

SUPREME COURT OF PENNSYLVANIA

Cynthia Randall and Paul Albrecht v. Pennsylvania Public Utility Commission

Nos. 619-624 MAL 2020 and 663-668 MAL 2020 · No. Nos. 619-624 MAL 2020 and 663-668 MAL 2020 ·

Decided May 12, 2021

SUMMARY

The Supreme Court of Pennsylvania issued a per curiam order addressing consolidated petitions for allowance of appeal involving smart-meter deployment by Pennsylvania electric utilities. The court granted allowance of appeal on limited statutory-interpretation and Public Utility Code issues concerning universal deployment, consumer opt-outs, and the burden of proof regarding smart-meter safety, while denying the remaining issues. The court also granted an application by the Energy Association of Pennsylvania to file an amicus brief.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
JURISDICTION	Pennsylvania
DECIDED	May 12, 2021
DOCKET	Nos. 619-624 MAL 2020 and 663-668 MAL 2020
DISPOSITION	cert_granted
PROCEDURAL POSTURE	Consolidated petitions for allowance of appeal and cross-petitions from orders of the Commonwealth Court concerning smart-meter deployment and safety under the Pennsylvania Public Utility Code.
PRECEDENTIAL VALUE	Published per curiam order granting allowance of appeal on specified issues; no merits holding stated.
PARTIES	Pennsylvania Public Utility Commission, PECO Energy Company, Maria Povacz, Laura Sunstein Murphy, Cynthia Randall and Paul Albrecht v. Maria Povacz, Laura Sunstein Murphy, Cynthia Randall and Paul Albrecht, Pennsylvania Public Utility Commission, PECO Energy Company

TOPICS

statutory interpretation

plain meaning rule

legislative intent

appellate jurisdiction

administrative law

PRACTICE AREAS

administrative law

public utilities

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether Section 2807(f)(2) of the Pennsylvania Public Utility Code mandates universal deployment of smart meters.
2. Whether the Commonwealth Court abused its discretion or otherwise erred in interpreting the Public Utility Code concerning Act 129's smart-meter deployment mandate, including the rules of statutory construction and legislative intent.
3. Whether the Commonwealth Court erred in articulating a burden of proof under Section 1501 that could permit a utility to be found in violation without evidence of harm.
4. Whether Act 129 permits individual consumers to reject or opt out of smart-meter technology despite the statutory directive that electric distribution companies shall furnish smart-meter technology.
5. Whether the Commonwealth Court erred by upholding a PUC interpretation of Section 1501 requiring conclusive causal proof between radio-frequency exposure from smart meters and harm to petitioners.

FACTUAL BACKGROUND

The consolidated matters concern Pennsylvania's statutory requirements governing electric distribution companies' deployment of smart-meter technology under Act 129. The parties disputed whether consumers may reject smart meters and what proof is required to establish that smart-meter technology is unsafe or causes harm. The Commonwealth Court interpreted the Public Utility Code and the parties sought further review.

PROCEDURAL HISTORY

The Commonwealth Court entered orders addressing whether Act 129 and the Public Utility Code require universal smart-meter deployment, permit consumers to opt out, and impose particular burdens of proof concerning safety and harm. The parties sought allowance of appeal in the Supreme Court of Pennsylvania. The Supreme Court granted allowance of appeal in specified consolidated matters, limited to identified issues, denied allowance as to all remaining issues, and granted an application for leave to file an amicus brief.

DISPOSITION

cert_granted

OPINION

Randall, C. and Albrecht, P. v. PUC

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 [619 - 624 MAL 2020 and 663 -668 MAL 2020] - 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, :
[619 - 624 MAL 2020 and 663 - 668 MAL 2020] - 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 : [619 - 624 MAL 2020 and 663 - 668 MAL 2020] - 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: [619 - 624 MAL 2020 and 663 - 668 MAL 2020] - 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. [619 - 624 MAL 2020 and 663 - 668 MAL 2020] - 6

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