

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

Public Meeting held February 22, 2024

Commissioners Present:

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

Michael Chattin

C-2017-2630649

v.

Pennsylvania Electric Company

Craig Toth

C-2018-3001563

Lori Bae and Myung Bae

C-2018-3003332

Michele Armstrong

C-2018-3004052

Patricia Steely

C-2018-3004770

v.

Metropolitan Edison Company

Robert Redinger, Jr.

C-2018-3000938

Lowell Watts

C-2018-3002477

Allen Uhler

C-2019-3008098

v.

West Penn Power Company

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Michael Chattin (Complainant or Mr. Chattin) filed on October 23, 2019, to the Initial Decision of Administrative Law Judge (ALJ) Emily I. DeVoe issued on October 3, 2019 at Docket No. C-2017-2630649 (Chattin Initial Decision or Chattin I.D.) dismissing the Complaint filed against Pennsylvania Electric Company (Penelec or the Company) with prejudice for the Complainant's failure to prosecute the Complaint. Penelec filed Replies to Exceptions on November 4, 2019.

Also before the Commission are the Exceptions and Petitions for Reconsideration/Recission filed by separate parties challenging the Initial Decisions dismissing the Complaints filed against the Metropolitan Edison Company (Met-Ed or the Company) with prejudice for the respective Complainant's failure to prosecute the Complaint, including: (1) the Petition for Recission of Craig Toth (Complainant or Mr. Toth) filed on March 2, 2020 to the Initial Decision of ALJ Jeffrey A. Watson issued on February 7, 2020 at Docket No. C-2018-3001563 (Toth Initial Decision or Toth I.D.); (2) the Exceptions of Lori Bae and Myung Bae (Complainants or Lori and Myung Bae) filed on September 28, 2020, to the Initial Decision of ALJ Watson issued on July 29, 2020 at Docket No. C-2018-3003332 (Bae Initial Decision or Bae I.D.); (3) the Petition for Recission of Michele Armstrong (Complainant or Ms. Armstrong) filed on February 26, 2020, to the Initial Decision of ALJ Watson issued on December 23, 2019 at Docket No. C-2018-3004052 (Armstrong Initial Decision or Armstrong I.D.); and (4) the Petition for Reconsideration of Patricia Steely (Complainant or Ms. Steely) filed on November 27, 2023, to the Initial Decision of ALJ Watson issued on April 17, 2020 at Docket No. C-2018-3004770 (Steely Initial Decision or Steely I.D.). An Answer to the Petition for Recission of Mr. Toth and Replies to the Exceptions of Lori and Myung Bae, were filed by Met-Ed on March 6, 2020, and October 7, 2020, respectively.

Also before the Commission are the Exceptions and Petition for Recission filed by separate parties challenging the Initial Decisions dismissing the Complaints filed against the West Penn Power Company (West Penn or the Company) with prejudice for the respective Complainant's failure to prosecute the Complaint, including: (1) the Exceptions of Robert Redinger, Jr (Complainant or Mr. Redinger) filed on October 9, 2019, to the Initial Decision of ALJ Watson issued on September 27, 2019 at Docket No. C-2018-3000938 (Redinger Initial Decision or Redinger I.D.); (2) the Exceptions of Lowell Watts (Complainant or Mr. Watts) filed on February 18, 2020, to the Initial Decision of ALJ Watson issued on January 27, 2020 at Docket No. C-2018-3002477 (Watts Initial Decision or Watts I.D.); and (3) the Petition for Recission of Allen Uhler (Complainant or Mr. Uhler) filed on February 7, 2020, to the Initial Decision of ALJ Watson issued on December 10, 2019 at Docket No. C-2019-3008098 (Uhler Initial Decision or Uhler I.D.). Replies to the Exceptions of Robert Redinger, Jr, and the Exceptions of Lowell Watts were filed by West Penn on October 28, 2019, and March 2, 2020, respectively. An Answer to the Petition for Recission of Allen Uhler was filed by West Penn on March 19, 2020.

For the reasons discussed more fully, *infra*, we shall: (1) consolidate our consideration of the Exceptions and Petitions for Reconsideration/Recission;¹ (2) deny the Complainants' Exceptions and Petitions for Reconsideration/Recission in the above-referenced proceedings; (3) adopt and/or let stand the Initial Decisions rendered in the above-referenced proceedings without modification; and (4) deny and dismiss the respective Complaints, with prejudice, for the respective Complainant's failure to prosecute the Complaint.

¹ The eight cases to be consolidated arise as either Exceptions to Initial Decisions or as Petitions for Reconsideration or Recission. As discussed, *infra* at Section I, for purposes of consolidation, we find this procedural distinction to be immaterial where, as here, the cases to be consolidated turn upon similar legal grounds.

I. Consolidation of the Proceedings

As a preliminary procedural matter, we shall order that our consideration and disposition of the above-referenced Exceptions or Petitions for Reconsideration/Recission to the Initial Decisions rendered at the respective Docket Nos. to be consolidated, pursuant to Section 5.81(a) of Commission Regulations. 52 Pa. Code § 5.81(a).

Section 5.81(a) of the Commission's Regulations provides that "[t]he Commission or presiding officer, *with or without motion, may order proceedings involving a common question of law or fact to be consolidated.* The Commission or presiding officer may make orders concerning the conduct of the proceeding as *may avoid unnecessary costs or delay.*" 52 Pa. Code § 5.81(a) (emphasis added).

In the present cases, the Complainants' challenges to the Initial Decisions of the ALJs, whether arising in the procedural posture of Exceptions or Petitions for Reconsideration/Recission, arise from the disposition of the Complaints by dismissal on the same procedural and legal grounds. Specifically, each of the consolidated Complaints was dismissed with prejudice due to the Complainants' failure to prosecute the Complaint, either by failure to appear at hearing, or by failure to comply with the respective ALJ's orders for discovery.

Because our consideration and disposition of the Exceptions and the Petitions for Reconsideration/Recission involve a common issue of fact and law, *i.e.*, the proper basis for dismissing a Complaint with prejudice for Complainant's failure to prosecute the Complaint, we shall consolidate our consideration and disposition of the above-referenced Exceptions and the Petitions for Reconsideration/Recission, in the interest of judicial and administrative economy.

II. Procedural History of the Consolidated Proceedings

This matter pertains to the Commission's disposition of eight Formal Complaints (Complaints) challenging the obligation to have a smart meter installed at the Complainants' respective properties. In each case, for various reasons, the Initial Decision rendered by the respective ALJ concluded that the Complainants involved had failed in their duty to adequately prosecute the case, thereby interfering with the due process rights of the respective Company and the public interest to such a degree that dismissal of the Complaint with prejudice² was warranted in the circumstances.

The procedural history of each case up to the issuance of the Initial Decision is set forth in the respective Initial Decision and is fully incorporated herein by reference, including: Chattin I.D. at 1-12; Toth I.D. at 1-5; Bae I.D. at 1-4; Armstrong I.D. at 1-6; Steely I.D. at 1-5; Redinger I.D. at 1-4; Watts I.D. at 1-6; and, Uhler I.D. at 1-3.

As previously noted, the Complainants filed Exceptions or Petitions for Reconsideration/Recission on the above-referenced dates, and Penelec, Met-Ed and West

² "Dismissal with prejudice" is a procedural term which establishes that the Complaint is denied and dismissed and the allegations of the Complaint are now forever barred. In other words, the Complainant may not raise the same allegation of the Complaint in any future action. Particularly, the respondent company should not be required to expend resources in the future to respond to the claims which have now been, forever barred. In civil proceedings, a ruling dismissing a complaint for failure to prosecute, or non pros, is based upon common law principles of equity, under which there is a finding of the following: (1) a failure of due diligence by the complainant in moving the case forward with reasonable promptitude; (2) the complainant has no compelling reason for the delay; and, (3) that the delay causes actual prejudice to the defendant. *See, James Brothers Co. v. Union Banking and Trust Co. of Dubois*, 432 Pa. 129, 247 A.2d 587 (1968).

Penn filed Replies to Exceptions or Answers to the Petitions at the above-referenced dates, respectively.³

Relevant to these eight consolidated cases, 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 electric distribution company (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 Complainants of the lifting of the stay and their procedural rights and obligations under the Commission's regulations.

³ To the extent the Exceptions or Petitions for Reconsideration/Rescission contain procedural defects, we shall nevertheless address the Exceptions and Petitions for Reconsideration/Rescission. Because the Complainants in these eight proceedings are acting *pro se*, without the benefit of attorney representation, we will exercise our discretion under 52 Pa. Code § 1.2(a), and liberally construe the Commission's rules of procedure to secure the just, speedy, and inexpensive determination of this proceeding. 52 Pa. Code § 1.2(a). Accordingly, we shall accept the Complainants' filings despite any failure to strictly comply with the Commission Regulations governing filing requirements. Further, we shall construe the Complainants' filings in each case as either timely filed Exceptions, as timely filed Petitions for Reconsideration consistent with Commission Regulations at Section 5.572 (c), or as Petitions for Rescission of the Commission's final decision, which may be filed at any time under our Regulations at Section 5.572(d). 52 Pa. Code § 5.572(c) and (d); 66 Pa. C.S. §§ 703(f) and (g).

Therefore, each of the consolidated cases resume at the procedural phase at which the stay of smart meter cases was lifted and arise before us now on Exceptions or as Petitions for Reconsideration/Recission filed by the respective Complainants.

III. Legal Standards

We advise the Parties that any issue or argument that we do not specifically address herein has been duly considered and will be 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 Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. 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). 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-finder⁴ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005).

B. Failure to Prosecute

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) (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)).

⁴ 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)).

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).

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See, Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995), *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

1. Failure to Comply with Discovery

The Commission's rules and regulations prescribe the process for litigating formal complaints. Section 5.21 of the Commission's Regulations provides, "The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest." 52 Pa. Code § 5.21. Under Section 5.481 of Commission Regulations, when evidence is to be taken in a proceeding, either the Commission or a presiding officer appointed by law may preside. 52 Pa. Code § 5.481.

Under Section 5.222(b) of Commission Regulations, the presiding officer may direct that a prehearing conference be held and may direct the parties to the proceeding to appear to consider various matters. 52 Pa. Code § 5.222(b). A party may obtain discovery in preparation of a case, and, if served with written interrogatories, a party must serve objections within ten days of service and responses within twenty days of service. 52 Pa. Code § 5.341; 52 Pa. Code § 5.342. Evidentiary hearings are held before presiding officers and are stenographically reported by the Commission's official reporter. 52 Pa. Code § 5.241(a); 52 Pa. Code § 5.251(a).

The Commission has held that parties must comply with the orders of an administrative law judge, including discovery orders, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

Under Section 5.245 of Commission Regulations, provided that a party's right to due process is protected, upon the Commission's finding that the actions of the party obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission may take appropriate action, including dismissal of the Complaint. 52 Pa. Code § 5.245; *See also, Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

2. Failure to Appear at Hearing

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See*, 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See, Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (Pa. 1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied*, 539 Pa. 696, 653 A.2d 1234 (1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Opinion and Order entered

January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

A party to a proceeding has the right to request a continuance of the hearing, which may be considered and granted by the presiding officer “only for good cause shown.” *See*, 52 Pa. Code § 1.15(b). The party making the request must file a motion at least five days prior to the hearing date stating the facts on which the request is made, except that during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing room. 52 Pa. Code § 1.15(b).

If a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in a hearing in the matter. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). This result is not applied to the party, however, if the presiding officer determines that the party’s failure to appear was “unavoidable” and the interests of the other party (or parties) and the public will not be “prejudiced” by permitting the reopening or further examination. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). Also, this result may not be applied if the presiding officer or Commission determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013) (*Yomari Then*); *see also, Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011) (*Wiggins*).

C. Petitions for Reconsideration or Rescission

With respect to petitions for rehearing, reconsideration, rescission and amendment of Commission orders, the Code establishes a party’s right to seek relief within fifteen days following the service of a Commission order pursuant to

Subsections 703(f). 66 Pa. Code § 703(f)(relating to rehearing).⁵ Upon the filing of a petition for relief pursuant to Section 703(f) the Commission may affirm, rescind, or modify its original order. 66 Pa.C.S. § 703(f). The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa. C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of Commission Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572 (c) of Commission Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas or others within fifteen days of the service of a Commission order, or under Section 5.572(d) as a petition for rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission under the same standard. The standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to *rescind* or *amend* a prior order in whole or in part. In this regard, we agree with the court in the *Pennsylvania Railroad Company* case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them” What we

⁵ Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for *rehearing* pursuant to Section 703 (f) of the Code, typically include an allegation of new evidence. 66 Pa. Code § 703(f); See *West Penn Power Co. v. Pa. PUC*, 659 A. 2d 1055 (Pa. Cmwlth. 1995).

expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Duick, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935) (emphasis added)).

Thus, under the *Duick* standard, a petition for amendment, reconsideration, or rescission may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

Where a petition for reconsideration or rescission has been filed, we note that the application of *Duick* requires a two-step analysis. *See, e.g., SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Opinion and Order entered May 9, 2019) (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Opinion and Order entered September 11, 2014)). The first step is to determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. *Id.* The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, to determine whether to modify our previous decision. *Id.* We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. *Id.*

IV. Discussion

In the Initial Decisions issued in these cases, the presiding ALJ made specific Findings of Fact and reached express Conclusions of Law. *See*, Chattin I.D. at 12-19, 28-29; Toth I.D. at 5-9, 11-12; Bae I.D. at 5-7, 8-9; Armstrong I.D. at 6-9, 11-12; Steely I.D. at 5-8, 11-12; Redinger I.D. at 4-7, 10; Watts I.D. at 6-9, 11-12; and, Uhler I.D. at 3-5, 7-8. We hereby adopt the said findings and conclusions, unless they are expressly rejected, or rejected by necessary implication from our disposition of this Opinion and Order.

A. Common Background of the Consolidated Smart Meter Cases

The consolidated cases involve Complaints objecting to the installation of an advanced metering infrastructure (AMI), or smart meter, that the Companies, Penelec, Met-Ed and West Penn, propose to install, or has installed, at the respective Complainants' residences, to use in the ordinary course of business, to measure the Complainants' electricity consumption.

Penelec, Met-Ed, and West Penn are EDCs subject to the jurisdiction of the Commission, which furnish, own, and maintain the meters in the Companies' respective distribution systems. *See*, FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at 44⁶.

The Complainants are customers of either Penelec, Met-Ed, or West Penn, who have either been notified of the Company's intent to install a smart meter at the

⁶ Effective January 1, 2024 – the First Energy companies, Penelec, Met-Ed, and West Penn, have a Pennsylvania tariff combined for the Pennsylvania companies.

respective customers' residence, or who have already had a smart meter installed at their residence.

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, which includes Penelec, Met-Ed, and West Penn, 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 consistent 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*). Penelec, Met-Ed and West Penn 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 Deployment Plan Order* or *SDP*).

B. Consolidated Proceedings /Disposition

1. *Michael Chattin v Penelec*, Docket No. C-2017-2630649

a. Position of the Parties

In the Complaint, Mr. Chattin objected to the installation of a smart meter that Penelec proposed to install at his residence. The Complainant's objection to installation of the smart meter included medical reasons and that Act 129 did not mandate installation of a smart meter. The Complainant requested that Penelec and the Commission refrain from ordering installation of the smart meter. As relief, the Complainant requested that he be allowed to use his existing meter at his residence. I.D. at 1-2.

During the proceeding, the Complainant requested that ALJ DeVoe recuse herself from the case and claimed that the ALJ's employment by the Commission constituted conflict of interest. Mr. Chattin also argued that as an employee/agent of the Commission, ALJ DeVoe is disqualified as an independent and objective mediator and is not able to judge the facts or the merits of the case due to inherent bias favoring her employer. I.D. at 10.

Penelec averred that the Complainant had refused the installation of a smart meter at the service location even though Penelec was required by Act 129 and the Commission-approved SDP to install a smart meter at the service location. Penelec contended that neither the law requiring the implementation of the Company's SDP or the SDP itself permit forbearance from smart meter installation or an opt-out. I.D. at 2.

Subsequently, Penelec averred that the Complainant's continued unwillingness to actively participate in the proceeding that the Complainant had initiated impaired Penelec's ability to effectively defend itself against the Complainant's claims therefore, Penelec's due process rights would be jeopardized should the case be permitted to move forward. Penelec requested dismissal of the Complainant's case with prejudice. I.D. at 4.

b. ALJ's Initial Decision

The ALJ's Initial Decision turned upon the ALJ's finding that the Complainant had failed to comply with multiple Orders issued by two different ALJs and that continuing with the proceeding would be contrary to the public interest. Therefore, the ALJ dismissed the Complaint with prejudice. I.D. at 28. In the Initial Decision, ALJ DeVoe noted that the Complainant voluntarily filed a Formal Complaint with the Commission. The ALJ also noted that by filing his Complaint, the Complainant knew or should have known that he was initiating a legal proceeding before the Commission and

that he was a party to that proceeding. ALJ DeVoe explained that the Commission's Rules and Regulations clearly prescribe the process for litigating formal complaints. Citing to the Commission's Regulations at Section 5.21, ALJ DeVoe explained that by filing a formal complaint the Complainant is entitled to a formal hearing before the Commission and when evidence is to be taken in a proceeding, either the Commission or a presiding officer may preside. I.D. at 21 (citing 52 Pa. Code §§ 5.21 and 5.481).

ALJ DeVoe explained the under the Commission's Regulations, the Commission's adjudication may be conducted by the presiding officer, who may direct: that a prehearing conference be held; that the parties in the proceeding appear to consider various matters; that a party may obtain discovery in preparation of a case; and, that if served with written interrogatories, a party must serve objections within ten days of service and responses within twenty days of service. I.D. at 22 (citing 52 Pa. Code § 5.222(b) (pertaining to prehearing conferences); 52 Pa. Code § 5.241(a) (pertaining to attendance at hearings); 52 Pa. Code § 5.251(a) (pertaining to hearings being stenographically reported); and 52 Pa. Code § 5.341 (pertaining to written interrogatories); 52 Pa. Code § 5.342 (pertaining to answers or objections to written interrogatories)).

ALJ DeVoe also explained that the Complainant refused to consent to the Commission's adjudicative proceedings, disputed the Commission's jurisdiction over his Complaint, disputed the Commission's regulations that govern such proceedings. Further, the ALJ noted that the Complainant argued that any individual employed by the Commission is disqualified from presiding over these proceedings. I.D. at 22-28.

In addition, ALJ DeVoe noted that administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. I.D. at 23, citing, *Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984). The ALJ also noted that this due process requirement is satisfied, however, when the administrative

agency provides the parties notice and the opportunity to be heard. ALJ DeVoe noted that in this case, the Complainant has been provided notice and the opportunity to be heard to satisfy due process requirements. Specifically, the ALJ noted that two prehearing conferences that were scheduled in this case by two different ALJs, one for May 9, 2019, by ALJ Watson and another on July 22, 2019, by ALJ DeVoe, were cancelled due to the Complainant's repeated refusal to attend. I.D. at 24-25.

ALJ DeVoe concluded that there had been a significant expenditure of resources by the Commission and the Parties based upon the Complainant's refusal to accept the Commission's jurisdiction over the Complaint which the Complainant voluntarily brought before the Commission. I.D. at 24. ALJ DeVoe found that, because the Complainant had failed to comply with multiple Orders issued by two different ALJs, continuing with the proceeding would be contrary to the public interest and dismissed the Complaint with Prejudice. I.D. at 28 (citing *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (The Commission held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter)).

c. Exceptions and Replies

Mr. Chattin's Exceptions, in summary, assert that the ALJ's Initial Decision has no legal validity, and that therefore, the Complainant "cannot recognize" the decision. The Complainant asserts that the Commission's action in denying his Complaint "ignores" the language of Section 2807(f)(7)(2)(i), which the Complainant asserts, gives the customer the right to choose whether to have a smart meter installed on their property. *See*, 66 Pa. C. S. § 2807(f)(7)(2)(i). Exc. at 1-2.

In its Replies, Penelec notes that the Complainant's Exceptions generally "objects" to the ALJ's Initial Decision but fails to assert any specific factual or legal error. Further, the Company notes that the Complainant fails to assert any valid basis for the Complainant's refusal to participate in the proceeding which the Complainant initiated, including the failure to respond to the ALJ's order compelling discovery. R. Exc. at 1. The Company concludes that the Complainant's refusal to participate in the proceeding, if excused, would deprive the Company of its due process right to have a full and fair hearing of the issues in the proceeding. Accordingly, the Company requests that the Commission adopt the ALJ's Initial Decision and deny and dismiss the Complaint, with prejudice. R. Exc. at 1-2.

d. Disposition

Upon review, we shall adopt the ALJ's Initial Decision denying and dismissing the Complaint, with prejudice, based upon the Complainant's unexcused action in refusing to actively participate in the proceeding. The record in this proceeding reflects that the Complainant was afforded every opportunity to actively participate in the proceeding, but refused to do so, while offering no valid basis for such refusal.

Specifically, as recounted by ALJ DeVoe:

Two prehearing conferences were scheduled in this case, by two different ALJs. Complainant unquestionably received notice of these conferences in the form of multiple Interim Orders and Notices. The Interim Orders clearly described the purposes and goals of the conferences and repeatedly assured Complainant that he would have an opportunity to raise any questions or concerns he had regarding his Complaint and the proceedings. Rather than avail himself of these opportunities to be heard, Complainant rejected the ALJs' authority, "cancelled" their jurisdiction, and advised he "did not consent to the proceedings." Complainant was given the notice and

opportunity to be heard to which he is entitled; however, he has repeatedly and unequivocally rejected them.

I.D. at 27-28.

While it is within our discretion to liberally construe procedural rules, in the interest of a just and speedy resolution, especially where a party appears *pro se* before the Commission, the exercise of such discretion requires a reasonable justification. The liberal construction of our procedures cannot be stretched to the point at which it infringes upon the due process rights of the opposing party, and the public interest. In the present case, the Complainant was afforded ample notice and every opportunity to participate in the proceeding and present any facts and arguments in support of the Complaint but failed to do so.

We find the ALJ's action in dismissing the Complaint with prejudice to be justified based upon the relevant procedural history of this case, which established the Complainant's unjustified refusal to participate in the proceeding. The ALJ's disposition protected the Complainant's due process rights to notice and opportunity to be heard, while also taking appropriate action to protect both the due process rights of the respondent Company and the public interest. *See, Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984) (pertaining to the agency's duty to protect due process rights); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (pertaining to dismissal for failure to comply with the ALJ's orders); and, 52 Pa. Code § 5.24 (pertaining to failure to appear, proceed or maintain order in a proceeding).

Further, we find that the Complainant's Exceptions assert neither a legal or factual error in the ALJ's Initial Decision, nor a lawful basis for the Complainant's refusal to participate in the Complaint proceeding, which the Complainant initiated.

Accordingly, we shall deny the Complainant's Exceptions, and adopt the ALJ's Initial Decision, denying and dismissing the Complaint with prejudice, without modification.

2. *Craig Toth v. Met-Ed*, Docket No. C-2018-3001563

a. Position of the Parties

Mr. Toth's Complaint versus Met-Ed averred that the Company was threatening to terminate electric service at his residence unless the Complainant agreed to the installation of a smart meter. As relief, the Complainant requested that Met-Ed be required to use an analog meter at his residence. I.D. at 1.

Met-Ed's position was that the Complainant's refusal of smart meter installation was unfounded, and that Met-Ed is required by Act 129 and its Commission-approved SDP to install a smart meter at the Complainant's residence. Met-Ed asserted that the Complainant's refusal to allow the installation of a smart meter constitutes legal grounds to terminate service to the Service Location. Met-Ed filed a Motion to Dismiss the Complaint based upon failure of the Complainant to comply with the October 31, 2019 Interim Order issued by the ALJ directing the Complainant to comply with discovery. I.D. at 2,4.

b. ALJ's Initial Decision⁷

ALJ Watson's Initial Decision dismissed the Complaint for failure of the Complainant to comply with the October 31, 2019 Interim Order issued by the ALJ in this proceeding – specifically for failure to: (1) submit full and complete responses to

⁷ Because no Exceptions were timely filed, in accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. § 332(h), the ALJ's Initial Decision dated February 5, 2020, became final without further Commission action.

Met-Ed's Discovery Requests issued on November 20, 2018; and (2) exchange witness information with Met-Ed. I.D. at 10.

The ALJ explained that Met-Ed is entitled to engage in discovery to obtain information that is relevant and material to the issues raised by the Complainant. I.D. at 9 (citing 52 Pa. Code §§ 5.342(d), (e)). The ALJ noted that Sections 5.371 and 5.372 of Commission Regulations address the consequences of a participant's failure to comply with Commission's discovery regulations. I.D. at 9 (citing 52 Pa. Code § 5.371-5.372). The ALJ further noted that, on motion, the Commission or the presiding officer may make an appropriate order if a party fails to answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests. I.D. at 9 (citing 52 Pa. Code § 5.371). The ALJ further cited the authority of the Commission or presiding officer to impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's Regulations. I.D. at 9-10 (citing 52 Pa. Code § 5.372).

In addition, the ALJ explained that parties must comply with the orders of an ALJ, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. I.D. at 10 (citing *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006)).

The ALJ explained that, in this case, Met-Ed filed numerous Motions to Compel, and the Complainant never filed full and complete discovery responses, despite being provided numerous opportunities to do so. The ALJ further explained that, via Interim Order dated October 31, 2019, the Complainant was given a final opportunity to provide full and complete discovery responses no later than November 12, 2019, and to provide full and complete witness information no later than November 12, 2019. Because the Complainant did neither, the ALJ found that the Complainant failed to

comply. The ALJ noted that the Complainant chose to defy the Interim Order dated October 31, 2019, and instead again objected to the discovery requests and requests for witness information despite the clear language of the October 31, 2019 Order advising the Complainant that objections had been denied via Interim Order dated February 6, 2019 and thus could not be raised again. I.D. at 10.

The ALJ found that, as of the date of the Initial Decision, the Complainant had not exchanged witness information with the Company and had not filed a certificate of service showing his service of his witness information, in violation of the October 31, 2019 Interim Order. Additionally, the ALJ found that the Complainant had not provided full and complete discovery responses and had not filed a certificate of service showing his service of full and complete responses to the discovery requests, in violation of the October 31, 2019 Interim Order. I.D. at 10. Meanwhile, in contrast, the ALJ found that the Company filed a certificate of service regarding its service of its witness information upon the Complainant by the deadline and attempted to gather information about the Complainant's claims through discovery. I.D. at 11.

The ALJ stated that both Parties have due process rights that must be protected. I.D. at 11. The ALJ reasoned that the Complainant's actions in this proceeding have denied Met-Ed the opportunity to prepare a defense to the Complainant's claims. The ALJ concluded that to proceed with this matter in these circumstances would result in the denial of the Company's due process rights. I.D. at 11. Accordingly, the ALJ concluded that a hearing in this matter is neither necessary nor appropriate and would not serve the public interest. I.D. at 11. Accordingly, the ALJ dismissed the Complaint with prejudice. I.D. at 12.

c. Petition for Recission and Answer⁸

In the Petition, the Mr. Toth takes issue with the ALJ's dismissal of the Complaint due to the Complainant's failure to comply with discovery for two reasons. First, the Complainant repeats his assertion that the information sought by certain of the Company's discovery requests is not relevant. *See*, Petition at 1-2. The Complainant attempts to include information sought in discovery in his Petition and then asserts that this submission satisfies the discovery requests. Petition at 2. Second, the Complainant asserts he failed to identify witnesses in compliance with the ALJ's January 31, 2019 and October 31, 2019 Interim Orders because "[a]ll of the documentation I have requested regarding expert witnesses for my discovery is held by Met-Ed and its agents..." *Id.*

In its Answer, Met-Ed argues that the Complainant's arguments are without merit and should be denied. Answer at 1. Met-Ed submits the ALJ properly dismissed the Complaint due to the Complainant's failure to cooperate and participate in this proceeding. Answer at 2. Met-Ed submits that it is noted in the Initial Decision that throughout this proceeding the Complainant has: (a) refused to respond to simple and straightforward discovery requests; and (b) failed to identify any witnesses. Answer at 2 (citing I.D. at 5-9). Met-Ed argues that the Complainant was afforded numerous extensions and continuances to allow him to respond to discovery and identify his witnesses. Answer at 2 (citing I.D. at 5-9; citing also Findings of Fact (FOF) Nos. 10, 13, 14, 17, 19). Met-Ed asserts that the Complainant's arguments presented in his Petition do

⁸ No Exceptions were filed by the due date, February 27, 2020. On March 2, 2020, the Complainant filed a document which he titled his "written comments (called exceptions)" to the Initial Decision. For the reasons set forth *supra* at note 3, we shall exercise our discretion to waive any procedural defects of the Complainant's filing and will treat it as a Petition for Recission of the ALJ's Initial Decision pursuant to Section 5.572(d) of Commission Regulations. 52 Pa. Code § 5.572(d); 66 Pa. C.S. § 703(g). Accordingly, we will treat the Company's responsive filing as an Answer to the Petition.

not correct his prior failures to cooperate and participate in this proceeding. Answer at 2-3. Moreover, Met-Ed argues that the record is closed and his assertions neither constitute record evidence nor comply with the ALJ's directives in the Interim Orders. Answer at 3.

In addition, Met-Ed argues that the Complainant was provided with a "final opportunity" to comply with the ALJ's October 31, 2019 Interim Order. Answer at 3 (citing I.D. at 8; FOF No. 19; citing also, October 31, 2019 Interim Order at 7). Met-Ed also argues the Complainant was clearly notified that failure to comply with the ALJ's directive would result in a dismissal of his Complaint. Answer at 3 (citing October 31, 2019 Interim Order at 7-8).

Finally, Met-Ed submits the ALJ properly concluded that it was necessary to dismiss the Complaint, with prejudice, to protect Met-Ed's due process rights, explaining that the ALJ correctly found that by failing to engage in discovery and participate in the proceeding, in compliance with the directives set forth in the ALJ's Interim Orders, the Complainant denied Met-Ed the opportunity to prepare a defense to his claims. Answer at 3 (citing I.D. at 11). Met-Ed argues that the Complainant, despite being afforded every opportunity to prosecute his Complaint, elected to flout the Commission's Regulations and the various Interim Orders issued by the ALJ. Answer at 3. As such, Met-Ed argues the ALJ correctly and properly dismissed the Complaint with prejudice and requests the Commission deny the Complainant's Petition. *Id.*

d. Disposition

Upon review, we shall deny the Complainant's Petition for failing to meet the *Duick* standard because the Petition does not raise any new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the ALJ. Further, we agree with the ALJ on the merits that the failure of any party to

comply with orders of the Commission or an ALJ is a sufficient basis to support dismissal of the matter.

The Commission previously has, on motion, appropriately dismissed complaints in cases involving smart meters as sanction for a complainant's failure to comply with an interim order compelling service of witness lists and responses to an EDC's discovery requests for information that may be admissible at hearing or lead to the discovery of admissible evidence, such as, for example, the identification of medical records, witnesses, cell phone usage, etc. *See, e.g. Anthony Venini v. PPL Electric Utilities Corporation*, Docket No. C-2018-3006469 (Opinion and Order entered January 29, 2020) (*Venini*);⁹ *see also, Paul Berginc v. West Penn Power*, Docket No. C-2017-2632636 (Opinion and Order entered March 26, 2020) at 12-13.

In the present circumstances, the dismissal of the Complaint is an *appropriate* sanction for the Complainant's failure to comply with the ALJ's October 31, 2019 Interim Order¹⁰ and the several warnings given to the Complainant by the presiding officer.

Thus, for all the foregoing reasons, the Complainant's Petition is denied for failing to meet the *Duick* standard because the Petition does not raise any new or novel

⁹ *See also, e.g., B. Susanne Spohn v. Metropolitan Edison Company*, C-2018-3001725 (Order entered August 8, 2019); *see also, e.g., Kimberly Beckmann v. Metropolitan Edison Company*, C-2017-2613702 (Order entered April 11, 2019).

¹⁰ *See, Treffinger v PPL Electric Utilities Corp.*, Docket No. C-20027978, 2003 Pa. PUC Lexis 3 (Opinion and Order entered March 3, 2003); *Snyderville Community Development Corp. v. PGW*, Docket No. C-20055032, 206 Pa. PUC Lexis 64 (Opinion and Order entered July 31, 2006); *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966); *Application of Mountain High Transportation Group, Inc.*, December 1, Docket No. A-2009-2140243, 2010 Pa. PUC LEXIS 188 (Final Order entered August 6, 2010); *Michelle and Bobby Rhone v. PPL Electric Utilities Corporation*, Docket No. F-2010-2164739, 2011 Pa. PUC LEXIS 1087 (Final Order entered May 27, 2011).

arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the ALJ. Accordingly, the ALJ's Initial Decision dismissing the Complaint with prejudice, which became final by operation of law, remains the final order of the Commission.

3. *Lori Bae and Myung Bae v. Met-Ed*, Docket No. C-2018-3003332

a. Position of the Parties

In the Complaint, Lori Bae and Myung Bae objected to the installation of the smart meter at their residence for health reasons due to their alleged sensitivity to electromagnetic fields. The Complainants requested to opt out of smart meter installation. I.D. at 1.

Met-Ed's position was that the Complainants' refusal of smart meter installation was unfounded, and that Met-Ed is required by Act 129 and its Commission-approved SDP to install a smart meter at the Complainants' residence. Met-Ed asserted that the Complainants' refusal to allow the installation of a smart meter constitutes legal grounds to terminate service to the Service Location. Met-Ed filed a Motion to Dismiss the Complaint based upon failure of the Complainants to appear and prosecute the Complaint at the hearing scheduled for July 16, 2020, based upon the Hearing Notice issued by the ALJ. I.D. at 1-4, 7.

b. ALJ's Initial Decision

Based upon the Complainants' unexcused failure to appear and participate at the hearing duly scheduled and noticed, the ALJ granted the Company's Motion to Dismiss and dismissed the Complaint with prejudice. The ALJ concluded that the Complainants had ample notice and opportunity to appear and be heard in this proceeding

but did not do so. I.D. at 7-8 (citing *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-0 0161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a)). The ALJ concluded that the due process rights of the Complainants have been fully protected. *Id.*

Finally, the ALJ concluded that by failing to appear and proffer any evidence to support their Complaint, the Complainants have failed to meet the requisite burden of proof to sustain the Complaint under Section 332(a) of the Code. I.D. at 9 (citing 66 Pa. C. S. § 332(a)). Based upon the Complainants' unexcused failure to appear at the hearing and failure to carry the burden of proof on the Complaint, the ALJ dismissed the Complaint with prejudice. I.D. at 8-9 (citing *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245).

c. Exceptions and Replies¹¹

In their Exceptions, the Complainants reiterate their position that they should be exempted or permitted to opt out of smart meter installation at their residence due to their alleged sensitivity to electromagnetic frequency. Exc. at 1-2.

In its Replies, Met-Ed avers that the Parties were afforded notice and the opportunity to be heard when the Commission sent Hearing Notices to the Complainants, but they failed to appear at the hearing scheduled for June 16, 2020. Met-Ed also averred

¹¹ The Complainants were granted an extension of time in which to file Exceptions, until September 27, 2020. *See*, Secretarial Letter, Docket No. C-2018-3003332 (September 10, 2020). However, the Exceptions were filed 1-day late on September 28, 2020. Nevertheless, for the reasons set forth *supra* at note 3, we shall exercise our discretion, waive any defect in the Complainants' filing, and treat the Exceptions as having been timely filed.

that when a party fails to appear at a scheduled hearing, the Commission's Regulations state that the party: (1) waives "the opportunity to participate;" (2) is "[n]ot permitted thereafter to reopen the disposition of a matter accomplished at the . . . hearing;" and (3) is "[n]ot permitted to recall witnesses who were excused for further examination." Replies at 1-3 (citing 52 Pa. Code § 5.245(a)(1)-(3)). Met-Ed states that the Complainants were afforded proper due process and requested dismissal of the Formal Complaint with prejudice for failure to meet their burden of proof. *Id.*

Met-Ed also avers that the Commission should not address the merits of the health concerns raised by the Formal Complaint, as the Complainants refused the installation of a smart meter at the service location which Met-Ed was required by Act 129 and the Commission-approved SDP to install a smart meter at the service location. Further, Met-Ed contends that the Complainants' health concerns were unfounded since no evidence was presented or admitted into the record. The Complainants' refusal to allow the installation of a smart meter constitutes legal grounds to terminate service to the service location. Replies at 3-4.

d. Disposition

Upon review, we shall adopt the ALJ's Initial Decision denying and dismissing the Complaint, with prejudice, based upon the Complainants' unexcused action in failing to appear at hearing to actively participate in the proceeding. The record in this proceeding reflects that the Complainants were afforded every opportunity to actively participate in the proceeding, but failed to do so, while offering no valid basis for such failure.

We find the ALJ's action in dismissing the Complaint with prejudice to be justified based upon the relevant procedural history of this case, which established the Complainants' unjustified refusal to participate in the proceeding. In this case, the

Commission sent Hearing Notices to the Complainants, but they failed to appear at the hearing scheduled for June 16, 2020. I.D. at 7-8. The ALJ's disposition protected the Complainants' due process rights to notice and opportunity to be heard, while also taking appropriate action to protect both the due process rights of the respondent Company and the public interest. *Id. See, Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984)(pertaining to the agency's duty to protect due process rights); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (pertaining to dismissal for failure to comply with the ALJ's orders); and, 52 Pa. Code § 5.245 (pertaining to failure to appear, proceed or maintain order in a proceeding).

Further, we find that the Complainants' Exceptions assert neither a legal or factual error in the ALJ's Initial Decision, nor a lawful basis for the Complainants' failure to appear at the hearing and participate in the Complaint proceeding, which the Complainants initiated. Accordingly, we shall deny the Complainants' Exceptions, and adopt the ALJ's Initial Decision without modification.

4. *Michele Armstrong v. Met Ed*, Docket No. C-2018-3004052

a. Position of the Parties

Ms. Armstrong's Complaint against Met Ed stated:

I have never requested an Opt-in to the PA Smart Meter Program. I have never requested a smart meter. I have never agreed to pay the cost of a smart meter. Despite this, I am being faced with the forced installation of a device and technology that I don't want, that I will still have to pay for, that I judge to be questionable and of little true benefit and that many reputable experts and institutions have

indicated will jeopardize the health, safety, financial resources, privacy, security, and well-being of my family.

Complaint at 3-4. The Complainant requested the Commission grant her relief by allowing her continued use of her analog meter and that no smart meter be installed at her property. I.D. at 1-2.

Met Ed requested dismissal of Ms. Armstrong's Complaint with prejudice for legal insufficiency. Answer at 4-6. Subsequently, Met Ed filed an Amended Motion to Dismiss based upon Ms. Armstrong's failure to comply with the ALJ's Interim Order entered July 5, 2019, requiring Ms. Armstrong to comply with the litigation schedule ordered in this matter. I.D. at 2, 4-5.

b. ALJ's Initial Decision¹²

The ALJ's Initial Decision granted Met Ed's Amended Motion to Dismiss and dismissed the Complaint with prejudice. In the Initial Decision, the ALJ outlined the permission of discovery pursuant to Commission Regulations and discussed Ms. Armstrong's repeated failures to actively engage in discovery as required by 52 Pa. Code §§ 5.342(d) and (e). Armstrong I.D. at 6-8;9-10. Noting the multiple Interim Orders entered in this matter requiring Ms. Armstrong to comply with discovery, ALJ Watson dismissed the Complaint in reliance upon Commission precedent holding the failure of parties to comply with orders of the ALJ can be a sufficient basis for dismissal of a matter. I.D. at 10 (citing, *See, Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019) (citations omitted)). Based upon the Complainant's failure to respond to reasonable discovery orders and the

¹² The ALJ's Initial Decision was converted to a Final Order of the Commission, pursuant to Act 294, on January 31, 2020.

multiple ALJ Interim Orders, ALJ Watson granted Met-Ed's Amended Motion to Dismiss and dismissed Ms. Armstrong's Complaint with prejudice. *Id.* at 11-12.

c. Petition for Recission¹³ and Answer

In the Petition, the Complainant neither raises any issues with the Initial Decision, nor addresses Ms. Armstrong's repeated failure to comply with the ALJ's ordered litigation schedule in this matter. Pet. at 1. The Petition asserts no grounds for recission of the ALJ's Initial Decision. *Id.* No answer to the Petition for Recission was filed.

d. Disposition

As previously noted, under the standards of *Duick*, a petition for amendment/reconsideration/recission may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

In the present case, the Complainant requests the recission of the ALJ's Initial Decision without asserting any basis for recission. Pet. at 1. Notably, the Petition

¹³ On February 26, 2020, the Complainant filed a document described as a Petition for Recission of the ALJ's Initial Decision. For the reasons set forth *supra* at note 3, we shall exercise our discretion to waive any procedural defects of the Complainant's filing and will treat it as a Petition for Recission of the ALJ's Initial Decision pursuant to Section 5.572(d) of Commission Regulations. 52 Pa. Code § 5.572(d); 66 Pa. C.S. § 703(g).

does not address or explain the Complainant's failure to comply with the ALJ's orders directing discovery. *See*, I.D. at 10-11. Specifically, as the ALJ recounted:

Complainant violated multiple Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not filed a certificate of service showing her service of full and complete responses to the discovery requests or her witness information upon Respondent, in violation of the Interim Orders entered November 30, 2018, March 13, 2019, May 23, 2019 and has not filed a status report in violation of the Interim Order entered July 5, 2019. Numerous deadline extensions were provided to Complainant in this proceeding giving her many opportunities to comply.

I.D. at 10. Accordingly, the ALJ properly relied upon established precedent that, where a complainant filed a complaint objecting to the installation of a smart meter and subsequently failed to comply with an order requiring the complainant to exchange witness information and failed to comply with an order granting a motion to compel, the Complaint may be dismissed with prejudice. *Id.*

Further, the Petition fails to raise any new or novel argument or matter which appears to have been overlooked or not addressed by the Commission. As such, we conclude the Petition fails to satisfy the *Duick* standards, and therefore, we find no basis to exercise our discretion to rescind the ALJ's well-reasoned Initial Decision.

Thus, for all the foregoing reasons, the Complainant's Petition is denied for failing to meet the *Duick* standard because the Petition does not raise any new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the ALJ. Accordingly, the ALJ's Initial Decision dismissing the Complaint with prejudice, which became final by operation of law, remains the final order of the Commission.

5. *Patricia Steely v. Met-Ed*, Docket No. C-2018-3004770

a. Position of the Parties

In the Complaint, the Complainant objected to the installation of a smart meter at her residence due to health concerns. The Complainant requested that the Commission grant her relief by allowing her to forgo installation of the smart meter at her residence. I.D. at 1.

Met Ed requested dismissal of Ms. Steely's Complaint with prejudice for legal insufficiency. Subsequently, Met Ed filed a Motion to Dismiss based upon Ms. Steely's failure to comply with the ALJ's Interim Orders entered, December 20, 2018 and May 13, 2019 requiring the Complainant to comply with the discovery orders in this matter. I.D. at 2-4.

b. ALJ's Initial Decision

The ALJ's Initial Decision granted Met Ed's Amended Motion to Dismiss for the Complainant's failure to Comply with both of the ALJ's December 20, 2018 Interim Order and May 13, 2019 Interim Order directing the Complainant to comply with reasonable discovery, including, exchanging witness information and providing responses to discovery. I.D. at 8-9, 11.

The ALJ explained that Met-Ed is entitled to engage in discovery to obtain information that is relevant and material to the issues raised by the Complainant. I.D. at 9 (citing 52 Pa. Code §§ 5.342(d), (e)). The ALJ further noted that Sections 5.371 and 5.372 of Commission Regulations address the consequences of a participant's failure to comply with the Commission's discovery regulations. I.D. at 9 (citing 52 Pa. Code § 5.371-5.372). The ALJ also noted that the Commission or presiding officer may

impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's Regulations. I.D. at 10 (citing 52 Pa. Code § 5.372).

Further, the ALJ explained that parties must comply with the orders of an ALJ, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. I.D. at 10 (citing *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006)).

The ALJ found that, despite ample opportunity to do so, the Complainant had not exchanged witness information with the Company and had not filed a certificate of service showing service of her witness information, in violation of the December 20, 2018 Interim Order. I.D. at 4-5. Additionally, the ALJ found that the Complainant had not provided full and complete discovery responses and had not filed a certificate of service showing her service of full and complete responses to the discovery requests, in violation of the Interim Orders issued, May 13, 2019, October 17, 2019, and December 5, 2019. I.D. at 10.

The ALJ noted that both parties have due process rights that must be protected. The ALJ reasoned that the Complainant's actions in this proceeding have denied Met-Ed the opportunity to prepare a defense to the Complainant's claims. Therefore, the ALJ concluded that to proceed with this matter in these circumstances would result in the denial of the Company's due process rights. Accordingly, the ALJ concluded that a hearing in this matter is neither necessary nor appropriate and would not serve the public interest. I.D. at 10-11. Accordingly, the ALJ dismissed the Complaint with prejudice. I.D. at 11-12.

c. Petition for Reconsideration¹⁴

The Complainant filed a Petition for Reconsideration which reiterates the Complainant's objection to smart meter installation in her home for health reasons. The Petition neither raises any factual or legal issue with the ALJ's Initial Decision, nor addresses/explains Ms. Steely's failures to comply with the Interim Orders compelling discovery in this matter. Pet. at 1. No answer to the Petition was filed.

d. Disposition

As previously noted, under the standards of *Duick*, a petition for amendment/reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

In the present case, the Complainant reiterates the request that a smart meter not be installed for health reasons. Pet. at 1. Notably, the Petition does not address or explain the Complainant's failure to comply with the ALJ's multiple orders directing discovery. As such, we find no basis to exercise our discretion pursuant to *Duick*, to grant reconsideration of the ALJ's well-reasoned Initial Decision.

¹⁴ On November 27, 2023, the Complainant filed a document described as a "Petition for Delay of Smart Meter." to the Initial Decision. For the reasons set forth *supra* at note 3, we shall exercise our discretion to waive any procedural defects of the Complainant's filing and will treat it as a Petition for Reconsideration of the ALJ's Initial Decision pursuant to Section 5.572(c) of Commission Regulations (Petition). 52 Pa. Code § 5.572(c).

Accordingly, we shall deny Complainant's Petition for Reconsideration, and adopt the ALJ's Initial Decision dismissing the Complaint with prejudice for Complainant's failure to comply with the ALJ's discovery orders, without modification.

6. *Robert Redinger, Jr. v. West Penn, Docket No C-2018-3000938*

a. Position of the Parties

Mr. Redinger's Complaint against West Penn stated that West Penn was threatening to shut off his service and that he was having a reliability, safety or quality problem with his utility service. Complaint at 2. Specifically, Mr. Redinger stated:

Utility is forcing me to have a "smart meter" installed or they will shut off service. I have legitimate concerns, both medically and in terms of them controlling our electricity usage.

Id. As relief, Mr. Redinger requested that he be granted an "exemption from having this dangerous and controlling device installed at our property/home." I.D. at 1.

West Penn's position was that the utility held no "active intent to terminate" Mr. Redinger's service, and in support provided background on the efforts taken to install a smart meter at Mr. Redinger's service address. Answer at 2-4. West Penn requested the Commission dismiss Mr. Redinger's Complaint with prejudice. *Id.* at 8. West Penn further argued that Mr. Redinger had failed to state a legally sufficient claim. I.D. at 2. *See*, Preliminary Objection at 4-9.

In response to Mr. Redinger's failure to respond to the ALJ's discovery orders, West Penn filed a Motion to Dismiss the Complaint with Prejudice (Motion to Dismiss), noting Mr. Redinger's ongoing failure to comply with Commission Regulations regarding discovery and the Interim Orders issued in this matter. I.D. at 4.

b. ALJ’s Initial Decision

ALJ Watson issued an Initial Decision granting West Penn’s Motion to Dismiss. In the Initial Decision, the ALJ outlined the permission of discovery pursuant to our Regulations and discussed Mr. Redinger’s repeated and clear failures to actively engage in discovery pursuant to 52 Pa. Code §§ 5.342(d) and (e). I.D. at 7-8. The ALJ noted the remedies available to impose sanctions upon parties who fail to comply with discovery, including the entry of orders compelling responses. *Id.* at 8 (citing 52 Pa. Code §§ 5.371 and 5.372). Noting that there were multiple Interim Orders entered in this matter requiring Mr. Redinger to comply with discovery, the ALJ concluded the Complainant refused to comply. ALJ Watson noted the Commission precedent holding that the failure of parties to comply with orders of the ALJ can be a sufficient basis for dismissal of a matter. *Id.* at 9 (citing, *See, Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019) (citations omitted)). ALJ Watson concluded that, based upon the Complainant’s action in refusing to comply with reasonable discovery, a hearing in this matter would not serve the public interest, granted West Penn’s Motion to Dismiss, and dismissed Mr. Redinger’s Complaint with prejudice. *Id.* at 10-11.

c. Exceptions¹⁵ and Replies

Mr. Redinger’s Exceptions allege that he had “not had a chance to present any information regarding my complaint, without preview or prejudice.” Exceptions at 1. The Exceptions neither address the findings of the Initial Decision, nor provide any reasoning for the Complainant’s repeated failures to participate in discovery in this

¹⁵ For the reasons set forth *supra* at note 3, we exercise our discretion to treat the Letter filed by Complainant dated October 4, 2019, as properly filed Exceptions to the ALJ’s Initial Decision (Exceptions).

matter. In its Replies, West Penn notes the extensive failures of Mr. Redinger to comply with discovery and the Interim Orders of the Commission. Reply Exceptions at 1-2.

d. Disposition

In this case, the Company made reasonable discovery requests with which the Complainant refused to comply. Based upon the Complainant's unreasonable refusal to comply with discovery, the ALJ granted the Company's motion to dismiss. I.D. at 10-11. The ALJ found that the Complainant repeatedly refused to comply with reasonable discovery, in the face of the ALJ's direct order to do so. *Id.* At this point, the ALJ concluded the Complainant's refusal to comply with discovery was unreasonable and deprived the Company of its due process right to notice and meaningful opportunity to be heard on the substance of whatever claims the Complainant had raised. I.D. at 9. Accordingly, the ALJ dismissed the Complaint with prejudice. I.D. at 11.

We find the ALJ's action in dismissing the Complaint with prejudice to be justified based upon the relevant procedural history of this case, which established the Complainant's unjustified refusal to comply with reasonable discovery. The ALJ's disposition protected the Complainant's due process rights to notice and opportunity to be heard, while also taking appropriate action to protect both the due process rights of the Company and the public interest. *See, Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984)(pertaining to the agency's duty to protect due process rights); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (pertaining to dismissal for failure to comply with the ALJ's orders); and, 52 Pa. Code § 5.245(pertaining to failure to appear, proceed or maintain order in a proceeding).

Further, we find that the Complainant's Exceptions assert neither a legal or factual error in the ALJ's Initial Decision, nor a lawful basis for the Complainant's refusal

to comply with discovery in the Complaint proceeding. Accordingly, we shall deny the Complainant's Exceptions, and adopt the ALJ's Initial Decision, denying and dismissing the Complaint with prejudice, without modification.

7. *Lowell Watts v. West Penn*, Docket No. C-2018-3002477

a. Position of the Parties

The Complaint filed by Mr. Watts generally opposed installation of a smart meter, and stated the following:

I've done a considerable amount of research on the harmful effects of EMF radiation on the human body and I don't want the risk involved or associated with them. In return I've offered to read the meter for them, even sending them pictures and paying a premium to keep my analog meter, but they don't respect my concern.

Complaint at 2. As relief, Mr. Watts requested a hearing to discuss his concerns regarding the installation of a smart meter by West Penn. I.D. at 2.

West Penn asserted that Complainant had failed to state a legally sufficient claim. *See*, Answer at 2-5; Preliminary Objection at 6-12. Subsequently, West Penn argued that, *inter alia*, the Complaint should be dismissed as Mr. Watts failed to serve discovery responses in violation of the ALJ's November 8, 2018, Interim Order, and Mr. Watts twice failed to serve witness information or a Status Report in violation of an Interim Order dated October 17, 2018. I.D. at 4-5; *See*, Second Amended Motion to Dismiss.

b. ALJ's Initial Decision

ALJ Watson's Initial Decision granted West Penn's Second Amended Motion to Dismiss. The Initial Decision outlined the permission of discovery pursuant to Commission Regulations and noted Mr. Watt's repeated failures to actively engage in discovery as required by 52 Pa. Code §§ 5.342(d) and (e). I.D. at 9-10. Further noting the Interim Orders entered in this matter requiring Mr. Watts to comply with discovery, ALJ Watson cited to Commission precedent holding the failure of parties to comply with orders of the ALJ can be a sufficient basis for dismissal of a matter. *Id.* at 10 (citing *See, Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019) (citations omitted)). Based upon the Complainant's failure to comply with discovery orders, ALJ Watson granted West Penn's Second Amended Motion to Dismiss and dismissed Mr. Watts's Complaint with prejudice. *Id.* at 11-12.

c. Exceptions¹⁶ and Replies

The Exceptions filed by Mr. Watts neither address the findings of the Initial Decision, nor provide any reasoning for the Complainant's repeated failures to participate in discovery in this matter. Rather, Mr. Watts reiterates his opposition to smart meter installation on medical grounds. Exc. at 1-2. In its Reply, West Penn notes the ample opportunities provided to Mr. Watts by ALJ Watson, including multiple continuances to allow for replies to discovery, retaining of counsel, and active participation in this matter. West Penn R. Exc. at 2-4.

¹⁶ For the reasons set forth *supra* at note 3, we exercise our discretion to treat the Letter filed by Complainant on February 18, 2020, as properly filed Exceptions to the ALJ's Initial Decision (Exceptions).

d. Disposition

In this case, the Company made reasonable discovery requests with which the Complainant refused to comply. Based upon the Complainant's unreasonable refusal to comply with the ALJ's discovery orders, the ALJ granted the Company's motion to dismiss. I.D. at 10-11. The ALJ found that the Complainant repeatedly refused to comply with reasonable discovery, in the face of the ALJ's direct order to do so. *Id.* At this point, the ALJ concluded the Complainant's refusal to comply with discovery was unreasonable and deprived the Company of its due process right to notice and meaningful opportunity to be heard on the substance of whatever claims the Complainant had raised. I.D. at 11. Accordingly, the ALJ dismissed the Complaint with prejudice. I.D. at 12.

We find the ALJ's action in dismissing the Complaint with prejudice to be justified based upon the relevant procedural history of this case, which established the Complainant's unjustified refusal to comply with the ALJ's orders for reasonable discovery. The ALJ's disposition protected the Complainant's due process rights to notice and opportunity to be heard, while also taking appropriate action to protect both the due process rights of the Respondent and the public interest. *See, Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984)(pertaining to the agency's duty to protect due process rights); *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) (pertaining to dismissal for failure to comply with the ALJ's orders); and 52 Pa. Code § 5.245 (pertaining to failure to appear, proceed or maintain order in a proceeding).

Further, we find that the Complainant's Exceptions assert neither a legal or factual error in the ALJ's Initial Decision, nor a lawful basis for the Complainant's refusal to comply with discovery in the Complaint proceeding. Accordingly, we shall deny the Complainant's Exceptions, and adopt the ALJ's Initial Decision without modification.

8. *Allen Uhler v. West Penn, Docket No. C-2019-3008098*

a. Position of the Parties

Mr. Uhler's Complaint against West Penn requested the removal of the smart meter installed by West Penn, alleging that he was having a reliability, safety or quality problem with his utility service. Complaint at 2. Specifically, Mr. Uhler stated:

Smart meters give off RF waves which include radiation. RF radiation is classified by the International Agency for Research on Cancer (IARC) as possibly carcinogenic to humans...

Id. As relief, he requested the meter be removed and located further from his home and objected to West Penn's assertion that he could have the meter moved at his own expense. Complaint at 3.

West Penn requested the Commission dismiss Mr. Uhler's Complaint with prejudice for a lack of legal sufficiency since West Penn had "not violated the Public Utility Code or the orders or regulations of the Commission." Answer at 9-10. Subsequently, West Penn filed a Motion to Dismiss Mr. Uhler's Complaint, alleging lack of adherence to Commission Regulations regarding discovery and failure to comply with the ALJ's Interim Order Granting West Penn's Motion to Compel, entered on May 30, 2019 (Interim Order). I.D. at 3.

b. ALJ's Initial Decision¹⁷

ALJ Watson's Initial Decision granted West Penn's Motion to Dismiss the Complaint with prejudice for failure to comply with the ALJ's discovery orders. The Initial Decision outlines the permission of discovery pursuant to Commission Regulations and noted Mr. Uhler's repeated failure to actively engage in discovery as required by 52 Pa. Code §§ 5.342(d) and (e). I.D. at 5-7. The Initial Decision noted the remedies available to impose sanctions upon parties who fail to comply with discovery, including the entry of orders compelling responses. *Id.* at 6 (citing 52 Pa. Code §§ 5.371 and 5.372). Noting Complainant's failure to comply with the Interim Order entered in this matter requiring Mr. Uhler comply with discovery, ALJ Watson dismissed the Complaint in reliance upon Commission precedent holding the failure of parties to comply with orders of the ALJ can be a sufficient basis for dismissal of a matter. I.D. at 7 (citing, *see, Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019) (citations omitted)). Based upon Mr. Uhler's failure to comply with reasonable discovery, ALJ Watson granted West Penn's Motion to Dismiss and dismissed Mr. Uhler's Complaint with prejudice. I.D. at 9.

c. Petition for Rescission and Answer¹⁸

Mr. Uhler's Petition for Rescission reiterates the request in the Complaint that the smart meter installed by the Company be relocated further from the residence for health reasons and included documentation previously submitted with the Complaint.

¹⁷ The ALJ's Initial Decision was converted to a Final Order of the Commission, pursuant to Act 294, on January 17, 2020.

¹⁸ Mr. Uhler filed a document titled "Petition for Reconsideration of Resubmit Due to No Receipt" on February 7, 2020. For the reasons set forth, *supra* at note 3, we shall treat the Complainant's filing as a Petition for Rescission of the ALJ's Initial Decision pursuant to Section 5.572(d) of Commission Regulations, despite any procedural defects. 52 Pa. Code § 5.572(d).

Notably, the filing neither addresses the Complainant's failure to comply with reasonable discovery requests and the ALJ's Interim Order, nor raises any issue with the ALJ's findings in the Initial Decision. Exc. at 1.

In its Answer, West Penn argues that, by failure to assert any new or novel argument or matter not previously considered, the Petition fails to meet the *Duick* standards for reconsideration and asks the Commission to reject the Petition in its entirety. Answer at 5-7.

d. Disposition

Upon review, we shall deny the Complainant's Petition for failing to meet the *Duick* standards because the Petition does not raise any new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the ALJ. Further, we agree with the ALJ on the merits that the failure of any party to comply with orders of the Commission or an ALJ is a sufficient basis to support dismissal of the matter. The Commission previously has, on motion, appropriately dismissed complaints in cases involving smart meters as sanction for a complainant's failure to comply with an interim order compelling service of witness lists and responses to an EDC's discovery requests for information that may be admissible at hearing or lead to the discovery of admissible evidence, such as, for example, the identification of medical records, witnesses, cell phone usage, etc. *See, e.g. Venini*;¹⁹ *see also, Paul Berginc v. West Penn Power*, at 12-13.

In the present circumstances, the dismissal of the Complaint is an *appropriate* sanction for the Complainant's failure to comply with the ALJ's

¹⁹ *See also, e.g., B. Susanne Spohn v. Metropolitan Edison Company; see also, e.g., Kimberly Beckmann v. Metropolitan Edison Company.*

May 30, 2019 Interim Order²⁰ and the several warnings given to the Complainant by the presiding officer.

Thus, for all the foregoing reasons, the Complainant's Petition is denied for failing to meet the *Duick* standard because the Petition does not raise any new or novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the ALJ. Accordingly, the ALJ's Initial Decision dismissing the Complaint with prejudice, which became final by operation of law, remains the final order of the Commission.

V. Conclusion

Upon review of the respective filings and positions of the parties, we shall: (1) deny the Complainants' challenges to the respective Initial Decisions at the above-referenced proceedings; (2) adopt without modification and/or let stand the ALJs' Initial Decisions in the above-referenced proceedings; and (3) dismiss the Complaints filed at the above-referenced dockets, with prejudice, consistent with the discussion in this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the consideration and disposition of the Exceptions, Petitions for Reconsideration or Petitions for Rescission in: *Michael Chattin v. Pennsylvania Electric Company*, Docket No. C-2017-2630649; *Craig Toth v. Metropolitan Edison Company*, Docket No. C-2018-3001563; *Lori Bae and Myung Bae v. Metropolitan Edison*

²⁰ See *Treffinger v PPL Electric Utilities Corp.*; *Snyderville Community Development Corp. v. PGW*; *Application of Black Diamond Cab Co*; *Application of Mountain High Transportation Group, Inc*; *Michelle and Bobby Rhone v. PPL Electric Utilities Corporation*.

Company, Docket No. C-2018-3003332; *Michele Armstrong v. Metropolitan Edison Company*, Docket No. C-2018-3004052; *Patricia Steely v. Metropolitan Edison Company*, Docket No. C-2018-3004770; *Robert Redinger, Jr. v. West Penn Power Company*, Docket No. C-2018-3000938; *Lowell Watts v. West Penn Power Company*, Docket No. C-2018-3002477; *Allen Uhler v. West Penn Power Company*, Docket No. C-2019-3008098 specified by this Opinion and Order at the above-captioned dockets, are consolidated in accordance with Section 5.81(a) of the Commission's Regulations, 52 Pa. Code § 5.81(a), consistent with the discussion in this Opinion and Order.

2. That the Exceptions of Michael Chattin filed on October 23, 2029, to the Initial Decision of Administrative Law Judge Emily I. DeVoe issued on August 30, 2019, at Docket No. C-2017-2630649, are denied, consistent with this Opinion and Order.

3. That the Petition for Recission of the Initial Decision of Administrative Law Judge Jeffrey A. Watson at Docket No. C-2018-3001563 (Final Order entered February 5, 2020), filed by Craig Toth on March 2, 2020, is denied, consistent with this Opinion and Order.

4. That the Exceptions of Lori Bae and Myung Bae filed on September 28, 2020, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on October 7, 2020, at Docket No. C-2018-3003332, are denied, consistent with this Opinion and Order.

5. That the Petition for Recission of the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on December 23, 2019, at Docket No. C-2018-3004052, filed by Michele Armstrong on February 24, 2020, is denied, consistent with this Opinion and Order.

6. That the Petition for Reconsideration of the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on April 6, 2020, at Docket No. C-2018-3004770, filed by Patricia Steely on November 27, 2023, is denied, consistent with this Opinion and Order.

7. That the Exceptions of Robert Redinger, Jr. filed on October 9, 2020, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on September 11, 2019, at Docket No. C-2018-3000938, are denied, consistent with this Opinion and Order.

8. That the Exceptions of Lowell Watts filed on February 18, 2020, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on January 24, 2020, at Docket No. C-2018-3002477, are denied, consistent with this Opinion and Order.

9. That the Petition for Recission of the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on December 9, 2019, at Docket No. C-2019-3008098, filed by Allen Uhler on February 7, 2020, is denied, consistent with this Opinion and Order.

10. That the Initial Decision of Administrative Law Judge Emily I. DeVoe issued on August 30, 2019, at Docket No. C-2017-2630649; the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on October 7, 2020 at Docket No. C-2018-3003332; the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on April 6, 2020, at Docket No. C-2018-3004770; the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on September 11, 2019 at Docket No. C-2018-3000938; and, the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on January 24 ,2020 at Docket No. C-2018-3002477, are adopted without modification, consistent with this Opinion and Order.

11. That the Final Orders entered in *Craig Toth v. Metropolitan Edison Company* at Docket No. C-2018-3001563 (Final Order entered February 5, 2020); *Michele Armstrong v. Metropolitan Edison Company* at Docket No. C-2018-3004052 (Final Order entered January 31, 2020); and *Allen Uhler v. West Penn Power Company* at Docket No. C-2019-3008098 (Final Order entered January 17, 2020), remain the Final Orders of the Pennsylvania Public Utility Commission, consistent with this Opinion and Order.

12. That the Formal Complaints filed by: Michael Chattin on October 19, 2017 at Docket No. C-2017-2630649; Craig Toth on April 26, 2018 at Docket No. C-2018-3001563; Lori Bae and Myung Bae on July 5, 2018 at Docket No. C-2018-3003332; Michele Armstrong on July 24, 2018 at Docket No. C-2018-3004052; Patricia Steely on September 17, 2018 at Docket No. C-2018-3004770; Robert Redinger, Jr. on March 26, 2018 at Docket No. C-2018-3000938; Lowell Watts on May 22, 2018 at Docket No. C-2018-3002477; Allen Uhler on February 16, 2019 at Docket No. C-2019-3008098, are dismissed, with prejudice.

13. That the Secretary's Bureau shall mark Docket Nos.
C-2017-2630649; C-2018-3001563; C-2018-3003332; C-2018-3004052; C-2018-3004770;
C-2018-3000938; C-2018-3002477; and C-2019-3008098, as closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being particularly prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 22, 2024

ORDER ENTERED: February 22, 2024