.R.A.P. 2542(a)(1) provides that "an application for reargument shall be filed with the prothonotary within 14 days after entry of the judgment or other order involved." Pa.R.A.P. 108(a)(1) relevantly provides that "the day of entry shall be the day the clerk of the court . . . mails or delivers copies of the order to the parties[.]" Because Petitioners timely filed the instant Application nine days after the Court mailed the Order to them on November 12, the Court rejects their first assertion of error.

The Court also rejects Petitioners' argument that the Court should reconsider its November 12 Order because the PUC never informed Petitioners of its intent to file the Motion to Dismiss, per Pa.R.A.P. 3707, as Petitioners have likewise failed to comply with Rule 3707's requirements in filing the instant Application. Specifically, Petitioners have not stated that they contacted counsel of record for the PUC or Intervenor to obtain their position before filing the Application with the Court or indicated therein whether the PUC or Intervenor concurred with the relief sought. As noted, Petitioners filed a Response to the PUC's Motion to Dismiss, which the Court considered in disposing of that Motion. The PUC's failure to comply with Rule 3707 is thus immaterial for purposes of the instant Application.

The Court addresses Petitioners' third and fourth objections together. Regardless of whether Petitioners admitted or did not admit that their *pro se* communication was untimely filed in this Court in their Response to the Motion to Dismiss, and even considering the Form 3817 they attached to their Application, Petitioners' *pro se* communication is still untimely. As noted in the November 12 Order, the PUC issued its order dismissing Petitioners' complaint on May 9, 2024, and the last day to appeal that order was June 10, 2024. Petitioners did not enclose or separately mail a Form 3817 to this Court showing the date of deposit of their *pro se* communication in the mail, as required by Pa.R.A.P. 1514(a)(2). To the contrary, the *pro se* communication contains only **retail** USPS postage indicating that the communication was sent by First-Class Mail on June 11, 2024. In the absence of a

Form 3817 or any other USPS form from which the date of deposit could be verified, the Court deemed the communication to have been filed on June 13, 2024, the date of its receipt. Because the appeal was untimely filed three days after the 30-day deadline, *see* Pa.R.A.P. 1512(a)(1), the Court granted the PUC's Motion to Dismiss and quashed the appeal.

Notwithstanding that Petitioners did not mention anything about a Form 3817 in their *pro se* communication, ancillary petition for review, or Response to the Motion to Dismiss,[1] Petitioners have now provided the above-mentioned partial photocopy of a Form 3817 with their Application that they claim proves their *pro se* communication was timely filed. However, it is not readily apparent that the Form 3817 was meant to accompany Petitioners' *pro se* communication. It does not indicate it was cancelled by the USPS or include any docket number. *See* Pa.R.A.P. 1514(a)(2). Rather, it shows only that Petitioners deposited **something** in the United States mail in Meadville, Pennsylvania, on **Tuesday, June 11, 2024**, i.e., one day after the expiration of the 30-day appeal period. Petitioners' appeal is therefore untimely even with the Form 3817.

Petitioners have not set forth any compelling reason for this Court to reconsider its November 12 Order granting the PUC's Motion to Dismiss and quashing Petitioners' petition for review. Accordingly, the Court denies the Application and confirms its November 12 Order.

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[1] To the extent Petitioners claim to have relied on an unnamed Court representative's purported advice to keep the Form 3817 "and provide it if a time for proof was ever needed[,]" *see* Application at 3, in an attempt to prove compelling reason for this Court to reconsider its Order, the Court observes that Petitioners were on notice that proof of timely mailing may be needed since September 11, 2024, at the earliest, when this Court issued a Memorandum and Order observing that their appeal may be untimely, and September 20, 2024, at the latest, when the PUC filed its Motion to Dismiss. Despite being on notice of the untimeliness of their appeal, Petitioners inexcusably waited until their appeal was finally quashed to provide the Form 3817 to this Court.

APPENDIX C

Order of the Pennsylvania Public Utility Commission

Docket No. C-2023-3041147

Dated: May 9, 2024

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held May 9, 2024

Commissioners Present:

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

Orpheus and Kimberly Hanley C-2023-3041147

v.

Pennsylvania Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Orpheus and Kimberly Hanley (collectively, the Complainants or the Hanleys), filed on February 27, 2024, in the above-captioned proceeding.[1] The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Alphonso Arnold III, served on the Parties on February 7, 2024. On March 27, 2024, Pennsylvania Power Company (Penn Power or the Company) timely filed Replies to Exceptions.[2] The Initial Decision denied the Formal Complaint (Complaint) filed by the Complainants on June 5, 2023. For the reasons discussed below, we shall deny the Complainants' Exceptions, adopt the Initial Decision of ALJ Arnold, and dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Penn Power proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant requested that Penn Power not install a smart meter at their residence due to privacy, safety, and property protection concerns. Complaint at 3.

Penn Power is an electric distribution company (EDC) subject to the jurisdiction of the Commission. Penn Power furnishes, owns, and maintains the meters in its distribution system. *See,* Pennsylvania Power Company Tariff Electric Pa. P.U.C. No. 36, Section 7 at 34.

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[1] By Secretarial Letter issued March 13, 2024 (*March 2024 Secretarial Letter*), the Commission's Secretary: (1) notified the Parties that the Complainant failed to properly serve Pennsylvania Power Company (Penn Power or the Company) with a copy of the Exceptions; and (2) enclosed the Exceptions, in order to constitute service. Therefore, pursuant to 52 Pa. Code § 5.535, Penn Power was given until the close of business (4:30 p.m. EST) March 27, 2024, to file Reply Exceptions. *See, March 2024 Secretarial Letter.*

[2] Initially, on February 27, 2024, Penn Power filed a letter stating that it would not be filing Exceptions to the matter.

The Complainants are Penn Power customers who have been notified of Penn Power's intent to install a smart meter at their residence that provides the function of automatic meter reading (AMR).

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, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).
>
> (2) Electric distribution companies 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 Penn Power, 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*). Penn Power sought and obtained the Commission's approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter 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 Proceeding

On June 5, 2023, the Hanleys filed the instant Complaint.[3] In their Complaint, the Complainants alleged that Penn Power is threatening to, or already has, shut off their electric service. The Complainants provided that they do not want a smart meter installed, have not requested participation in the smart meter program, and exercise their right not to participate in the program based on 66 Pa. C.S. § 2807(f)(2)(i), 52 Pa. Code § 57.251(a), and the Public Utility Regulatory Policies Act of 1978

[3] We note that the Commission's case management system indicates the Complaint was received June 5, 2023, but was not served on the Parties until June 7, 2023. We further note that the Complaint is stamped "DATE OF DEPOSIT" by the Commission's Secretary's Bureau on May 31, 2023. *See*, Complaint at 1-3, 5.

(PURPA) standards Section 111(d)(11), (14). Further, the Complainants emphasize that their reason for refusing smart meter installation is based on health, privacy, safety, and property protection concerns. As relief, the Complainants request that Penn Power cease in their attempts to install a smart meter. Complaint at 2-3; I.D. at 1-2.

On June 27, 2023, Penn Power filed an Answer to the Complaint and New Matter (Answer and New Matter), which was properly endorsed with a Notice to Plead.[4] Also, on June 27, 2023, Penn Power filed a Preliminary Objection in response to the Complaint (Preliminary Objection), which was properly endorsed with a Notice to Plead.[5] I.D. at 2-3.

In its Answer and New Matter, Penn Power admitted, in part, and denied, in part, various material allegations in the Complaint. *Inter alia*, Penn Power admitted that it provides electric service to the Complainants and sent the Complainants a termination notice on May 1, 2023, but denied that it has terminated their service. Further, Penn Power denied that the Complainants are permitted to opt-out of smart meter installation. Answer and New Matter at 1-4; I.D. at 2. Moreover, Penn Power asserted that the Complainants challenged the Company's installation of a smart meter at their service address in a prior formal complaint proceeding. Specifically, Penn Power provided that at Docket No. C-2016-2557487, the Commission dismissed with prejudice the formal complaint filed by the Hanleys against the Company which challenged the Company's planned installation of a smart meter at the service address (2016 Complaint). I.D. at 2; Answer and New Matter at 10 (citing *Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Initial Decision issued November 2, 2018) (*2018 Hanley Initial Decision*), request to reopen proceedings denied

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[4] We note that a Certificate of Service is attached to Penn Power's Answer and New Matter. *See*, Answer and New Matter at 17.

[5] We note that a Certificate of Service is attached to Penn Power's Preliminary Objection. *See*, Preliminary Objection at 11.

(Opinion and Order entered December 19, 2019) (*2019 Hanley Order*), petition for rehearing or reconsideration denied (Opinion and Order entered August 27, 2020) (*2020 Hanley Order*)). Therefore, Penn Power asserted that: (1) the Complainants are barred from filing a new formal complaint with the Commission regarding the same issues of act and law; and (2) the instant Complaint is barred by 66 Pa. C.S. § 316, and the doctrines of *res judicata* and collateral estoppel. As relief, Penn Power requested that the instant Complaint be dismissed. Answer and New Matter at 11-15; I.D. at 2.

In its Preliminary Objection, Penn Power argued that pursuant to 52 Pa. Code § 5.101(a)(4), the instant Complaint is legally insufficient because: (1) the Complaint is the second formal complaint that the Complainants filed against the Company concerning smart meter installation and arguing that the installation of a smart meter would violate Section 1501 of the Code, 66 Pa. C.S. § 1501; and (2) the Complainants' requested relief (*i.e.*, to opt-out of smart meter installation) cannot be granted by the Commission because the Company is legally required to install smart meters and customers are not permitted to opt-out of the installation. Preliminary Objection at 6-8 (citing 52 Pa. Code § 5.101(a)(4); 66 Pa. C.S. § 1501); I.D. at 3.

On July 18, 2023, the Complainants filed a document labeled "Never Requested, Never Agreed to Pay for Installation," in which the Complainants, *inter alia*, repeated their argument that they never requested participation in the smart meter program and argued that they never opted out of smart meter installation because they never opted in.[6] I.D. at 3. On July 26, 2023, the Complainants filed their document

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[6] Upon review of the Commission's case management system, this document is labeled as an Answer to Preliminary Objection (Answer to P.O.). Further, according to the Initial Decision, the Complainants' Answer to P.O. was filed untimely. *See*, I.D. at 3. Pursuant to Sections 5.101(f)(1) and 1.56(b) of the Code, answers to the preliminary objection were due on July 8, 2023 (*i.e.*, within ten days after the date of service; July 4, 2023, was a holiday). *See*, 52 Pa. Code §§ 5.101(f)(1); 1.56(b).

labeled "Never Requested, Never Agreed to Pay for Installation" a second time, with a Certificate of Service attached.[7]

On July 28, 2023, the ALJ issued an Order staying this proceeding, which was issued in compliance with the Commission Order and Notice entered November 4, 2020, 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 (*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. I.D. at 3-4.

By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. On November 20, 2023, the ALJ issued an Order lifting the stay in this proceeding. I.D. at 4.

In the Initial Decision issued on February 7, 2024, the ALJ granted Penn Power's Preliminary Objection and dismissed the Complaint because the Complaint raises the same issues that were previously addressed by the Commission in dismissing a prior complaint (*i.e.*, the 2016 Complaint) with prejudice. Therefore, the Complainants are barred from bringing their Complaint by the doctrines of *res judicata*, collateral estoppel, and by 66 Pa. C.S. § 316. I.D. at 1, 12, 15.

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[7] According to the Commission's case management system, the Complainant's filing on 7/26/23 is labeled as "Letter re smart meter installation – Hanley."

As previously noted, the Complainants timely filed Exceptions on February 27, 2024, and Penn Power timely filed Replies to Exceptions on March 27, 2024.

III. Discussion

A. Legal Standards

1. Preliminary Objections

Section 5.101(a) of our Rules of Practice and Procedure states that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon, and be limited to the following:

> 1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
>
> 2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
>
> 3. Insufficient specificity of a pleading.
>
> 4. Legal insufficiency of a pleading.
>
> 5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
>
> 6. Pendency of a prior proceeding or agreement for alternative dispute resolution.
>
> 7. Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

The Commission's preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC Lexis 69, Docket No. C-00935435 (July 18, 1994) (*Equitable Small*). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing the motion, all well-pleaded, material facts of the non-moving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Company of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). Thus, the Commission must view a complaint only in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complaint would not be entitled to relief under any circumstances as a matter of law. *Equitable Small*.

Here, Penn Power's Preliminary Objection asserted that the Complaint is legally insufficient pursuant to 52 Pa. Code § 5.101(a)(4), based upon the prior complaint predicated upon the same issues and set of facts which the Commission ultimately dismissed.

The provision at 52 Pa. Code § 5.101(a)(4): (1) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency; and (2) serves judicial economy by avoiding a hearing where no factual dispute exists, and the matter in dispute is purely a legal question. If no factual issue pertinent to the resolution of a cases exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557, 564 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006, 1008-9 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. PUC*, 103 A.2d 502, 507 (Pa. Super. 1954).

2. *Res Judicata*

Res judicata is appropriately raised as a defense if all the issues between the parties in the current proceeding have been previously decided in a prior proceeding, where the parties had an opportunity to appear and be heard. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983) (*Day*)

3. Dismissal with Prejudice

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See, Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *see also, e.g., Nichols, III v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Arnold made eleven Findings of Fact (FOF) and reached seventeen Conclusions of Law (COL). I.D. at 4-5, 13-15. The FOF and COL are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

First, the ALJ addressed the grounds that permit parties to file preliminary objections, as set forth in 52 Pa. C.S. §5.101(a). I.D. at 5-6. The ALJ noted that upon consideration of preliminary objections, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments ... that no recovery or relief is possible." I.D. at 6 (citing P.J.S. v. Pa. State Ethics Commission, 669 A.2d 1105 (Pa. Cmwlth. 1996)). The ALJ continued that "[a]ny doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections." I.D. at 6 (citing *Department of the Auditor General v. State Employees' Retirement System*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003)). The ALJ further noted that all of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted must be considered against the non-moving party. I.D. at 6 (citing *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997)).

The ALJ noted that the Complainants, based on their health, privacy, safety, and property protection concerns, seek to refuse, or "opt-out," of smart meter installation at their home, based on Act 129, the Commission's Regulations, and the Public Utility Regulatory Policies Act of 1978.[8] I.D. at 7. The ALJ also addressed Penn Power's argument that the Complaint is legally insufficient because the Complainants cannot opt-out of smart meter installation given that the Company is required by Act 129 to install a smart meter at the Complainant's home and, thus, the Complainants' request to opt-out of the smart meter installation cannot be granted by the Commission. I.D. at 7 (citing 52 Pa. Code §5.101(a)(4)).

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[8] The ALJ noted that although the Complainants argue that they are not "opting out" because they never "opted in," attempting to refuse smart meter installation under the belief that the smart meter installation is not mandatory and is voluntary is, essentially, an attempt to opt-out of smart meter installation. I.D. at 7.

The ALJ agreed with Penn Power that the Complainants cannot refuse or "opt-out" of smart meter installation because, in *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz*), the Supreme Court of Pennsylvania (Supreme Court) concluded that Act 129 mandates the system wide installation of smart meter technology by EDCs. However, the ALJ continued, the Supreme Court stated that customers may file a complaint with the Commission raising a claim that installation of a smart meter at their address violates Section 1501 of the Code. I.D. at 7. As such, the ALJ found that the Complaint will not be dismissed on the ground of legal insufficiency because the Complainants raised health, privacy, safety, and property protection concerns (*i.e.*, an argument that installation of a smart meter at their home violates Section 1501 of the Code). I.D. at 7. The ALJ also noted that the Commission may direct an EDC to provide a customer with a reasonable accommodation if the customer meets their burden of proof as it relates to the installation of a smart meter at their home being in violation of Section 1501. I.D. at 7-8.

The ALJ then turned to *res judicata*, collateral estoppel, and Section 316 of the Code. The ALJ pointed out that the Complainants did not make mention of the 2016 Complaint in their Complaint or Answer to P.O. The ALJ continued that in its Answer and New Matter, Penn Power noted that: (1) in the 2016 Complaint, the Complainants sought to prevent smart meter installation at the same property under the same customer account that is the subject of the instant Complaint; and (2) the 2016 Complaint was dismissed by the Commission with prejudice. I.D. at 8. The ALJ also cited 52 Pa Code § 5.63(b) to note that the facts alleged in Penn Power's Answer and New Matter are deemed admitted because the Complainants failed to timely file an answer to the Answer and New Matter. I.D. at 8 (citing 52 Pa. C.S. § 5.63(b)). The ALJ also noted that in its Answer and New Matter, Penn Power argued that because the Commission dismissed the 2016 Complaint with prejudice, the Complainants are barred from relitigating the same or related factual and legal issues, and therefore, the instant Complaint is barred, pursuant to the doctrines of *res judicata* and collateral estoppel, and 66 Pa. C.S. § 316. I.D. at 8.

The ALJ cited *O'Toole v. Bell Telephone Company of Pennsylvania*, 77 Pa. P.U.C. 98 (1992) (*O'Toole*), to explain that the doctrines of *res judicata* and collateral estoppel apply to preclude collateral attack of final orders rendered in proceedings brought before the Commission. The ALJ continued that *res judicata*, or claim preclusion, reflects the refusal of the law to allow the re-litigation of a claim in a subsequent cause of action arising between the same parties on the same claim after a court of competent jurisdiction has rendered a final judgment on the merits in a previous case. I.D. at 8-9 (citing *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. 1994)). Further, the ALJ noted that four conditions must be met to apply the doctrine *res judicata*: (1) identity of issues; (2) identity of causes of action; (3) identity of persons and parties to the action; and (4) identity of the quality and capacity of the parties suing or sued. I.D. at 9 (citing *Day*, 464 A.2d 1313, 1316; *O'Toole*).

The ALJ also explained that the doctrine of collateral estoppel, or issue preclusion, prevents the question of law or an issue of fact that has been once litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit. The ALJ noted that four conditions must be met to apply the doctrine of collateral estoppel: (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) there was a final judgement on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action. I.D. at 9 (citing *Day*, 464 A.2d at 1319). The ALJ continued that as a doctrine of issue preclusion, collateral estoppel seeks to prevent the re-litigation of a finally litigated issue in a subsequent proceeding between the same parties. I.D. at 9 (citing *Baker v. Pa. Human Relations Commission*, 462 A.2d 881 (Pa. Cmwlth. 1983)).

The ALJ also cited 66 Pa. C.S. § 316 to note that it is well-settled that a party is precluded from relitigating that which has been litigated and for which a final

Commission Order has been issued. I.D. at 9 (citing 66 Pa. C.S. § 316). The ALJ further noted that Section 316 precludes a collateral attack upon a Commission Order that has not been reversed upon appeal. I.D. at 9 (citing *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 548 (Pa. Cmwlth. 1989) (*Lehigh*)).

The ALJ reasoned that because Penn Power properly raised the affirmative defenses of *res judicata* and collateral estoppel in its Answer and New Matter, pursuant to 52 Pa. Code § 5.62(b), Penn Power's Preliminary Objection will be treated as a Motion for Judgment on the Pleadings filed, pursuant to 52 Pa. Code § 5.102. I.D. at 10 (citing 52 Pa. Code §§ 5.62(b), 5.102). The ALJ added that pursuant to 52 Pa. Code § 1.2(a), he will consider the issue of the previously litigated case, at Docket No. C-2016-2557487, in order to secure a just, speedy, and inexpensive determination of this proceeding. I.D. at 10 (citing 52 Pa. Code § 1.2(a)). Further, the ALJ referred to the Notice to Plead included in Penn Power's Answer and New Matter, which raised the aforementioned affirmative defenses, to note that the Complainants' substantive rights, pursuant to 52 Pa. Code § 1.2(c), will not be adversely affected because the Complainants had notice of the issues and an opportunity to respond. I.D. at 10.

The ALJ noted that the Commission will grant a Motion for Judgment on the Pleadings only if the pleadings show that there is no genuine issue as to a material fact and the moving party is entitled to a judgment as a matter of law. I.D. at 10 (citing 52 Pa. Code § 5.102(d)(1)). The ALJ continued that judgement on the pleadings should be granted only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise. I.D. at 10 (citing *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a/ Dominion Peoples*, Docket No. C-20028539 (Opinion and Order entered December 19, 2003)). The ALJ further noted that in ruling on a Motion for Judgement on the Pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against them only those facts that they specifically admit. The ALJ added that judgements on the pleadings should be entered only when the case is clear and free from doubt. I.D. at 10-11 (citing *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985)).

The ALJ summarized that: (1) the instant Complaint concerns the same property under the same customer account that was the subject of the 2016 Complaint; (2) the Complainants in both complaints request to opt-out of Penn Power's installation of a smart meter at their property, arguing that the law does not require smart meter installation and that installation of a smart meter at their home would raise privacy, health, and safety concerns, resulting in unsafe and unreasonable service, pursuant to Section 1501 of the Code; and (3) an evidentiary hearing was held concerning the 2016 Complaint, where the Complainants presented testimony and argument about their claim pertaining to the smart meter mandate and opting out of the smart meter installation, their privacy allegations, and were afforded the opportunity to present testimony about their health and safety concerns. I.D. at 11. The ALJ further noted that following the hearing concerning the 2016 Complaint, the assigned ALJ issued the *2018 Hanley Initial Decision*, which dismissed the 2016 Complaint with prejudice, finding that the Complainants failed to satisfy their burden of proof. I.D. at 11 (citing *2018 Hanley Initial Decision*). The ALJ also noted that subsequently, the Commission entered the *2019 Hanley Order*, which denied the Complainants' request to reopen the 2016 Complaint proceedings and adopted the ALJ's decision, and the *2020 Hanley Order*, which further denied the Complainants' petition for rehearing or reconsideration of the 2016 Complaint. I.D. at 11 (citing *2020 Hanley Order*; *2019 Hanley Order*).

The ALJ found that all four conditions of *res judicata* have been met. Specifically, the ALJ reasoned that: (1) the issues are identical - both the 2016 Complaint and the instant Complaint pertain to the installation of a smart meter at the Complainants' home; (2) the causes of action are identical – in both the 2016 Complaint and the instant Complaint, the Complainants wish to opt-out of smart meter installation, arguing that Act 129 does not mandate smart meter installation and that installation of a smart meter would violate Section 1501 of the Code; (3) the persons and parties to the action are identical – both the 2016 Complaint and the instant Complaint involve the Hanleys as the Complainants, and Penn Power as the Respondent; and (4) the quality and capacity of the parties suing or sued are also identical – as the parties are the same in both the 2016 Complaint and the instant Complaint, the quality and capacity of the parties suing or sued are identical. I.D. at 11-12.

The ALJ also found that all four conditions required for a finding of collateral estoppel have also been met. Specifically, the ALJ reasoned that: (1) the issue decided in the prior adjudication is identical with the one presented in the later action – both the 2016 Complaint and the instant Complaint pertain to the installation of a smart meter at the Complainants' home; (2) there was a final judgment on the merits – the Commission entered an Opinion and Order dismissing the 2016 Complaint with prejudice; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication – both the 2016 Complaint and the instant Complaint involve the Hanleys as Complainants; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action – the Complainants participated in an evidentiary hearing in the 2016 Complaint matter, where they had the opportunity to present their case. I.D. at 12.

The ALJ also found that the Complainants' instant Complaint is also barred, pursuant to 66 Pa.C.S. § 316, because it raises the same issues before the Commission a second time. Further, the ALJ found that the Commission's Opinion and Order dismissing the 2016 Complaint with prejudice remains conclusive upon all parties to that proceeding, which includes the Hanleys and Penn Power. I.D. at 12.

The ALJ concluded that the Complainants are barred from bringing the instant Complaint by virtue of the Commission's final action at Docket No.

C-2016-2557487. As such, the ALJ granted Penn Power's Preliminary Objection, treated as a Motion for Judgment on the Pleadings. The ALJ noted that 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. I.D. at 12 (citing 66 Pa. C.S. § 703(b), 52 Pa. Code § 5.21(d)). The ALJ continued that a hearing is necessary only to resolve disputed questions of fact, but when the question presented is one of law, the Commission need not hold a hearing. I.D. at 12 (citing *Lehigh*; *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth 1993)).

C. Exceptions[9]

In their Exceptions, the Hanleys repeat several of the same arguments put forth in their Complaint, including, *inter alia*, that they never requested a smart meter, they never agreed to participate in the smart meter program, PURPA and Act 129 do not require participation in the smart meter program, and a utility company must offer the customer the option to participate in the advanced meter program. The Complainants also dispute the outcome of the proceeding for the 2016 Complaint. Exc. at 2-17.

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[9] We acknowledge that the format of the Complainants' Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainants are appearing *pro se*, we will exercise our discretion to accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

Attached to the Exceptions are several pages from the Complainants' Brief, which was submitted in the proceeding for the 2016 Complaint.[10] Exc. at 18-36.

D. Replies to Exceptions

In its Replies to Exceptions, Penn Power avers that the Complainants' Exceptions neither contemplate nor address the basis for the dismissal of the Complaint with prejudice. Specifically, Penn Power highlights that the Complainants do not: (1) address or dispute that the Complaint is barred by collateral estoppel; and (2) contend that the ALJ mistakenly applied 66 Pa. C.S. § 316 to the instant Complaint. As such, Penn Power submits that the Complainants' Exceptions should not be considered because the Complainants failed to take Exception to the ultimate grounds for dismissal of the Complaint. Penn Power continues that if the Exceptions are considered, then the Exceptions are meritless. R. Exc. at 2-3.

Penn Power cites Section 316 of the Code, 66 Pa. C.S. § 316, to repeat its argument that the instant Complaint is barred by the Orders in the proceeding for the 2016 Complaint. Specifically, Penn Power argues that under 66 Pa. C.S. § 316, a complainant is prohibited from raising issues that were previously decided. R. Exc. at 3-4 (citing 66 Pa. C.S. § 316; *Moore, Jr. v. PECO Energy Company*, Docket No. C-2012-2309932 (Opinion and Order entered October 24, 2012); *Denlinger v. PPL Electric Utilities Corp.*, Docket No. C-2019-3014786 (Initial Decision issued February 24, 2020), *adopted without modification* (Opinion and Order entered

[10] Additionally, we note that the document attached to the end of the Exceptions appears to be from the proceeding for *Lamagna v. Pennsylvania Electric Co.*, Docket No. C-2017-2608014 (Opinion and Order entered December 19, 2019). *See*, Exc. at 37-40. We are unable to determine any relevance of this document to the instant proceeding or the proceeding for the 2016 Complaint. To the extent the Complainants' Exceptions include matters deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter, they are stricken from our consideration of the Exceptions, pursuant to 52 Pa. Code § 1.4(e).

May 21, 2020); 66 Pa. C.S. § 316). Further, Penn Power argues that Section 316 precludes a collateral attack upon a Commission Order which has not been reversed upon appeal. R. Exc. at 4 (citing *Lehigh*; 66 Pa. C.S. § 316). Moreover, Penn Power argues that the 2016 Complaint 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. R. Exc. at 4 (citing *2018 Hanley Initial Decision*; *2019 Hanley Order*; *2020 Hanley Order*). Furthermore, Penn Power posits that the ALJ correctly held that the Complainants' claims in the instant Complaint are barred by Section 316 of the Code. R. Exc. at 4 (citing I.D. at 12; 66 Pa. C.S. § 316). Additionally, Penn Power notes that the Complainants do not take issue with this holding and, to the extent that the Complainants' Exceptions are considered to take issue with the ALJ's finding regarding 66 Pa. C.S. § 316, such arguments are meritless and should be rejected. R. Exc. at 4 (66 Pa. C.S. § 316).

Penn Power also contends that the Complainants do not dispute that the Complaint is barred by the doctrine of *res judicata* (*i.e.*, a ground on which the Complaint was dismissed), given that the Complainants' claims related to the Company's planned installation of a smart meter at the service address were, or could have been, raised and ruled on in the 2016 Complaint. R. Exc. at 5. Penn Power continues that *res judicata*, or claim preclusion: (1) prevents a future suit between the same parties on the same cause of action after a final judgment is entered on the merits of the action; (2) prohibits parties involved in a prior litigation from asserting claims in a later action that were, or could have been raised, in the prior adjudication; and (3) protects parties from re-litigating claims with the same parties, or parties in privity with the original litigant, and serves to protect the courts from inefficiency and confusion that re-litigation fosters. R. Exc. at 5 (citing *PMA Insurance Group v. Workmen's Compensation Appeal Board (Kelley)*, 665 A.2d 538 (Pa. Cmwlth. 1995), *appeal denied*, 1996 Pa. LEXIS 619 (Pa. 1999); *Hillgartner v. Port Auth.*, 936 A.2d 131, 141(Pa. Cmwlth. 2007)). Further, Penn Power notes that for the doctrine of *res judicata* to apply, a party must demonstrate the identity of: (1) issues; (2) causes of action; (3) persons and parties to the action; and (4) the quality or capacity of the parties suing or being sued. R. Exc. at 5 (citing *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316-17 (Pa. Super. 1983)). Moreover, Penn Power agrees with the ALJ that the instant Complaint is barred by *res judicata* because, in both the 2016 Complaint and the instant Complaint: (1) the issues relate to the Company's planned installation of a smart meter at the service address; (2) the cause of action is a formal complaint involving the Company's planned installation of a smart meter at the service address; (3) the parties are the same (*i.e.*, the Hanleys and the Company) and, therefore, have identical quality or capacity. I.D. at 5-6. Accordingly, Penn Power asserts that the ALJ correctly walked through a *res judicata* analysis and, therefore, the instant Complaint should be dismissed on *res judicata* grounds. R. Exc. at 6 (citing I.D. at 11-12).

Penn Power also repeats its argument that the Complaint is barred by the doctrine of collateral estoppel, or issue preclusion, which prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. R. Exc. at 6 (citing *Fiore v. Commonwealth*, 508 A.2d 371, 374 (Pa. Cmwlth. 1986)). Penn Power continues that the doctrine of collateral estoppel applies where: (1) "[a]n issue decided in a prior action is identical to the one presented in a later action;" (2) "[t]he prior action resulted in a final judgment on the merits;" and (3) the party against whom collateral estoppel is asserted: (a) was a party to the prior action, or is in privity with a party to the prior action; and (b) had a full and fair opportunity to litigate the issue in the prior action. R. Exc. at 6-7 (citing *Rue v. K-Mart Corporation*, 713 A.2d 82, 84 (Pa. 1998)). Further, Penn Power argues that the instant Complaint is barred by collateral estoppel because: (1) in both the 2016 Complaint and the instant Complaint, the issues are about the Company's planned installation of a smart meter at the service address; (2) the 2016 Complaint was adjudicated on the merits; (3) the parties in both the 2016 Complaint and the instant Complaint are the same (*i.e.*, the Hanleys and the Company); and (4) in the previous action, the Complainants had a full and fair opportunity to raise claims and litigate issues regarding the Company's planned installation of a smart meter at the service address. R. Exc. at 7. Accordingly, Penn Power asserts that the ALJ correctly walked through a collateral estoppel analysis and, to the extent that the Complainants take issue with the ALJ's findings related to collateral estoppel, the ALJ clearly and correctly applied the concept of collateral estoppel barring the instant Complaint. Therefore, Penn Power submits that given that the fully litigated 2016 Complaint involved the same issue(s), the same Parties, and the same service address, the ALJ's findings and dismissal of the Complaint on collateral estoppel grounds should be adopted without modification. R. Exc. at 7-8.

Penn Power also counters that contrary to the Complainants' assertions, the Commission cannot grant the Complainants' requested relief because the Company's customers are not permitted to opt-out of or rescind smart meter installation. R. Exc. at 8 (citing Exc. at 5-16). Penn Power avers that the Company is legally required to install the smart meters by Code, the Commission's Orders, and the Company's Commission-approved Smart Meter Deployment Plan. R. Exc. at 8-9 (citing *Smart Meter Implementation Order*; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order June 9, 2010); *2014 Smart Meter Order*; 66 Pa.C.S. § 2807(f)). Further, Penn Power refers to *Povacz, et al. v. Pa. PUC*, 280 A.3d 975, 1012-1014 (Pa. 2022) (*Povacz II*) to note that the Supreme Court issued its Opinion affirming in part and reversing in part the Commonwealth Court's decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*). R. Exc. at 9-10 (citing *Povacz I*; *Povacz II*). Specifically, Penn Power notes that, in *Povacz II*, the Supreme Court held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the Commission applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Code; (3) an 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." R. Exc. at 10 (citing *Povacz II*). Moreover, Penn Power argues that the Complainants' Exceptions do not consider the Supreme Court's holding in *Povacz II*, adding that the Complainants' reliance on their reading of Act 129 is meritless. R. Exc. at 10 (citing Exc. at 5-16; *Povacz II* at 998).

Additionally, Penn Power argues that even if the Complainants were to prove a Section 1501 violation, which they did not do in the proceeding for the 2016 Complaint, they would only be entitled to "an accommodation to the extent allowed by Act 129 and a utility's tariff." R. Exc. at 10 (citing *Povacz II* at 1014). Penn Power continues that the only accommodation permitted under the Company's Commission-approved tariff is the option of installing the smart meter at a different location at the customer's expense. Therefore, Penn Power asserts that the Complainants' Exception related to the mandatory installation of smart meters should be denied and the Initial Decision should be adopted without modification. R. Exc. at 10-11.

E. Disposition

At the outset, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In this case, the ALJ concluded the Complainants are barred from bringing this Complaint by virtue of the Commission's final action at Docket No. C-2016-2557487, a prior Complaint between the same parties, raising the identical issues which were finally decided against the Complainants, and dismissed with prejudice.

I.D. at 12. On that basis, the ALJ concluded that the Respondent's Preliminary Objections, treated as a Motion for Judgment on the Pleadings, should be granted and the Complaint should be dismissed. *Id.*

On Exception, the Complainants do not challenge the ALJ's basis for granting the Company's Preliminary Objections, treated as a Motion for Judgement on the Pleadings and dismissing the Complaint. Rather the Complainants reiterate the substantive arguments raised in the Complaint. Exc. at 3-16. To the extent that the Complainants' Exceptions may be construed to challenge the ALJ's finding that the Complaint is barred by Section 316 of the Code, we find the Complainants' arguments to be without merit and, therefore we shall deny Complainant's Exceptions.

We agree with Penn Power that the instant Complaint is barred by the Orders in the proceeding for the 2016 Complaint. Specifically, under Section 316 of the Code, a complainant is prohibited from raising issues that were previously decided. 66 Pa. C.S. § 316; *Moore, Jr. v. PECO Energy Company*, Docket No. C-2012-2309932 (Opinion and Order entered October 24, 2012); *Denlinger v. PPL Electric Utilities Corp.*, Docket No. C-2019-3014786 (Initial Decision issued February 24, 2020), *adopted without modification* (Opinion and Order entered May 21, 2020); 66 Pa. C.S. § 316).

Further, we agree that Section 316 of the Code precludes a collateral attack upon a Commission Order which has not been reversed upon appeal. 66 Pa. C.S. § 316. We expressly adopt the ALJs analysis of requisite elements of *res judicata* and collateral estoppel, and thorough examination of the identity of the parties and issues raised in the present Complaint and the 2016 Complaint, finding:

> All four conditions required for a finding of *res judicata* have been met: 1) the issues are identical (both complaints pertain to the installation of a smart meter at Complainants' home); 2) the causes of action are identical (complainants in both

> complaints wish to opt-out of smart meter installation, arguing that Act 129 does not mandate smart meter installation and that installation of a smart meter would violate Section 1501 of the Code); 3) the persons and parties to the action are identical (both complaints involve Orpheus and Kimberly Hanely as Complainants and the Pennsylvania Power Company as Respondent); and 4) the quality and capacity of the parties suing or sued are also identical (as the parties are the same in both complaints, the quality and capacity of the parties suing or sued are identical).
>
> Additionally, all four conditions required for a finding of collateral estoppel have also been met: 1) the issue decided in the prior adjudication is identical with the one presented in the later action (both complaints pertain to the installation of a smart meter at Complainants' home); 2) there was a final judgment on the merits (the Commission entered an Opinion and Order dismissing the 2016 complaint with prejudice); 3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication (both complaints involve Orpheus and Kimberly Hanely as Complainants); and 4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action (the Complainants participated in an evidentiary hearing in the 2016 complaint matter where they had the opportunity to present their case).

I.D. at 11-12.

Moreover, as Penn Power argued, the 2016 Complaint 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. *See, 2018 Hanley Initial Decision*; *2019 Hanley Order*; *2020 Hanley Order*. We find that the ALJ correctly held that the Complainants' claims in the instant Complaint are barred by Section 316 of the Code. I.D. at 12 (citing 66 Pa. C.S. § 316).

We find that the ALJ properly applied the provision of Section 316 of the Code and the doctrines of *res judicata* and collateral estoppel as a bar to the present Complaint and to preclude a hearing on the Complaint. We note that 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). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh*; *Edan Transp. Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth 1993). Because the Complaint was properly precluded under Section 316 of the Code, no hearing was necessary as a matter of law.

Accordingly, for all the forgoing reasons, we shall adopt the ALJ's Initial Decision, and dismiss the instant Complaint.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Orpheus and Kimberly Hanley on February 27, 2024, at Docket No. C-2023-3041147, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Alphonso Arnold III, issued on February 7, 2024, at Docket No. C-2023-3041147, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed on June 5, 2023, by Orpheus and Kimberly Hanley against Pennsylvania Power Company, at Docket No. C-2023-3041147, is denied.

4. That this proceeding at Docket No. C-2023-3041147 be marked closed.

BY THE COMMISSION,

Rosemary Chiavetta

Rosemary Chiavetta

APPENDIX D

Statement of the Vice Chair of the Pennsylvania
Public Utility Commission Regarding ALJ Dismissal
Dated: May 9, 2024

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Orpheus and Kimberly Hanley
vs.
Pennsylvania Power Company

Public Meeting held May 9, 2024
3041147-OSA
Docket No. C-2023-3041147

STATEMENT OF VICE CHAIR KIMBERLY BARROW

The matter before us for disposition involves allegations against Pennsylvania Power Company (Penn Power) relating to a smart meter at the residence of Orpheus and Kimberly Hanley. Administrative Law Judge (ALJ) Alphonso Arnold III's February 7, 2024 Initial Decision dismisses the Formal Complaint, with prejudice, based upon the doctrines of *res judicata*,[1] collateral estoppel,[2] and Section 316 of the Public Utility Code.[3] Specifically, the ALJ determined that the Hanleys' claims were barred due to a Commission order dismissing the Hanleys' 2016 Formal Complaint (2016 Complaint) averring similar claims.[4] The Hanleys filed Exceptions.

The Hanleys' 2016 Complaint argued that the Hanleys' decision not to participate in the smart meter program was based upon concerns regarding health, privacy, safety, and property protection. The matter was fully litigated, however, the ALJ limited the Hanleys' testimony and presentation of evidence during the evidentiary hearing. Specifically, the ALJ ordered a discovery sanction against the Hanleys and prohibited them from raising any issues related to the impact of a smart meter on their health.[5]

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[1] *Res judicata*, or claim preclusion, reflects the refusal of the law to allow the re-litigation of a claim in a subsequent cause of action arising between the same parties on the same claim after a court of competent jurisdiction has rendered a *final judgment on the merits* in a previous case. *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. 1994). Four conditions must be met to apply the doctrine of *res judicata*: (1) identity of issues; (2) identity of causes of action; (3) identity of persons and parties to the action; and (4) identity of the quality and capacity of the parties suing or sued. *Mendozav. Peoples Nat. Gas Co. LLC*, Docket Number F-2019-3015189 (Order entered July 15, 2021) (*citing Winston v. Phila. Gas Works*, Docket C-2010-2181504 (Order entered April 16, 2012)); *O'Toole v. Bell Telephone Company of Pennsylvania*, 77 Pa. P.U.C. 98 (1992); *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983).

[2] Collateral estoppel, or issue preclusion, prevents the question of law or an issue of fact that has been once litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit. Four conditions must be met to apply the doctrine of collateral estoppel: (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) *there was a final judgement on the merits*; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983)(emphasis added).

[3] 66 Pa.C.S. § 316. Relevant portion provides that "[w]henever the commission shall make any rule, regulation, *finding, determination or order*, the same shall be prima facie evidence of the *facts found* and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review." (emphasis added).

[4] *See generally Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order dated December 19, 2019 and Order dated August 27, 2020).

[5] Hearing Transcript, pg. 36 (May 2, 2018).

Notably, a prohibition from allowing complainants to pursue or present evidence on a specific claim does not result in a final judgement on the merits which triggers the doctrines of *res judicata* or collateral estoppel.[6] Moreover, Section 316 does not apply as the Commission did not render a finding or determination regarding the Hanleys' health claims.[7] Accordingly, I disagree with part of the ALJ's findings in the instant matter. The Hanleys should be permitted to pursue their Section 1501 health allegations because this claim was not decided on the merits in the 2016 Complaint proceeding.

May 9, 2024

Kimberly Barrow, Vice Chair

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[6] Notably, the ALJ in the 2016 Complaint did not make any findings of fact related to health and simply stated that the Hanleys failed to carry their burden of proof establishing that Penn Power provided *unsafe or unreasonable* service in violation of Section 1501. *Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Initial Decision issued October 24, 2018). The ALJ did not issue a finding of fact or conclusion of law related to the Hanleys' health concerns.

[7] The December 19, 2019 Order noted that the Hanleys were afforded the ability to provide claims related to unsafe and unreasonable service and found that the ALJ's initial Decision relating to privacy concerns and unsafe and unreasonable service were well-reasoned. *Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487, pgs. 23-24 (Order dated December 19, 2019). It also explicitly highlighted the discovery limitations placed by the ALJ, noting that the ALJ sustained objections to Ms. Hanley's lay and opinion testimony regarding health effects on the basis of the overall sanction restricting evidence of purported health effects. *Id.* The August 27, 2020 Order again noted that the Hanleys were afforded the ability to present evidence regarding their safety concerns, i.e., belief that smart meters were carcinogenic and could explode and cause fires, but were not allowed to present evidence relating to their health concerns. *Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487, pgs. 8-9 (Order dated August 27, 2020). Neither the December 19, 2019 Order nor the August 27, 2020 Order rendered a finding or determination on the Hanleys' health concerns, just the privacy, unsafe, and unreasonable service allegations. *Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Order dated December 19, 2019 and Order dated August 27, 2020). As the Hanleys were not afforded the ability to provide evidence on their health claims, and the fact that safety concerns do not equate to health concerns, logic dictates that Section 316 does not apply in this matter.

APPENDIX E

Commonwealth Court Order granting extension time

(Per Curiam)

Dated: October 25, 2024

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orpheus Hanley and Kimberly Hanley, Petitioners v. Pennsylvania Public Utility Commission, Respondent	:	No. 865 C.D. 2024

PER CURIAM **ORDER**

NOW, October 25, 2024, upon consideration of Orpheus Hanley and Kimberly Hanley's (Petitioners) Request for Extension to Submit Brief (Request), in which Petitioners seek a 30-day extension of time to file a brief,[1] the Request is GRANTED.

Petitioners shall file four copies of the appellate brief, and serve on each other party one copy of the appellate brief, on or before November 22, 2024.

[1] The Pennsylvania Public Utility Commission consents to Petitioners' Request. Petitioners indicate that they contacted counsel for Pennsylvania Power Company (Intervenor), but they had not received a response from Intervenor's counsel at the time they printed their Request.

Certified from the Record

OCT 25 2024

And Order Exit

APPENDIX F

Docket sheet or certification showing in forma pauperis status granted

Supreme Court of Pennsylvania

Miscellaneous Docket Sheet

Docket Number: 2 WM 2025

October 26, 2025

CAPTION

Orpheus Hanley and Kimberly Hanley, Petitioners
v.
Pennsylvania Public Utility Commission, Respondent

CASE INFORMATION

Initiating Document:	Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc
Case Status:	Closed
Journal Number:	

Case Category:	Administrative Agency	Case Type(s):	Public Utility Commission

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Pro Se:	Hanley, Kimberly
Address:	PO Box 539 Conneaut Lake, PA 16316
Phone No:	(814) 732-0727
Receive Mail:	Yes
Pro Se:	Hanley, Kimberly, Petitioner
Pro Se:	Yes
IFP Status:	Pa.R.A.P. 551

Pro Se:	Hanley, Orpheus
Address:	PO Box 539 Conneaut Lake, PA 16316
Phone No:	(814) 732-0727
Receive Mail:	Yes
Pro Se:	Hanley, Orpheus, Petitioner
Pro Se:	Yes
IFP Status:	

Attorney:	Garcia, Daniel Alonso FirstEnergy Service Company		
Address:	800 Cabin Hill Rd Greensburg, PA 15601		
Phone No:	(412) 980-2282		
Receive Mail:	Yes		
Receive EMail:	Yes	Email:	
Representing:	Pennsylvania Power Company, Respondent		
Pro Se:	No		
IFP Status:			
Representing:	Pennsylvania Power Company a/k/a Penn Power, Respondent		
Pro Se:	No		
IFP Status:			

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
January 8, 2025	**Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc**		
		Petitioner	Hanley, Orpheus
		Petitioner	Hanley, Kimberly
January 8, 2025	**Verified Statement in Support of Continuation of IFP Status**		
		Petitioner	Hanley, Kimberly
January 8, 2025	**In Forma Pauperis Continued**		
			Supreme Court of Pennsylvania
January 15, 2025	**No Answer Letter to Application**		
		Respondent	Pennsylvania Public Utility Commission
January 15, 2025	**No Answer Letter to Application**		
		Respondent	Pennsylvania Power Company a/k/a Penn Power
		Respondent	Pennsylvania Power Company
June 23, 2025	**Order Denying Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc**		
			Per Curiam

Comments:
AND NOW, this 23rd day of June, 2025, the Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc is DENIED.

June 23, 2025	**Order Exited**		
			Office of the Prothonotary
July 7, 2025	**Application for Reconsideration**		
		Petitioner	Hanley, Kimberly
July 18, 2025	**No Answer Letter to Application**		
		Respondent	Pennsylvania Public Utility Commission
July 21, 2025	**No Answer Letter to Application**		
		Respondent	Pennsylvania Power Company a/k/a Penn Power
		Respondent	Pennsylvania Power Company
July 31, 2025	**Order Denying Application for Reconsideration/Reargument**		
			Per Curiam

Comments:
AND NOW, this 31st day of July, 2025, the Application for Reconsideration is DENIED.

July 31, 2025	**Order Exited**		
			Office of the Prothonotary
July 31, 2025	**Reconsideration Time Expired/Case Closed**		
			Office of the Prothonotary

CROSS COURT ACTIONS

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Orpheus Hanley and Kimberly Hanley, Petitioners v. Pennsylvania Public Utility Commission, Respondent	:	No. 865 C.D. 2024

PER CURIAM **ORDER**

NOW, September 13, 2024, upon consideration of Orpheus Hanley's and Kimberly Hanley's (Petitioners) Application for Leave to Proceed In Forma Pauperis (Application), the Application is GRANTED, the filing fee is waived, and Petitioners shall proceed in conformity with Pa.R.A.P. 2151(b) (a party granted leave to proceed in forma pauperis shall not be required to file a reproduced record).

FO

Order Exit
09/13/2024

APPENDIX G

Pa. Legislative Journal, 192d Gen. Assemb., Reg. Sess. 2626–27 (Oct. 8, 2008) (at 2627, col. 2)

Dated: October 8, 2008

SB 1107 (Pr. No. 2472) (Rereported) *(Concurrence)*

An Act amending Titles 23 (Domestic Relations) and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, further providing for modification of existing custody orders; and providing for protection of deployed members of the Pennsylvania National Guard and reserve components in child custody arrangements.

SB 1504 (Pr. No. 2454) (Rereported) *(Concurrence)*

An Act providing for the highway capital budget project itemization for the fiscal year 2008-2009 to be financed from current revenue or by the incurring of debt.

CONSIDERATION OF CALENDAR RESUMED

BILL ON CONCURRENCE IN HOUSE AMENDMENTS TO SENATE AMENDMENTS AS AMENDED

SENATE CONCURS IN HOUSE AMENDMENTS
TO SENATE AMENDMENTS AS AMENDED

HB 1096 (Pr. No. 4527) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further providing for definitions; establishing the Uniform Construction Code Review and Advisory Council; and further providing for revised or successor codes and for training of inspectors.

On the question,
Will the Senate concur in the amendments made by the House to Senate amendments, as further amended by the Senate, to House Bill No. 1096?

Senator PILEGGI. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate amendments, as further amended by the Senate, to House Bill No. 1096.

On the question,
Will the Senate agree to the motion?

The yeas and nays were required by Senator PILEGGI and were as follows, viz:

YEA-50

Armstrong	Fontana	O'Pake	Tartaglione
Baker	Fumo	Orie	Tomlinson
Boscola	Gordner	Piccola	Vance
Browne	Greenleaf	Pileggi	Washington
Brubaker	Hughes	Pippy	Waugh
Corman	Kasunic	Punt	White, Donald
Costa	Kitchen	Rafferty	White, Mary Jo
Dinniman	LaValle	Regola	Williams, Anthony H.
Earll	Logan	Rhoades	Williams, Constance
Eichelberger	Madigan	Robbins	Wonderling
Erickson	McIlhinney	Scarnati	Wozniak
Ferlo	Mellow	Stack	
Folmer	Musto	Stout	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

THIRD CONSIDERATION CALENDAR RESUMED

BILLS ON THIRD CONSIDERATION
AND FINAL PASSAGE

HB 2200 (Pr. No. 4526) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for director of operations, secretary, employees and consultants; repealing provisions relating to office of trial staff; further providing for bureaus and offices; providing for other bureaus, offices and positions; further providing for electric utility definitions; providing for energy efficiency and conservation program and for energy efficiency and conservation; further providing for duties of electric distribution companies and for market power remediation; and providing for procurement, for additional alternative energy sources and for carbon dioxide sequestration network.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT pro tempore. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Mr. President, I rise to ask for support for House Bill No. 2200 as amended by the Senate. I think this is very, very important legislation for our consumers today who consume power and energy in Pennsylvania. House Bill No. 2200 is, I think, a large step forward. The Governor of the State of Pennsylvania, Ed Rendell, has been a leader in a new energy policy, and this legislation contains many of those items in there.

It includes demand-side reduction, conservation, that I think is going to help the consumer, in the long run, to reduce the demand on power. We are requiring a reduction of 3 percent by the year 2013 and 4 1/2 percent for peak power, and I think that is extremely important as we go forward with an energy policy, Mr. President. It also contains language in there that we will have smart meters. It is not mandated, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.

I think probably the most important reason that we do this is the procurement language. As many of you know, we fought, in the last few months, trying to get mitigation for rate caps coming off. So that is a year or 2 away in some instances, and I think we have more time to fight that battle, but something that I think will help the consumer immediately will be the fact that we have new procurement standards. We no longer are going to use market pricing. We are going to use best pricing or least price for the consumer, and I think that helps the consumer in the end, when utilities are able to go out and compete for power as they purchase it for the distribution company.

I think that by offering these different tools and giving some latitude, people are not locked into buying power in 1 day for the rest of their contracts. Many of you are aware of the Pike County situation, where after the episode of Katrina, Pike County and that utility up there were forced to buy their power the day after the hurricane, and of course, the rates were extremely high. Under our provisions here for procurement, we would be able to prevent that. And so for that reason, I think that would be a huge step forward in trying to bring electric rates down for the consumers in Pennsylvania.

I am disappointed. I fought hard to try to get mitigation. I do not think that is possible now, but I do not think that chapter is closed. I think that we are going to stand here and fight hard in these next 2 years and fight for mitigation or fight to make sure that any rate increases when the caps come off are not onerous for our consumers. But I think it is important today that we step forward and take these steps when it comes to demand-side reduction, to energy conservation, and to procurement, to make sure that we are moving forward with a very sensible energy policy in Pennsylvania.

I want to thank several people here. I want to thank Senator Boscola, my counterpart on the committee, for her hard fight and her cooperation. I want to thank my counterparts in the House, Representative McCall and Representative Preston. I want to thank our staffs. Fran Cleaver and Kathy Eakin have worked extremely hard, along with Bernie Kieklak and Christopher Craig, who have done an outstanding job, particularly, I think, in representing the interests of the consumer in this.

We are very, very fortunate in Pennsylvania to have some very strong utility companies, and we are, in fact, an exporter of power. We are, in fact, very energy-independent. We export probably 40 percent of the power we produce. Thirty-five percent of our power is produced by nuclear, and we are, of course, very, very rich in coal resources in Pennsylvania. So I think we have a great base in our energy policies and in our energy companies here to be able to go on and move into some of our alternative energies, to move into a better energy policy, as the Governor has asked for.

So I think this is a great compromise bill. It has been hard-fought. There are very, very strong and passionate positions on both sides of this issue. But I think it is time now to move forward, help the consumer, move forward with a forward-thinking energy policy that the Governor has put forward, and pass this bill today. So for that reason, Mr. President, I ask for a favorable vote on House Bill No. 2200 as amended by the Senate.

The PRESIDENT pro tempore. The Chair recognizes the gentlewoman from Northampton, Senator Boscola.

Senator BOSCOLA. Mr. President, as we all know, electric rate caps are scheduled to expire in Pennsylvania's five largest electric companies in 2010. And if we do nothing, if we do nothing to protect millions of electric customers from rate shock, the people we represent will see their bills go up by 30, 40, 50, and up to 70 percent in some areas, and that will be overnight.

Today, in House Bill No. 2200, we can finally do something to help millions of ratepayers hold on to more of their money instead of having to send it to their electric company. The procurement provisions contained in this bill will force power companies to purchase least-cost fuel instead of purchasing coal or natural gas or uranium at prevailing market rates, which is more expensive. It also gives Pennsylvania's Consumer Advocate the tools he needs to keep electric prices as low as possible in the future. That is why our Consumer Advocate endorses this bill today, and personally assured me late last night that passing House Bill No. 2200 today is the right thing to do.

The other major provision of this bill deals with energy conservation and some very important steps that we all need to take for electric use. So-called smart meters by themselves are not magically -- anyone's monthly electric bill is not going to go down just because you are getting a smart meter. That will not happen. But this new technology will reward customers who are smart enough to realize that they can use electricity when it is cheapest during off-peak hours and pay a lower rate. We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.

There is also strong market manipulation language in House Bill No. 2200, and that is what Senator Mellow insisted on being part of this bill. He should be commended for that, and we should not overlook that critical provision, because it will insure that real competition will not be undermined by existing power companies manipulating the wholesale market or the retail market to their own advantage.

What is not contained in this bill, unfortunately, is a real rate relief mitigation plan that I think the Senate needs to pass eventually. As everyone in this Chamber knows, that is what I have been fighting for for the past 2 years, and I do not doubt anybody knows that I am passionate about it, and this is just the beginning of this fight. Now, have we reached an agreement on mitigation yet? No. Despite our best efforts and ongoing negotiations that lasted into early morning, we have not. But I believe we are getting there.

And I know for a fact that we are closer to real rate mitigation now than we were 2 weeks ago or 2 months ago or 2 years ago. If there is anyone who wants to dispute that, you just have to take my word for it. And you can ask Senator Pileggi and Senator Tomlinson. They both sat in marathon sessions, negotiating sessions, and they want what we all want. We want Pennsylvania power companies to put up their own money to make it easier for customers to afford the new deregulated electric rates in 2010 and 2011. To do that will cost billions of dollars, billions, billions, that the companies would have given to their shareholders or slickly added to their profits.

So real rate relief, not just some Christmas card program or a plan to add some coupons, stuff some coupons in your pocket and save $10 off your next purchase of a $30,000 solar panel, that is not real rate relief. Just because it did not all come together at the eleventh hour like it does in the movies does not mean that we are done and that mitigation is dead. I have too much respect for Senator Pileggi, Chairman Tomlinson, Senator Fumo, and Senator Mellow to doubt that we will have a mitigation plan in place before rate caps come off. I also know that Governor Rendell will not rest until we have a mitigation plan in place that helps the ratepayers, small businesses, and our most vulnerable industries from this rate shock.

Together, we have put a tremendous amount of time into making this bill good for ratepayers and good for Pennsylvania. I

APPENDIX D -- Pa Cmwlth Legislative Journal
EXHIBIT pg. D-5

APPENDIX H

Excerpts from Initial Complaint, Termination Threats for not arranging installation, and Pennsylvania Public Utility Commission Order Denying Stay

Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

NO SMART METER INSTALLATION. WE HAVE NOT REQUESTED participation in the Smart Meter program. WE exercise our RIGHT TO NOT PARTICIPATE in the advanced metering program. We WILL NOT participate in this program.

Based on PURPA standards Sec. 111(d)(11) and (14), and based on 66 Pa. C.S. §2807(f)(2)(i), and based on 52 Pa. Code § 57.251(a): WE HAVE A RIGHT TO NOT PARTICIPATE in the advanced metering program.

- 66 Pa. C.S. §2807(f)(2) (i) ***UPON REQUEST FROM A CUSTOMER THAT AGREES TO PAY THE COST*** of the smart meter at the time of the request.
- 52 Pa. Code § 57.251(a) ... THIS SUBCHAPTER ***DOES NOT REQUIRE THE PUBLIC TO PARTICIPATE*** IN AN ADVANCED METERING PROGRAM.
- PURPA standards Sec. 111(d)(11) ... make available ***UPON REQUEST*** net metering service to any electric consumer....
  PURPA Sec. 111(d)(14)(A) ... OFFER EACH OF ITS CUSTOMER CLASSES, AND PROVIDE INDIVIDUAL CUSTOMERS UPON CUSTOMER REQUEST

While it appears that no explanation is required, our decision **NOT** to **REQUEST** participation and to **NOT AGREE TO PAY the cost of the smart meter** is based upon VERY **STRONG CONCERNS** regarding *HEALTH, PRIVACY, SAFETY*, and *PROPERTY PROTECTION.*

WHAT WE WANT: FirstEnergy Penn Power to **stop forcing an involuntary installation** of a smart meter or advanced meter that **we have not nor do not** request.
We have NEVER requested NOR opted in for the installation of a smart meter / an advanced meter. NOR do we agree to pay for its installation.
WE DO NOT WANT TO PARTICIPATE IN THE ADVANCED METER PROGRAM!

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7. **Protection From Abuse (PFA)/ Domestic Violence**

Has a court granted you a "Protection From Abuse" order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

2. NAME OF UTILITY OR COMPANY (RESPONDENT)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill. PennPower A FirstEnergy Company

3. TYPE OF UTILITY SERVICE

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- [x] Electric
- [ ] Gas
- [ ] Water
- [ ] Wastewater/Sewer
- [ ] Storm Water
- [ ] Steam Heat
- [ ] Motor Carrier (taxi, moving company, limo)
- [ ] Telephone/Telecommunications (local, long distance)

Note: The PUC does not regulate high-speed internet service, cell phones or cable TV.

4. REASON FOR COMPLAINT

What kind of problem are you having with the utility or company? We are before the Appeals Court yet utility persists with shut-off threats!

Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- [x] The utility is threatening to shut off my service or has already shut off my service.
- [ ] I would like a payment agreement.
- [ ] Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have them.
- [ ] I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- [x] Other (explain) We are in the middle of an appeal case before the Pennsylvania Commonwealth of Appeals, yet every 1 1/2 to 2 weeks PennPower A FirstEnergy Company (also referred to as FirstEnergy PennPower) keeps threatening to shut off power if we do not accept an advanced net meter (a.k.a, a smart meter) on our property, despite never contacting the utility for such an installation, nor have we ever agreed to pay for such installation, per the federal PURPA, EPAC regulatory guidelines and per the state regulatory Electricity Generation Customer Choice and Competition Act.

Met-Ed®
Penelec®
Penn Power®
West Penn Power®

FirstEnergy Companies

76 South Main Street
Akron, Ohio 44308-1890

July 16, 2024

10 DAY SHUT-OFF NOTICE
AVISO DE SUSPENCION DE SERVICIO

Orpheus Hanley

RE:
ACCOUNT NUMBER:

Dear Orpheus Hanley:

Your Electric Service May Be Shut Off!
Because you have failed to make arrangements for the meter at your premises to be replaced with a smart meter, service to will be shut off on or after July 26, 2024. The company may have up to 60 days to act on this notice.

Your electric service will not be shut off if you contact us immediately to make arrangements for the meter at your premises to be replaced with a smart meter. If your electric service is shut off, service will only be restored after a smart meter has been installed on the premises. There will be no reconnection charge.

Please call us at 1-855-344-3400 (Monday through Friday, 8:00 a.m. to 6:00 p.m.). We would like to answer questions that you have regarding our smart meter program and make arrangements to install the new meter.

IMPORTANT TO KNOW BEFORE YOUR ELECTRIC SERVICE IS SHUT OFF

- If you have questions or need more information, please call us at 1-855-344-3400. After you talk with us, if you are not satisfied, you may file a complaint with the Public Utility Commission (PUC). The PUC may delay the shut-off if you file the complaint before the shut-off date. To contact them, call 1-800-692-7380 or write to: Pennsylvania Public Utility Commission, Box 3265, Harrisburg, PA 17105-3265.
- If you have trouble understanding or speaking English or have a disability, please call us at 1-855-344-3400 for free interpretation.
- If your service is shut off, you must contact us to make arrangements to have the smart meter installed on your premises to have the service turned back on.
- After all conditions have been met to have the service turned back on, it may take up to three days to have your service restored. Please contact us to discuss the details.

Attencion! Este es en mensaje muy importante. Si usted no lo entiende, favor de llama a 1-855-344-3400.

Sincerely,
Pennsylvania Smart Meter Deployment

Letter 3 Res 8/17

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held August 14, 2025

Commissioners Present:

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

Orpheus and Kimberly Hanley — C-2024-3051044

v.

FirstEnergy Pennsylvania Electric Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Orpheus and Kimberly Hanley (collectively, the Complainants or the Hanleys), filed on May 19, 2025, in the above-captioned proceeding. The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Alphonso Arnold III, which the Commission served on the Parties on April 21, 2025.[1] FirstEnergy Pennsylvania Electric Company (FirstEnergy or Company) timely filed Reply Exceptions

[1] As noted, *infra*, the Complainants were granted a request for a ten (10) day extension to file Exceptions to the Initial Decision.

installation case are considered on an individual basis established on the facts in the record of each proceeding.

In summary, we find nothing in the Complainants' Exceptions to refute the ALJ's conclusion that the Hanleys failed to meet their burden of proving that FirstEnergy violated the Code, the Commission's Regulations, or a Commission Order. Therefore, for all of the foregoing reasons, we shall: (1) deny the Complainants' Exceptions; (2) adopt the Initial Decision; and (3) dismiss the Hanleys' Complaint, with prejudice.

F. Petition for Stay and Disposition

1. Petition for Stay

In their Petition, the Complainants request that the Commission "allow [their] request for an emergency stay order of C-2024-3051044 to prevent further actions that could cause irreparable harm to the pending higher court case." Petition at 1-2 (citing 52 Pa. Code § 56.151) (emphasis omitted). The Hanleys also state the following: "Complainants are under appeal to the Pennsylvania Supreme Court (2 WM 2025) concerning related PUC case number C-2023-3041147, which case is directly linked to this current case C-2024-3051044." *Id.*

2. Disposition

As a threshold matter, the Petition is not properly before the Commission for disposition because it seeks relief *before* the Commission has entered an order in this matter. The timing of the Complainants' Petition is determinative because, while the Commission's Regulations at 52 Pa. Code § 5.572 do provide for the consideration of petitions for relief, including petitions seeking a stay, such petitions are only appropriately considered *after* the Commission enters a final order in the underlying case.

The requirement for the Commission to have previously entered a final order in a case prior to considering a petition for relief is demonstrated in the following provision contained in the Commission's regulation regarding Petitions for relief: "Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within *15 days after the Commission order involved is entered or otherwise becomes final*." 52 Pa. Code § 5.572(c) (emphasis added). Here, the ALJ's Initial Decision is not a final order entered by the Commission from which a petition for relief may be granted.

Further, although the Complainants seek premature relief prior to the issuance of an order in this matter, the Complainants' Petition also fails to provide a reason explaining why an active appeal should cause a delay for the instant proceeding. Moreover, the Complainants fail to set forth any basis in fact or law to justify a stay of the proceedings at the Exceptions stage.

Both because the Complainants' Petition is not properly before the Commission for disposition, and because no good cause exists to grant the Petition, the Petition will be denied.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall: (1) deny the Complainants' Exceptions; (2) deny the Complainants' Petition for Stay; (3) adopt the ALJ's Initial Decision; and (4) deny and dismiss the Hanleys' instant Complaint, with prejudice, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Orpheus and Kimberly Hanley on May 19, 2025, at Docket No. C-2024-3051044, to the Initial Decision of

Administrative Law Judge Alphonso Arnold III, issued on April 21, 2025, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Alphonso Arnold III, issued on April 21, 2025, at Docket No. C-2024-3051044, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint, filed on September 5, 2024, by Orpheus and Kimberly Hanley against FirstEnergy Pennsylvania Electric Company, at Docket No. C-2024-3051044, is denied and dismissed, with prejudice.

4. That the Petition for Stay, filed on June 9, 2025, by Orpheus and Kimberly Hanley at Docket No. C-2024-3051044, is dismissed as moot.

5. That this proceeding at Docket No. C-2024-3051044 be marked closed.

BY THE COMMISSION,

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: August 14, 2025

ORDER ENTERED: August 14, 2025

APPENDIX I

Excerpts from the Smart Meter Deployment Plan

(SMDP §§ 1.3.1–1.3.2)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

METROPOLITAN EDISON COMPANY
DOCKET NO. M-2013-2341990

PENNSYLVANIA ELECTRIC COMPANY
DOCKET NO. M-2013-2341994

PENNSYLVANIA POWER COMPANY
DOCKET NO. M-2013-2341993

WEST PENN POWER COMPANY
DOCKET NO. M-2013-2341991

SMART METER DEPLOYMENT PLAN

ORIGINAL DECEMBER 31, 2012
REVISED MARCH 19, 2014
REVISED JUNE 16, 2014

1.3 Objectives and Assumptions

1.3.1 Objectives

The objectives surrounding the development of this Deployment Plan were as follows:

1. Submit a plan that complies with Act 129, the Implementation Order, and the various commitments made by any of the Companies.
2. Minimize the likelihood of stranded investment through obsolescence by performing robust evaluation and analysis and adhering to evolving national smart metering guidelines and policies.
3. Present a plan that provides the Companies with full cost recovery, including fair returns for any capital employed, while allowing them sufficient financial flexibility to provide for their other not-insubstantial capital requirements and obligations to shareholders.
4. Develop a strategic and cost effective deployment plan that will maximize early benefits taking into account risk and related costs.
5. Develop a workable process to track, measure and verify benefits arising from the implementation of this Deployment Plan.

1.3.2 Assumptions:

The development of this Deployment Plan was based on the following assumptions:

1. Act 129 calls for 100% customer deployment of smart meters with an implementation timeline of up to 15 years from the date of approval of the SMIP Plan. There will be no opt-out for customers.
2. Time-of-Use ("TOU") and Real-Time-Pricing ("RTP") rates will be in place consistent with Pennsylvania law and the Commission's Implementation Order.
3. Full and timely cost recovery of all costs associated with the evaluation, development, deployment and operation of a smart metering system will be approved.
4. After their grace period, the Companies will install smart meters in all new construction and upon customer request, provided that the latter pays for the incremental cost of such meters and related installation.

APPÈNDIX J

Constitutional and Statutory Provisions Involved

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Article VI, Clause 2 (Supremacy Clause)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effect s, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Constitution, Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

16 U.S.C. § 2621(d)(11)

(11) Net metering.

Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term "net metering service" means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

16 U.S.C. § 2621(d)(14)

(14) Time-based metering and communications.

(A) Not later than 18 months after August 8, 2005, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252(a)(14)

Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

'(14) TIME-BASED METERING AND COMMUNICATIONS.

(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

RELATED STATUTORY PROVISIONS (FOR CONTEXT ONLY)

Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1251(a)(11) and 1254

PENNSYLVANIA STATUTES

66 Pa. C.S. § 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 Pa. C.S. § 2807. Duties of electric distribution companies.

(e) (1) While an electric distribution company collects either a competitive transition charge or an intangible transition charge or until 100% of its customers have choice, whichever is longer, the electric distribution company shall continue to have the full obligation to serve, including the connection of customers, the delivery of electric energy and the production or acquisition of electric energy for customers.

(f)(2) Electric distribution companies 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.

(3) Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

1 Pa. C.S. § 1901. Rules of interpretation.

In the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly.

1 Pa. C.S. § 1903. Words and phrases.

(a) General rule.--Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.

(b) General restricted by particular words.--General words shall be construed to take their meanings and be restricted by preceding particular words.

1 Pa. C.S. § 1921. Legislative intent controls.

(a) Object and scope of construction of statutes.--The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

1 Pa. C.S. § 1922(3). Presumptions in ascertaining legislative intent.

Presumptions in ascertaining legislative intent. In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

66 Pa. C.S. § 315. Burden of proof.

(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 322. Procedures in general.

(a) Burden of proof.--Except 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.

PENNSYLVANIA REGULATIONS

52 Pa. Code § 57.251. Purpose

(a) The purpose of this subchapter is to facilitate the deployment of advanced metering equipment and the associated development of generation services based on these technologies. This subchapter establishes a procedure for identifying and providing for customer selection of qualified advanced meters, meter-related devices or deployment of automatic meter reading network equipment from the EDC while maintaining the safety and reliability of the electric system in this Commonwealth. This subchapter does not require the public to participate in an advanced metering program.

52 Pa. Code § 57.253. Approval of advanced meters

(b) Customers or EGSs, or both, shall be responsible for any net incremental costs incurred by the EDC as a result of using a qualified advanced meter or meter-related device.

(b)(1) Customers using a qualified advanced meter or meter-related device may be assessed a bill surcharge by the EDC to cover any net incremental cost associated with the choice to use an advanced meter.