

**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.

Cindy Kelly

C-2018-3004681

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Cindy Kelly (Ms. Kelly or the Complainant) on October 27, 2020, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which was served on the Parties on October 8, 2020, in the above-captioned proceeding. Replies to Exceptions were filed by Metropolitan Edison Company (Met-Ed or the Company) on

November 27, 2023.¹ The Initial Decision denied and dismissed the Formal Complaint (Complaint) filed by the Complainant on August 31, 2018. For the reasons discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Watson, and dismiss the Complaint, with prejudice, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Met-Ed proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant refuses to have a smart meter installed for health, safety, and privacy reasons. In her Complaint, Ms. Kelly requested an exemption from the requirement to have a smart meter installed. Complaint at 3-4.

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

The Complainant, Cindy Kelly is a Met-Ed customer who has been notified of Met-Ed's intent to install a smart meter at the service address. Answer at 1, 7.

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

¹ Met-Ed's Replies to Exceptions are considered timely. The Commission issued a stay discussed *infra at 8*, affecting this proceeding on November 4, 2020. The stay was lifted on November 14, 2023.

to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa. C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See*, H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including Met-Ed, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See, Smart Meter Procurement and Installation,*

Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*). Met-Ed sought and obtained the Commission's approval to complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. *See, Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan*, Docket No. M-2013-2341990 (Opinion and Order entered March 6, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding

On August 31, 2018, Ms. Kelly filed a Complaint with the Commission against Met-Ed objecting to the installation of a smart meter at the service address due to health, safety, and privacy concerns. As relief, Ms. Kelly requested that the Commission exempt the Complainant's residence from smart meter installation. I.D. at 1.

On October 9, 2018, Met-Ed filed an Answer and New Matter to the Complaint (Answer). In its Answer, Met-Ed denied all material allegations of fact in the Complaint. Met-Ed also asserted that the Company was installing the smart meter in accordance with Act 129 and that the Company had the right to terminate service when a customer refuses to allow the Company access to its meters. 66 Pa. C.S. § 2806 *et seq.* Answer at 1-4. In the New Matter, Met-Ed averred there is no legal basis upon which to grant the relief requested in the Complaint. *Id.* at 8. Therefore, Met-Ed requested that the Commission dismiss the Complaint with prejudice. *Id.* at 9.

Also, on October 9, 2018, Met-Ed filed preliminary objections in response to the Complaint. On October 19, 2018, the Complainant filed a reply to the Answer and New Matter. On November 21, 2018, an Interim Order was issued denying Met-Ed's Preliminary Objections. I.D. at 2.

On December 6, 2018, an Interim Order was entered establishing a procedural schedule. *Id.*

On May 30, 2019, an Interim Order was entered scheduling a prehearing conference for June 27, 2019. The prehearing conference was subsequently canceled due to the Complainant advising in a status report filed May 21, 2019, that she was declining any prehearing conference and preferred to proceed directly to an evidentiary hearing. *Id.*

On June 3, 2019, the Commission issued a Call-in Telephone Hearing Notice, scheduling an evidentiary hearing for June 27, 2019. *Id.*

The evidentiary hearing was subsequently rescheduled for September 10, 2019, by Hearing Notice issued July 18, 2019. On August 30, 2019, an Interim Order Confirming Requirements for Evidentiary Hearing was issued. *Id.*

On September 4, 2019, the Complainant submitted a request that the evidentiary hearing be continued and that the Parties be permitted to file written direct testimony. On September 5, 2019, an Interim Order was entered granting Complainant's request to continue the hearing and denying the Complainant's request for written direct testimony. *Id.*

On October 17, 2019, a Hearing Cancellation/Reschedule Notice was issued, rescheduling the evidentiary hearing for November 7, 2019. On October 18, 2019, an Interim Order Confirming Requirements for Rescheduled Evidentiary Hearing was issued. I.D. at 3.

On November 7, 2019, an evidentiary hearing was held. The Complainant appeared *pro se* and presented her case through her own testimony and exhibits. Met-Ed

was represented by counsel, Tori Giesler, Esq., and Lauren Lepkoski, Esq., and presented its case through the testimony of Company employee Mr. John Ahr. *Id.*

At the evidentiary hearing, the Complainant offered various documents as exhibits, including various reports, statements, internet publications and articles, but only Exhibits L-93, M-3, M-8, T-3, and T-13 were admitted into the evidentiary record. Exhibits M-3 and M-8 are confidential exhibits. Met-Ed presented Met-Ed Exhibits 1, 2 and 3, which were admitted into evidence. Additionally, official notice was taken of Act 129,² Complainant Exhibit L,³ 52 Pa. Code § 57.194,⁴ and Met-Ed Exhibits PD-1 through PD-5. *Id.*

At the hearing, the Complainant also offered Exhibit E 41-47 and Exhibit A 37-39 to be admitted into evidence, stating they were government or public documents and admissible as an exception to the hearsay rule. Met-Ed objected to the documents as hearsay at the hearing. The ALJ advised the Parties that consideration would be given to take official notice of the documents. The Complainant was directed to submit any information to establish that the proposed exhibits were public documents and admissible as an exception to the hearsay rule within 10 days of the hearing and Met-Ed was directed to submit any objections within 10 days of service of the Complainant's information. *Id.*

On November 19, 2019, the ALJ received correspondence from the Complainant dated November 15, 2019, requesting that Complainant Exhibit E 41-47 and Complainant Exhibit A 37-39 be admitted into evidence. The Complainant asserted that Complainant Exhibit E 41-47 is a statement by the National Director of Intelligence

² I.D. at 3 (citing Tr. at 169).

³ I.D. at 3 (citing Tr. at 200).

⁴ I.D. at 3 (citing Tr. at 211).

before the House of Representatives and that Complainant Exhibit A 37-39 is a statement by the United States Access Board concerning a report on the Indoor Environmental Quality Project, both of which were statements of a public office and exceptions to the hearsay rule. I.D. at 3-4.

No objection was filed to the request that official notice be taken of Complainant Exhibit E 41-47 and Complainant Exhibit A 37-39. I.D. at 4.

On December 20, 2019, an Interim Order Setting Briefing Schedule was entered. *Id.*

On January 30, 2020, both Parties filed main briefs.⁵

On February 6, 2020, the Complainant filed a request to submit a reply brief. On April 29, 2020, an Interim Order was entered, granting the parties leave to file reply briefs by May 28, 2020. *Id.*

On May 11, 2020, an Interim Order was entered granting the Complainant's request to take official notice of Complainant Exhibit E 41-47, and Complainant Exhibit A 37-39. *Id.*

On May 22, 2020, the Complainant filed a request for extension of time to file reply briefs. The Complainant's request was granted by Interim Order entered May 28, 2020. *Id.*

⁵ The ALJ noted that the Complainant's Main Brief contains references, citations, and quotes from documents not admitted at the hearing as exhibits. This extra-record discussion was not considered by the ALJ in the preparation of the Initial Decision. I.D. at 4, n. 4.

On August 3, 2020, both parties filed reply briefs.⁶ *Id.*

On September 2, 2020, an Interim Order was issued closing the evidentiary record. I.D. at 5.

On October 8, 2020, the Commission served ALJ Watson's Initial Decision in *Cindy Kelly v. Metropolitan Edison Company*, Docket No. C-2018-3004681.

As noted above, on October 27, 2020, the Complainant filed Exceptions to the Initial Decision.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa. C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020 Stay Order*). The *November 4, 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and her procedural rights and obligations under the Commission's regulations. On November 27, 2023, Met-Ed filed Replies to Exceptions.

⁶ The ALJ noted that the Complainant's Reply Brief contains references to documents and information not admitted at the hearing as exhibits or testimony. This extra-record discussion was not considered by the ALJ in the preparation of the Initial Decision. I.D. at 4, n. 5.

III. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

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

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

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

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

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

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

determining whether a complainant has met the burden of persuasion, the fact-finder⁷ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501⁸ Complaint Challenging Smart Meter Installation

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

⁷ 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)).

⁸ The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See*, 52 Pa. Code § 57.28(a)(1). *See, Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

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

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain “adequate, efficient, safe, and reasonable service⁹ 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,

⁹ The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. See, 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501¹⁰ of the Code. Therein, the Supreme Court stated:

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

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

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

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

¹⁰ 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*).

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).¹¹

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

¹¹ 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)¹² from the AMI meter.¹³

3. Other Relevant Legal Standards

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

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

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

¹² RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

¹³ See, *Povacz 2019 Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

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

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

B. ALJ's Initial Decision

In the Initial Decision, ALJ Watson made thirty Findings of Fact (FOF) and reached sixteen Conclusions of Law (COL). *See, I.D.* at 5-9, 18-21. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In his disposition, ALJ Watson addressed the following issues: (1) the smart meter mandate; (2) unreasonable or inadequate service; and (3) the Complainant's procedural due process concerns. *I.D.* at 12-18.

1. Smart Meter Mandate

The ALJ noted that Commission precedent supports Met-Ed's position that the Commission cannot grant exceptions to the requirements of Act 129 that smart meters be installed at all service locations and allow customers to "opt-out."¹⁴ The ALJ explained that the Company's Smart Meter Deployment Plan and Act 129 do not provide for an opt-out. I.D. at 13. The ALJ noted that the Commission reaffirmed this conclusion, holding in a similar complaint that: (1) there is no provision in the Code or the Commission's regulations or Orders that allows an opt-out; (2) there is Commission precedent that no opt-out exists in current Pennsylvania law; and (3) the EDC is legally required to install smart meters by Act 129 and Commission Orders. I.D. at 13 (citing *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019)). The ALJ noted that the Complainant presented no evidence to show that Met-Ed's refusal to allow an opt-out is in any way a violation of the Company's Smart Meter Deployment Plan (SMDP) or any Commission order. The ALJ stated that the Complainant's claim regarding an opt-out is not supported by the evidence and must be dismissed. I.D. at 13.

2. Unreasonable or Inadequate Service

The ALJ provided that the Complainant testified about the reasons why she does not want a smart meter including health, safety and privacy. I.D. at 13.

The ALJ explained that pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the

¹⁴ I.D. at 13 (citing *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011)).

accommodation, convenience, and safety of its patrons, employees, and the public. I.D. at 13-14 (citing 66 Pa. C.S. § 1501).

The ALJ noted that the Complainant testified that smart meters may negatively impact her health. The Complainant testified about her medical history and symptoms. She explained her medical diagnosis and that she believes smart meters are detrimental to her health. I.D. at 14 (citing Tr. at 65, 71, 73, 96-97, 106).

The ALJ provided that the Complainant testified that smart meters cause negative impacts to “the viability of humans, wildlife, and the environment around them.” In addition, she testified that smart meters “jeopardize the privacy of all homes and buildings that they are placed upon, and makes [her] less safe in [her] home.” I.D. at 14 (citing Tr. at 30). In addition, she testified that “smart meters and the networks that they participate in are high-value targets...[and] are vulnerable to hacking and harm caused by external parties.” *Id.* The Complainant also stated that smart meters “pose a significant danger to all building they are placed upon” and “[t]he vulnerabilities result in meter meltdowns, fires, and explosions.” *Id.*

The ALJ noted that Met-Ed employee, Mr. Ahr, testified to rebut the Complainant’s claims. Regarding health and safety concerns, Mr. Ahr testified that Met-Ed’s smart meters are compliant with the standards set by the Federal Communications Commission (FCC), the American National Standards Institute (ANSI) and are certified by Underwriters Laboratory (UL). I.D. at 15 (citing Tr. at 354). Mr. Ahr testified that he is not aware of any fires caused by the smart meters in Met-Ed’s service territory and has no reason to believe the smart meters used by Met-Ed are unsafe. I.D. at 15-16 (citing Tr. at 356).

Mr. Ahr also testified regarding the privacy measures Met-Ed uses to safeguard customer data. Mr. Ahr explained that the only information available to the

Company through the smart meter network is the customer's total electric usage. I.D. at 15 (citing Tr. at 350). Mr. Ahr testified that the Company must follow its Commission-approved customer Privacy Policy which prohibits the Company from sharing sensitive customer information with third parties. He also testified that the smart meter network complies with the security standards of the advanced metering infrastructure guidelines published by North American Energy Standards Board (NAESB) and National Institute of Standards and Technology (NIST). I.D. at 15 (citing Tr, at 353, Met-Ed Exh. JCA-2). Mr. Ahr testified that no personally identifiable customer information is transmitted by the smart meter or the smart meter network. Mr. Ahr explained that the smart meter network has security safeguards including encryption, firewalls, password protection and continuous security monitoring. *Id.*

The ALJ concluded that the Complainant failed to meet her burden to demonstrate that the Company's installation of the smart meter at the service address constitutes unreasonable or inadequate service. The ALJ reasoned that although the Complainant raised concerns about health, safety and privacy, these claims consisted solely of the Complainant's lay opinions and beliefs. The ALJ explained that assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 16 (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). The ALJ determined that there is no record evidence to support the conclusion that Met-Ed's installation of the smart meter at the service address constitutes a violation of Section 1501 of the Code. The ALJ denied and dismissed the Complainant's claims with prejudice. I.D. at 16.

3. Complainant's Procedural Due Process Concerns

The ALJ noted that the Complainant raised procedural due process claims regarding the conduct of the evidentiary hearing in her Main and Reply Briefs. I.D. at 16. The ALJ provided that the Complainant argues that she had a delay on her phone that made it difficult for her to hear others and for others to hear her. I.D. at 16 (citing

Complainant's Main Brief at 5). The ALJ stated that the Complainant complained about the delay only once during the hearing towards the end of the hearing. I.D. at 16 (citing Tr. at 385). The ALJ observed that at no point in the hearing did an individual indicate an inability to hear the Complainant and at no point did the Complainant indicate that the delay on her phone impacted her ability to hear others. I.D. at 16-17.

While the Complainant argued that the hearing lasted over eight hours without any breaks for a rest or a meal, the ALJ noted that the Complainant did not ask for a break during the hearing. The ALJ explained that at the beginning of the hearing, he instructed the parties that if anybody needed a break to let him know and that he would be "more than generous with breaks." I.D. at 17 (citing Tr. at 20). The ALJ noted three other occasions during the hearing when he asked the parties if they needed a break, but the Complainant did not indicate that she needed a break. I.D. at 17 (citing Tr. at 257, 313, 328).

The ALJ further noted that the Complainant described the difficulties of the hearing process as "overwhelming" and like "being in a foreign country" because she did not understand the legal procedures or terminology. I.D. at 18 (citing Complainant's Main Brief at 14). The ALJ observed that the Complainant advised in a status report that she was "declining" a prehearing conference and preferred to proceed directly to an evidentiary hearing. The ALJ reasoned that the Complainant may have had questions addressed and may have better understood the hearing procedures and rules of evidence if she had participated in a prehearing conference. I.D. at 18.

Based on all the above, the ALJ denied the Complaint finding that Ms. Kelly has failed to carry her burden of proof establishing that Met-Ed's installation of a smart meter at the service address would violate the Public Utility Code or a regulation or order of the Commission. I.D. at 20, COL No. 20 (citing 66 Pa.C.S. §332). The ALJ concluded that the Complainant failed to carry her burden of proof establishing

that Met-Ed, by installing a smart meter at the service location, would provide unsafe or unreasonable service in violation of 66 Pa. C.S. §1501. I.D. at 20-21, COL No. 21.

C. Exceptions, Replies, and Disposition

The Complainant's Exceptions¹⁵ generally pertain to the following:

(1) an opt-out request; (2) burden of proof; (3) due process; and (4) issues with several Findings of Fact.

The Complainant used extra-record materials in her Exceptions. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). Any extra-record information Ms. Kelly used in her Exceptions will not be considered. *Apollo Gas*.

¹⁵ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), to secure a just, speedy, and inexpensive determination. The Complainant has marked her Exceptions as Confidential and states "some of the contents are CONFIDENTIAL". We will not be discussing the details of the Complainant's medical history here to avoid any confidential information.

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

a. Exception Nos. 2, 4, 8, 9, and 10

In her Exception Nos. 2, 4, 8, 9, and 10, the Complainant contends that she did not request an opt-out from meter installation, but rather an “accommodation.” The Complainant argues that Act 129 does not require the installation of a smart meter at the service location and that “[b]y refusing to consider or offer an accommodation there is a violation of Section 1501.” Exc. at 5-6, 10-12.

b. Replies

Met-Ed provides that the Complainant argues that she is seeking an accommodation rather than an opt-out of smart meter installation and that such an accommodation was allowed by the Commonwealth Court's interpretation of Section 1501 of the Code in *Povacz I*. R.Exc. at 5 (citing Exc. Nos. 2 and 4). Met-Ed disagrees with the Complainant's argument that the Commission has the authority to “accommodate Consumers' desire to avoid radiofrequency (RF) emissions from smart meters.” According to Met-Ed, the Complainant uses this flawed premise to request an accommodation that would provide Complainant with electrical service without requiring the installation of any device that has an operational radio or switch mode power supply. R.Exc. at 5 (citing Exc. No. 8). Met-Ed avers that the Complainant's request for an accommodation is essentially a request to opt out of smart meter installation, which is not possible. R.Exc. at 5.

Met-Ed explains that the PA Supreme Court held in *Povacz II* 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. Met-Ed explains further that Act 129 mandates smart meter deployment and the PA Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. R.Exc. at 6 (citing *Povacz II* at 1015). Without the finding of a Section 1501 violation, Met-Ed contends that it cannot be required to provide the Complainant an accommodation. R.Exc. at 7.

c. Disposition

Although the Complainant contends that she has not asked for an opt-out of a smart meter, her Formal Complaint requested to “exempt our house from a smart meter...” Complaint at 4. The Complainant phrases her request to opt out of a smart meter as an “accommodation”¹⁶ which she states, “means that Metropolitan Edison shall provide electrical service to the Kelly residence without requiring the installation of any device that has an operational radio or switch mode power supply.” Exc. at 11. The Complainant's definition of accommodation is equivalent to a request to opt out of having a smart meter at the service address.

In her Exception Nos. 2, 4, 8, 9, and 10 the Complainant argues that she is seeking an “accommodation” and the Commission should require Met-Ed to provide electrical service to the Complainant without a smart meter. Because the Pennsylvania Supreme Court's holding in *Povacz II* expressly found that there is no “opt-out” provision under Act 129, we shall deny the Exceptions.

In *Povacz II*, the Pennsylvania Supreme Court expressly concluded that the complainant's assertion of the right to “opt-out” of Act 129 was unfounded. The Supreme Court further found that a customer may seek an accommodation to smart meter

¹⁶ See Exception No. 2 at 5.

installation, provided the customer first established a violation under Section 1501 of the Code. Therein, the Supreme Court stated:

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

Povacz II, at 983-984. Therefore, by establishing that there is no “opt-out” permitting a customer to refuse smart meter installation, the Supreme Court’s holding in *Povacz II* is controlling on the question. In the present case, the Complainant's Exceptions assert that she is seeking an “accommodation,” but fails to establish any violation by the utility under Section 1501 of the Code, as a prerequisite to seeking an accommodation. Therefore, the Complainant’s Exceptions are properly viewed as seeking an opt-out of smart meter installation. Accordingly, to the extent the Complainant asserts a right to opt-out of Act 129 to refuse smart meter installation, we shall deny the Complainant’s Exception Nos. 2, 4, 8, 9 and 10 without further discussion.

2. Complainant’s Arguments Regarding the Burden of Proof

a. Exception Nos. 1, 3, 4, and 9

In her Exception Nos. 1, 3, 4, and 9 the Complainant contends that the ALJ erred in concluding that the Complainant failed to carry her burden of proof establishing that Met-Ed, by installing a smart meter at the service location, would provide unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501. Exc. at 5-7, 11; I.D. at 21.

b. Replies

According to Met-Ed, the ALJ appropriately weighed the evidence presented by the Parties and correctly rejected each of the Complainant's claims stating that assertions, personal opinions, or perceptions do not constitute evidence and her claims solely consisted of the Complainant's lay opinions and beliefs. R. Exc. at 4 (citing I.D. at 16). Met-Ed provides that the ALJ stated, and *Povacz II* affirmed, that a complainant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible. R.Exc. at 4 (citing I.D. at 9) (additional citations omitted).

c. Disposition

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

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

evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Id.* Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.

In the present case, the ALJ's analysis and disposition turned on the relative weight of the evidence presented by the Complainant to establish that installation of a smart meter would constitute a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff, versus the weight of the evidence presented by the Company in opposition to the Complaint. The ALJ concluded that the evidence presented by the Company outweighed the evidence presented by the Complainant on all issues. We concur. Upon review, we agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainant did not meet her burden to demonstrate that the Company's installation of the smart meter at her residence constitutes unreasonable or inadequate service. I.D. at 16.

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 there is no record evidence to support the conclusion that Met-Ed’s installation of the smart meter at the service location constitutes a violation of Section 1501 of the Code. The ALJ stated that although the Complainant raised concerns about health, safety, and privacy, these claims consisted solely of the Complainant’s lay opinions and beliefs. The ALJ concluded that assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 16.

Specifically, we affirm the ALJ’s finding in COL No. 16, that the Complainant failed to satisfy her burden of proof establishing that Met-Ed, by installing a smart meter at the service location, would provide unsafe or unreasonable service in violation of 66 Pa. C.S. § 1501. I.D. at 21. 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.

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

3. Complainant's Arguments Regarding Due Process

a. Exception Nos. 5, 6, and 7

In her Exception No. 5, the Complainant contends that a delay on her phone caused “many misunderstandings” at the evidentiary hearing. Exc. at 7. In her Exception No. 6, the Complainant contends that the hearing went too long without breaks and that it was not her responsibility to ask for, or accept offers, for a break. Exc. at 8-9. In her Exception No. 7, the Complainant avers that the ALJ’s contention that a prehearing conference may have been helpful to the Complainant in navigating the evidentiary hearing is “a bold assertion and blatantly false.” Exc. at 9. The Complainant also includes extra-record material on this topic in her Exceptions at pages 8-10 that will not be addressed here.

b. Replies

Met-Ed contends that the Complainant was afforded due process in this proceeding. According to Met-Ed, the Complainant was provided the opportunity to conduct discovery, call upon and cross examine witnesses and submit post-hearing briefs. Met-Ed notes that the Complainant raised due process claims regarding the conduct of the evidentiary hearing. R.Exc. at 8. With respect to the Complainant’s claim of a phone delay, Met-Ed notes that the Complainant complained only once about the delay toward the end of the hearing and the Complainant did not indicate the delay impacted her ability to hear others. R. Exc. at 8 (citing I.D. at 16-17).

Regarding the availability of breaks in the hearing, Met-Ed provides that the Parties were given multiple opportunities by the ALJ to take a break and the ALJ instructed the Parties to let him know if a break was needed and that he would be more than generous with breaks. Met-Ed maintains that at no point in the evidentiary hearing

did the Complainant request a break or accept the opportunity for a break when presented with one. R. Exc. at 9.

Met-Ed avers that the Complainant exhibited a lack of willingness to cooperate and comply with the Commission's procedural regulations. According to Met-Ed, the "Complainant declined to participate in a prehearing conference,¹⁷ failed to comply with the ALJ's litigation schedule which required the Complainant to identify all fact and expert witnesses on or before a date certain,¹⁸ repeatedly failed to follow the instructions and directives of the ALJ at hearing which led to parts of her testimony being stricken,¹⁹ and repeatedly refused to respond to questions on cross examination."²⁰ R. Exc. at 9.

c. Disposition

We find that the ALJ's conduct of the telephonic hearing did not violate the Complainant's due process rights. The ALJ began the hearing instructing the Parties that he would be generous with breaks. Tr. at 20. The Complainant did not accept the ALJ's offers for breaks during the evidentiary hearing. While the Complainant argues that it is not her responsibility to ask for or accept breaks, we disagree. The ALJ offered breaks and the Complainant refused. We do not find error in the ALJ's handling of the evidentiary hearing relating to breaks.

¹⁷ R. Exc. at 9, n. 9 (citing Tr. at 49-52; see also Complainant's Reply Status Report dated May 17, 2019 ("I decline any prehearing conference recommended by Met-Ed...").

¹⁸ R.Exc. at 9, n. 10 (citing Tr. at 55-56).

¹⁹ R. Exc. at 9, n. 11 (See, e.g. Tr. at 186).

²⁰ R.Exc. at 9, n. 12 (See Tr. at 320-325).

Regarding the Complainant's assertion of a phone delay, we note that the Complainant did not mention the delay until near the end of the hearing. None of the other Parties said that they could not hear the Complainant. While the Complainant may have been inconvenienced by a phone delay, she did not indicate to the ALJ that it was making it difficult for her to hear others. I.D. at 16-17. We note that at the start of the hearing, the ALJ asked the Parties if they could hear him and specifically asked Ms. Kelly if she could hear him. Tr. at 17. The ALJ advised "if at any time you can't hear me, just let me know." Tr. at 17. Near the end of the hearing, Ms. Kelly stated, "I'm sorry, there's a delay on my phone." Tr. at 385. Ms. Kelly did not ask for assistance with the delay. She did not ask to disconnect from the hearing and call in again. She did not state that she was having a problem hearing the other parties. Accordingly, we find no error with the ALJ's handling of the Complainant's phone delay at the evidentiary hearing.

Finally, we find no error with the ALJ's statements regarding the Complainant's refusal of a prehearing conference. The Complainant expressly refused the "prehearing conference recommended by Met-Ed." Complainant Reply Status Report dated May 17, 2019. Where a Complainant refuses to participate in a prehearing conference, then subsequently claims that the process of the proceeding is overwhelming in some way, it is reasonable for the ALJ to note that a prehearing conference may have been helpful to the Complainant.

In our opinion, the Complainant's due process rights were preserved throughout every phase of the proceeding. The ALJ made numerous adjustments to the proceeding schedules to accommodate the Complainant's requests for additional time to make filings. At the evidentiary hearing, the ALJ began the hearing indicating that breaks were possible and that he intended to be generous with breaks. The Complainant did not ask for a break and refused all offers of a break at the evidentiary hearing. The ALJ asked if the Complainant could hear him clearly and indicated that if there were

problems hearing him to let him know. The Complainant did not indicate that she was having problems hearing the other parties due to a phone delay. The ALJ reasonably noted that a prehearing conference may have helped resolve any procedural questions. Accordingly, because we conclude the ALJ protected the Complainant's procedural due process rights at every stage of the proceeding, the Complainant's Exception Nos. 5, 6 and 7 are denied.

4. Complainant's Arguments Regarding the Findings of Fact

a. Exceptions at Pages 4-5

In her Exceptions at pages 4-5, the Complainant excepts to Findings of Fact. FOF No. 13 indicates that Met-Ed plans to deploy 100% of smart meters to its customer service locations by 2022. The Complainant disagrees, averring that the SMDP never states that this represents 100% of service locations. The Complainant argues that Act 129 does not require installation of smart meters at all customer service locations. Exc. at 4.

FOF No. 20 states that the smart meter Met-Ed uses is compliant with FCC, ANSI and UL standards. The Complainant contends that only one standard deals with human health and it is outdated. Exc. at 4.

FOF No. 23 states that the Complainant spoke to a Met-Ed representative and agreed to the installation of a smart meter. The Complainant contends that she agreed to the installation "under the condition that the company would provide safety information that would not cause harm to the health of humans." Exc. at 5.

FOF No. 27 states “On September 17, 2019, Met-Ed was served with the Complaint in the instant proceeding and ceased its installation efforts.” The Complainant notes that the date should be September 17, 2018.

b. Replies

Met-Ed contends that the Complainant fails to demonstrate that the Findings of Fact are not based on substantial evidence or are not borne out by the weight of the evidence as follows:

Complainant relies on language in *Povacz I* that erroneously states “the PUC’s position that Act 129 requires installation of wireless smart meters in all consumer residences is incorrect.” Complainant’s Exceptions, p. 4 (¶ 1). The PA Supreme Court in *Povacz II* rejects the Commonwealth Court’s assertion in *Povacz I* and affirms that Act 129 is indeed a mandate with no opt out provisions.

The Complainant takes issue with the Finding that Met-Ed’s smart meters comply with American National Standards tests for smart meters. Complainant’s Exceptions, p. 4 (¶ 2). However, Complainant does not present nor cite evidence showing Met-Ed’s smart meters do not comply with these standards and does not present or cite evidence showing that the American National Standards violation the Public Utility Code, or the Commission’s regulations or orders.

Complainant attempts to rely on extra-record evidence to assert that a Company representative spoke with the Complainant who agreed to the installation of a smart meter, under the condition that the Company would provide safety information related to the smart meter’s health effects on humans. Complainant’s Exceptions, p. 4 (¶ 3).

R.Exc. at 4-5.

c. Disposition

Regarding FOF No. 13, Mr. Ahr testified that 100% of the Company's smart meters will be installed by the end of 2022. Mr. Ahr stated "[T]his plan requires Met-Ed to install smart meters at all customer service locations." Tr. at 348-349. As discussed *supra*, the Complainant is incorrect in her assertion that Act 129 does not require EDCs to install smart meters at each customer service location. Accordingly, we find there is no error in FOF No. 13.

Similarly, there is no error in FOF No. 20 or FOF No. 23. FOF No. 20 correctly reflects the testimony of Mr. Ahr that the smart meter used by Met-Ed is compliant with the standards of the FCC, ANSI and is UL certified. Tr. at 354. FOF No. 23 correctly reflects the testimony of Mr. Ahr that on January 15th of 2019, the Company spoke with Ms. Kelly, and she agreed to the installation of the meter. Tr. at 357.

However, we find there is a typographical error in FOF No. 27. While Mr. Ahr testified that the Formal Complainant was served on the Company on September 17, 2019, the Formal Complaint was in fact served on September 17, 2018. *See*, Tr. at 359; Answer at 3. Therefore, FOF No. 27 should state:

On September 17, 2018, Met-Ed was served with the Complaint in the instant proceeding and ceased its installation efforts. Answer at 3.

We shall modify this FOF, however, this correction is immaterial to our finding that the Complainant has failed to show that installation of the proposed AMI meter would violate a Commission Order, Regulation or Commission-approved tariff. This is a minor typo and does not affect the rights of the Parties in the proceeding. The

Initial Decision is modified to correct this typographical error. The Complainant's remaining Exceptions regarding the Findings of Fact are denied.

IV. Conclusion

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

IT IS ORDERED:

1. That the Exceptions filed by Cindy Kelly on October 27, 2020, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on October 8, 2020, at Docket No. C-2018-3004681, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on October 8, 2020, at Docket No. C-2018-3004681, is adopted, as modified by this Opinion and Order.

3. That Finding Of Fact No. 27 shall be modified as follows: On September 17, 2018, Met-Ed was served with the Complaint in the instant proceeding and ceased its installation efforts. Answer at 3.

4. That the Formal Complaint filed by Cindy Kelly, on August 31, 2018, at Docket No. C-2018-3004681, is dismissed, with prejudice.

5. That this proceeding is marked closed.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 14, 2024

ORDER ENTERED: March 14, 2024