

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

Public Meeting held March 14, 2024

Commissioners Present:

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

Christopher L. Macey

C-2019-3012705

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Mr. Christopher L. Macey (Complainant or Mr. Macey) filed on May 23, 2020, to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Conrad A. Johnson, served on the Parties on May 6, 2020, in the above-captioned proceeding. On June 5, 2020, West Penn Power Company (West Penn or the Company) filed Replies to Exceptions.¹ The Initial Decision

¹ Initially, on May 26, 2020, West Penn filed a letter stating that it would not be filing Exceptions to the matter.

denied the Amended Formal Complaint (Amended Complaint) filed by the Complainant on October 18, 2019. For the reasons discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Johnson, and dismiss the Amended Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Formal Complaint (Complaint), as amended, concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that West Penn installed at the Complainant's residence for use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant requested, *inter alia*, that West Penn remove the smart meter from his residence and replace it with an analog meter. Amended Complaint at 11.

West Penn is an electric distribution company (EDC) subject to the jurisdiction of the Commission. West Penn furnishes, owns, and maintains the meters in its distribution system. *See*, West Penn Power Company Tariff Electric Pa. P.U.C. No. 40, Section 7 at 39.

The Complainant is a West Penn customer who previously had a powerline carrier (PLC) meter installed at his residence that provided the function of automatic meter reading (AMR). The Complainant had been notified of West Penn's intent to install a smart meter at his 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, including 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 in accordance with other guidelines established therein. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Implementation Order*). West Penn sought and obtained the Commission’s

approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by mid-2019. *See, Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Its Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding

On September 6, 2019, Mr. Macey filed the instant Complaint. Attached to the Complaint is a letter that, according to the Complainant, represents a Settlement Agreement with West Penn (Settlement Agreement).² I.D. at 2; Complaint at 3, 8. In the Complaint, the Complainant alleges that, essentially, West Penn rendered poor service and breached the Settlement Agreement when it installed a smart meter on his home. As relief, the Complainant requested, *inter alia*, that the smart meter on his home be removed and replaced with an analog meter. Complaint at 3-4; I.D. at 1-2.

On September 26, 2019, the Company filed an Answer to the Complaint and New Matter (Answer), which admitted, in part, and denied, in part, various material allegations in the Complaint. In its Answer, West Penn admitted that it provides electric service to the Complainant and entered into the Settlement Agreement with the Complainant involving the installation of a customer-owned pole as a resolution to Mr. Macey's Prior Formal Complaint. Answer at 1-4; I.D. at 2. West Penn provided that on August 16, 2019, a Company representative installed a smart meter on the Complainant's home after Mr. Macey failed to honor the terms of the Settlement

² The letter, which is signed by Mr. Macey and counsel for West Penn, pertains to the installation of a new meter service pole at Mr. Macey's property, as a resolution to Mr. Macey's Formal Complaint at Docket No. C-2017-2628021 (Prior Formal Complaint), the docket of which was closed February 5, 2019. I.D. at 2; Complaint at 8.

Agreement. Answer at 4-5; I.D. at 2. West Penn further provided that on August 26, 2019, Company representatives met with the Complainant's electrician to complete the relocation of the smart meter. Answer at 5-6; I.D. at 2. West Penn also argued that because the Company's installation of a smart meter was in compliance with Act 129 and the Company's Commission-approved Smart Meter Deployment Plan (SMDP), the Complaint was legally insufficient. Answer at 12-13; I.D. at 2.

Also, on September 26, 2019, West Penn filed Preliminary Objections in response to the Complaint (Preliminary Objections), essentially arguing that the Commission lacked jurisdiction to direct the reprimand of employees or to award monetary damages. As such, the Company requested that the Commission strike the Complainant's request for relief or, alternatively, dismiss the Complaint. Preliminary Objection at 1-2, 5, 10-11; I.D. at 2.

On October 4, 2019, the Complainant filed a Response to the Preliminary Objections, essentially admitting to the factual averments in the Preliminary Objections but denying the legal claims on the basis that he did not have sufficient time to review the legal precedents and noting that he intended to amend his Complaint. I.D. at 3.

On October 15, 2019, the Complainant filed a Reply to West Penn's Answer (Reply to Answer), arguing, *inter alia*, that the installation of smart meters is not mandatory under Act 129. Reply to Answer at 5-6; I.D. at 3.

On October 18, 2019, the Complainant filed the Amended Complaint.³ In the Amended Complaint, Mr. Macey alleged, *inter alia*, that: (1) West Penn failed to respond to several communications regarding the placement of his new utility pole; (2) smart meters are not mandatory and the Commission is misinterpreting Act 129; (3) the Company breached the Settlement Agreement for, among other reasons, installing a smart meter on the Complainant's house with no notice; (4) West Penn violated Section 1501 of the Code, 66 Pa. C.S. § 1501; and (5) because the Settlement Agreement, dated January 8, 2019, required the relocation of the utility pole by May 15, 2018, the completion date stipulation was null and void from the onset. Amended Complaint at 3-11. As relief, the Complainant requested, *inter alia*, that the Commission: (1) administer fines and sanctions against the Company; (2) award money damages for pain, suffering, and out-of-pocket expenses; and (3) reprimand Company representatives and management for violating the Settlement Agreement. Amended Complaint at 11; I.D. at 4.

On October 25, 2019, ALJ Mary D. Long issued an Interim Order Granting in Part and Dismissing in Part West Penn's Preliminary Objections (Interim Order), in which ALJ Long: (1) dismissed the Complainant's claim for monetary damages; and

³ According to the Commission's case management system, the Amended Complaint was filed with the Commission on October 18, 2019. However, it was "docketed" with the Secretary's Bureau October 28, 2019. I.D. at 4. By letter dated October 28, 2019 (*October 2019 Secretarial Letter*), the Commission's Secretary: (1) enclosed a copy of the Amended Complaint; and (2) advised that an Answer to the Amended Complaint should be filed with the Commission and served upon the Complainant within twenty (20) days from receipt of the *October 2019 Secretarial Letter*. See, *October 2019 Secretarial Letter*. Therefore, pursuant to 52 Pa. Code § 5.61(a), West Penn was given until November 18, 2019, to file an Answer to the Amended Complaint.

(2) ruled that the Complainant's claims related to the Company's customer service were appropriate for hearing.⁴ I.D. at 3-4.

On November 18, 2019, West Penn filed an Answer and New Matter to the Amended Complaint (Answer to the Amended Complaint).⁵ In its Answer to the Amended Complaint, West Penn, essentially, denied in part and admitted in part the material allegations of the Amended Complaint. West Penn averred, *inter alia*, that at all times in this proceeding, the Company's actions have been reasonable and performed in accordance with all applicable laws, the Company's Commission-approved tariffs, the Code, Commission Regulations, Commission Orders, and the terms of the Settlement Agreement. Answer to Amended Complaint at 1-2, 7-9; I.D at 4. Further, West Penn addressed the Complainant's requested relief, asserting that the Commission does not have the power to award monetary damages or to interfere with the general management of public utility companies. Moreover, West Penn noted that the Complainant's request for monetary damages was already dismissed with the Interim Order. Answer to Amended Complaint at 11-12, 16-17; I.D. at 4.

On January 7, 2020, the Complainant filed a letter requesting an in-person hearing.⁶ West Penn did not object to the Complainant's request. I.D. at 4-5. Consequently, by Corrected Hearing Notice dated January 7, 2020 (Hearing Notice), an Initial In-Person Hearing was scheduled for January 28, 2020, at 10:00 a.m. The Hearing Notice included the date, location, and time of the hearing. Hearing Notice at 1.

⁴ On October 9, 2019, a Motion Judge Assignment Notice was issued assigning the proceeding to ALJ Emily DeVoe. According to the Initial Decision, subsequently, ALJ Long received the assignment. I.D. at 3.

⁵ Although the Company refers to West Penn's filing on November 18, 2019, as an answer to Mr. Macey's formal complaint, for the purpose of clarity, we shall refer it as Answer to the Amended Complaint. *See*, Answer to Amended Complaint at 1.

⁶ On December 23, 2019, a Judge Change Notice was issued changing the ALJ in the instant proceeding to ALJ Johnson. I.D. at 4.

On January 27, 2020, the Complainant filed his Response to the West Penn's Answer to the Amended Complaint (Response to West Penn's Answer to the Amended Complaint), which is, essentially, an argument comprised of six questions concerning the Settlement Agreement and the smart meter, and Mr. Macey's response to those six questions.⁷ I.D. at 5.

On January 28, 2020, the hearing was held as scheduled. The Complainant appeared *pro se* and his wife, Ms. Elizabeth Vienna (Ms. Vienna), was also present, but she did not testify. At the hearing, the Complainant testified on his own behalf and offered two exhibits which were entered into the record (Complainant Exhibits A and B). I.D. at 5; Tr. at 98, 101. The Company was represented by counsel and presented the testimony of two witnesses: (1) Mr. John Ahr; and (2) Mr. Scott Curcio (Mr. Curcio). West Penn also offered three exhibits for entry into the record. Two of the Company's Exhibits were entered into the record (West Penn Exhibits 2 and 3), and one was not (West Penn Exhibit 1). I.D. at 5; Tr. at 58, 63.

The hearing produced a transcript consisting of 113 pages. On February 28, 2020, ALJ Johnson issued an Interim Order Closing the Record. I.D. at 5.

In the Initial Decision issued on May 6, 2020, the ALJ dismissed the Amended Complaint because: (1) the Commission lacks the authority to award monetary damages and reprimand the employees of a public utility company; and (2) the evidence fails to establish that West Penn violated the Code, Commission Regulation, Commission Order, thereby warranting the assessment of any fine or to direct the removal of a smart meter. I.D. at 1, 13-14, 18-20.

⁷ According to the ALJ, although the Complainant's Response to West Penn's Answer to the Amended Complaint did not strictly comply with 52 Pa. Code § 5.1(a)(2), which provides for a reply to new matter, the ALJ included it in his Initial Decision for completeness of the procedural history and pursuant to 52 Pa. Code § 1.2(a). I.D. at 5.

As previously noted, the Complainant timely filed Exceptions on May 23, 2020, and West Penn timely filed Replies to Exceptions on June 5, 2020.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa. C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action.

By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and their procedural rights and obligations under the Commission's regulations. Based upon the lifting of the stay, we shall now address the Complainant's Exceptions.

III. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might

accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

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

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See, Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See, Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See, Milkie*, 768 A.2d at 1220; *see also, 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-finder⁸ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*).

⁸ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)).

2. Burden of Proof Applied to Section 1501⁹ Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court’s October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission’s March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) (*2019 Povacz Order*); *Laura Sunstein Murphy v. PECO Energy Company*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019) (*Laura Sunstein Murphy*); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, Docket No. C-2016-2537666 (Opinion and Order entered May 9, 2019) (*Cynthia Randall*). By *Povacz II*, the Supreme Court affirmatively established that there is no “opt-out” provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II* at 280 A. 3d at 983-984.

⁹ The applicable Commission Regulation governing an EDC’s provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC’s provision of electric utility service and its associated equipment and facilities. See, 52 Pa. Code § 57.28(a)(1). See, *Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Opinion and Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service¹⁰ and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See*, 66 Pa. C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501.

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

¹⁰ The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlt. 1995).

but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code.¹¹ Therein, the Supreme Court stated:

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

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

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

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

¹¹ The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000, citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. January 28, 2016) (*Kreider*).

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

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

. . . .

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

Povacz II, 280 A. 3d at 999-1000 (emphasis added; footnote omitted).¹²

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

¹² With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)¹³ from the AMI meter.¹⁴

3. Other Relevant Legal Standards

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

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

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

¹³ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

¹⁴ See, 2019 *Povacz Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

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

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Johnson made thirty Findings of Fact (FOF) and reached nine Conclusions of Law (COL). I.D. at 6-9, 19-20. The FOF and COL are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ referred to the hearing transcript to summarize the Complainant's position. Specifically, the ALJ noted the Complainant's assertions that: (1) West Penn provided him unreasonable service because, according to Mr. Macey, the Company breached the Settlement Agreement; (2) he made repeated requests to the Company for the designer's contact information which, according to Mr. Macey, he needed to proceed with the installation of a new smart meter pole; (3) the Company did not respond to his requests and attached a smart meter to his house without notice and in violation of their

agreement; and (4) West Penn's refusal to shut-off his electricity after installing the smart meter caused harm to his wife who, according to Mr. Macey, suffers from Electromagnetic hypersensitivity (EHS). I.D. at 12 (citing Tr. 13-16, 18-21, 26-29, 112). The ALJ also noted that the Complainant seeks fines and monetary damages against the Company, and replacement of his smart meter with an analog meter. I.D. at 12 (citing Tr. 23-24).

The ALJ also summarized West Penn's position that by law and in accordance with its tariff, the Company was required to install a smart meter at Mr. Macey's residence. I.D. at 12 (citing Tr. 61). The ALJ noted that under the Parties' Settlement Agreement, the Complainant was required to install the new meter pole by May 15, 2019. The ALJ further noted that although Mr. Macey received a three-month extension, the installation of the pole was not complete by August 16, 2019, and, according to West Penn, Mr. Macey offered no explanation. I.D. at 12 (citing Tr. 42, 54, 56). Therefore, West Penn posited that the Company's actions were reasonable. I.D. at 12 (citing Tr. 107-110).

The ALJ addressed Mr. Macey's claim concerning the expense he incurred to install the meter pole on his property.¹⁵ Specifically, the ALJ noted that the Commission has no authority to award damages. I.D. at 13 (citing Tr. 22-23; *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977)). Accordingly, the ALJ denied the Complainant's request for monetary damages. I.D. at 13.

Next, the ALJ addressed the Complainant's request that the smart meter that was attached to his new meter pole on August 26, 2019, be replaced with an analog meter. I.D. at 13 (citing Tr. 24). The ALJ provided that ordering the Company to

¹⁵ The ALJ noted that although the Complainant's request for monetary damages was dismissed upon Preliminary Objections to his Complaint, Mr. Macey again requested compensation via his Amended Complaint.

remove the Complainant's smart meter and replace it with an analog meter would violate the Code. Specifically, the ALJ noted that Act 129 required West Penn to file a smart meter technology procurement and installation plan with the Commission for approval. I.D. at 13-14 (citing 66 Pa. C.S. §§ 101, 2807(f)). More specifically, the ALJ referred to Section 2807(f)(2) of the Code, which directed EDCs to furnish smart meter technology: (1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (2) in new building construction; and (3) in accordance with a depreciation schedule not to exceed fifteen years. I.D. at 14 (citing 66 Pa. C.S. § 2807(f)(2)). The ALJ denied Mr. Macey's request for an analog meter because, under the Code and in accordance with its Commission-approved SMDP, the Company was required to install a smart meter at the service address. I.D. at 14.

Next, the ALJ addressed Mr. Macey's claims that the Company failed to provide him reasonable service. I.D. at 14. The ALJ noted that Section 1501 of the Code requires every public utility to provide reasonable service to its customers. I.D. at 15 (citing 66 Pa. C.S. § 1501). The ALJ also cited Section 102 of the Code to note that a utility's "service" includes "any and all acts" related to the distribution of utility service. I.D. at 15 (citing *West Penn Power Company v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990); 66 Pa. C.S. § 102).

The ALJ reasoned that the Complainant's request for the Company's designer's contact information falls within the ambit of reasonable service. The ALJ observed that Mr. Macey claims that West Penn's failure to provide him with the designer's contact information delayed him in installing the new meter pole on his property, to which West Penn would attach the smart meter. The ALJ noted that the agreed-upon date for installation of the meter pole was May 15, 2019. I.D. at 15.

Acknowledging West Penn's position that the Company's designer's information was given to the Complainant as early as February 2018, the ALJ pointed out

that, on February 16, 2018, West Penn's witness, Mr. Curcio, staked the service address for the location of the meter pole and provided Mr. Macey the measurements for the pole. The ALJ continued that on April 10, 2019, Mr. Curcio provided the Complainant with the requisite information a second time, and he again staked the service address in the same place he had staked it during his February 2018 visit. Moreover, the ALJ highlighted that Mr. Macey had received an extension from May 15, 2019, the agreed upon date to complete installation of the new meter pole, to August 16, 2019; however, by August 16, 2019, installation of the pole was not complete. I.D. at 15.

The ALJ found that West Penn's retort to the Complainant's claim that the Company caused his delay has merit. Specifically, the ALJ observed that although the Company did not respond to Mr. Macey's service request between January 10, 2019 and April 12, 2019, the information he was seeking had been provided to him in February 2018. The ALJ also pointed out that on January 10, 2019, the Complainant agreed to install the meter pole by May 15, 2019. On July 12, 2019, the Complainant informed the Company, via e-mail, that installation of the pole would be complete by the next week. Subsequently, the pole was installed at the service address on July 25, 2019. I.D. at 16 (citing Tr. 17).

The ALJ highlighted Mr. Macey's statement that because additional work was necessary to "prep for acceptance of the new feeder line," the pole was not ready for attachment of the smart meter on July 25, 2019. I.D. at 16 (citing Tr. 17, 46-47). Further, the ALJ noted that on August 16, 2019, counsel for West Penn e-mailed Mr. Macey and informed him since there had been no further contact from him, the Company would proceed with installation of the service meter at the service address. I.D. at 16 (citing West Penn Exh. A, Attachment Exhibit H). Moreover, the ALJ noted that Mr. Macey offered no explanation for the delay in completing the prep work required for acceptance of the new feeder line on the pole between July 25, 2019 and August 16, 2019. I.D. at 16 (citing Tr. 30-31).

The ALJ found that Mr. Macey failed to timely install the pole because the evidence establishes that the Company provided the Complainant with the information necessary for installation of the new meter pole at the service address and afforded Mr. Macey sufficient time for the pole installation for attachment of the smart meter. The ALJ added that under these circumstances, it would be unwarranted to find that the Company failed to provide the Complainant reasonable service, either in responding to Mr. Macey's requests or in attaching the smart meter to his house. I.D. at 16.

The ALJ also addressed the Complainant's claim that when the Company attached the smart meter to his home on August 16, 2019, he told his wife to call the Company to have the electric shut-off, but West Penn refused this request. I.D. at 16 (citing Tr. 19-21). The ALJ noted that West Penn countered that the service person left the service address because of the Complainant's volatile behavior. I.D. at 16 (citing Tr. 31-32). The ALJ also noted that while Mr. Macey admitted to being animated when the service person arrived, he denied making any threats. I.D. at 16 (citing Tr. 32-33). The ALJ found that credibility favors West Penn on this issue. I.D. at 16. Further, the ALJ denied the Complainant's claim that the Company's failure to shut-off his service upon request constituted unreasonable service because the evidence establishes that the Company sent a service person to the service address in response to a shut-off request and a reasonable inference may be drawn from the evidence that the shut-off did not occur due to Mr. Macey's behavior. I.D. at 16-17.

The ALJ also addressed the Complainant's argument that because his wife has EHS, West Penn attaching the smart meter to his house constituted unsafe service. I.D. at 17. The ALJ noted that according to the Complainant, his wife became ill and suffered from sleep disruption after the Company attached the smart meter to his house. I.D. at 17 (citing Tr. 15, 19-20).

The ALJ noted that when a utility customer challenges the effects of a smart meter installation, the Commission has stated that the role of the ALJ will be to determine whether there is sufficient record evidence to support a finding that the complainant was adversely affected by the smart meter or whether the utility's use of a smart meter will constitute unsafe or unreasonable service, in violation of Section 1501. I.D. at 17 (citing *Kreider* at 23; *Woodbourne-Heaton*, 1992 Pa. PUC LEXIS 160, at *12-13; *Frompovich* at 10).

The ALJ pointed out that the Complainant did not present any medical evidence concerning his claim that his wife, Ms. Vienna, suffers from EHS. Further, the ALJ noted that according to the Complainant, the Company deliberately and maliciously installed the smart meter on his home. I.D. at 17 (citing Tr. 14-15). The ALJ reasoned that absent medical evidence to establish a causal connection between Ms. Vienna's health and any harmful effects from the smart meter, Mr. Macey's claim is an unsubstantiated opinion and, therefore, does not constitute factual evidence. I.D. at 17 (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

The ALJ found it notable that the Complainant did not call Ms. Vienna, who was present throughout the hearing, to testify. I.D. at 18 (citing Tr. 4, 5, 8, 24, 45). The ALJ reasoned that to establish that installation of the smart meter was harmful to her health and sleep patterns, Ms. Vienna could have presented her medical records as evidence. The ALJ denied Mr. Macey's claim that the Company provided unsafe service because the Complainant's failure to call Ms. Vienna as a witness draws an adverse inference that her testimony would not have been favorable to Mr. Macey's case. I.D. at 18 (citing *Kovach v. Solomon*, 732 A.2d 1, 8-9 (Pa. Super. 1999)). I.D. at 18.

Finally, the ALJ addressed the Complainant's request that the Commission reprimand the Company's employees and assess fines against West Penn for poor service

and for attaching the smart meter to his home, in violation of the Settlement Agreement. The ALJ denied Mr. Macey's request because reprimand of a utility's employees is an internal management decision beyond the Commission's authority. I.D. at 18-19 (citing *Metropolitan Edison Company v. Pa. PUC*, 62 Pa.Cmwlth. 460, 437 A.2d 76 (1981)). The ALJ also denied the Complainant's request for the assessment of a fine against the Company because, although the Commission has the authority to impose a civil penalty upon the utility for violation of the Code, a Commission Regulation or Order, the evidence fails to establish any violation by the Company. I.D. at 19 (citing *see, Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557, 1975 Pa. PUC LEXIS 7 (1975)).

Based on all of the above, the ALJ dismissed Mr. Macey's Amended Complaint for failure to carry his burden of proof. I.D. at 19.

C. Exceptions¹⁶

In his Exceptions, Mr. Macey maintains his position that the Company, *inter alia*: (1) failed to respond to any communications; (2) violated the Settlement Agreement when it installed the smart meter on his home; and (3) refused to shut-off his electric service upon request. Exc. at 2-3. Mr. Macey also disagrees with the ALJ's reasoning for dismissing his Amended Complaint, arguing that the reasons were based on conclusions of matters that were not argued. Exc. at 3. Further, the Complainant avers that he did not ask his wife to testify regarding her EHS symptoms because "he [asked] the court to take punitive action against the Respondent for poor service and breach of

¹⁶ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will exercise our discretion to accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

[the] [S]ettlement [A]greement.” Exc. at 3-4. Moreover, the Complainant maintains that “his right to fair, honest, and reasonable service was not met” by the Company. Exc. at 4.

D. Replies to Exceptions

In its Replies to Exceptions, West Penn avers that because the installation of the smart meter on the Complainant’s residence resulted from the Complainant’s failure to install a new meter pole by May 15, 2019, the ALJ correctly concluded that the Company did not violate the Settlement Agreement. R. Exc. at 3-4 (citing I.D. at 15-16; WP Exhibit No. 2 at 1; Tr. at 40-41, 54). Further, West Penn argues that the evidence demonstrates that the Complainant failed to satisfy his obligations under the Settlement Agreement and the Company lawfully installed the smart meter on Mr. Macey’s residence. R. Exc. at 4-5 (citing Tr. at 16, 27-28, 30-31, 46-47, 56, 81, 85-86). Moreover, West Penn points out that despite not being required under the Settlement Agreement to do so, the Company provided the Complainant with additional time to have the utility pole work completed. R. Exc. at 5 (citing Tr. at 55-56).

West Penn also addresses the Complainant’s argument that West Penn was unresponsive to Mr. Macey’s requests for information. R. Exc. at 5 (citing Exc. at 2, 4). Specifically, West Penn argues that the ALJ properly concluded that the Company provided the Complainant with the information and time needed for installation of the new meter pole. R. Exc. at 5 (citing I.D. at 16; Tr. at 28, 55-56, 81, 85-86). Further, West Penn contends that contrary to the Complainant’s argument otherwise, the Company has the legal right to access a customer’s residence to exchange an analog meter with a smart meter and the Company has no legal obligation to provide advance notice. R. Exc. at 6 (citing Tr. at 61-62). Moreover, West Penn argues that the Complainant failed to demonstrate that the Company’s communications and subsequent clarifications regarding the installation of a meter on his residence constitute unreasonable service. R. Exc. at 6-7 (citing Tr. at 100-101, 103-104). Additionally,

West Penn also refers to the record evidence to dispute the Complainant's argument that the Company provided unreasonable service by failing to shut-off the electric power to his residence until the smart meter was removed. R. Exc. at 7-8 (citing Exc. at 3; I.D. at 16-17; Tr. at 31-33, 35-36).

West Penn also disagrees with Mr. Macey's assertion regarding why he did not ask his wife to testify regarding her medical and health concerns. R. Exc. at 8 (citing Exc. at 3-4). West Penn counters that the ALJ correctly analyzed and disposed of the Complainant's claims that the installation of a smart meter by the Company would result in unsafe and unreasonable service due to Ms. Vienna's alleged medical condition. R. Exc. at 8 (citing I.D. at 17-18). Further, West Penn contends that despite the Complainant putting Ms. Vienna's health and medical concerns at issue in this proceeding, Mr. Macey did not call his wife to testify regarding her alleged health and medical conditions. R. Exc. at 8-9 (citing Tr. at 8, 14-15, 20, 33). Accordingly, West Penn avers that the Complainant's Exceptions should be denied. R. Exc. at 9.

E. Disposition

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

In the present case, the Complainant requested that the smart meter installed to his new meter pole be replaced with an analog meter. The ALJ denied Mr. Macey's request because, under the Code and in accordance with the Company's Commission-approved SMDP, West Penn was required to install a smart meter at the Complainant's service address and replacing it with an analog meter would violate the Code. I.D. at 13-14 (citing 66 Pa. C.S. §§ 101, 2807(f)).

As noted, *supra*, in *Povacz II*, the Pennsylvania Supreme Court affirmatively established that there is no "opt-out" provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II* at 280 A. 3d at 983-984. Here, as discussed *infra*, we agree with the ALJ's analysis and conclusion that the Complainant did not meet his burden of proof to show that the Company's service is unsafe or unreasonable, in violation of Section 1501. I.D. at 20, COL No. 7. Further, we agree with the ALJ's analysis and conclusion that the Complainant has not identified how the Company violated the law and, under Act 129, West Penn is required to deploy smart meters. I.D. at 14, 19-20, COL No. 8.

In his Amended Complaint, Mr. Macey requested that his smart meter be replaced with an analog meter. Amended Complaint at 11. In addition to no opt-out from smart meter installation, the customer has no right to select the smart meter technology utilized by the Company. Under *Povacz II*, it is the Company, not the customer, which has the authority to determine the type of smart meter to install. In *Povacz II*, the Supreme Court reasoned that by obtaining service from their incumbent EDC, customers contractually accept the EDC's Commission-approved Tariff, including the installation of smart meter technology. *Id.* at 994. Therefore, the Supreme Court found that "the authority to select and install a certain type of electric meter rests solely with the EDCs, [...] not the customer." *Id.*

Although the Complainant expresses that he wants an analog meter and does not want a smart meter installed on his home or on his property, we agree with the ALJ's analysis and conclusion that, under the provisions of Act 129, West Penn is required to deploy smart meters, consistent with 66 Pa. C.S. § 2807(f)(2). I.D. at 13-14, 20, COL No. 6. Further, we agree with the ALJ's conclusion that the Complainant has not provided how West Penn, which is required to comply with Act 129 and 66 Pa. C.S. § 2807 by installing smart meters at the Complainant's residence, violated the Code, a Commission Regulation, or a Commission Order. I.D. at 20, COL No. 8.

Indeed, we declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Implementation Order* at 14. We also "recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment." *Smart Meter Implementation Order* at 9, 14. Moreover, we agree with the ALJ that, under the Code and in accordance with West Penn's Commission-approved SMP, the Company is required to install smart meters for all of West Penn's customers. I.D. at 14 (citing *2014 Smart Meter Order*). Therefore, we find no error in the ALJ's determination that the installation of the smart meter was mandatory, as set forth in the Initial Decision.

Next, we will address the Complainant's claim that the Company provided unreasonable service when it attached a smart meter to his home. The Complainant alleges that his wife suffers from EHS symptoms. Exc. at 3; Tr. at 14. Mr. Macey argued that his wife's alleged EHS symptoms were exacerbated by West Penn's installation of a smart meter on his house and, subsequently, on his new utility pole. Tr. at 14-15, 21; Amended Complaint at 5. The Complainant further contended that the Company's actions were a violation of Section 1501, 66 Pa. Code § 1501. Amended Complaint at 7. Therefore, each of the Complainant's claims arise, if at all, as a claim

under Section 1501 asserting unreasonable or unsafe provision of service. 66 Pa. Code § 1501.

As noted *supra*, in affirming the Commission’s 2019 *Povacz Order*, the Pennsylvania Supreme Court held in *Povacz II* that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specially, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See, Povacz II* at 999-1000. In that context, the lay opinion of the Complainant does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.*

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

The Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other

sources of RF emissions, caused them harm.¹⁷ The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Id.* Once the parties have presented their evidence, the onus then falls on the fact-finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.¹⁸

In the present case, the ALJ's analysis and disposition turned on: (1) the absence of any medical evidence to establish a causal connection between his wife's health and any harmful effects from the smart meter; and (2) the Complainant's failure to call his wife, Ms. Vienna, as a witness at any time during the hearing, which the ALJ inferred to mean that Ms. Vienna's testimony would not have been favorable to Mr. Macey's case. *See, I.D.* at 17-18. The ALJ concluded that given the lack of any medical evidence and the adverse inference from the Complainant's failure to call Ms. Vienna to testify regarding her EHS symptoms, the Complainant's claim that West Penn provided unsafe service cannot stand and must be denied. We concur. Upon review, we agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainant did not meet his burden of proof regarding his claim that the smart meter installed at his property caused, or contributed to, adverse health effects for his wife. *I.D.* at 19-20.

¹⁷ Notably, the Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Id.* at 1005.

¹⁸ The Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff. However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id.* at 1015

To prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See, 2019 Povacz Order*. Here, the ALJ properly concluded that the lay, unsubstantiated opinion of the Complainant does not provide a conclusive, causal connection between the alleged harm to human health and the RFs from the AMI meter. I.D. at 17.

Specifically, we affirm the ALJ’s finding in COL No. 7, that the Complainant failed to show that the installation of the smart meter at the service address constituted unsafe or unreasonable service, in violation of the Code. I.D. at 20. Similarly, the Complainant failed to offer any competent or factual evidence of record to support a finding that Ms. Vienna’s health is adversely affected by the installation of a smart meter at his property. I.D. at 17-18. We find nothing in the Complainant’s Exceptions to refute the ALJ’s conclusions that the Company’s use of a smart meter to measure the electric usage at the Complainant’s property will not constitute unsafe or unreasonable service, in violation of Section 1501.

To the extent that the Complainant contends that the ALJ dismissed the Amended Complaint based on matters that were not argued in this proceeding, we disagree. As explained above, the ALJ addressed the Complainant’s argument that the Company’s installation of a smart meter on his home constituted unsafe service and his request that the smart meter be replaced with an analog meter. The ALJ also addressed the Complainant’s further claims that the Company provided unreasonable service because West Penn: (1) failed to provide him with the information necessary to complete the installation of a new meter pole at his property; and (2) refused, upon request, to turn off his electric service. The ALJ found that West Penn’s counter to Mr. Macey’s claims have merit because the evidence establishes that the Company provided the Complainant: (1) the information necessary for the installation of the new utility pole at his home

address; and (2) sufficient time for the pole installation for attachment of the smart meter. I.D. at 16. We agree. Further, we agree with the ALJ that a reasonable inference may be drawn that the shut-off request was not completed on August 16, 2019, due to the Complainant's behavior when the Company's troubleshooter was at the service address. I.D. at 16-17.

The ALJ also denied the Complainant's requests that the Commission: (1) reprimand West Penn's management and employees, noting that such an action is an internal management decision beyond the Commission's authority; (2) assess fines against the Company, because the evidence fails to establish that West Penn violated the Code, a Commission Regulation, or Commission Order; and (3) award compensation based on the expense incurred to install his utility pole, because the Commission has no authority to award monetary damages. I.D. at 13, 18-19. We find no fault or error in the ALJ's findings on these matters. Therefore, we find the Complainant's claim that the ALJ dismissed the Amended Complaint based on matters that were not argued has no merit.

Accordingly, for all the forgoing reasons, we shall adopt the ALJ's Initial Decision, as modified, and dismiss the Amended Complaint.

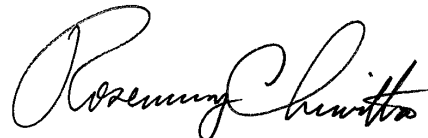
IV. Conclusion

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

IT IS ORDERED:

1. That the Exceptions filed by Christopher L. Macey on May 23, 2020, at Docket No. C-2019-3012705, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on May 6, 2020, at Docket No. C-2019-3012705, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed on September 6, 2019, and the Amended Complaint filed on October 18, 2019, by Christopher L. Macey against West Penn Power Company, at Docket No. C-2019-3012705, are denied.
4. That this proceeding at Docket No. C-2019-3012705 be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 14, 2024

ORDER ENTERED: March 14, 2024