

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)

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

624 MAL 2020 AND 663 - 668 MAL 2020, J.

- 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,;

624 MAL 2020 AND 663 - 668 MAL 2020, J.

- 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:

624 MAL 2020 AND 663 - 668 MAL 2020, J.

- 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:

624 MAL 2020 AND 663 - 668 MAL 2020, J.

- 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.

624 MAL 2020 AND 663 - 668 MAL 2020, J.

- 6