

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Andrew and Theresa Sabatini, :
Petitioners :
 :
v. :
 :
 :
Pennsylvania Public Utility :
Commission, : No. 237 C.D. 2025
Respondent : Submitted: May 14, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STELLA M. TSAI, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE TSAI

FILED: October 14, 2026

Petitioners Andrew Sabatini and Theresa Sabatini petition, *pro se*, for review of an order of the Pennsylvania Public Utility Commission (PUC or Commission), which affirmed the decision of an administrative law judge (ALJ) and dismissed Petitioners' complaint with prejudice. We affirm.

I. BACKGROUND

This Court recently explained:

On November 14, 2008, the General Assembly enacted Act 129,^[1] which required [electrical distribution companies (EDCs)] with more than 100,000 customers . . . to file smart meter technology^[2] procurement and installation plans [(Procurement and Installation

¹ Act of October 15, 2008, P.L. 1592. Act 129 amended the Public Utility Code (Code), which is set forth in its entirety at 66 Pa. C.S. §§ 101-3316.

² “Smart meters, also known as advanced metering infrastructure (AMI) meters, record electricity consumption on at least an hourly basis using radio frequency (RF) electromagnetic energy.” *Hughes v. Pa. Pub. Util. Comm’n*, 322 A.3d 982, 987 (Pa. Cmwlth. 2024).

Plans)] with the Commission within nine months. On June 24, 2009, the Commission issued its Smart Meter Implementation Order, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval thereof.

Kline v. Pa. Pub. Util. Comm’n, 352 A.3d 1086, 1090 (Pa. Cmwlth. 2026) (footnotes added).

We summarize the relevant findings of fact of ALJ Emily DeVoe, as follows. Petitioners reside in Acme, Pennsylvania. Certified Record (C.R.) at 842a. West Penn Power Company (West Penn)³ is an EDC with at least 100,000 customers, and West Penn provides residential electrical service to Petitioners at their residence. *Id.* at 842a-843a. The Commission approved West Penn’s Procurement and Installation Plan on June 30, 2011, and it approved West Penn’s smart meter deployment plan on June 5, 2014. *Id.* at 843a. West Penn’s smart meter deployment plan does not include any provision for its customers to opt-out from the installation of a smart meter. *Id.*

Petitioners filed a complaint with the Commission on October 9, 2018, seeking to retain the analog electricity meter at their residence and to block the installation of a smart meter. *Id.* at 919a. ALJ Jeffrey Watson held an evidentiary hearing on February 20, 2020. *Id.* at 924a. On November 4, 2020, the Commission entered an order which stayed the proceedings in this matter, along with others involving similar claims. *Id.* at 739a-741a.

The Commission lifted its stay order on November 14, 2023. *Id.* at 744a-753a. The Commission entered an order on November 27, 2023, reassigning this matter to ALJ DeVoe. *Id.* at 754a-755a. On December 5, 2023, ALJ DeVoe entered

³ On June 18, 2025, this Court granted West Penn’s application to intervene in this matter. Further, we note that West Penn subsequently merged with several other companies and is now known as FirstEnergy Pennsylvania Electric Company. C.R. at 917a n.3 (Commission’s Op. & Order). However, we will refer to the EDC as “West Penn” throughout for consistency.

an order providing that the parties may, but were not required to, file briefs on or before January 12, 2024. *Id.* at 768a. Petitioners filed a motion for extension of time to file a brief on January 9, 2024, explaining that a family member had recently passed away and Petitioners did not have enough time to review the transcript at the Commission offices in Pittsburgh and to prepare their brief. *Id.* at 771a-772a. ALJ DeVoe denied the motion on the following day. *Id.* at 774a-777a.

ALJ DeVoe issued an initial decision on June 4, 2024, denying Petitioners' complaint. *Id.* at 830a-849a. Petitioners filed timely exceptions to that initial decision. *Id.* at 885a-882a. The Commission subsequently entered an opinion and order dismissing Petitioners' complaint with prejudice on December 19, 2024. *Id.* at 915a-945a. Petitioners then petitioned this Court for review.

II. ISSUES

On appeal,⁴ Petitioners raise five issues, which we consolidate into three issues: (1) whether the Commission erred by concluding that Section 2807(f) of the Code, 66 Pa. C.S. § 2807(f), mandates universal installation of smart meters; (2) whether mandatory smart meter installation violates Article I, Section 8 of the Pennsylvania Constitution; and (3) whether ALJ DeVoe violated Petitioners' procedural due process rights. Additionally, West Penn requests that we dismiss this appeal as moot.⁵

⁴ "This Court's review of a Commission adjudication determines whether constitutional rights have been violated, an error of law has been committed, or the Commission's findings and conclusions are, or are not, supported by substantial evidence." *Schmukler v. Pa. Pub. Util. Comm'n*, 302 A.3d 247, 250 n.6 (Pa. Cmwlth. 2023) (citations, quotation marks, and brackets omitted). Further, statutory interpretation is a pure question of law subject to *de novo* review. *See McCloskey v. Pa. Pub. Util. Comm'n*, 255 A.3d 416, 423 n.13 (Pa. 2021).

⁵ Whether a case is moot presents a "pure question[] of law, and therefore this Court's standard of review is *de novo* and our scope of review is plenary." *Commonwealth v. Dixon*, 907 A.2d 468, 472 (Pa. 2006).

III. DISCUSSION

A. Mootness

Before we address the merits of Petitioners' claims, we first address West Penn's request to dismiss this appeal as moot. West Penn argues that "Petitioners' appeal is moot because it is impossible for the Court to grant their request for an opt-out of the smart meter." West Penn's Brief at 18. Specifically, West Penn contends that the Pennsylvania Supreme Court's decision in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), is controlling and bars this Court from granting Petitioners the relief that they are seeking. *Id.* at 17-20.

Petitioners respond that this appeal is not moot because there are unresolved constitutional questions. Petitioners' Am. Reply Brief at 29-31. Alternatively, Petitioners contend that this case satisfies all three exceptions to the mootness doctrine. *Id.* at 31-33.

This Court has explained:

It is well settled that an actual case or controversy must be extant at all stages of litigation, not merely at the time that a complaint is filed; otherwise, this Court will dismiss an appeal as moot. An "actual case or controversy" is one that is real rather than hypothetical and affects someone in a concrete manner so as to provide a factual predicate for reasoned adjudication. Exceptions to the mootness doctrine may be made where the conduct complained of is capable of repetition yet likely to evade judicial review, where the case involves issues of great public importance, or where one party will suffer a detriment without the court's decision.

Gray v. Philadelphia Dist. Att'y's Off., 311 A.3d 1230, 1236 (Pa. Cmwlth. 2024) (citations and quotation marks omitted). "An issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case or due to an intervening change in the applicable law. In that case, an opinion of this Court is

rendered advisory in nature.” *Consumer Educ. & Prot. Ass’n v. Pub. Util. Comm’n*, 847 A.2d 789, 794 n.9 (Pa. Cmwlth. 2004) (citation omitted).

West Penn relies on our Supreme Court’s 2022 decision in *Povacz II*, which the Supreme Court issued after Petitioners’ complaint and before the Commission’s decision and the instant appeal, in support of its argument that this appeal should be dismissed as moot. West Penn essentially contends that because *Povacz II*, in West Penn’s view, precludes this Court from granting Petitioners the relief that they seek, the appeal is moot. Whether *Povacz II* controls the issue in this case is not relevant to the question of mootness. Rather, the applicability of *Povacz II* is relevant to the merits of this appeal. Put another way, this Court could conclude that Petitioners’ arguments lack merit in the face of *Povacz II*, but that does not mean that the appeal is moot. Petitioners have not withdrawn their complaint in the light of the Supreme Court’s decision in *Povacz II*, and, therefore, an actual case which affects Petitioners in a concrete manner still exists. *See Gray*, 311 A.3d at 1236. For this reason, we deny West Penn’s request to dismiss this appeal as moot, and we will address the merits of this appeal.

B. Whether Section 2807(f) of the Code Mandates Universal Installation of Smart Meters

Turning to the merits of this appeal, Petitioners’ first three claims relate to the interpretation and application of Section 2807(f) of the Code. First, Petitioners argue that *Povacz II* should no longer be considered controlling in light of the United States Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (*Loper Bright*), which overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (*Chevron*). Petitioners’ Am. Brief at 20-33. Second, Petitioners argue that, for purposes of construing Section 2807(f) of the Code, neither the plain language nor the legislative history of that section supports

the Commission’s interpretation that the General Assembly, when it enacted Section 2807(f), intended to require universal installation of smart meters for all customers of an EDC. *Id.* at 34-63. Lastly, Petitioners argue that the Commission erred in interpreting the term “depreciation schedule” in Section 2807(f)(2)(iii) to mean “deployment schedule” as part of mandatory smart meter installation. *Id.* at 38-40, 42. As to the last two arguments, this Court will only reach them if we embrace Petitioners’ argument that *Povacz II* is no longer controlling given the United States Supreme Court’s decision in *Loper Bright*.

According to Petitioners, *Loper Bright* “fundamentally transformed administrative law and how courts review agency interpretations of statutes.” *Id.* at 20. Petitioners claim that, in *Povacz II*, the Pennsylvania Supreme Court implicitly applied the doctrine of *Chevron* deference when interpreting Act 129 because the *Povacz II* Court “gave weight to the [Commission’s] specialized knowledge of utility regulation,” “emphasized that the [Commission] had interpreted Act 129 to require mandatory installation since 2009,” “noted that [EDCs] relied on the [Commission’s] interpretation when making investment decisions,” and “referenced billions of dollars utilit[y companies] spent on smart meter infrastructure based on the [Commission’s] mandate.” *Id.* at 24 (citing *Povacz II*, 280 A.3d at 987-88). For those reasons, Petitioners argue that *Loper Bright* “requires this Court to use traditional tools of statutory construction to independently determine Act 129’s meaning.” *Id.* at 28. Petitioners additionally contend that this Court should reimplement its holding from *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*en banc*) (*Povacz I*), which concluded that Section 2807(f) of the Code does not mandate smart meter installation. *Id.* at 31-33.

The Commission and West Penn respond that *Loper Bright* applies to federal courts interpreting federal law, and it does not apply to Pennsylvania courts interpreting Pennsylvania statutes. Commission’s Brief at 14-15; West Penn’s Brief at 23. Further, the Commission and West Penn argue that *Povacz II* remains good law and is controlling here. Commission’s Brief at 17-20; West Penn’s Brief at 20-24.

As to the federal concept of *Chevron* deference,

the term “*Chevron* deference” refers to the United States Supreme Court’s seminal decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which stated that federal law had “long recognized that considerable weight should be accorded to an executive department’s construction of a statutory scheme it is entrusted to administer[.]” [*Chevron*], 467 U.S. at 844 (footnote omitted).

Marcellus Shale Coal. v. Dep’t of Env’t Prot., 292 A.3d 921, 928 (Pa. 2023).

Under the *Chevron* doctrine, courts utilized

a two-step framework to interpret statutes administered by federal agencies. After determining that a case satisfie[d] the various preconditions . . . for *Chevron* [deference] to apply, a reviewing court [would] first assess “whether Congress has directly spoken to the precise question at issue.” [*Chevron*, 467 U.S.] at 842. If, and only if, congressional intent is “clear,” that is the end of the inquiry. *Ibid.* But if the court determines that “the statute is silent or ambiguous with respect to the specific issue” at hand, the court must, at *Chevron*’s second step, defer to the agency’s interpretation if it “is based on a permissible construction of the statute.” *Id.*, at 843.

Loper Bright, 603 U.S. at 379-80.

The United States Supreme Court in *Loper Bright* ultimately held that “*Chevron* cannot be reconciled with the” federal Administrative Procedures Act, 5 U.S.C. §§ 551-559, “by presuming that statutory ambiguities are implicit delegations to agencies,” and that *Chevron* was “fundamentally misguided.” *Id.* at

399, 407. Therefore, the United States Supreme Court abandoned the doctrine of *Chevron* deference. *Id.* at 412.

As to the effect of the United States Supreme Court’s decision in *Loper Bright* on our interpretation of Pennsylvania statutes, the Pennsylvania Supreme Court has explained that, “[p]ursuant to the Supremacy Clause of the United States Constitution,^[6] . . . this Court, like all state courts, is bound by decisions of the [United States] Supreme Court with respect to the federal Constitution and federal substantive law.” *Commonwealth v. Jemison*, 98 A.3d 1254, 1257 (Pa. 2014). “However, when resolving matters that involve no federal question,” state courts are “not bound by decisions of the [United States] Supreme Court.” *Id.*; *see also Est. of Benyo v. Breidenbach*, 233 A.3d 774, 783 n.14 (Pa. 2020) (explaining that the Pennsylvania Supreme Court “has final decision-making authority when interpreting state statutes”). Furthermore, “[a]s an intermediate appellate court, we must follow and apply” the decisions of the Pennsylvania Supreme Court “to establish some measure of predictability and stability in our case law.” *Zauflik v. Pennsbury Sch. Dist.*, 72 A.3d 773, 783 (Pa. Cmwlth. 2013) (citations and quotation marks omitted), *aff’d*, 104 A.3d 1096 (Pa. 2014).

“Our goal when interpreting a [Pennsylvania] statute is to ascertain and effectuate the General Assembly’s intent. The plain language of a statute is, as a general rule, the best indicator of such legislative intent.” *Ghaderi v. State Bd. of Osteopathic Med.*, 302 A.3d 240, 244 (Pa. Cmwlth. 2023) (citations and quotation marks omitted). Section 1921 of the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. § 1921, sets forth basic statutory construction principles that guide Pennsylvania courts. That section provides, in relevant part:

⁶ U.S. Const. art. VI, cl. 2.

(a) 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.

(b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

(c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

. . . .

(7) The contemporaneous legislative history.

(8) Legislative and administrative interpretations of such statute.

1 Pa. C.S. § 1921. Thus, “[w]here the intent of the legislature is clear from the plain meaning of the statute, courts must not pursue statutory construction. . . . Only when the language of the statute is ambiguous or not explicit does statutory construction become necessary.” *Twp. of Washington v. Twp. of Upper Burrell*, 184 A.3d 1083, 1088 (Pa. Cmwlth. 2018).

In *Povacz II*, the Pennsylvania Supreme Court, when interpreting Section 2807(f) of the Code⁷ pertaining to smart meter technology, considered the following

⁷ Section 2807(f) of the Code provides, in relevant part:

(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.

question: “Does Act 129 mandate the system-wide installation of smart meters?” *Povacz II*, 280 A.3d at 989. In answering that question, the Court explained that “Act 129 directed the PUC to ‘adopt an energy efficiency and conservation [(EE&C)] program to require [EDCs] to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption’ within their service territories.” *Id.* at 992 (quoting 66 Pa. C.S. § 2806.1(a)). The *Povacz II* Court then explained that “Section 2806.1 [of the Code] **expresses the General Assembly’s intent** to create the EE&C program to include electric customers; hence the need for a plan based on a fixed existing customer base.” *Id.* at 993 (emphasis added); *see also id.* at 994 (observing that, in order for an EDC to develop a Procurement and Installation Plan, “an EDC would need to rely on its existing customer base, not parts of it” (footnote omitted)).

Based upon the General Assembly’s expressed intent, the Pennsylvania Supreme Court held:

Our comprehensive reading of Act 129 leads us to conclude that the statute is **not ambiguous** and that Section 2807(f)(2) [of the Code] imposes a mandate on EDCs to furnish smart meter technology to all electric customers within an electric distribution service area, regardless of a customer’s preference. In reaching this conclusion, we have considered Section 2807(f)(2) in its context as the implementation provision of Act 129.

....

If, as argued by [the c]ustomers, retail customers could choose the type of EE&C measures they prefer, including the type of electric meter, then EDCs could not comply with the requirements of the EE&C program or their individual PUC-approved plans, and the General Assembly’s goal of reducing energy consumption and demand in Pennsylvania would not be realized.

Id. at 992-993 (footnote omitted) (emphasis added); *see also id.* at 998 (“Considering the overall goal of Act 129 to promote energy efficiency and conservation in

Pennsylvania, the plain language of Section 2807(f)(2) mandates the system-wide installation of smart meter technology, including smart meters, with no opt-out provision”).

Subsequently, this Court has applied *Povacz II* and held that “[t]he Commission and this Court are bound by the Supreme Court’s ruling. Because the Supreme Court has ruled that Section 2807(f)(2) of the Code mandated the system-wide installation of smart meter technology, the Commission properly interpreted that Act 129 does not include a smart meter opt-out . . . for customers.” *Kline*, 352 A.3d at 1094 (footnote omitted).

Here, the Commission concluded that,

by establishing that there is no “opt-out” permitting a customer to refuse smart meter installation, the Supreme Court’s holding in *Povacz II* is controlling on the question. In the present case, the Complainants’ Exceptions fail to establish any violation by the utility under Section 1501 of the Code, [66 Pa. C.S. § 1501,] as a prerequisite to seeking an accommodation. To the extent the Complainants’ arguments challenge the Supreme Court’s holding in *Povacz II*, that there is no opt out from smart meter implementation, we reject the Complainants’ arguments. *Povacz II* is settled law, and we find no merit in the Complainants’ argument that *Povacz II* was wrongly decided.

C.R. at 942a (Commission’s Op. & Order).

Petitioners’ reliance on *Loper Bright* is misplaced. As explained above, *Loper Bright* applies to federal courts interpreting federal statutes. *See Loper Bright*, 603 U.S. at 379-80, 385. Therefore, *Loper Bright* does not apply to Pennsylvania courts when they are interpreting Pennsylvania statutes. *See Est. of Benyo*, 233 A.3d at 783 n.14; *Jemison*, 98 A.3d at 1257.

At a more fundamental level, however, question Petitioners’ reliance on *Loper Bright* because, contrary to Petitioners’ assertions, the Pennsylvania Supreme Court did not defer to the Commission’s interpretation of Act 129 in *Povacz II*. Instead,

the Court found that Act 129 was not ambiguous and relied on the plain text of the statute. *See Povacz II*, 280 A.3d at 992, 998. Therefore, the *Povacz II* Court did **not** apply *Chevron* deference when it interpreted Act 129. *Compare Loper Bright*, 603 U.S. at 379-80 (explaining that *Chevron* deference was applied when a court determined that a “statute is silent or ambiguous with respect to the specific issue at hand” (citation and quotation marks omitted)) *with Povacz II*, 280 A.3d at 998 (stating that “the plain language of Section 2807(f)(2) mandates the system-wide installation of smart meter technology, including smart meters, with no opt-out provision.”).⁸

For the reasons set forth above, we reject Petitioners’ claims that *Loper Bright* requires this Court to take any course of action other than following the Pennsylvania Supreme Court’s precedent in *Povacz II*. *See Kline*, 352 A.3d at 1094; *Zauflik*, 72 A.3d at 783.

C. Whether the Installation of a Smart Meter Violates Article I, Section 8 of the Pennsylvania Constitution

Petitioners next argue, in the alternative, that if Act 129 contains a mandate to install smart meters, it violates Article I, Section 8 of the Pennsylvania Constitution because it authorizes a warrantless search through the installation of a smart meter. Petitioners’ Am. Brief at 64-80. Specifically, Petitioners contend that the data collected by smart meters at fifteen-minute intervals constitutes a search for the purposes of Article I, Section 8 of the Pennsylvania Constitution. *Id.* at 70-72. Petitioners assert that West Penn is a state actor because it possesses government-

⁸ We also note that, because the *Povacz II* Court’s interpretation of Section 2807 of the Code is based on the plain language of the statute, it is not ambiguous, and therefore, there is no need to pursue statutory construction. *Twp. of Washington*, 184 A.3d at 1088; *see also Ghaderi*, 302 A.3d at 244 (“The plain language of a statute is, as a general rule, the best indicator of such legislative intent.”).

like powers, such as the power of eminent domain, the power to enter private property to install meters, and the power to set rates. *Id.* at 67-69. Petitioners further note that the actions of private entities who act pursuant to statutory mandate and regulatory oversight are state actions. *Id.* at 68. Petitioners observe that the “Pennsylvania Supreme Court has recognized that public utilities perform functions ‘imbued with the public interest.’” *Id.* at 69 (citing purportedly *Pa. Pub. Util. Comm’n v. Israel*, 356 A.2d 325, 331 (Pa. 1976)). Further, Petitioners claim that “[c]onstitutional protections ‘cannot be evaded by the simple expedient of vesting authority in a private entity.’” *Id.* (citing purportedly *Kremer v. Cox*, 114 A.2d 509, 512 (Pa. 1955)). Petitioners maintain that, because Article I, Section 8 of the Pennsylvania Constitution provides greater protections than the Fourth Amendment to the United States Constitution, mandatory smart meter installation is an unreasonable search. *Id.* at 78-80 (citing, *inter alia*, *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991)).

The Commission responds that Petitioners have waived their Article I, Section 8 claim, because Petitioners only argued that smart meter installation violated the Fourth Amendment in the proceedings before the Commission.⁹ Commission’s Brief at 22-23. Alternatively, the Commission contends that, even if not waived, Petitioners are not entitled to relief because West Penn is not a state actor. *See id.* at 23-24; *see also* West Penn’s Brief at 29-30.

Before turning to the merits of Petitioners’ argument, we reject the contention that Petitioners waived their constitutional challenge by not raising it before the Commission. While Pennsylvania Rule of Appellate Procedure 1551 limits our

⁹ “The issue of waiver presents a question of law, and, as such, our standard of review is *de novo* and our scope of review is plenary.” *Trigg v. Child. ’s Hosp. of Pittsburgh of UPMC*, 229 A.3d 260, 269 (Pa. 2020).

review of quasijudicial orders of a government unit to “[o]nly questions raised before the government unit,” it excepts from that limitation “[q]uestions involving the validity of a statute.” Pa.R.A.P. 1551(a); *see also Lehman v. Pa. State Police*, 839 A.2d 265, 275 (Pa. 2003) (stating that “facial challenges to a statute’s constitutionality need not be raised before the administrative tribunal to be reviewed by an appellate court; [constitutional] challenges to a statute’s application, however, must be raised before the agency or are waived for appellate review”).

As to whether Section 2708(f) of the Code violates Article I, Section 8 of the Pennsylvania Constitution, we have explained the protections afforded to Article I, Section 8 in terms of its federal counterpart, the Fourth Amendment to the United States Constitution. In *Hughes*, we wrote:

The Fourth Amendment of the U.S. Constitution (Fourth Amendment) protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. Similarly, [A]rticle I, [S]ection 8 of the Pennsylvania Constitution, Pa. Const. art. I, § 8, affords people the same security against unreasonable searches and seizures.

A “search” occurs when “an expectation of privacy that society is prepared to consider reasonable is infringed.” *United States v. Jacobsen*, 466 U.S. 109, 113 . . . (1984). . . .

. . . .

Significant to our analysis here, the Fourth Amendment’s protection against unlawful searches and seizures applies to “only governmental action.” *Jacobsen*, 466 U.S. at 113 It follows, therefore, that “the proscriptions of the Fourth Amendment and Article I, [Section] 8 [of the Pennsylvania Constitution], do not apply to searches and seizures conducted by private [actors].” *Commonwealth v. Harris*, . . . 817 A.2d 1033, 1047 ([Pa.] 2002). . . .

Where the action complained of was taken by a private actor, such as a privately-owned utility company, we must examine whether the conduct itself involves private or state action. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 . . . (1974). “The mere fact that a business is subject to state regulation does not by itself convert its

action into that of the State for purposes of the Fourteenth Amendment. Nor does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so.” *Id.* (footnote and citation omitted).

“[T]he inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.” *Jackson*, 419 U.S. at 351.

....

Pennsylvania courts have historically “rejected the contention that the furnishing of utility services is . . . a state function.” *Jackson*, 419 U.S. at 353 In *Jackson*, the U.S. Supreme Court also rejected the contention that a utility is a state actor even where the utility is “a heavily regulated, privately owned utility, enjoying at least a partial monopoly in the providing of electrical service within its territory” and takes action “in a manner which the [PUC] found permissible under state law.” *Id.* at 358

Hughes, 322 A.3d at 990-91 (some citations omitted).

This Court in *Hughes*, based upon the above reasoning, concluded that EDCs are not state actors with regard to the installation of smart meters. We wrote:

Although Act 129 mandates [PPL Electric Utilities Corporation (PPL)] and other EDCs to install smart meters in their territories, PPL’s compliance with Act 129 does not make it an agent of the state. There is no evidence in this case that the government controls the operations of PPL or that PPL acts as an agent of the government.

Hughes, 322 A.3d at 992. We likewise conclude, here, that Act 129—specifically Section 2708(f) of the Code—does not violate Article I, Section 8 of the Pennsylvania Constitution by authorizing a so-called “warrantless search” of data through the installation of a smart meter because West Penn, like other EDCs, is not a state actor.¹⁰ *See id.* at 990-92.

¹⁰ Petitioners’ argument to the contrary is without merit. Petitioners turn to “*Pennsylvania Public Utility Commission v. Israel*, 356 A.2d 325 (Pa. 1976),” and “*Kremer v. Cox*, 114 A.2d 509 (Pa. 1955),” in support of their argument that public utilities are state actors for Fourth Amendment purposes, but these two cases, as cited, do not appear to exist. There is a case with the name

D. Whether Petitioners’ Procedural Due Process Rights Were Violated

In their final issue, Petitioners claim that ALJ DeVoe violated their due process rights by denying their request for an extension of time to file a brief. Petitioners’ Am. Brief at 81-85. Specifically, Petitioners argue that the denial of their extension request was unreasonable and the death of a family member constituted good cause for an extension of the deadline. *Id.* at 81-82. Petitioners also claim that if the extension had been granted, they would have discovered the testimony of former State Representative Thomas Yewcic regarding the General Assembly’s intent when it enacted Act 129. *Id.* at 82. Petitioners assert that if ALJ DeVoe granted their request for an extension of time they could have presented their argument about how *Loper Bright* affected *Povacz II*. *Id.* at 83. Petitioners conclude that they were deprived of a meaningful opportunity to present their case, and this violated their due process rights. *Id.* at 85; *see also* Petitioners’ Am. Reply Brief at 28.

The Commission responds that Petitioners had ample opportunity to review the transcript between August 9, 2020, and December 5, 2023, because this matter had been stayed before the Commission until November 9, 2023. Commission’s

“*Pennsylvania Public Utility Commission v. Israel*” at 52 A.2d 317 (Pa. 1947), but it stands for the proposition that under the former Public Utility Law of 1937, the Commission was able to institute proceedings in the Court of Common Pleas of Dauphin County to enjoin the defendants from operating an uncertified taxicab service. The actual *PUC v. Israel* case has no bearing on whether public utilities can be held liable for Fourth Amendment violations as state actors. *See Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d at 322-24. Petitioners’ amended brief and amended reply brief are rife with citations to other cases that do not exist and/or non-existent quotations from actual cases.

Based on the foregoing, we have serious questions about the authenticity of the Petitioners’ citations, which begs the question from whence they came, and **caution Petitioners not to cite or otherwise rely on non-existent cases in violation of the Rules of Appellate Procedure.** *See* Pa.R.A.P. 2119(a) (providing that litigants must cite to “pertinent” legal authorities in their appellate briefs).

Brief at 26-27; *see also* West Penn’s Brief at 31 (observing that “Petitioners were given a series of extensions of time in a complaint proceeding that was initiated six years prior to the PUC’s final decision”). The Commission claims that the filing of briefs was optional because ALJ DeVoe had advised the parties that, because she had reviewed the transcript and exhibits, she was able to render an initial decision without the aid of briefs. Commission’s Brief at 27 (citing C.R. at 841a). Further, the Commission argues that Petitioners were not deprived of the opportunity to present their case, because they fully participated in the hearing and were able to present their argument in its entirety. *Id.* at 27-28.

The Pennsylvania Supreme Court has “recognized that due process principles apply to quasi-judicial or administrative proceedings, and whether a due process violation has occurred raises a question of law for which this Court’s standard of review is *de novo* and scope of review is plenary.” *Pascal v. City of Pittsburgh Zoning Bd. of Adjustment*, 259 A.3d 375, 382 (Pa. 2021) (citations omitted and some formatting altered). “[T]he basic elements of procedural due process [are] adequate notice, opportunity to be heard, and the chance to defend oneself” *Cresco, Inc. v. Pa. Pub. Util. Comm’n*, 622 A.2d 997, 1000 (Pa. Cmwlth.), *appeal denied*, 637 A.2d 292 (Pa. 1993). Moreover, “due process is fully applicable to adjudicative hearings involving substantial property rights. We have recognized that . . . [a] fundamental requirement of due process is the *opportunity* to be heard at a *meaningful* time and in a *meaningful* manner.” *Id.* (citations and quotation marks omitted) (emphases in original). A party is not denied due process when that party

fails to avail themselves of the process afforded them. *See, e.g., Allison v. Pa. Hum. Rels. Comm’n*, 716 A.2d 689, 694 (Pa. Cmwlth. 1998).¹¹

Lastly, we observe that the Commission “is the ultimate finder of fact in formal complaint proceedings. As factfinder, the [Commission] is empowered to review record evidence, make credibility determinations, and accord evidentiary weight.” *Hughes*, 322 A.3d at 993-94.

Based on our review of the record, we disagree with Petitioners’ claim that ALJ DeVoe’s denial of their motion for extension of time to file a brief deprived them of an opportunity to be heard. First, Petitioners had the opportunity to be heard at the evidentiary hearing on February 20, 2020. C.R. at 251a. Second, ALJ DeVoe’s order stated that the parties may, but were not required to, file briefs. *Id.* at 768a. Third, Petitioners did not include a request to reopen the record in their motion for an extension of time.¹² *Id.* at 771a-72a. Fourth, Petitioners filed exceptions with the Commission to ALJ DeVoe’s initial decision in which they raised additional issues such as their claim that *Povacz II* was wrongly decided and former Representative Yewcic’s testimony about Act 129. *Id.* at 865a-72a.

¹¹ We note that the petitioners in *Allison* argued that they had been denied due process because the Pennsylvania Human Relations Commission entered a decision without affording the petitioners the opportunity to file a post-hearing brief, but this Court explained the petitioners failed to file a brief and failed to request an extension of time to file a brief. *See Allison*, 716 A.2d at 693-94.

¹² We note that the Commission’s regulations provide that the record is closed at the conclusion of the hearing and additional matters will not be considered unless the Commission grants a motion to reopen the record. *See* 52 Pa. Code §§ 5.431(a)-(b), 5.571(a). Petitioners did not include a request to reopen the record in the request for an extension of time to file briefs that they submitted to ALJ DeVoe. Further, after Petitioners filed with the Commission exceptions to ALJ DeVoe’s initial decision, they did not request that the Commission reopen the record to consider additional evidence such as former Representative Yewcic’s testimony. As explained above, a party is not denied due process when that party fails to avail itself of the process afforded it. *See Allison*, 716 A.2d at 694.

For these reasons, we conclude that Petitioners had the opportunity to be heard at a meaningful time and in a meaningful manner in the proceedings before the Commission, which is the ultimate factfinder, not the ALJ. *See Hughes*, 322 A.3d at 993-994. Therefore, the Commission did not violate Petitioners' due process rights. *See Schmukle*, 302 A.3d at 250 n.6; *Cresco*, 622 A.2d at 1000.

IV. CONCLUSION

For the reasons set forth above, we affirm the Commission's order dismissing Petitioners' complaint with prejudice.¹³

STELLA M. TSAI, Judge

Judge Fizzano Cannon did not participate in the decision in this case.

¹³ We further note that Petitioners also requested that this Court certify several questions for review by the Pennsylvania Supreme Court pursuant to Pennsylvania Rule of Appellate Procedure 3341. Petitioners' Am. Reply Brief at 49-52. The certification procedure set forth in Rule 3341 can only be exercised by the United States Supreme Court and the United States Courts of Appeals. *See* Pa.R.A.P. 3341(a). Therefore, we deny Petitioners' request for certification without prejudice to Petitioners' right to file a timely petition for allowance of appeal with the Pennsylvania Supreme Court. *See* Pa.R.A.P. 1112.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Andrew and Theresa Sabatini,	:	
Petitioners	:	
	:	
v.	:	
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	No. 237 C.D. 2025

ORDER

AND NOW, this 14th day of October, 2026, the order of the Pennsylvania Public Utility Commission is AFFIRMED.

STELLA M. TSAI, Judge