

**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.

Kim Martin

C-2017-2631482

v.

Metropolitan Edison Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Kim Martin (Ms. Martin or the Complainant) on September 21, 2020, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which was served on the Parties on September 1, 2020, in the above-captioned proceeding. Replies to Exceptions were filed by Metropolitan Edison Company (Met-Ed or the Company) on October 1, 2020. The Initial Decision denied and dismissed, with prejudice, the Formal Complaint (Complaint) filed by the Complainant on October 25, 2017. For the reasons

discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Watson, and dismiss the Complaint, with prejudice, 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 Met-Ed 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 refuses to have a smart meter installed for health reasons. In her Complaint, Ms. Martin requested a medical waiver to the requirement to have a smart meter installed. Complaint at 3.

Met-Ed, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns and maintains the meters in its distribution system. *See*, FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at 44.

The Complainant is the spouse of a Met-Ed customer who has been notified of Met-Ed's intent to install a smart meter at the service address. Answer at 1.

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 Met-Ed, 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*). Met-Ed sought and obtained the Commission’s approval to

complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. *See, Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan*, Docket No. M-2013-2341990 (Opinion and Order entered March 6, 2014) (*2014 Smart Meter Order*).

## II. History of the Proceeding

On October 25, 2017, Ms. Martin filed a Complaint with the Commission against Met-Ed. On the Complaint form, Ms. Martin indicated that the utility is threatening to shut off her service. Complaint at 2. She provided that she has a medical condition that is negatively affected by “EMFs.” Complaint at 3. Ms. Martin attached a ten-day shut-off notice and an unsigned letter from the Complainant’s doctor regarding Ms. Martin’s medical condition. Complaint at 7-8.

On November 20, 2017, Met-Ed filed an Answer and New Matter to the Complaint (Answer). In its Answer, Met-Ed denied all material allegations of fact in the Complaint. Met-Ed provided that Ms. Martin is the spouse of the customer, Keith Martin, at the service address. Answer at 1. Met-Ed also asserted that the Company was installing the smart meter in accordance with Act 129 and that the Company had the right to terminate service when a customer refuses to allow the Company access to its meters. 66 Pa. C.S. § 2806 *et seq.* Answer at 1-4. In the New Matter, Met-Ed averred that neither the Company’s Smart Meter plan nor Act 129 enable the Commission to grant the relief requested by the Complainant. Answer at 8. Met-Ed explained that if the Commission ruled in favor of the Complainant and barred Met-Ed from installing a smart meter at the service location, the Commission would be forcing Met-Ed to be in violation of Act 129. *Id.* at 9. Therefore, Met-Ed requested that the Commission dismiss the Complaint with prejudice. *Id.*

Also, on November 20, 2017, Met-Ed filed preliminary objections in response to the Complaint. By interim order dated November 14, 2018, Met-Ed's preliminary objections were denied by ALJ Watson.

A hearing was held as scheduled on January 10, 2020. Ms. Martin presented her case through her own testimony. Met-Ed appeared represented by counsel with one witness. The Complainant's Exhibits A,<sup>1</sup> B, and C were admitted into evidence, and official notice was taken of the Complainant's Exhibits M and N<sup>2</sup> and Met-Ed's Exhibits PD-1, PD-2, and PD-3. I.D. at 2.

On May 28, 2020, the Complainant made two separate filings with the Commission's Secretary's Bureau, one with a cover letter dated April 16, 2020, with a document titled "Brief," and another that consists of documents labeled "Exhibits M, N, O, and P." These documents were not admitted and thus are not part of the evidentiary record. *Id.*

The record in this case closed on July 1, 2020.

On September 1, 2020, the Commission served ALJ Watson's Initial Decision in *Kim Martin v. Metropolitan Edison Company*, Docket No. C-2017-2631482.

As noted above, on September 21, 2020, the Complainant filed Exceptions to the Initial Decision. On October 1, 2020, Met-Ed filed Replies to Exceptions.

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<sup>1</sup> Exhibit A was admitted for the limited purpose of showing that the Complainant submitted it to Met-Ed prior to filing her Complaint and was excluded for any other purpose. I.D. at 2, n. 1 (citing Tr. at 45).

<sup>2</sup> Exhibits M and N are copies of 52 Pa. Code § 57.251 and the 14th Amendment to the U.S. Constitution, Section 1, respectively. I.D. at 2, n. 2.

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 Complainant of the lifting of the stay and her 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 (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-finder<sup>3</sup> 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, 682 (Pa. Cmwlth. 2005) (*Suber*).

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<sup>3</sup> 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)).

## 2. Burden of Proof Applied to Section 1501<sup>4</sup> 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*, 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 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 service<sup>5</sup> and facilities” and to make

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<sup>4</sup> 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*).

<sup>5</sup> 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

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, but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501<sup>6</sup> 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

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the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

<sup>6</sup> 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*).

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. 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.

. . . .

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).<sup>7</sup>

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 by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)<sup>8</sup> from the AMI meter<sup>9</sup>.

### **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.”

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<sup>7</sup> 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*).

<sup>8</sup> RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

<sup>9</sup> 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).

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

*Povacz II* at 985, fn. 8. As the Supreme Court denied allocatur 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 Watson made thirty-two Findings of Fact (FOF) and reached seventeen Conclusions of Law (COL). *See*, I.D. at 3-7, 13-15. 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 his disposition, ALJ Watson addressed the following issues: (1) the smart meter mandate; and (2) unreasonable or inadequate service. I.D. at 10-13.

### **1. Smart Meter Mandate**

The ALJ provided that Commission precedent supports Met-Ed's position that the Commission cannot grant exceptions to the statutory directive that smart meters must be installed at all service locations and there is no "opt-out" for customers. I.D. at 11 (citing *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011)). The ALJ explained that the Commission reaffirmed this conclusion, holding in a similar complaint proceeding that there is no opt-out and the EDC is legally required to install smart meters. I.D. at 11 (citing *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019)). The ALJ noted that the Complainant presented no evidence to show that Met-Ed's refusal to allow an opt-out is in any way a violation of the Company's Smart Meter Deployment Plan or any Commission order. The ALJ stated that the Complainant's claim regarding an opt-out is not supported by the evidence and must be dismissed. I.D. at 11.

## 2. Unreasonable or Inadequate Service

The ALJ noted that the Complainant testified about the reasons why she does not want a smart meter, her concerns related to her health and the potential effects of “electric magnetic frequencies” (EMFs) on her health. I.D. at 12 (citing Tr. at 22). The ALJ provided that the Complainant testified that she has a sensitivity to EMFs. The ALJ provided that while the Complainant may suffer from the symptoms to which she testified, her evidence that these symptoms are caused by EMFs that would be affected or worsened by a smart meter consist only of the Complainant’s personal feelings, opinions and beliefs. The ALJ also noted that assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 12 (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

The ALJ stated that the Met-Ed witness, Mr. John Ahr, testified that Met-Ed’s smart meters are compliant with the standards set by the Federal Communications Commission (FCC) and the American National Standards Institute (ANSI) and are Underwriters Laboratory (UL) certified. I.D. at 12 (citing Tr. at 123). As the ALJ noted, Mr. Ahr testified that he agreed with the statement that there were no health risks posed by smart meters and that he was not aware of any smart meter malfunctioning that would affect the Complainant’s health. I.D. at 12 (citing Tr. at 148; Tr. at 157).

Based on all of the above, the ALJ denied the Complaint because Ms. Martin has failed to meet her burden to demonstrate that Met-Ed’s installation of a smart meter at her residence constitutes unreasonable or inadequate service. The ALJ concluded that the Complainant’s claims must be dismissed. I.D. at 13.

## **C. Exceptions, Replies, and Disposition**

The Complainant's Exceptions<sup>10</sup> generally pertain to the following: (1) her argument that Act 129 provides an opt-out request; (2) the testimony of Met-Ed's witness, Mr. John Ahr; and (3) Met-Ed's responsibility to prove the safety of the smart meters.

### **1. Complainant's Concerns Regarding the Commission's No Opt-Out Interpretation of 66 Pa. C.S. § 2807(f)**

#### **a. Exception No. 1**

In her Exception No. 1, the Complainant contends that the ALJ erred in ignoring the Complainant's legal arguments regarding Act 129. The Complainant contends that the Commission "does not interpret the plain language of this law correctly." The Complaint provides that "EDCs, including Met-Ed, have no legal basis on which to force Smart Meters on all of their customers." Exc. at 4.

#### **b. Replies**

Met-Ed provides that under Act 129, it has an obligation to install smart meters at all of its customers' service locations. R. Exc. at 2. Met-Ed explains that nothing in Act 129 permits a customer to "opt-out" of a smart meter installation. Met-Ed

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<sup>10</sup> 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 exception 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) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination.

argues that it must comply with the relevant Commission orders directing the Company to employ smart meters. Met-Ed maintains that its Smart Meter Deployment Plan, approved by the Commission, states that no opt-out option is available. R. Exc. at 3-4 (citing Met-Ed Exhibit JCA-1 at 6).

**c. Disposition**

In Exception No. 1, the Complainant asserts that the ALJ erred by ignoring Ms. Martin’s arguments regarding the language of Act 129 and refusing to approve the Complainant’s request to “opt-out” of installation of a smart meter. Exc. at 4. 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 Exception.

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 Complainant asserts a right to “opt-out” of Act 129 to refuse smart meter installation, we shall deny the Complainant’s Exception No. 1 without further discussion.

**2. Complainant's Arguments Regarding the Testimony of Met-Ed's Witness, Mr. John Ahr**

**a. Exception No. 2**

In her Exception No. 2, the Complainant contends that the ALJ erred in accepting the testimony of the Met-Ed witness, Mr. Ahr. The Complainant argues that Mr. Ahr is not an expert on the safety of the smart meter and therefore, Mr. Ahr's testimony that the smart meter is compliant with UL, ANSI and FCC standards is meaningless. The Complainant states that she asked ALJ Watson to strike Mr. Ahr's testimony from the record, but the ALJ refused to do so. Exc. at 5.

**b. Replies**

Met-Ed contends that the ALJ correctly accepted and relied on the testimony of Mr. Ahr that the smart meters used by Met-Ed are safe. R. Exc. at 5 (citing I.D. at 12). Met-Ed provides that Mr. Ahr has a degree in electrical engineering and has worked for Met-Ed since 1984 in various positions. His current position is as the Advisor in Regulatory Compliance for Smart Meters. R. Exc. at 5 (citing Tr. at 109-110). Mr. Ahr testified that the smart meters used by Met-Ed comply with the FCC, ANSI and UL standards. Met-Ed explains that the meter manufacturer, Itron, Inc., utilized certified personnel to perform the required testing. *Id.* According to Met-Ed, the Complainant has no technical qualifications or experience in this area and failed to present evidence that is more persuasive than Mr. Ahr's testimony. R. Exc. at 5.

**c. Disposition**

On Exception, the Complainant asserts that the ALJ erred by not striking the testimony of Mr. Ahr from the record as she requested. The Complainant contends

that Mr. Ahr is not an expert in the safety of the smart meters used by Met-Ed. We note that Mr. Ahr did not state that he was an expert in the safety of smart meters. He testified that he was “responsible for the regulatory compliance associated with the smart meter project.” He also stated that the purpose of his testimony was “to explain the regulatory requirement for the smart meter plan in Pennsylvania, Met-Ed’s smart meter deployment plan, the general features of Met-Ed smart meters, as well as suggest the overall safety of Met-Ed smart meters.” Tr. at 110, 111-112. Mr. Ahr provided testimony regarding the testing the smart meters were subject to and that the smart meters used by Met-Ed passed this testing that demonstrated compliance with FCC, ANSI and UL standards. Tr. at 123-124.

While the Complainant contends that Mr. Ahr’s testimony should be stricken from the record, we disagree. Mr. Ahr’s testimony stated that the smart meters used by Met-Ed were tested by the manufacturer and met standards of the FCC, ANSI and UL. Based on Mr. Ahr’s qualifications, we find no fault with the ALJ’s finding of credibility of Mr. Ahr’s testimony. We concur with the ALJ’s finding that the Complainant failed to meet her burden to demonstrate that the Company’s installation of a smart meter at her residence constitutes unreasonable or inadequate service. I.D. at 13. Accordingly, the Complainant’s Exception No. 2 is denied.

**3. Complainant’s Argument Regarding Met-Ed’s Responsibility to Prove the Safety of the Smart Meter**

**a. Exception No. 3**

In her Exception No. 3, the Complainant contends that the ALJ erred by concluding that Met-Ed proved the safety of the smart meter it uses. The Complainant argues that Met-Ed did not present the expert witnesses she expected to testify at the hearing. Ms. Martin repeats her argument that Mr. Ahr is not qualified to speak on

safety. Exc. at 5. The Complainant argues that the documents on the Met-Ed website do not demonstrate the safety of the smart meter that Met-Ed uses. *Id.*

**b. Replies**

Met-Ed contends that the Complainant fails to recognize that she has the burden of proof in this proceeding, not Met-Ed. R. Exc. at 4, n. 8 (citing 66 Pa. C.S. § 332(a) (explaining that the “proponent of a rule or order” has the burden of proof)). According to Met-Ed, the Complainant had the burden to prove that the installation of Met-Ed’s smart meter would violate Section 1501 of the Public Utility Code. R. Exc. at 4, n. 9 (citing 66 Pa.C.S. § 1501).

Met-Ed avers that the Complainant fails to challenge the ALJ’s rejection of her evidence and the ALJ’s finding that she failed to sustain her burden of proof. Met-Ed maintains that the Complainant’s objections focus solely on the evidence presented by Met-Ed. R. Exc. at 4-5.

**c. Disposition**

The Complainant did not except to the ALJ’s finding that she did not meet her burden to demonstrate that the Company’s installation of a smart meter at her residence constitutes unreasonable or inadequate service. I.D. at 13. Instead, the Complainant argues that Met-Ed did not prove the safety of the smart meter it uses. The Complainant has the burden of proof in this proceeding, not Met-Ed. Ms. Martin filed the Complaint alleging that the smart meter Met-Ed proposes to use at the service address would negatively affect her health. The Complainant provided only “her unsubstantiated personal feelings, opinions, and beliefs,” which are not considered evidence. I.D. at 12. The ALJ correctly determined that the Complainant had the burden of proof in this

proceeding, and she did not meet that burden. *See, Milkie, Moore*. I.D. at 13-14, COL 9, 10. Therefore, we find that the Complainant's Exception No. 3 is denied.

#### **IV. Conclusion**

In light of the above discussion, we shall: (1) deny the Complainant's 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 Kim Martin on September 21, 2020, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on September 1, 2020, at Docket No. C-2017-2631482, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on September 1, 2020, at Docket No. C-2017-2631482, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Kim Martin, on October 25, 2017, at Docket No. C-2017-2631482, is dismissed, with prejudice.

4. That this proceeding is marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: February 22, 2024

ORDER ENTERED: February 22, 2024