

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held January 18, 2024

Commissioners Present:

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

Linda E. Beck and Hubert P. Beck

C-2018-3002924

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Linda E. Beck and Hubert P. Beck (Complainants) on January 15, 2020, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, which was served on the Parties on December 30, 2019, in the above-captioned proceeding. Replies to Exceptions were filed by PPL Electric Utilities Corporation (PPL or the Company) on January 31, 2020. The Initial Decision denied and dismissed the Formal Complaint (Complaint) filed by the Complainants on June 13, 2018. For the reasons

discussed below, we shall deny the Complainants' Exceptions, adopt the Initial Decision of ALJ Barnes, 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 PPL has installed at the Complainants' residence and uses in the ordinary course of business to measure the Complainants' electricity consumption. The Complainants are seeking a directive that an electric distribution company (EDC) remove the smart meter and replace it with an analog meter at their residence for health, safety and privacy reasons. Complaint at 3. The Complainants allege that the smart meter has caused an increase in their recent bills. Complaint at 2. In their Amended Formal Complaint filed on January 26, 2019, the Complainants also allege that the smart meter is an invasion of their privacy and a violation of the Pennsylvania Constitution. Amended Complaint at 3.

PPL, an EDC subject to the jurisdiction of the Commission, furnishes, owns and maintains the meters in its distribution system. *See* PPL's Tariff Electric Pa. P.U.C. No. 201, Rule 8 at 12.

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 PPL, 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 Installation Order*). PPL sought and obtained the Commission’s approval to complete the installation of AMI meters for substantially all customers within its service territory by the end of 2019. *See, Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan*, Docket No. M-2014-2430781

(Opinion and Order entered September 3, 2015); *see also*, *Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2123945 (Opinion and Order entered June 24, 2010).

On May 10, 2017, Ms. Beck contacted PPL by telephone to inform PPL that she did not want the meter change. PPL Exh. KD-1 at 2. On August 21, 2017, PPL, in carrying out its obligations under Act 129 and the relevant Commission's Orders implementing Act 129, sent the Complainants a letter notifying them that a smart meter would be installed at the service address in approximately six weeks. On September 11, 2017, PPL sent the Complainants a notice that the smart meter would be installed in three weeks. PPL St. No. 3 at 6. PPL installed a RF Mesh smart meter at the service property on November 20, 2017. PPL Exh. KD-1 at 2.

The Complainants and PPL eventually litigated this matter in an evidentiary hearing before ALJ Barnes. After the hearing concluded, ALJ Barnes' written Initial Decision concluded that the Complainants failed to satisfy their burden of proof with respect to the claims contained in the Complaint. The Complainants filed Exceptions to the Initial Decision, and PPL filed Replies thereto. This Opinion and Order addresses the Complainants' Exceptions.

II. History of the Proceeding

On June 13, 2018, Linda and Hubert Beck (Complainants) filed the instant Complaint with the Commission against PPL. The Complainants indicated that they wanted the smart meter at the service address removed for health, safety, privacy and high billing concerns. The Complainants requested a directive that PPL remove the smart meter and replace it with an analog meter. Complaint at 3.

The Complaint was served upon PPL on June 22, 2018. On July 12, 2018, PPL filed an Answer. The Answer admitted that PPL provides electric service to the Complainants and installed a smart meter at the service address. The Answer provided that PPL was required to install the smart meter, per the requirements of Act 129 and the Commission's orders. PPL denied that the AMI meter poses a health hazard. Answer at 1-3.

On January 26, 2019, the Complainants filed an Amended Formal Complaint. The Amended Complaint was served upon PPL on February 1, 2019. The Amended Complaint alleged that the smart meter installed by PPL at the service address was an invasion of privacy for the Complainants and the smart meter has caused higher bills. Amended Complaint at 2. On February 19, 2019, PPL filed an Answer to the Amended Complaint. In its Answer to the Amended Complaint, PPL denied that the smart meter has inaccurately recorded the Complainants' electric usage. Additionally, PPL provided that its smart meters comply with all applicable state and federal laws and regulations and are certified by Underwriters Laboratories. PPL averred that it will only collect and use customer data in compliance with its Commission-approved smart meter plan and AMI customer privacy policy. Answer to Amended Complaint at 2-4.

The Hearing was held as scheduled on November 5, 2019. At the hearing, Complainants appeared pro se with several exhibits pre-marked A-O. Of these, Complainants' Exhibits L and N were admitted. Tr. at 20-26. PPL appeared represented by Devin Ryan, Esquire and Curtis Renner, Esquire with sixteen exhibits and four witnesses: Kevin Durkin, Donald Vinciguerra, Christopher Davis, Ph.D., and Mark Israel, M.D. All statements and exhibits from PPL were admitted into the record. A transcript consisting of ninety-nine (99) pages was filed on December 3, 2019.

The record in this case closed on December 3, 2019.

On December 30, 2019, the Commission served ALJ Barnes' Initial Decision in *Linda and Hubert Beck v. PPL Electric Utilities Corporation*, Docket No. C-2018-3002924.

As noted above, on January 15, 2020, the Complainants filed Exceptions to the Initial Decision. On January 31, 2020, PPL filed Replies to Exceptions.¹

On November 4, 2020, the Commission entered an Order and Notice, 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 4, 2020 Stay Order*). The *November 4, 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. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay. Notice was provided on November 14, 2023, informing the Complainants of the lifting of the stay and their procedural rights and obligations under the Commission's regulations.

¹ The Complainants' Exceptions were due on January 21, 2020, i.e. 20 days after the Initial Decision was issued on December 31, 2019, plus the additional day because January 20, 2020 was Martin Luther King Day. PPL's Replies to Exceptions were timely filed because they were due ten days after the January 21, 2020 due date for the Complainants' Exceptions. R.Exc. at 1, n. 1.

III. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going

forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See, Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See, Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See, Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See, Milkie*, 768 A.2d at 1220; *see also, Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See, Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See, Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also, Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In

determining whether a complainant has met the burden of persuasion, the fact-finder² may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501³ Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court's October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, C-2015-2475023 (*Povacz 2019 Order*); *Laura Sunstein Murphy v. PECO Energy Company*, C-2015-2475726 (*Laura Sunstein Murphy*); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, C-2016-2537666 (*Cynthia Randall*). By *Povacz II*, the Supreme Court affirmatively established that there is no "opt-out" provision for

² In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)).

³ The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See*, 52 Pa. Code § 57.28(a)(1). *See, Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632* (Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II* at 280 A. 3d at 983-984.

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain “adequate, efficient, safe, and reasonable service⁴ and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa. C.S. § 1501. Section 1501 of the Code, provides, in pertinent part, as follows:

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 and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501.

As previously noted, in *Povacz II*, the Pennsylvania Supreme Court not only affirmed the Commission’s determination that there is no “opt-out” provision for smart meter installation in either Act 129, the Code, Commission Regulations, or Orders,

⁴ The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

but also confirmed that challenges to smart meter installation, other than an “opt-out”, may arise under Section 1501⁵ of the Code. Therein, the Supreme Court stated:

[W]e conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

Povacz II, at 983-984; *See, Povacz 2013 Order*; *see also Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018) (*Frompovich*).

In applying Section 1501 to a complaint challenging the installation of smart meter technology, the Supreme Court affirmed the Commission’s Opinion and Order in the *Povacz 2019 Order*, stating:

A customer seeking affirmative relief from the [Commission] must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a [Commission] regulation or [o]rder, or a violation of a [Commission]-approved tariff. [See] 66 Pa.C.S. §§ 332(a), 701; *Samuel J. Lansberry, Inc. v.*

⁵ The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000, citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at *14(Pa. P.U.C. January 28, 2016) (*Kreider*).

Pa. Pub. Util. Comm'n, . . . 134 Pa. Commw. 218, 578 A.2d 600 ([Pa. Cmwltth.] 1990)[.] . . .

Although Act 129 does not provide an electric customer [] with the right to opt-out of the installation of a smart meter at their residence, they [sic] may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.

. . . .
Pursuant to [S]ection [1501 of the Code], an EDC (as a public utility) must provide service that is, *inter alia*, both safe and reasonable. **To carry their burden of proof on a Section 1501 [of the Code] claim, a smart meter challenger may be required to present medical documentation and/or expert testimony demonstrating that the furnishing of a smart meter constitutes unsafe or unreasonable service** in violation of Section 1501 [of the Code] under the circumstances presented. *Susan Kreider v. PECO Energy Co.*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. Jan. 28, 2016).

Povacz II, 280 A. 3d at 999-1000 (emphasis added; footnote omitted)⁶

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *Povacz 2019 Order*, and was subsequently affirmed by the Supreme Court in *Povacz II*, that in order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused or will cause adverse health effects or harm to human health, the Complainant must demonstrate

⁶ With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwltth. 2017) (*Romeo*).

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)⁷ from the AMI meter.⁸

3. Other Relevant Legal Standards

In addition to establishing that a complaint challenging the installation of a smart meter may arise under Section 1501, the Supreme Court’s decision in *Povacz II* acknowledged the Commonwealth Court’s rejection of a constitutional claim for exemption from smart meter installation predicated on a violation of “bodily integrity.” The Supreme Court noted the Commonwealth Court’s denial of a claim under the Fourteenth Amendment, stating:

The Commonwealth Court rejected Customers’ constitutional arguments, persuaded by the reasoning of *Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. Ill. 2014) (“*Naperville I*”). Therein, a federal district court rejected the customers’ “*Fourteenth Amendment* bodily integrity argument because their complaint failed to identify an arbitrary deprivation of a recognized liberty or property interest” and to aver that the city’s decision to employ smart meters was arbitrary. *Id.* at 839 (internal quotations marks omitted).

Povacz II at 985, fn. 8.

⁷ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

⁸ See, *Povacz 2019 Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

Further, the Supreme Court noted that a customer must be connected to the distribution system to receive electric service confirming that EDCs operate in a universal basis. *Povacz II* at 993. As such, the Court concluded that by obtaining service from their incumbent EDC, customers contractually accept the EDC's Commission-approved Tariff, including the installation of smart meter technology. *Id* at 994. Therefore, the Supreme Court found that "the authority to select and install a certain type of electric meter rests solely with the EDCs, [...] not the customer." *Id*.

Finally, 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).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Barnes made forty Findings of Fact (FOF) and reached nineteen Conclusions of Law (COL). *See, I.D.* at 3-8, 16-20. The Findings of Fact and Conclusions of Law 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.

In her disposition, ALJ Barnes addressed the Complainants' health and safety concerns and high billing claims. *I.D.* at 11-16.

1. Health and Safety Concerns

The ALJ noted that the Complainants argued that PPL violated 66 Pa. C.S. §§ 1501 and 1502 (relating to discrimination between customers) by installing the smart meter. The ALJ further noted that the Complainants argued that after the installation of the smart meter on November 20, 2017, the Complainants suffered health complaints. I.D. at 11.

The ALJ reasoned that, although the Complainants offered testimony and medical letters regarding health conditions they may have or may be experiencing as of the date of the hearing, there is insufficient evidence to show any of these health conditions are caused or exacerbated by the smart meter. I.D. at 11-12 (citing PPL St. No. 2 at 7). The ALJ was not persuaded by the Complainants' lay opinion as to the potential health impacts of the smart meters as the Complainants are neither engineers nor medical professionals. The ALJ noted the confidential letter from Ms. Beck's doctor, Dr. Stacey Kuhns, in confidential Complainant Exhibit L. The ALJ provided that the medical notes from Dr. Kuhns are inconclusive and Dr. Kuhns was not available for cross-examination. The ALJ concluded that Complainant Exhibit L is therefore unreliable hearsay evidence. I.D. at 12.

The ALJ was persuaded by the credible testimony of Dr. Mark Israel, who testified that there is no reliable medical basis to conclude that RF fields from the smart meter used by PPL will cause or contribute to adverse health effects. I.D. at 13 (citing PPL St. 2 at 16, 18). The ALJ found credible the expert testimony of PPL witness, Dr. Davis that the smart meter used by PPL would not cause adverse health effects. I.D. at 13 (citing PPL St. 1 at 2,3).

2. High Billing

The ALJ provided that in cases of alleged high billing, to establish a prima facie case of overbilling, the complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilizations was low and (3) that the complainant's billing history shows no prior abnormalities. I.D. at 15. The ALJ provided further that once the complainant makes a prima facie case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. I.D. at 15 (citing *Malcolm Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980); *Repogle v. Pennsylvania Electric Company*, 54 Pa. P.U.C. 528 (1980)). The ALJ determined that the Complainants offered no evidence in the form of either testimony or bills to show any of the three elements above. The ALJ provided that the Complainants can request a meter test if they believe the meter is inaccurate in accordance with Commission regulations and the Company's tariff provisions. The ALJ noted that there is no evidence that the Complainants have requested a meter test. The ALJ found that there is no evidence to direct a meter test or high bill investigation as the meter was tested for accuracy before its installation and was found to be accurate within the Commission's regulations. I.D. at 16.

Based on the above, the ALJ dismissed the Complaint for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission Order or Regulation or a Commission-approved tariff of the company. I.D. at 16.

C. Exceptions, Replies and Disposition

The Complainants' Exceptions⁹ generally pertain to the following:

(1) burden of proof; (2) an opt-out request; (3) Pennsylvania and/or federal Constitutional claims; and (4) issues with the "History of the Proceeding" section of the Initial Decision.

To the extent the Complainants have used extra-record materials in support of their Exceptions, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). Therefore, any extra-record information the Complainants used in their Exceptions will not be considered. *Apollo Gas*.

1. Complainants' Arguments Regarding the Burden of Proof

a. Exception Nos. 1, 5-15, and 18

In their Exception No. 1, the Complainants disagree with the ALJ's ruling dismissing the Complaint for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501. The Complainants contend that they provided exhibits and doctor's

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 exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainants are appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination. We note that the Complainants have identified each Exception as an "Item." We will use the term Exception.

notes. They discuss their Exhibits that were not admitted to the record and aver that they should have been admitted. Exc. at 4-5.

In Exception Nos. 5-15 and 18, the Complainants reiterate their health concerns, disagree with the testimony of PPL witnesses Dr. Israel and Dr. Davis, and except to Finding of Facts No. 16, 21, 23, 30, 31, 33, 38-40, and Conclusions of Law No. 8, 10-11, and 18. Exc. at 7-17; 18-19.

b. Replies

PPL contends that the Complainants failed to meet their burden of proof that installing a smart meter on their residence violated Sections 1501 and 1502 of the Public Utility Code. R. Exc. at 2. PPL provides that its witness, Dr. Davis, testified that the Federal Communications Commission (FCC) has determined the safe public exposure levels for RF transmissions, such as those from smart meters. R. Exc. at 3 (citing PPL St. 1 at 9). PPL explains that the FCC limits are based on evaluations of scientific research and were adopted in consultation with other agencies including the Food and Drug Administration and the Environmental Protection Agency. *Id.* According to PPL, the FCC continues to coordinate with the agencies and to consider whether new scientific research indicates any adverse effects from RF fields. *Id.* (citing PPL St. 1 at 9-11). PPL explains further that the FCC reviewed its current RF limits in response to a Notice of Inquiry and found that its existing limits did not require updating. R. Exc. at 3 (citing *In the Matter of Proposed Changes in the Comm'n's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, 2019 FCC LEXIS 3622, at *2, 483 n.1 (F.C.C. Dec. 4, 2019)).

PPL submits that Dr. Davis calculated that the levels of RF from the smart meters are 98,000 times lower than the FCC exposure limit. R. Exc. at 3 (citing PPL St. 1 at 13, PPL Exh. CD-2). Dr. Davis concluded that the RF fields from the smart meters

used by PPL are of very short duration and occur for only a total of 84 seconds over a 24-hour period. R. Exc. at 3-4 (citing PPL St. 1 at 7).

Dr. Davis testified that the RF fields from using cell phones can be over 260,000 times higher than the fields from a smart meter. R. Exc. at 4 (citing PPL St. 1 at 14). According to Dr. Davis, the RF fields at the Complainants' home from the smart meter are at least 7.21 times smaller than the background RF exposure from local television broadcast towers. *Id.* (citing PPL St. 1 at 15; PPL Exhibit CD-5). PPL contends that there is no reliable scientific basis to conclude that the very low levels of RF fields from the smart meters used by PPL can or will cause any adverse thermal or non-thermal biological effects in people. *Id.* (citing PPL St. 1 at 15-16). PPL submits that Dr. Davis' expert testimony was not contradicted by any other expert testimony. *Id.*

PPL witness, Dr. Israel – the only medical expert to present testimony - testified that he reviewed the published scientific research on electromagnetic hypersensitivity (EHS) from the perspective of a medical doctor. R. Exc. at 6 (citing PPL St. 2 at 12-15). Dr. Israel testified that claimed symptoms related to EHS are more accurately described as “Idiopathic Environmental Intolerance” (IEI), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. *Id.* (citing PPL St. No. 2 at 12-13). R. Exc. at 6.

PPL argues that based on the evidence present, the ALJ correctly concluded that the “Complainants have failed to show any health concerns ... are likely to be caused, contribute to, or exacerbated by the AMI meter installed at the service property.” R. Exc. at 7 (citing I.D. at 11). According to PPL, it presented overwhelming evidence through its scientific and medical expert witnesses, that there is no reliable basis to conclude that the smart meter will cause or contribute to any adverse health effects. R. Exc. at 7.

PPL notes that the Complainants erroneously argue that the ALJ should have admitted and relied on all their pre-served hearing exhibits. R. Exc. at 8 (citing Exc. at 4-6). PPL explains that the Complainants never mentioned or moved for admission of many of their pre-served exhibits. According to PPL, only Complainants' Exhibits A, L, N and O were mentioned at the hearing. *Id.* (citing Tr. at 7-8, 20-21, 24-26). Exhibits A and O were excluded from the record because they pertained to the Americans with Disabilities Act, which is outside of the Commission's jurisdiction. R. Exc. at 8-9 (citing Tr. at 7-8; *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *69 (Order entered May 3, 2018)).

According to PPL, the Complainants' Exhibits L and N were admitted into the record, but the Complainants did not identify any additional exhibits for admission into the record. R. Exc. at 9 (citing Tr. at 20-21, 24-26, 34-36). PPL argues that the ALJ gave the proper weight to Exhibits L and N. PPL explains that Exhibit L was written by Dr. Kuhns who was not available for cross-examination at the hearing. PPL reasons that the ALJ correctly rejected Exhibit L as "unreliable hearsay evidence." R. Exc. at 9 (citing I.D. at 11-12; Complainants' Exh. L). Similarly, PPL argues that the ALJ correctly rejected Exhibit N which was not written by the Complainants and pertained to a federal grant issued to PPL because it was both unreliable hearsay evidence and irrelevant to the issues in the case. R. Exc. at 9-10 (citing Tr. at 25; Complainants' Exhibit N).

Finally, PPL argues that the Commission should reject the Complainants' extra-record materials included in their Exceptions. PPL notes that parties cannot introduce new evidence and arguments at the exception stage. In addition, PPL contends that consideration by the Commission of the extra-record materials put forward by the Complainants would violate PPL's due process rights. R. Exc. at 11-12 (citing *Apollo Gas*).

c. Disposition

As noted *supra*, in affirming the Commission’s 2019 *Povacz Order*, the Pennsylvania Supreme Court held in *Povacz II* that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specially, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See, Povacz II* at 1006. In that context, the lay opinion of the Complainant does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.*

The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Id.* at 1005. The Court further opined that while a customer’s evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer’s evidence by providing scientific and/or medical expert testimony that, within a

reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Id.* Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.

In the present case, the ALJ's analysis and disposition turned on the relative weight of the evidence presented by the Complainants to establish that installation of a smart meter would constitute a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff, versus the weight of the evidence presented by the Company in opposition to the Complaint. The ALJ concluded that the evidence presented by the Company outweighed the evidence presented by the Complainants on all issues. We concur. Upon review, we agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainants did not meet their burden of proof regarding their claim that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission Order or Regulation or a Commission-approved tariff of the company. I.D. at 16.

In order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the AMI meter. See *2019 Povacz Order*. Here the ALJ properly concluded that the Complainants have failed to satisfy their burden of demonstrating that the smart meter deployed by PPL emit electromagnetic frequencies that cause their adverse health effects. I.D. at 15.

Specifically, we affirm the ALJ's finding in COL No. 11, that the Complainants failed to satisfy their burden of proof that installing the new AMI meter would violate the Public Utility Code or any Commission Regulation or Order. I.D. at 18

(citing 66 Pa. C.S. §§ 332(a), 701). The Complainants' Exhibit L was the only health-related exhibit they had admitted to the record. Complainant Exhibit L is letter from Ms. Beck's physician, Dr. Kuhns. The exhibit was correctly considered unreliable hearsay by the ALJ because Dr. Kuhns was not available for cross-examination at the hearing. We find nothing in the Complainants' Exceptions to refute the ALJ's conclusion that the Company's use of a smart meter to measure the electric usage at Complainants' property will not constitute unsafe or unreasonable service, in violation of Section 1501.

Further, the Company presented credible evidence through its expert witnesses, Dr. Israel and Dr. Davis, to support the ALJ's finding that there is no reliable basis to conclude that the new AMI meter will cause, or contribute to, any adverse health or environmental effects. I.D. at 20. Specifically, we concur in the ALJ's finding that the Complainants' arguments concerning the alleged effects of the electromagnetic frequencies on their health from smart meters are non-persuasive and were rejected based on the record developed in this case. I.D. at 11-15.

Therefore, upon review of the record, and based on the foregoing discussion, we find that the ALJ properly weighed the evidence presented to conclude that the Complainants failed to establish by a preponderance of the evidence that the Company's installation of a smart meter would constitute unreasonable or unsafe provision of service under Section 1501 of the Code. Therefore, we shall deny Complainants' Exceptions challenging the ALJ's dismissal of the Complaint for failure to satisfy the burden of proof.

2. Complainants' Concerns Regarding the Commission's No Opt-Out Interpretation of 66 Pa. C.S. § 2807(f)

a. Exception Nos. 4, 15-17

In their Exception Nos. 4, 15, 16, and 17 the Complainants argue that PPL is not required to install a smart meter at the service address, and they maintain that Section 1501 and 1502 should preclude them from the requirement to have a smart meter at their residence. Exc. at 7, 17-18.

b. Replies

PPL provides that the ALJ properly held that the smart meter is required by law. R. Exc. at 14 (citing I.D. at 19). PPL explains that it must comply with the relevant Commission orders directing the Company to deploy the new smart meters. R. Exc. at 15. PPL contends that the Complainants' reliance on Sections 1501 and 1502 is misplaced. PPL argues that the Complainants have failed to meet their burden of proof that the new smart meter violated Section 1501. Additionally, PPL contends that the installation of the smart meter did not violate Section 1502. PPL avers that it treated the Complainants the same as every other similarly situated customer by installing the new smart meter. According to PPL, allowing the Complainants to opt-out of installing a smart meter would violate Section 1502 because the Complainants would receive an "unreasonable preference or advantage" in service that similarly situated customers do not receive. R. Exc. at 16-17 (citing 66 Pa. C.S. § 1502).

c. Disposition

In Exception Nos. 4, 16 and 17, the Complainants assert that they should be allowed an opt-out from the installation of a smart meter at the service address. Because

the Pennsylvania Supreme Court's holding in *Povacz II* expressly found that there is no "opt-out" provision under Act 129, we shall deny the Exceptions.

In *Povacz II*, the Pennsylvania Supreme Court expressly concluded that the complainant's assertion of the right to "opt-out" of Act 129 was unfounded. Therein, the Supreme Court stated:

[W]e conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

Povacz II, at 983-984. Therefore, 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. Accordingly, to the extent the Complainants assert a right to "opt-out" of Act 129 to refuse smart meter installation, we shall deny the Complainants' Exception Nos. 4, 16 and 17 without further discussion.

In their Exception No. 15, the Complainants requests that their AMI meter be replaced with an analog meter. Exc. at 17.

In *Povacz II*, the Pennsylvania Supreme Court expressly concluded that the utility and not the customer has the right to determine what type of smart meter technology to install. *See, Povacz II* at 993. The Supreme Court noted that a customer must be connected to the distribution system to receive electric service confirming that EDCs operate in a universal basis. *Id.* As such, the Court concluded that by obtaining service from their incumbent EDC, customers contractually accept the EDC's

Commission-approved Tariff, including the installation of smart meter technology. *Id.* at 994. Therefore, the Supreme Court found that “the authority to select and install a certain type of electric meter rests solely with the EDCs, [...] not the customer.” *Id.*

Therefore, by establishing that the customer has no right to select which smart meter technology to install, the Supreme Court’s holding in *Povacz II* is controlling on the question. Accordingly, to the extent the Complainants assert the right to select which smart meter technology to install, we shall deny the Complainants’ Exception No. 15 without further discussion.

3. Complainants’ Argument Regarding Constitutional Claims

a. Exception No. 9

In their Exception No. 9, the Complainants contend that the installation of a smart meter at their residence is “irresponsible” and against their “Constitutional Rights to a home” of their choice. Exc. at 10-11.

b. Replies

PPL provides that the Complainants failed to specify which constitutional rights they believe have been violated by the installation of the AMI meter. PPL explains that it is not a state actor and therefore cannot violate the Complainants’ constitutional rights. R. Exc. at 17-18 (citing *Commonwealth v. Corley*, 491 A 2.d 829, 832 (Pa. 1985); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974); additional citations omitted). PPL explains further that if it were a state actor, the Seventh Circuit Court of Appeals found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search. R. Exc. at 18 (citing *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527-29 (7th Cir. 2018)).

c. Disposition

To the extent the Complainants' Exception No. 9 asserts that the ALJ erred by not finding that the installation of a smart meter constitutes a violation of the Complainants' constitutional rights, we shall deny the Exception. See Exc. at 10-11.

As a general matter, the Complainant fails to specify any constitutional claim. Further, in *Povacz II*, the Supreme Court acknowledged that the Commonwealth Court concluded that, in the circumstances, the assertion of a constitutional right to refuse installation of a smart meter predicated upon an asserted violation of "bodily integrity" was unfounded. See, *Povacz II* at 985, fn. 8. As the Supreme Court denied allocatur as to any constitutional claims, the Commonwealth Court's holding stands. Accordingly, to the extent the Complainants assert a constitutional right to refuse smart meter installation, we shall deny the Complainants' Exception No. 9 without further discussion.

4. Complainants' Issues Regarding the "History of the Proceeding" Section of the Initial Decision

a. Exception Nos. 2 and 3

In their Exception Nos. 2 and 3, the Complainants take issue with items included in the History of the Proceedings. Specifically, the Complainants contend that the ALJ erred in minor details regarding a hearing time change and the filing of a Motion of Limine. Exc. at 6.

b. Replies

In its Replies, PPL argues that the ALJ properly stated that on September 20, 2019, the hearing start time was changed from 10:00 a.m. to 9:00 a.m.

R. Exc. at 18 (citing I.D. at 2, Hearing Change Notice dated Sept. 20, 2019). PPL explains that the Complainants overlook the ALJ's statements that noted when the PPL's Motion in Limine was filed in relation to the evidentiary hearing. R. Exc. at 19 (citing I.D. at 2).

c. Disposition

We shall deny the Complainants' Exceptions on this issue. We find no error in the History of the Proceedings regarding the hearing time change or the Motion in Limine. Further, nothing in the alleged errors is material to our conclusion that the ALJ properly weighed the record evidence to conclude that the Complainants had failed to carry their burden of proof. Thus, the Complainants' Exception Nos. 2 and 3 are denied.

IV. Conclusion

In light of the above discussion, we shall: (1) deny the Complainants' Exceptions; (2) adopt the ALJ's Initial Decision; and (3) dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

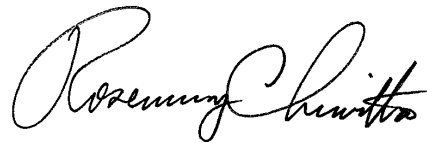
1. That the Exceptions filed by Linda E. and Hubert P. Beck on January 15, 2020, to the Initial Decision of Administrative Law Judge Elizabeth H. Barnes issued on December 30, 2019, at Docket No. C-2018-3002924, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on December 30, 2019, at Docket No. C-2018-3002924, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Linda E. and Hubert P. Beck, on June 22, 2018, and Amended on January 26, 2019, at Docket No. C-2018-3002924, is dismissed.

4. That this proceeding is marked closed.

BY THE COMMISSION,

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 18, 2024

ORDER ENTERED: February 2, 2024