PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held February 22, 2024

Commissioners Present:

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

Alan Andrews C-2019-3008770

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 of Mr. Alan Andrews (Complainant or Mr. Andrews) filed on August 10, 2020, to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, served on the Parties on

April 21, 2020, in the above-captioned proceeding.[1] On August 20, 2020, PPL Electric Utilities Corporation (PPL or the Company) filed Replies to Exceptions. The Initial Decision denied the Amended Formal Complaint (Amended Complaint) filed by the Complainant on January 31, 2020. For the reasons discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Barnes, and dismiss the Amended Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Formal Complaint (Complaint), as amended, concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PPL proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant requested that PPL not install a smart meter at his residence due to his health and safety concerns related to installation of the smart meter. Amended Complaint at 4-5, 10-11.

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

The Complainant is a PPL customer who has been notified of PPL's intent to install a smart meter at his residence. The Complainant currently has a powerline carrier (PLC) meter installed at his residence that provides the function of automatic meter reading (AMR).

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[1] By Secretarial Letter issued May 12, 2020 (*May 2020 Secretarial Letter*), the Commission granted Mr. Andrews' request for an extension of time to file Exceptions to the Initial Decision, pursuant to 52 Pa. Code § 1.15. The *May 2020 Secretarial Letter* instructed the Parties that Exceptions shall be filed with the Commission on or before August 10, 2020, and Reply Exceptions shall be filed on or before August 20, 2020. *See, May 2020 Secretarial Letter*.

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 Implementation Order*). PPL sought and obtained the Commission's approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by late 2019. *See, Petition of PPL Electric Company for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781 (Opinion and Order entered September 3, 2015) (*2015 Smart Meter Order*).

II. History of the Proceeding

On March 25, 2019, Mr. Andrews filed the instant Complaint stating that due to health, safety, fire, and privacy concerns, he does not want a smart meter installed on his residence. Complaint at 1-3; I.D. at 1-2. On April 15, 2019, the Company filed an Answer to the Complaint (Answer), essentially admitting that PPL provides electric service to the Complainant but contending that it is required to install AMI, or smart meters, for all AMR customers and that it has the right to terminate service for failure of the customer to permit access to the meter. Answer at 1-4; I.D. at 2. On August 27, 2019, the Complainant filed a supplemental letter labeled as "Complainant to PPL" (Complainant Letter). I.D. at 2.

On September 3, 2019, PPL filed a Motion to Compel Responses to Discovery Propounded on Alan Andrews – Set I (Motion to Compel).[2] On September 12, 2019, the ALJ issued an Order Granting Motion to Compel. On October 3, 2019, the Complainant filed a Certificate of Service (Certificate of Service) certifying that he served his Answers to Interrogatory on PPL.[3]

By Hearing Change Notice dated October 15, 2019 (Hearing Notice) and duly served on the Parties, an Initial Telephonic Hearing was scheduled for February 6, 2020, at 10:00 a.m. The Hearing Notice included the date, location, and time of the hearing. Hearing Notice at 1. The Hearing Notice further stated: "If you have any hearing exhibits to which you will refer during the hearing, three (3) copies must be sent to the [ALJ] and one (1) copy each must be sent to every other party. All copies **must be received** at least five (5) business days **before** the hearing." Hearing Notice at 2 (emphasis in original).

On January 31, 2020, the Complainant filed the Amended Complaint.[4] In the Amended Complaint, Mr. Andrews alleged, *inter alia*, that the AMI meter PPL

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[2] On July 18, 2019, PPL filed Interrogatories and Requests for Production of Documents Propounded by PPL on Alan Andrews – Set 1 (Interrogatories and Requests). On August 9, 2019, the Complainant filed his Response to Interrogatories and Requests for Production of Documents by PPL. According to PPL's Motion to Compel, as of the date of the Motion to Compel, no response to Question No. 7 in the Interrogatories and Requests has been received from the Complainant. Motion to Compel at 2. Copies of PPL's Interrogatories and Requests and the Complainant Letter are attached to the Motion to Compel. *See,* Appendix A and B to Motion to Compel.

[3] We note that although the Commission's case management system indicates that the Certificate of Service was received on October 3, 2019, and the Certificate of Service is stamped "RECEIVED" by the Commission's Secretary's Bureau on October 3, 2019, the Initial Decision indicates that the Certificate of Service was received by the Commission on October 1, 2019.

[4] Although the Amended Complaint was filed with the Commission on January 31, 2019, it was not served on the Respondent until February 3, 2019. I.D. at 2.

intends to install poses a risk to his safety and the safety of his family, in violation of Sections 1501 and 1502 of the Code, 66 Pa. C.S. § § 1501 and 1502, and Section 57.194 of our Regulations, 52 Pa. Code § 57.194. The Complainant also claimed that PPL has been illegally charging him approximately $2.00 a month since 2014. The Complainant also noted his concerns with, *inter alia*, termination of electric service. As relief, the Complainant requested, *inter alia*, to retain the analog meter currently installed on his residence and a refund of his smart meter-related fees. Amended Complaint at 7, 10-11.

On February 5, 2020, PPL filed an Answer and New Matter to the Amended Complaint (Answer to the Amended Complaint), essentially denying all of the material allegations of the Amended Complaint but contending that it is required to install AMI, or smart meters, for all AMR customers and that it has the right to terminate service for failure of the customer to permit access to the meter. Answer to Amended Complaint at 1-19; I.D. at 2. On February 19, 2020, Mr. Andrews filed an Answer to New Matter, alleging, *inter alia*, that PPL has been unlawfully charging him for costs of smart meter deployment. I.D. at 2.

On February 6, 2020, an evidentiary hearing was held as scheduled. The Complainant appeared *pro se* and his wife, Mrs. Jeraldine Andrews (Mrs. Andrews), appeared as a witness. At the hearing the Complainant offered five exhibits for entry into the record. Four of the Complainant's exhibits were entered into the record (Complainant Exhibits A, B, C, and D), and one was not (Complainant Exhibit E). I.D. at 3; Tr. at 58. The Company was represented by counsel and presented the testimony of four witnesses: (1) Christopher C. Davis, Ph.D.; (2) Mark Israel, M.D.; (3) Kevin Durkin; and (4) Michael Asbury. PPL offered four witness statements and seventeen exhibits, which were admitted into the record as follows: PPL's Statements 1-4 and Exhibits CD-1 – CD-5, MI-1-MI-3, KD-1-KD-8, and MA-1. I.D. at 3.

The hearing produced a transcript consisting of seventy-eight pages. The record was closed on February 26, 2020. I.D. at 3.

In the Initial Decision issued on April 21, 2020, the ALJ dismissed the Amended Complaint for failure to prove, by a preponderance of the evidence, that the installation of the smart meter constitutes unsafe or unreasonable service under Section 1501 of the Code, 66 Pa. C.S. § 1501, or that it violates any other provision of the Code, Commission Regulation, Commission Order or Commission-approved Company tariff. I.D. at 1, 17.

As previously noted, the Complainant timely filed Exceptions on August 10, 2020, and PPL timely filed Replies to Exceptions on August 20, 2020.

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 2020 Stay Order*). The *November 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 of pending smart meter complaints. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and their procedural rights and obligations under the Commission's regulations.

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 (Final Order entered August 25, 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, Burleson 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*, *Burleson*, 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-finder[5] 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. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501[6] Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. PUC*, 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*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) (*2019 Povacz Order*); *Laura Sunstein Murphy v. PECO Energy Company*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019) (*Laura Sunstein Murphy*); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, Docket No. C-2016-2537666 (Opinion and Order entered

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[5] 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)).

[6] 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 (Opinion and Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

May 9, 2019) (*Cynthia Randall*). By *Povacz II*, the Supreme Court affirmatively established that there is no "opt-out" provision for 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, a public utility has a duty to maintain "adequate, efficient, safe, and reasonable service[7] 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,

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[7] 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 1501 of the Code.[8] 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 Company*, 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 *2019 Povacz 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.*

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[8] 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. Cmwlth.] 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.
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> . . . .
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> 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).[9]

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *2019 Povacz 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

[9] 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. Cmwlth. 2017) (*Romeo*).

by a preponderance of the evidence a "conclusive causal connection" between the harm to human health and the radio frequency fields (RFs)[10] from the AMI meter [11].

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 conclusion that the assertion of a constitutional claim for exemption from smart meter installation, predicated upon an asserted a violation of "bodily integrity," was unfounded in those circumstances. Specifically, 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. III 2014) ("*Naperville II*"). 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

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

[11] *See, 2019 Povacz 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).

> meters was arbitrary. *Id*. at 839 (internal quotations marks omitted).

Povacz II at 985, fn. 8. As the Supreme Court denied allocator as to any constitutional claims, the Commonwealth Court's holding stands.

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 thirty-five Findings of Fact (FOF) and reached eighteen Conclusions of Law (COL). I.D. at 3-7, 17-20. The FOF and COL 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.

The ALJ first addressed the Complainant's claim that the AMI meter will cause or exacerbate certain medical conditions and impact biological processes. The ALJ noted that although the Complainant testified that he has no health conditions, his wife, Mrs. Andrews, testified that she has a heart condition and is worried about the smart meter installation. I.D. at 10 (citing Tr. at 28-29). The ALJ also acknowledged the Company's contention that the Complainant failed to meet a *prima facie* case, showing that the smart meter will cause or is likely to exacerbate medical conditions. I.D. at 10.

The ALJ found that because the Complainant has no engineering or medical degrees, his testimony that the smart meter will contribute to negative health symptoms lacks credibility. The ALJ noted that the Complainant failed to show that any health concerns are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at his property. The ALJ further noted that the Complainant's testimony and articles offered in support of his argument are insufficient evidence to meet the *prima facie* burden of proof to show that the Company's service is unsafe or unreasonable. I.D. at 10 (citing Complainant Exhs. B, C, D).

The ALJ also found that there is insufficient evidence to demonstrate that alleged health conditions are caused or exacerbated by an AMI meter installation close to the premises. Further, the ALJ found the lay opinion of the Complainant as to the probable health effects of RF fields or electromagnetic fields emitting from an RF meter to be installed at the residence to be non-persuasive. The ALJ noted that the articles upon which the Complainant relies to prove the health claims were authored by persons not available for cross-examination at the hearing. I.D. at 11 (citing Tr. at 58).

The ALJ noted the self-reported symptoms of Electromagnetic Hypersensitivity (EHS) some people claimed to be caused by RF fields. I.D. at 11 (citing PPL St. 2 at 12-15). The ALJ further noted that a "nocebo effect," which is said to occur when negative expectations of the patient regarding a treatment cause the

treatment to have a more negative effect than it otherwise would have, may present symptoms similar to the symptoms that Mrs. Andrews complains of in Idiopathic Environmental Intolerance attributed to Electromagnetic Fields (IEI-EMF) and control participants; however, there is no reliable medical basis to conclude that RF fields from the AMI meters being installed by the Company would cause, contribute to, or exacerbate any of the symptoms claimed by Mrs. Andrews or any other adverse health effects. I.D. at 11 (citing PPL St. 2 at 14-17). The ALJ also noted studies which examined whether RF fields at the frequencies used by cell phones affect heart rates found no significant changes or effects on heart rates resulted from RF exposure. I.D. at 11 (citing PPL St. 2 at 12-13).

The ALJ was persuaded by the testimony of PPL witness Dr. Israel, who explained that claimed symptoms related to EHS are more accurately described as Idiopathic Environmental Intolerance (IEI), in which "idiopathic" means "cause unknown." I.D. at 6, 11 (citing PPL St. 2 at 12-13).

The ALJ provided that Dr. Israel testified to a reasonable degree of medical certainty that there is no reliable medical basis to conclude that RF fields from the AMI meter intended for installation by PPL will cause, or contribute to, adverse effects on health or the development of illness or diseases. The ALJ concluded that, based on the expert medical opinion testimony of Dr. Israel, there is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. I.D. at 11-13 (citing PPL St. 2 at 8-11, 16).

The ALJ also summarized Dr. Israel's testimony regarding a number of studies on animals in areas that address fundamental, biological functions that are sensitive to any disruption and that involved lifetime exposures to RF Fields. According to Dr. Israel, these studies found no adverse effects on genetics, fertility, reproduction,

growth, or development, nor did they find any increased incidence in cancer, in the animals exposed to RF fields. I.D. at 12 (citing PPL St. 2 at 8-10).

In addition, the ALJ found credible the testimony of PPL witness Dr. Davis, who opined that the Landis + Gyr AMI meter would not cause adverse health effects. The ALJ provided that the Federal Communications Commission (FCC) has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. The ALJ further provided that the FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration and the Environmental Protection Agency. I.D. at 13 (citing PPL St. 1 at 2-3, 9-12).

The ALJ noted that the levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC.[12] I.D. at 13 (citing PPL St. 1 at 13; PPL Exh. CD-2). The ALJ noted further that RF signals from the AMI meter are of short duration and will occur for only a total of 84 seconds over a 24-hour period. I.D. at 13 (citing PPL St. 1 at 7).

In additional summary of the expert evidence, the ALJ stated that the exposure from using cell phones at a person's head can be over 260,000 times higher than the RF fields one meter away from the AMI meter. I.D. at 14 (citing PPL St. 1 at 14). The ALJ also referenced Dr. Davis' testimony that there are nine television broadcast towers within a 50-mile radius of the Complainant's residence. According to Dr. Davis, the locations of each tower and their RF fields result in a constant background level of RF fields at Mr. Andrews's residence that are 16.3 times higher than the RF signals from the AMI meter. I.D. at 13-14 (citing PPL St. 1 at 15; PPL Exh. CD-5). The ALJ noted

[12] The applicable FCC Maximum Permissible Exposure Limit for the smart meter proposed by PPL is 0.6 mW/cm^2 based on a 30-minute average. 47 CFR § 1.1310.

further that the RF fields emitted by an AMI meter are far below the current federal safety standards regarding exposure levels. I.D. at 14 (citing PPL St. 1 at 7-16; PPL Exhs. CD-1, CD-2, CD-3, CD-4, CD-5). Thus, regarding the matter of health and safety concerns, the ALJ found in favor of the Company.

The ALJ also acknowledged the Complainant's argument that pursuant to Act 129, he is entitled to an opt-out from smart meter installation. I.D. at 14 (citing Complainant Exh. A). The ALJ provided that the Company contends its installation of an AMI meter is required by Pennsylvania law and that installation of an AMI meter on the Complainant's property would not constitute unreasonable or unsafe service. *Id.* The ALJ further noted that the Company contends that the language in Act 129 is unambiguous and the Commission has established case law through consistent rulings finding the installation to be mandated by legislation. I.D. at 14 (citing Tr. at 73-75).

The ALJ explained that the Commission has ruled that there is no provision in the Code, or our Regulations or Orders, that permits an opt out of smart meter installation. I.D. at 14 (citing *Bervinchak v. PPL Electric Utilities Corporation*, Docket Nos. C-2016-2572824 and C-2016-2577527 (Final Order October 2, 2018, Initial Decision dated August 16, 2018); *2013 Povacz Order* at 10; *2019 Povacz Order*). Further, the ALJ noted that the Commonwealth Court has held that federal law does not preempt the Commission's interpretation. I.D. at 14-15 (citing *Romeo*). Moreover, the ALJ noted that the Commission has held that it has no authority, absent directive in the form of legislation, to prohibit an EDC from installing a smart meter where a customer does not want one. I.D. at 15-16 (citing *2013 Povacz Order*). Accordingly, the ALJ concluded that PPL would be in violation of the law if it did not install a smart meter at properties similarly situated to the Complainant's residence. I.D. at 16 (citing *2013 Povacz Order*; *Frompovich* at 10).

Finally, the ALJ found that the Complainant failed to offer any substantial evidence to support any privacy or fire safety claims.[13] Therefore, the ALJ found in favor of PPL on these issues. I.D. at 17.

Based on all of the above, the ALJ dismissed the Complaint for failure to prove, by a preponderance of evidence, that the installation of a smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501, or a violation of the Code, a Commission Order or Regulation or a Commission-approved tariff of the Company. I.D. at 17.

C. Exceptions, Replies, and Disposition

The Complainant's Exceptions[14] generally argue that the ALJ erred as to the rulings regarding: (1) due process; (2) health and safety concerns; (3) opt-out and interpretation of 66 Pa. C.S. § 2807(f); (4) credibility and credential concerns of Dr. Davis and Dr. Israel; and (5) prior decisions of smart meter complaints.

In addition, we note that the Complainant has included and made use of extra-record materials in his Exceptions. We will disregard the extra-record materials – specifically: (1) the document referred to by the Complainant as the "Senate Journal on October 8, 2008, pages 2626-2631," and the Complainant's summarized comments from

[13] The ALJ noted that the Complainant withdrew his claim that the rider surcharge on his bill was an incorrect charge. I.D. at 17; Tr. at 24.

[14] We acknowledge that the format of the Complainant's 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 exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

those pages; and (2) the hyperlink referred to by the Complainant as "peer-reviewed studies by independent scientists that do show harm," and the Complainant's summarized comments from those studies – as the use of this extra-record information by the Commission would violate PPL's due process rights.[15]

It is well-established that parties cannot introduce new evidence at the exceptions stage. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Opinion and Order entered February 10, 1994) (*Apollo Gas*). As noted earlier, the record closed on February 26, 2020. I.D. at 3. The information regarding "the discussion of PN 4526 in the Senate" and the comments regarding smart meters and studies referenced by the Complainant is introduced for the first time in his Exceptions and is not in the record. Exc. at 5-6, 12. The Complainant's extra-record evidence cannot be admitted into the record at this current procedural stage of the case. Therefore, we must reject this extra-record evidence introduced by the Complainant in his Exceptions. *Apollo Gas*.

1. Complainant's Due Process Concerns Regarding Briefs

a. Exception No. 1

The Complainant avers that the ALJ erred when she did not issue a briefing schedule to the Parties. Mr. Andrews claims that he is at a disadvantage without a briefing schedule and a chance to present his legal arguments. The Complainant further argues that by not issuing a briefing schedule, the ALJ serves to dismiss his case without legal process and is in violation of his constitutional rights. Exc. at 2.

b. Replies

[15] A hyperlink to the extra record materials appears immediately following the Complainant's summarized comments from those materials. Exc. at 5-6, 12.

PPL contends that the Complainant was not denied due process by the lack of briefs being submitted by the Parties. R. Exc. at 2 (citing *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014)). PPL notes that the Complainant had an opportunity at the hearing to: (1) present his case and make his arguments; (2) present his testimony and evidence; and (3) provide a closing argument to present his legal arguments. PPL further states that the ALJ's decision not to issue a briefing schedule was within her discretion, adding that the presiding officer has authority to, *inter alia*, "regulate the course of the proceeding." R. Exc. at 2 (citing 52 Pa. Code § 5.483(a)). PPL adds that the Complainant's concern regarding the lack of briefing is moot because through the filing of Exceptions, Mr. Andrews has been able to present his written arguments. R. Exc. at 2.

c. Disposition

The Complainant essentially argues that he was denied the ability to present his legal arguments because the ALJ did not issue a briefing schedule and, as a result, his due process rights were violated. Exc. at 2.

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984), citing *Township of Middleton v. The Institute District of the County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), aff'd 450 Pa. 282, 299 A.2d 599 (Pa. Cmwlth. 1973). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

Here, Mr. Andrews appeared at, and participated in, the evidentiary hearing duly scheduled and held in this matter. Tr. at 4, 7. During the hearing, the Complainant was provided with an opportunity to explain why he filed the Amended Complaint and what relief he was seeking from the Commission. Tr. at 8-21. Further, the Complainant was offered the chance to cross-examine PPL's witnesses. Tr. at 34, 36, 40, 65. Finally, Mr. Andrews was provided with an opportunity to give a closing argument. Tr. at 75. In addition, we note that the Hearing Notice provided instructions to the Parties for relying upon and introducing exhibits at the hearing.

Upon review of the transcript and the Initial Decision, we find that the Complainant was provided an adequate opportunity to present his factual evidence and legal arguments to the ALJ at the hearing. Moreover, the ALJ had the authority, at her discretion, to regulate the course of the proceeding, including the use of pre- and post-hearing procedures. *See,* 52 Pa. Code § 5.483(a), s*ee also, e.g.*, 5.222(b). We note that, in *pro se* complaint cases in particular, it is a long-standing procedural practice of the Office of Administrative Law Judge to not require the submission of written briefs in the interest of minimizing the administrative burden placed on *pro se* complainants in litigating a formal complaint before the Commission. Finally, we note here that the Complainant did not request the ALJ to require the submission of briefs. Thus, for all the foregoing reasons, we find that it was not an abuse of discretion for the ALJ to decide not to issue a briefing schedule to the Parties. 52 Pa. Code § 5.483(a). Therefore, we find the Complainant's claim that he was not afforded due process to be without merit, and we shall deny the Exception.

2. Complainant's Health and Safety Concerns Regarding the Installation of the AMI Meter

a. Exception No. 2

The Complainant contends that the ALJ erred by "not giving credence" to his testimony or his filings. Exc. at 2. Mr. Andrews notes that he suffers from sleep disruptions at his other home, where a smart meter is installed. Further, Mr. Andrews maintains that his wife's heart issues would be exacerbated by a smart meter installed at his residence. Moreover, the Complainant expresses concern over the environmental effects of a smart meter. Additionally, the Complainant submits that PPL's threat to terminate his electric service if he does not allow the installation of a smart meter on his home is a violation of Section 1501 of the Code, 66 Pa. C.S. § 1501. Exc. at 2-3.

b. Replies

PPL asserts that the ALJ properly concluded that there was no reliable scientific or medical basis to conclude that the AMI meter will cause, contribute to, or exacerbate any adverse health effects, including any of the symptoms claimed by the Complainant, or cause or contribute to the development of illness or disease. R. Exc. at 5 (citing I.D. at 10-14). According to the Company, the ALJ relied upon the credible and reliable expert testimony of Dr. Israel and Dr. Davis, "refuting the Complainant's bald assertions that the AMI meter could cause or contribute to adverse health effects." R. Exc. at 5-6 (citing PPL St. 1 at 5-16; PPL Exhs. CD-1 through CD-5; PPL St. 2 at 7-18; PPL Exhs. MI-1 through MI-3). In support, PPL cites to and recounts the record evidence it presented through expert witnesses Dr. Davis and Dr. Israel, as summarized and considered by the ALJ in the Initial Decision based on the record. R. Exc. at 6-10.

PPL submits that based on the evidence presented, the ALJ correctly concluded that the Complainant's allegations were insufficient to sustain his burden of proof because they were based on his non-expert opinion and largely based on unnamed hearsay materials. R. Exc. at 10 (citing I.D. at 10-15, 17, 19). The Company states that it presented overwhelming evidence through its scientific and medical expert witnesses, Dr. Davis and Dr. Israel, 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 effects. R. Exc. at 10. Further, PPL disputes the Complainant's recognition of the burden of proof applied by the Commission in this proceeding. Specifically, PPL provides that, it is well-established that, "[p]roof of causation is required in order to prevail under Section 1501," and merely demonstrating "a potential for harm" is insufficient. R. Exc. at 10 (citing *Hoffman-Lorah v. PPL Electric Utilities Corporation*, 2019 Pa. PUC LEXIS 195, at 62 (Opinion and Order entered May 23, 2019), *appeal pending*, 712 C.D. 2019; *Laura Sunstein Murphy*, appeal pending, 606 C.D. 2019)).

PPL contends that under its Commission-approved tariff, the Commission's Regulations, and Chapter 14 of the Code, it has the legal right to terminate the Complainant's service if the Company is denied reasonable access to its meter. R. Exc. at 11 (citing PPL Exhs. KD-4, KD-5; 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3)). Further, PPL argues that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided. R. Exc. at 11-12 (citing *Frompovich* at 91-92). Moreover, PPL disputes the Complainant's claim that the installation of an AMI meter would violate his constitutional rights. R. Exc. at 18 (citing Exc. at 2). PPL avers that two elements must be met for there to be a deprivation of constitutional rights: (1) "the deprivation must be caused by the exercise of some right or privilege created by the state"; and (2) "the party charged with the deprivation must be a person who may fairly said to be a state actor." R. Exc. at 18 (citing *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (emphasis added by PPL)). Furthermore, PPL notes that it is not a state actor, but adds that if it were, the Seventh Circuit Court of

Appeals found that smart meter data collection by a city-owned public utility was a reasonable, warrantless search. R. Exc. at 19 (*citing Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527-529 (7th Cir. 2018)).

c. Disposition

As a general matter, in cases involving a challenge to smart meter installation, the standard burden of proof applicable in complaint proceedings applies. However, case law addressing the specific claims raised in challenges to smart meter installation has also developed. Claims challenging the installation of a smart meter can generally be categorized as claiming one or more of the following: (1) a right to opt out of the smart meter installation; (2) a Section 1501 violation of the provision of reasonable and safe service based on either alleged adverse health effect or unsafe technology; (3) a constitutional right to refuse the installation; and/or, (4) a right to choose which type of technology to install. *See, generally*, *Povacz II*.

In the present case, the Complainant alleges that smart meter installation will cause unreasonable and adverse effects to both Mr. and Mrs. Andrews' health and the surrounding environment. Exc. at 2-3. Therefore, each of the Complainant's claims arise, if at all, as a claim under Section 1501 asserting unreasonable or unsafe provision of service. 66 Pa. Code § 1501.

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 999-1000. 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.[16] 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

[16] Notably, the Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Id*. at 1005.

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.[17]

In the present case, the ALJ's analysis and disposition turned on the relative weight of the evidence presented by the Complainant 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 Complainant 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 Complainant did not meet his *prima facie* burden of proof regarding his claim that the AMI smart meter will cause, or contribute to, adverse health effects for the Complainant and his wife, or the environment. I.D. at 10-11.

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 lay opinion of the Complainant does not provide a conclusive, causal connection between the alleged harm to human health and the RFs from the AMI meter. I.D. at 10-11.

[17] The Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff. However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id*. at 1015

Specifically, we affirm the ALJ's finding in COL No. 15, that the Complainant failed to show that the proposed AMI meter causes, contributes to, or exacerbates any adverse health effect. I.D. at 20. Similarly, the Complainant failed to offer any competent evidence of record to support a finding that his or Mrs. Andrews' health or the environment will be adversely affected by installation of a smart meter. I.D. at 11. We find nothing in the Complainant's Exception to refute the ALJ's conclusions that the Company's use of a smart meter to measure the electric usage at the Complainant's property will not constitute unsafe or unreasonable service, in violation of Section 1501.

The Complainant also contends that PPL is threatening unlawful service termination if he does not allow the Company to install a smart meter at his residence. Exc. at 2. However, as discussed *infra*, PPL must install an AMI meter to comply with its Commission-approved Smart Meter Plan. R. Exc. at 15. Further, it is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided. 52 Pa. Code § 56.81(3).[18] The Commission's Regulations at 52 Pa. Code § 56.81(3), provide, in pertinent part, the following:

> A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91-56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . Failure to permit access to meters, service connections or other property

[18] While PPL furnishes and owns the meter, the meter typically is located on a customer's property. PPL's ability to change a meter or metering equipment – *i.e.*, to remove an existing PLC meter and install a new AMI meter – requires the customer to give PPL reasonable access to its meter located on the customer's property. Indeed, PPL's Tariff provides that "Company employees shall have access at all reasonable hours to customer's premises, without charge, for the purpose of inspecting installations, installing meters, reading, testing, removing, replacing or otherwise maintaining or disposing of any of Company's property." PPL's Tariff Electric Pa. P.U.C. No. 201, Rule 2.F, page 6B.

> of the public utility for the purpose of replacement, maintenance, repair or meter reading.

52 Pa. Code § 56.81(3). Additionally, PPL's Tariff Electric Pa. P.U.C. No. 201, Rule 10.B(g), page 14A, states that the Company may terminate electric service on reasonable notice if PPL's entry to the meter is refused.[19]

For all the foregoing reasons, we conclude that the Complainant's Exception fails to assert any factual or legal error in the ALJ's Initial Decision. Accordingly, we shall deny the Complainant's Exception No. 2.

3. Complainant's Concerns Regarding an Opt-Out and the Commission's Interpretation of 66 Pa. C.S. § 2807(f)

a. Exception No. 3

The Complainant contends that the ALJ erred by not recognizing that the *2015 Smart Meter Order* "[c]ontains a provision for customers to have to accept a smart meter (*i.e.*, no opt-out) that the customer did not request and who did and does not now live in a new construction home..." Exc. at 3. Further, Mr. Andrews argues that the Commission is defending a misinterpretation of the legislative intent of Section 2807(f)(2) of the Code, 66 Pa. C.S. § 2807(f)(2), Act 129, and the *Smart Meter Implementation Order*. Exc. at 3, 8-9. Moreover, the Complainant is of the opinion that, the Commission misinterpreted the word depreciation, as it appears in the language of

[19] A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa. C.S. § 316, *Kossman v. Pa. PUC*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (*Kossman)*; and *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth. 1977) (*Stiteler)*.

Section 2807(f)(2)(iii), to mean that EDCs are required to install smart meters for all of their customers within 15 years. Exc. at 3-5, 6-7, 9-10.[20]

The Complainant interprets Section 2807(f)(2) of the Code to mean that homeowners living in existing construction are provided with a smart meter if they request one, or that smart meters "shall be furnished" in new construction. Exc. at 3-4. According to Mr. Andrews, smart meter deployment is not mandated by Sections 2807(f)(2), 2807(f)(6), or 2807(f)(7) of the Code, 66 Pa. C.S. § 2807(f)(2), (6)-(7). Exc. at 5, 6, 9. In short, the Complainant contends that there is no legal basis on which the Commission or PPL can justify smart meter deployment, and no such inference can be made from Section 2807 and Act 129. Exc. at 10-11.

The Complainant states that although he is not contesting that prior Commission decisions have ruled that Act 129 does not allow for opt-outs, Mr. Andrews argues that it is the Commission's misinterpretation of the intent and meaning of Section 2807(f)(2)(iii) that makes Act 129 a "no opt out smart meter deployment law." Exc. at 8. Mr. Andrews elaborates as follows:

> The absence of a plainly stated opt-out provision does not preclude a utility customer from declining a meter based on various unsafe conditions…that could be caused or exacerbated by smart meter radiofrequency emissions in accordance with 66 Pa. C.S. § 1501. This is patently false.

Exc. at 8. To support his argument, the Complainant mentions, *inter alia*, several proposed House Bills and one Senate Bill, noting how the timeline of some bills compares with the June 2009 *Smart Meter Implementation Order*. *Id.*

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[20] More than once in his Exceptions, the Complainant refers to the Smart Meter Deployment Plan of Metropolitan Edison Company (Met-Ed). *See,* Exc. at 10. We note that Met-Ed is not a party to this proceeding. Therefore, we believe the Complainant's reference in his Exceptions to Met-Ed's Smart Meter Deployment Plan to be an inadvertent misstatement.

The Complainant claims that he has presented "overwhelming" evidence that Section 2807(f)(2)(iii) establishes nothing more than the maximum service life of smart meters. Exc. at 10. Further, Mr. Andrews avers that there is no evidence to support the Commission's position that the deployment of smart meters is a requirement under Section 2807(f)(2)(iii). *Id.* As support, the Complainant cites the following language from the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered June 9, 2010) (*2010 Joint Petition*):

> [The ALJ] found that the [*Smart Meter Implementation Order*] is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission's expectations about smart meter plans.

Exc. at 10 (citing *2010 Joint Petition*).

b. Replies

PPL provides that the ALJ properly held that the installation of the new AMI meter is required by law. R. Exc. at 15 (citing I.D. at 14-16, 19). The Company notes that Section 2807(f) of the Code prescribes that EDCs, like PPL, must file smart meter plans and "**shall** furnish smart meter technology" in any of the following situations: (1) "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request," (2) "[i]n new building construction," and (3) "[i]n accordance with a depreciation schedule not to exceed 15 years." R. Exc. at 15 (citing 66 Pa. C.S. § 2807(f)(1)-(2)) (emphasis added by PPL). PPL explains that in interpreting the provisions of Act 129, the Commission declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." R. Exc. at 15 (citing

Smart Meter Implementation Order at 14). Therefore, PPL reasons, it must install the new meters for every customer in its service territory, including the Complainant. R. Exc. at 14.

PPL provides that nothing in Act 129 permits a customer to opt-out of a smart meter installation. The Company avers that the Commission has repeatedly held that PPL must install the new AMI meters for all of its customers. R. Exc. at 15-16 (citing *Hoffman-Lorah* at 72-73; *Schmukler v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621285 at 73-74 (Opinion and Order entered July 23, 2019), *appeal pending*, 1102 C.D. 2019). Further, PPL notes that only the General Assembly can amend Act 129 to add such an opt-out and, according to PPL, bills proposed in the General Assembly to add such an opt-out have never been enacted. R. Exc. at 16. Moreover, PPL explains that it is not permitted to install any other type of meter under its Smart Meter Plan nor leave the existing PLC meter in place. R. Exc. at 17 (citing PPL St. 4 at 6-7; *2015 Smart Meter Order* at 24).

PPL also challenges the Complainant's argument that the Company should be allowed to grant him an opt-out of the smart meter installation because the *Smart Meter Implementation Order* is not legally binding. R. Exc. at 17 (citing Exc. at 10). The Company explains that the Order cited by the Complainant in his Exceptions, which approved the initial Smart Meter Deployment Plan for Met-Ed, Pennsylvania Electric Company, and Pennsylvania Power Company, omits the Commission's statement in that Order that "EDCs are not free to ignore" the *Smart Meter Implementation Order*. R. Exc. at 17 (*See, 2010 Joint Petition*). Moreover, PPL counters that the Commission's *2015 Smart Meter Order*, which requires the installation of smart meters for all of PPL's customers, is legally binding. R. Exc. at 17 (citing 66 Pa. C.S. § 501(c)). Therefore, PPL avers that it must install the new AMI meters for all its customers, including the Complainant. R. Exc. at 17-18.

c. Disposition

As noted, *supra*, in *Povacz II*, the Pennsylvania Supreme Court affirmatively established that there is no "opt-out" provision for 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. Here, as previously discussed, we agree with the ALJ's analysis and conclusion that the Complainant did not meet his *prima facie* burden of proof to show that the Company's service is unsafe or unreasonable, in violation of Section 1501. I.D. at 10-11.

Mr. Andrews currently has an analog meter or PLC. Tr. at 4, 8. In prior Orders, the Commission has found that the specifications of analog meters do not satisfy those required by Act 129, and thus must be replaced. R. Exc. at 16-17. Per this directive, PPL must install an AMI meter to comply with its Smart Meter Plan. An analog meter is not approved as a meter choice as part of PPL's Smart Meter Plan. PPL St. 4 at 6-7.

Section 2807(f) of the Code prescribes that EDCs must file smart meter plans and "shall furnish smart meter technology" in any of the following situations: (i) "[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request"; (ii) "[i]n new building construction"; and (iii) "[i]n accordance with a depreciation schedule not to exceed 15 years." 66 Pa. C.S. § 2807(f)(1)-(2). We previously concluded that the use of the word "shall" in Section 2807(f) indicates the General Assembly's direction that all customers will receive a smart meter. *2013 Povacz Order* at 10; *Paula and Charles Hughes v. PPL Electric Utilities Corporation*, C-2019-3007631 (Opinion and Order entered July 16, 2020) at 27.

In contrast with the Complainant's arguments, in our opinion, under a comprehensive reading of Section 2807(f)(2)(i) and (iii) together, subsection (i) directs an EDC to install a smart meter upon the request of a customer, in the event the customer desires a smart meter to be installed at the customer's premises, in advance of the time the EDC will install a smart meter at the customer's premises, in accordance with the EDC's Commission-approved depreciation or deployment schedule. This interpretation is based on the language in subsection (i), requiring the customer to agree to pay the cost for the installation of the smart meter at the time of the request. In contrast, the depreciation schedule referenced in subsection (iii) addresses the length of time the EDCs will recover the depreciation expense in socialized utility rates associated with the capital investment in deploying smart meters system-wide.[21]

Indeed, we declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Implementation Order* at 14. We also "recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment." *Smart Meter Implementation Order* at 9, 14. Moreover, we agree with PPL that the *2015 Smart Meter Order* requires the installation of smart meters for all of PPL's customers. R. Exc. at 17-18 (citing *2015 Smart Meter Order*).

Upon review, we find no error in the ALJ's determination that the installation of the smart meter was mandatory as set forth in the Initial Decision. Therefore, the Complainant's Exception No. 3 is denied.

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[21] In the *Smart Meter Implementation Order*, we recognized that the EDCs needed time to select the technology, train personnel, and deploy the entire AMI network, including any associated hardware and software. *Smart Meter Implementation Order* at 6.

4. Complainant's Credibility and Credential Concerns Regarding Dr. Davis and Dr. Israel

a. Exception Nos. 4 and 5

The Complainant contests the acceptance of Dr. Davis as an expert witness in biophysics because he does not possess a degree in that subject. Mr. Andrews claims that Dr. Davis, as an electrical engineer and a physicist, does not comprehend how complex biological systems of the body "work synergistically." Exc. at 11. The Complainant adds that Dr. Davis "is only concerned with heating effects of RF/microwaves as they strike the skin of a living being." *Id.* Further, Mr. Andrews challenges the accuracy of Dr. Davis' calculations of safe smart meter emissions. *Id.* In addition, the Complainant accuses Dr. Davis of having lied "when asked how many decades he has been testifying on the side of industry for the D.C Law firm of Watson and Renner." Exc. at 11. Specifically, Mr. Andrews disputes Dr. Davis' response of "two years," arguing that "Dr. Davis has been testifying for Watson and Renner for several decades, and in particular, for PECO Energy Company…beginning in 2015." Exc. at 11 (citing *Susan Kreider v. PECO Energy Company*, Docket No. C-2015-2469655 (Opinion and Order entered May 23, 2017); *Laura Sunstein Murphy*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019); *2019 Povacz Order*).

The Complainant also contests the testimony of Dr. Israel. Mr. Andrews explains that because neither he nor his wife have not been treated by Dr. Israel, and because Dr. Israel has not treated any patient with sensitivity to RF or microwaves, his testimony is not relevant. Further, the Complainant accuses Dr. Israel of ignoring studies that show, *inter alia*, adverse health effects to humans and animals. Exc. at 11-12. Moreover, the Complainant argues that three studies referenced by the ALJ "were not a part of Dr. Israel's testimony, written or otherwise." Exc. at 12 (citing I.D. at 12).

b. Replies

PPL disputes the Complainant's characterizations of the expert opinions and qualifications of Dr. Davis and Dr. Israel. PPL counters that the credentials and credibility of Dr. Davis and Dr. Israel are unassailable, and their opinions have been relied upon in several court proceedings and proceedings before the Commission. R. Exc. at 3-4 (citing PPL St. 1 at 1-5; PPL St. 2 at 1-7). Further, PPL points out that, at the hearing, the Complainant did not object to Dr. Israel being certified as an expert witness in his field of expertise. PPL R. Exc. at 4 (citing Tr. at 56).[22] Moreover, PPL continues that, the Complainant's argument that Dr. Davis has been testifying on the subject of biophysics for several decades does not provide any credible basis for ignoring the expert testimony of Dr. Davis. R. Exc. at 5 (citing Exc. at 11). As such, PPL contends that the ALJ properly relied on the expert opinions of Dr. Davis and Dr. Israel. R. Exc. at 5.

c. Disposition

On Exception, the Complainant asserts that the ALJ erred in the analysis of the weight of the evidence. Specifically, the Complainant challenges the ALJ's acceptance of and finding of credibility of PPL's witnesses, Dr. Davis and Dr. Israel, as outweighing the Complainant's personal testimony. Exc. at 11-12. However, we find no fault with either the ALJ's finding of credibility of the Company's witness or the ALJ's conclusion that the Company's witness' testimony outweighed the personal observations and lay testimony of the Complainant. I.D. at 10-11.

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[22] PPL notes that Mr. Andrews did object to Dr. Davis testifying as an expert in biophysics, but his objection was overruled. R. Exc. at 4 (citing Tr. at 38-39). Further, PPL claims that, "[a]ny fields of expertise to which the Complainant did not object, the Complainant waived his right to object to the expert witnesses' qualifications to testify as experts in those fields." R. Exc. at 4.

In his direct testimony, Dr. Davis testified that the fields of expertise that relate to his testimony about smart meters in this case are physics, biophysics, chemistry, electrical engineering, electromagnetics, bioelectromagnetics, RF bioelectromagnetics, and dosimetry. PPL St. 1 at 5. During the hearing, Dr. Davis testified that he has a degree in Natural Sciences and Physics. Further, Dr. Davis testified that he has over 40 years of research experience that resulted in his knowledge of biophysics. Tr. at 41. The ALJ accepted Dr. Davis as an expert witness in his field despite the Complainant's objection. Tr. at 39.

Dr. Israel testified that his fields of expertise that are relevant to the instant proceeding are medicine and medical research, including RF fields and health. PPL St. 2 at 6. During the hearing, the Complainant did not object to the acceptance of Dr. Israel as an expert witness in the fields of medicine and medical research. Tr. at 55-56.

The Company presented credible evidence through its expert witnesses, Dr. Davis and Dr. Israel, 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. Specifically, we concur in the ALJ's finding that the Complainant's claims concerning the environment and safety of smart meters are unpersuasive and were outweighed by the testimony and industry experience of Dr. Davis and Dr. Israel. I.D. at 11-13, 17.

Regarding the Complainant's contention that Dr. Davis lied when he was asked how long he has been testifying for Watson and Renner, we are not persuaded to find that his response of "about two years" was an intentionally false statement. Exc. at 11. Further, the Complainant does not provide an explanation to support his belief that Dr. Davis has been testifying for Watson and Renner "for several decades." *Id.* To the extent that the Complainant claims that the ALJ, in the Initial Decision,

referenced studies "that were not a part of Dr. Israel's testimony, written or otherwise," we disagree and find that this claim has no merit. Exc. at 12 (citing I.D. at 12).[23]

For the reasons outlined above, the Complainant's Exception Nos. 4 and 5 are denied.

5. Complainant's Concerns Regarding Prior Decisions of Smart Meter Complaints

a. Exception No. 6

The Complainant avers that the ALJ erred "when she stated that [the Commission] decides cases on an individual basis and the specific allegations presented." Exc. at 12. Mr. Andrews clarifies that since 2015, no one has won an accommodation from the smart meter deployment. In support, the Complainant points out that most of the other utilities have used Dr. Davis and Dr. Israel, and that the same ALJs have been assigned to most of the prior smart meter complaint cases for the same utility. *Id.*

b. Replies

PPL counters that nothing in the record, or in any Commission orders, demonstrates that the Commission fails to "thoroughly review the records of every case before it and render its decisions accordingly." R. Exc. at 19. In addition, PPL responds that, to date, the fact that no customer has received an opt-out of an AMI meter installation reflects that: (1) the Commission lacks the authority to approve an opt-out under Pennsylvania law; and (2) the allegations that the new AMI meters cause, contribute to, or exacerbate adverse health effects are unfounded. R. Exc. at 19-20.

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[23] We note that the studies referenced by the ALJ on page 12 of the Initial Decision cite to the following: PPL St. 2 at 8-11; PPL Exhs. MI-1, MI-2.

c. Disposition

We find that, the Complainant's argument in support of his allegation of biased positions and collusion between the Commission and the utilities is without merit and must be denied. We note that our decisions in each smart meter installation case are considered on a case-by-case basis based on the facts in the record of each particular proceeding.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

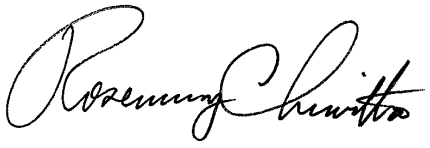
1. That the Exceptions filed by Alan Andrews on August 10, 2020, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Elizabeth H. Barnes, issued on April 21, 2020, at Docket No. C-2019-3008770, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed on March 25, 2019, and the Amended Complaint filed on January 31, 2020, by Alan Andrews against PPL Electric Utilities Corporation, at Docket No. C-2019-3008770, are denied.

4. That this proceeding at Docket No. C-2019-3008770 be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 22, 2024

ORDER ENTERED: February 22, 2024