

SUPREME COURT OF PENNSYLVANIA

Povacz v. Pennsylvania Public Utility Commission

No. 619 MAL 2020, 620 MAL 2020, 621 MAL 2020, 622 MAL 2020, 623 MAL 2020, 624 MAL 2020, 663 MAL 2020, 664 MAL 2020, 665 MAL 2020, 666 MAL 2020, 667 MAL 2020, 668 MAL 2020, Supreme Court of Pennsylvania (May 12, 2021)

SUMMARY

The Pennsylvania Supreme Court granted limited allowance of appeal on three issues concerning smart meter deployment under Act 129 and the Public Utility Code: (1) whether the Commonwealth Court erred in concluding that the statute does not mandate universal smart meter deployment; (2) whether Act 129 allows individual consumers to opt out of smart meter technology; and (3) whether the lower court erred in requiring a "conclusive causal connection" between radiofrequency exposure from smart meters and harm to prove a safety violation under Section 1501. Allocatur was denied on all remaining issues. The case addresses statutory interpretation of 66 Pa.C.S. § 2807(f)(2) and the burden of proof for safety claims under 66 Pa.C.S. § 1501.

CASE DETAILS

|                    |                                                                                                                                                                        |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Supreme Court of Pennsylvania                                                                                                                                          |
| JURISDICTION       | Pennsylvania                                                                                                                                                           |
| DECIDED            | May 12, 2021                                                                                                                                                           |
| DOCKET             | 619 MAL 2020, 620 MAL 2020, 621 MAL 2020, 622 MAL 2020, 623 MAL 2020, 624 MAL 2020, 663 MAL 2020, 664 MAL 2020, 665 MAL 2020, 666 MAL 2020, 667 MAL 2020, 668 MAL 2020 |
| DISPOSITION        | other                                                                                                                                                                  |
| PROCEDURAL POSTURE | Petition for allowance of appeal from the Commonwealth Court                                                                                                           |
| PRECEDENTIAL VALUE | published                                                                                                                                                              |
| PARTIES            | PENNSYLVANIA PUBLIC UTILITY COMMISSION, PECO ENERGY COMPANY v. MARIA POVACZ, LAURA SUNSTEIN MURPHY, CYNTHIA RANDALL, PAUL ALBRECHT                                     |

TOPICS

- administrative law
- statutory interpretation
- appellate procedure
- burden of proof

QUESTIONS PRESENTED

1. Whether the Commonwealth Court committed an error of law by concluding that the statute does not mandate universal deployment of smart meters, which is contrary to the plain and unambiguous statutory language of Section 2807(f)(2) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 2807(f)(2).
2. On a question of first impression involving Act 129's smart meter deployment mandate, whether the Commonwealth Court abused its discretion by interpreting the Public Utility Code in a manner that violated the rules of statutory construction and disregarded the legislative intent of the General Assembly.
3. Whether the Commonwealth Court committed an error of law by articulating a burden of proof under Section 1501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1501, that could result in a utility being found in violation of the Code without evidence of harm.
4. Whether the lower court erred when it concluded that Act 129 allows individual consumers to reject or 'opt-out' of smart meter technology, on the grounds that Act 129 requires that 'Electric distribution companies shall furnish smart meter technology,' Webster's Dictionary defines 'furnish' as meaning 'to provide with what is needed; . . . supply, give,' and that this definition of 'furnish' does not imply that the recipient is forced to accept that which is offered.
5. Whether the lower court erred as a matter of law by upholding the PUC's interpretation of Section 1501 of the Public Utility Code as requiring as to issues of safety proof of a 'conclusive causal connection' between RF exposure from smart meters and harm to Petitioners, when this heavy and unprecedented burden is not compelled by the language of the statute, where the statutory and dictionary definition of the word 'safe' includes protection from the possibility of harm, not just the conclusively proven certainty of harm, and where imposition of this burden would render it impossible for Petitioners to prove their cases.

## PROCEDURAL HISTORY

The Pennsylvania Public Utility Commission and PECO Energy Company filed petitions for allowance of appeal from a Commonwealth Court order. The Supreme Court of Pennsylvania granted limited allowance of appeal on specified issues and denied all other issues.

## DISPOSITION

other

## OPINION

PER CURIAM.

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT MARIA POVACZ,:  
No. 619 MAL 2020 Respondent:: Petition for Allowance of Appeal: from the Order of the v.:  
Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION,: Petitioner:  
LAURA SUNSTEIN MURPHY,: No. 620 MAL 2020 Respondent:: Petition for Allowance of  
Appeal: from the Order of the v.: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY:

COMMISSION,; Petitioner: CYNTHIA RANDALL AND PAUL: No. 621 MAL 2020 ALBRECHT,; Respondents: Petition for Allowance of Appeal: from the Order of the: Commonwealth Court v.: PENNSYLVANIA PUBLIC UTILITY: COMMISSION,; Petitioner: MARIA POVACZ: No. 622 MAL 2020 v.: Petition for Allowance of Appeal: from the Order of the: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION: PETITION OF: PECO ENERGY: COMPANY: LAURA SUNSTEIN MURPHY: No. 623 MAL 2020 v.: Petition for Allowance of Appeal: from the Order of the: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION: PETITION OF: PECO ENERGY: COMPANY: CYNTHIA RANDALL AND PAUL: No. 624 MAL 2020 ALBRECHT,; Petition for Allowance of Appeal v.: from the Order of the: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION: PETITION OF: PECO ENERGY COMPANY: MARIA POVACZ: No. 663 MAL 2020 Cross Petitioner:: Petition for Allowance of Appeal: from the Order of the v.: Commonwealth Court

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- 2 PENNSYLVANIA PUBLIC UTILITY: COMMISSION,; Respondent: LAURA SUNSTEIN MURPHY: No. 664 MAL 2020 Cross Petitioner:: Petition for Allowance of Appeal: from the Order of the v.: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION,; Respondent: CYNTHIA RANDALL AND PAUL: No. 665 MAL 2020 ALBRECHT: Cross Petitioners: Petition for Allowance of Appeal: from the Order of the: Commonwealth Court v.: PENNSYLVANIA PUBLIC UTILITY: COMMISSION,; Respondent: MARIA POVACZ: No. 666 MAL 2020 Cross Petitioner:: Petition for Allowance of Appeal: from the Order of the v.: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION, PECO ENERGY: COMPANY,;

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- 3 Respondents: LAURA SUNSTEIN MURPHY: No. 667 MAL 2020 Cross Petitioner:: Petition for Allowance of Appeal: from the Order of the v.: Commonwealth Court PENNSYLVANIA PUBLIC UTILITY: COMMISSION,; PETITION OF: PECO ENERGY: COMPANY,; Respondents: CYNTHIA RANDALL AND PAUL: No. 668 MAL 2020 ALBRECHT: Cross Petitioners: Petition for Allowance of Appeal: from the Order of the: Commonwealth Court v.: PENNSYLVANIA PUBLIC UTILITY: COMMISSION,; PETITION OF: PECO ENERGY: COMPANY,; Respondents:

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- 4 ORDER PER CURIAM AND NOW, this 12th day of May, 2021, the Petition for Allowance of Appeal at 619-621 MAL 2020 is GRANTED, LIMITED TO issues a., c., and, d. The issues, as stated by Petitioner are: (1) Did the Commonwealth Court commit an error of law by concluding

that the statute does not mandate universal deployment of smart meters, which is contrary to the plain and unambiguous statutory language of Section 2807(f)(2) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 2807(f)(2)?

(2) On a question of first impression involving Act 129's smart meter deployment mandate, did the Commonwealth Court abuse its discretion by interpreting the Public Utility Code in a manner that violated the rules of statutory construction and disregarded the legislative intent of the General Assembly?

(3) Did the Commonwealth Court commit an error of law by articulating a burden of proof under Section 1501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1501, that could result in a utility being found in violation of the Code without evidence of harm?

The Petition for Allowance of Appeal at 622-624 MAL 2020 is GRANTED, LIMITED TO issue a. The issue, as stated by Petitioner is: (1) Did the Court err when it concluded that Act 129 allows individual Consumers to reject or "opt -out" of smart meter technology, on the grounds that Act 129 requires that "Electric distribution companies shall furnish smart meter technology," Webster's Dictionary defines "furnish" as meaning "to provide with what is needed;... supply, give," and that this definition of "furnish" does not imply that the recipient is forced to accept that which is offered?

The Petition for Allowance of Appeal at 663-665 MAL 2020 and 666-668 MAL 2020 is GRANTED, LIMITED TO issue b. The issue, as stated by Petitioners is:

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- 5 (1) Did the lower court err as a matter of law by upholding the PUC's interpretation of Section 1501 of the Public Utility Code as requiring as to issues of safety proof of a "conclusive causal connection" between RF exposure from smart meters and harm to Petitioners, when this heavy and unprecedented burden is not compelled by the language of the statute, where the statutory and dictionary definition of the word "safe" includes protection from the possibility of harm, not just the conclusively proven certainty of harm, and where imposition of this burden would render it impossible for Petitioners to prove their cases?

Allocatur is DENIED as to all remaining issues. The Energy Association of Pennsylvania's application for leave to file amicus brief in support of the petitions for allowance of appeal at 619-621 MAL 2020 and 622-624 MAL 2020 is GRANTED.

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