

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

Public Meeting held May 9, 2024

Commissioners Present:

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

Lauren Zonca

C-2019-3007961

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 Ms. Lauren Zonca (Complainant or Ms. Zonca) filed on December 7, 2023. The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which was served on the Parties on September 11, 2020. On December 21, 2023, Metropolitan Edison Company (Met-Ed or the Company) filed

Replies to Exceptions.¹ For the reasons discussed below, we shall deny the Complainant's Exceptions; adopt the Initial Decision of ALJ Watson; and dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Formal Complaint (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. Met-Ed, an electric distribution company (EDC) subject to the jurisdiction of the Commission, owns, maintains, installs, and operates the meters in its distribution system. *See*, FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at 44. The Complainant is a Met-Ed customer who has been notified of Met-Ed's intent to install a smart meter at her residence that provides the function of automatic meter reading (AMR). The Complainant requested that Met-Ed not install a smart meter at her residence due to health concerns. Complaint at 2.

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

¹ Initially, on October 1, 2020, and on December 1, 2023, Met-Ed filed a letter stating that it would not be filing Exceptions to the matter.

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 Implementation Order*). Met-Ed 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 February 8, 2019, the Complainant filed the instant Complaint.² In the Complaint, Ms. Zonca explained that she does not want a smart meter installed at her home due to health concerns for both her and her young daughter. As relief, she requested an opt-out of the smart meter installation. Complaint at 2-3; I.D. at 1.

On March 11, 2019, Met-Ed filed an Answer and New Matter to the Complaint (Answer), essentially denying material allegations in the Complaint but contending that the Company is required by Act 129 to install smart meters at the service address. Answer at 1-2; I.D. at 1.

Also, on March 11, 2019, Met-Ed filed a Preliminary Objection in response to the Complaint (Preliminary Objection), essentially repeating its legal argument that, in accordance with Act 129 and the Commission's orders, the Company is required to develop and implement a smart meter installation plan. Met-Ed also argued that because the Complainant failed to allege that the Company committed or omitted an act in violation of its tariff or a Commission Statute, Regulation or Order, the Complaint is legally insufficient and, therefore, must be dismissed. Preliminary Objection at 6; I.D. at 2.

² Upon review of the Commission's case management system, the Complaint was served on the Respondent on February 19, 2019. Therefore, pursuant to 52 Pa. Code § 5.61(a), Met-Ed was provided twenty (20) days to file an Answer to the Complaint. Therefore, an Answer to the Complaint was due March 11, 2019.

On March 28, 2019, the Complainant filed a Reply to Met-Ed's Answer (Reply to Answer). In her Reply to Answer, the Complainant provides links to several articles, reports, and studies in support of the argument in her Complaint. Reply to Answer at 2-3; I.D. at 2.

On May 3, 2019, the ALJ issued an Interim Order denying Met-Ed's Preliminary Objection. On October 28, 2019, the ALJ issued a Corrected Interim Order regarding the procedural schedule. I.D. at 2.

By Hearing Notice dated January 9, 2020 (Hearing Notice), an Initial Telephonic Hearing was scheduled for February 19, 2020, at 1:00 p.m. The Hearing Notice included the date, location, and time of the hearing. I.D. at 2.

On February 19, 2020, the evidentiary hearing was held as scheduled (February 19 Hearing). The Complainant appeared *pro se*, testified on her behalf, and did not offer any exhibits. The Company was represented by counsel, presented the testimony of one witness, Mr. John Ahr (Mr. Ahr), and offered two exhibits, JCA-1 – JCA-2, which were admitted into the record as evidence. I.D. at 2; Tr. at 53. During the hearing, the ALJ took judicial notice of five Met-Ed Exhibits marked PD-1 through PD-5, which were identified as copies of the following: (1) Act 129; (2) the *Smart Meter Implementation Order*; (3) the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered on June 9, 2010); (4) the *2014 Smart Meter Order*; and (5) the Commission Secretarial Letter, dated May 1, 2015, approving Met-Ed's smart meter privacy policy. I.D. at 2-5; Tr. at 28, 31, 33, 36, 42.

On April 6, 2020, the ALJ issued an Interim Order requiring that any briefs be filed on or before May 29, 2020. On or about May 29, 2020, Met-Ed filed its Main Brief (Met-Ed Brief).³ The Complainant did not file a brief. I.D. at 2.

On August 14, 2020, the ALJ issued a Corrected Interim Order Closing the Hearing Record. I.D. at 3.

In the Initial Decision issued on September 11, 2020, the ALJ dismissed the Complaint due to the failure of the Complainant to meet her burden of proof. I.D. at 1, 10, 13.⁴

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.

³ According to the Initial Decision, Met-Ed filed its Main Brief on May 29, 2020. Upon review of the Commission's case management system, the Met-Ed Brief was added to the record in this proceeding June 1, 2020.

⁴ We note that, prior to the Commission's issuance of a stay of all smart meter proceedings, see *infra*, the 20-day period for filing exceptions had run without exceptions being filed. However, the Commission, at the time of lifting the stay, see *infra*, in its discretion under 52 Pa. Code § 5.533, granted the Complainant 20-days in which to file exceptions. Therefore, the present Exceptions have been timely filed.

On May 19, 2023, the Complainant filed a document and cover letter.⁵

By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints (*November 2023 Lifting Stay Order*). On November 21, 2023, a Corrected Notice was provided (Corrected Notice), informing the Complainant of the lifting of the stay and their procedural rights and obligations under the Commission’s regulations.⁶ The Corrected Notice further advised that all parties “have 20 days from the date of this Notice to file exceptions, and 10 days thereafter to file reply exceptions, pursuant to 52 Pa. Code §§ 5.533 and 5.535.” Corrected Notice at 2.

As previously noted, the Complainant timely filed Exceptions on December 7, 2023, and Met-Ed timely filed Replies to Exceptions on December 21, 2023. Based upon the lifting of the stay, we shall now address the Complainant’s Exceptions.

⁵ As noted, *infra*, the Complainant’s filing on May 19, 2023, is considered extra-record material filed after the close of the record and, therefore, cannot be entered into the record at this procedural stage of the proceeding.

⁶ According to the Corrected Notice, “the Incorrect Notice (exceptions filed) was attached to the [*November 2023 Lifting Stay Order*]. The Notice below is appropriate for this case, where only the Initial Decision has been issued prior to the Stay Order.” *See*, Corrected Notice at 1.

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-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. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (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*, 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

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

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*, 280 A. 3d at 983-984.

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable 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. Cmwlt. 1995).

but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code.¹⁰ 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 v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013) (*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.*

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*).

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).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 *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

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, 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.*

B. ALJ's Initial Decision

In the Initial Decision, ALJ Watson made twenty-one Findings of Fact (FOF) and reached seventeen Conclusions of Law (COL). I.D. at 3-6, 10-13. The FOF and COL are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ first addressed the smart meter mandate. Specifically, the ALJ noted that: (1) the Commission recently held in a similar proceeding that no provision in the Code or the Commission's Regulations or Orders allows a customer to "opt-out" of a smart meter installation; (2) there is Commission precedent that no opt-out provision exists in current Pennsylvania law; and (3) Met-Ed, an EDC, is legally required to install smart meters by Act 129 and Commission Orders. I.D. at 8 (citing *Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019); *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011)).

The ALJ found that there is no dispute that Act 129 does not provide for customers to opt-out of smart meter installation. The ALJ pointed out that the Complainant testified as to her belief that Act 129 requires the Company to install a smart

meter at the service location. The ALJ further noted that the Complainant testified that if Met-Ed were to install a smart meter at the service location, it would violate Section 1501 of the Code. I.D. at 9 (citing Tr. at 18).

The ALJ then addressed the Complainant's testimony regarding the reasons that she does not want a smart meter and her concerns related to health, safety, and privacy. The ALJ referred to Section 1501 of the Code to note that public utilities are required to maintain safe, adequate, and reasonable service 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. I.D. at 9 (citing 66 Pa. C.S. § 1501).

The ALJ noted that although the Complainant testified that smart meters pose a health and safety risk and would violate her privacy, she failed to present any credible or competent evidence to support her general concerns. I.D. at 9 (citing Tr. at 11). The ALJ also noted that Met-Ed's witness, Mr. Ahr, testified that: (1) he had no reason to believe that Met-Ed's smart meters are unsafe; (2) smart meters are compliant with standards set by the Federal Communications Commission (FCC) and the American National Standards Institute (ANSI), and are Underwriter Laboratory (UL) certified. I.D. at 9 (citing Tr. at 26). The ALJ also referred to Mr. Ahr's testimony about Met-Ed's privacy policy and network security. Specifically, Mr. Ahr testified that the Company's smart meter network complies with AMI guidelines published by the National American Energy Standards Board (NAESB) and the National Institute of Standards and Technology (NIST). I.D. at 9-10 (citing Tr. at 45).

The ALJ found that the Complainant's evidence consists solely of her unsubstantiated personal feelings and beliefs, and assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 10 (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

Accordingly, the ALJ dismissed the Complaint because the Complainant failed to meet her burden to demonstrate that the Company's installation of a smart meter at her residence constitutes unreasonable or inadequate service. I.D. at 10.

C. Exceptions¹⁴

In her Exceptions, the Complainant disagrees with the ALJ's Initial Decision, asserting that the ALJ failed to consider: (1) that an established guideline or standard of safety for protections against RF exposure does not exist; (2) that the universal smart meter mandate is based upon the Commission's misconstruction of the legislative intent of Act 129; (3) the Complainant's privacy and safety concerns; and (4) that mandating smart meter installations would force the Company to use the Complainant's home as a relay point to transmit data which does not originate from the Complainant's property, a violation of her Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendment rights under the United States Constitution (U.S. Constitution). Exc. at 6-7, 10, 18, 27, 30 (citing 66 Pa. C.S. §§ 1501, 2807(f)(1), (2), and (7)).

The Complainant puts forth several assertions to advance her argument that Met-Ed would use AMI smart meters installed on her home as "relay points to transmit data that does not originate from [her] property." Exc. at 10, 12, 33 (emphasis omitted). Generally, the Complainant asserts that Met-Ed is not permitted by the Code, Commission Regulations, or Act 129 to install an AMI smart meter device on her

¹⁴ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

home.¹⁵ In support of her assertions, the Complainant posits, *inter alia*, that: (1) no statute, regulation, or policy relevant to the matters alleged in her Complaint preempt, supersede, or take precedence over private property rights protected under the state and federal constitutions; (2) the Code and Commission Regulations do not apply to data communication devices that emit RF; (3) Met-Ed has no permission or authority, legally or otherwise, to install a data communication device that emits RF on the Complainant's home or property; (4) Met-Ed, the Commission, and the state of Pennsylvania have no right or authority to increase a customer's risk to biological or adverse health effects as a condition to having access to electric service; (5) the Commission does not have statutory authority or jurisdiction over the public's inherent right to deny consent; (6) the Commission cannot mandate or require that utility companies install smart meters on a customer's property; (7) Act 129 does not grant authority to an EDC to force customers to give consent to the installation of an AMI wireless meter on a customer's home; (8) the Commission has never required or obtained proof that RF emissions from AMI wireless meters do not cause adverse health effects; and (9) the Company is not constitutionally permitted to terminate or withhold electric service on the basis of the Complainant not giving consent to the Company's installation of an AMI wireless meter on the Complainant's home or property. Exc. at 10-15, 25-26, 32-34.

The Complainant also suggests that AMI smart meters are not covered under Section 1406(a)(4) of the Code and Section 56.81(3) of the Commission's Regulations. Exc. at 10-11, 15, 32. According to the Complainant, the term "smart meter" is a euphemism for a "composite collection" of RF-producing devices that the Company is seeking to install under the guise of a "meter." Exc. at 15. The Complainant continues that by threatening to terminate the Complainant's access to electric service, the Company and the Commission are, essentially, misapplying the meaning of the term "meter." Exc. at 15 (citing 52 Pa. Code. § 56.81(3) and 66 Pa. C.S. § 1406(a)(4)).

¹⁵ We note that at the February 19 Hearing, the Complainant testified that she believes that Act 129 requires a smart meter. *See*, Tr. at 18.

Further, the Complainant objects to Met-Ed's intent to use her home as a site for the Company's AMI smart meter to function as a relay point to transmit data without authority, permission, or the legal right to do so. Moreover, the Complainant posits that her rights under the Fourteenth Amendment to the U.S. Constitution are protected from enforcement of Act 129 which, according to the Complainant, is not an enforceable law. Exc. at 16. As such, the Complainant argues that if the Commission permits the Company to install and operate an AMI smart meter on her property, then such action will violate her rights under the Pennsylvania Constitution and the Fourth, Fifth, Eighth, Ninth, and Fourteenth Amendments under the U.S. Constitution. Exc. at 17-18, 26-27, 31, 33-35.

The Complainant also opines that the Commission is misconstruing the legislative intent of Act 129. Specifically, the Complainant refers to Sections 2807(f)(2) and 2807(f)(7) of the Code to offer her interpretation that EDCs are required to offer or make available smart meters to customers who request and agree to pay for the cost of the smart meters at the time of the request. Exc. at 18-19, 32 (citing 66 Pa. C.S. § 2807(f)(2), (7)). According to Ms. Zonca, Act 129 contains no language that: (1) requires smart meter installations for customers who do not want a smart meter; (2) mandate smart meters; and (3) does not allow a customer to opt-out of a smart meter installation. Exc. at 20, 25. Further, in dispute of the Commission's conclusion that Act 129 does not allow for a customer opt-out of smart meter installations, the Complainant argues that Section 2807(f)(2) is "explicitly opt-in language" because the customer has an option to choose a smart meter installation. Exc. at 20-21 (citing 66 Pa. C.S. § 2807(f)(2), (7)). Moreover, according to the Complainant, Act 129 does not require smart meter installations because early versions of House Bill 2200 were amended based on comments from three (3) state representatives opposing a smart meter mandate. Exc. at 21-24. Additionally, the Complainant opines that in *Povacz II*, the Supreme Court failed to consider the legislative direction given in Section 2807(f)(7) of Act 129. Exc. at 24.

The Complainant also disagrees with the ALJ's conclusion that the Complainant failed to prove, by a preponderance of the evidence, that the installation of a smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501. Exc. at 27. Specifically, the Complainant argues that the ALJ failed to consider that an established guideline or standard of safety for protections against RF exposure does not exist. More specifically, the Complainant asserts that the interaction of RF with biological structures and systems is a fact and, therefore, constitutes unreasonable service, in violation of 66 Pa. C.S. §1501. Exc. at 27, 33-34. Further, the Complainant asserts that the findings in several published reports demonstrate that: (1) RF exposure from Met-Ed's AMI meters increases the risk of certain cancers; and (2) AMI meters and wireless mesh networks have never been tested for safety, or with regard to potential hazards and risks posed by RF. Exc. at 28-29.

Additionally, the Complainant refers to the ALJ's analysis of the Complainant's privacy and safety concerns as "perfunctory" at best.¹⁶ Exc. at 5, 30. The Complainant argues that customer privacy is vulnerable because the Commission has given the Company and other Pennsylvania EDCs "free reign to collect customer data at sub-15-minute intervals with no lower limit to granularity." Exc. at 31 (emphasis omitted). Further, the Complainant avers that Met-Ed's installation and use of an AMI wireless smart meter on her home to collect and transmit more data than is necessary for generating a monthly bill without her consent "shall constitute electronic surveillance as defined and expounded under 50 U.S.C. 36, Subchapter I, §§ 1801(f), 1809(a), 1810, and 1812." *Id.* (emphasis omitted).

Finally, the Complainant closes her Exceptions by claiming that the Commission has "other interests" and is, essentially, biased against the Complainant.

¹⁶ We note that the Complainant makes several references to "the Naperville case" without any citation. *See*, Exc. at 30-31.

Exc. at 35 (emphasis omitted).

D. Replies to Exceptions

In its Replies, Met-Ed disagrees with the Complainant's claims regarding RF exposure, contending that there is no reliable medical or scientific evidence upon which to conclude that exposure to the RF radiation and RF fields produced by installed metering devices would exacerbate or contribute to biological or adverse health effects. R. Exc. at 2-3 (citing Exc. at 27-29). Met-Ed argues that the ALJ correctly found that the Company's smart meters are UL certified and comply with: (1) the AMI guidelines published by the NAESB and the NIST; and (2) the standards set by the FCC and the ANSI. R. Exc. at 3 (citing I.D. at 5-6, FOF Nos. 20-21; Tr. at 26, 45). Further, Met-Ed addresses the Complainant's argument that the Company's smart meter at her address presents health and safety concerns, countering that nothing in the record demonstrates that the Complainant possesses the requisite technical expertise to competently testify or opine about such concerns. R. Exc. at 3 (citing Tr. at 12-13, 15). Moreover, Met-Ed argues that the Complainant, through her Exceptions, is attempting to incorporate various pieces of extra-record evidence in support of her position. R. Exc. at 3.

Met-Ed argues that the Complainant's health and safety concerns were fully rebutted by the testimony of the Company's witness, Mr. Ahr, who testified that the Company's smart meters comply with all safety requirements and standards established by entities, including the FCC, ANSI, and UL. Further, Met-Ed notes that Mr. Ahr explained that the meter manufacturer is aware of product behavior and can detect product anomalies, if any, during ANSI testing, which the meters passed. R. Exc. at 4 (citing Tr. at 21-22, 45-46). Moreover, Met-Ed contends that even if the Complainant were permitted to present her purported evidence that the smart meters would cause, contribute to, or exacerbate adverse health effects, there is no reliable medical or scientific evidence in the record to reach that conclusion and, therefore, the Complainant's Exceptions should be dismissed. R. Exc. at 4.

Met-Ed also argues that Mr. Ahr thoroughly refuted the Complainant's disputes the Complainant's data privacy concerns. Specifically, Met-Ed notes that Mr. Ahr explained that Met-Ed follows its Commission-approved Smart Meter Privacy Policy (Privacy Policy), which governs how the Company must treat customer information, specifies the types of information transmitted through the Company's smart meters, and outlines the security protections in place to protect against unauthorized access of customer information on the smart meter network. R. Exc. at 5 (citing Met-Ed Exh. JCA-2; Tr. at 40-45). Further, Met-Ed notes that under the Privacy Policy, the Company is not permitted to share sensitive customer information with third parties without the customer's informed consent, and no other sensitive account information such as names, addresses, account numbers, are transmitted through the smart meter network. R. Exc. at 5 (citing Tr. at 43-44). Moreover, Met-Ed notes that only the customer's total electric usage is transmitted through the smart meter to the Company and the Company cannot determine what appliance is being used in the customer's home. Furthermore, Met-Ed notes that the Company's smart meter network is: (1) cybersecure, employing several security protections, such as encryption, firewalls, password protection, and continuous security monitoring, to protect against the unauthorized access of a customer's usage data; and (2) in compliance with the published guidelines of the NAESB and the NIST. R. Exc. at 5 (citing Tr. at 44-45).

In addressing the Complainant's contention that the Company's installation of the smart meter will violate the U.S. Constitution and the Pennsylvania Constitution, Met-Ed counters that EDCs, like Met-Ed, are not state actors and the Company cannot violate the Complainant's constitutional rights by installing a smart meter. R. Exc. at 6 (citing *Povacz II*; *Povacz v. Pa. PUC*, 241 A.3d 481, 486 n.9 (Pa. Cmwlth. 2020)). Met-Ed continues that even if the Company were a state actor, the Seventh Circuit Court of Appeals found that the collection of smart meter data by a city-owned public utility was a reasonable warrantless search. R. Exc. at 6 (citing *Naperville II*, 900 F.3d 521,

527-529 (7th Cir. 2018)). Accordingly, Met-Ed argues that because the Company takes the appropriate steps to protect smart meter information and data, the Complainant's data privacy concerns lack merit. R. Exc. at 6.

Met-Ed also argues that the Complainant is attempting to introduce and rely on extra-record evidence that was not admitted at the hearing and is, thus, not a part of the record and cannot be considered here. R. Exc. at 6-7 (citing Exc. at 46-47). Met-Ed notes that the record closed in this case on August 14, 2020, and parties cannot introduce new evidence and arguments for the first time in the exceptions stage of the proceeding. R. Exc. at 7 (citing I.D. at 3; *Application of Apollo Gas Company*, 1994 Pa. PUC LEXIS 45, at *8-9 (Opinion and Order entered February 10, 1994) (*Apollo Gas*); *Arthurs v. Pennsylvania Electric Company*, 2019 Pa. PUC LEXIS 197, at *14 (Opinion and Order entered May 23, 2019)). Accordingly, Met-Ed contends that the Commission should disregard the Complainant's extra-record evidence and her argument based on that extra-record evidence. R. Exc. at 7-8.

Met-Ed also disputes the basis of the Complainant's argument that Act 129 does not mandate the installation of smart meters for all customers and the Commission and the ALJ misinterpreted the legislative intent of the statute. R. Exc. at 8 (citing Exc. at 18-27). Met-Ed agrees with the ALJ that the Company must install smart meters for all of its customers. R. Exc. at 9 (citing I.D. at 4, FOF No. 14). Specifically, Met-Ed argues that the basis for the Complainant's argument fails to reflect the Pennsylvania Supreme Court's ruling in *Povacz II*, which concluded 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." R. Exc. at 9 (citing *Povacz II* at 983). Further, Met-Ed notes that other than an accommodation for the meter to be relocated to a different location and for the customer to pay for the estimated relocation costs, nothing in the Company's tariff permits an opt-out of the installation of the smart meter. R. Exc. at 9 (citing Met-Ed

Tariff Electric Pa. P.U.C. No. 52 at 33, Rule 4). Moreover, Met-Ed contends that under Act 129, the Company must install smart meters for all of its customers, including the Complainant. Therefore, Met-Ed agrees with the ALJ that the Company must install smart meters for all of its customers and the Complainant cannot opt-out of, or rescind, the installation of the smart meter. R. Exc. at 9 (citing I.D. at 4, FOF No. 14).

Finally, Met-Ed disputes the Complainant's claim that the Company should be prohibited from terminating her electric service if the Complainant does not allow the Company access to her meter. R. Exc. at 10 (citing Exc. at 14-15, 17, 25-26, 31, 33, 35). Specifically, Met-Ed counters that under its Commission-approved tariff, the Commission's Regulations, and Chapter 14 of the Code, the Company has the legal right to terminate the Complainant's service if it is denied reasonable access to its meters. R. Exc. at 10 (citing Met-Ed Tariff Electric Pa. P.U.C. No. 52 at 55, Rule 20; 66 Pa. C.S. §1406(a)(4); 52 Pa. Code §56.81(3)). Further, Met-Ed contends that the termination of service to a customer refusing the Company access to its smart meter is consistent with Section 1501 of the Code, the Commission's Regulations, and the Company's tariff. R. Exc. at 10 (citing *Frompovich*). Therefore, Met-Ed argues that the Complainant's argument on this matter should be rejected. R. Exc. at 10.

E. Disposition

1. Extra-Record Material Not Considered

As a preliminary matter, we note that the Complainant has filed and made use of extra-record materials. We will disregard the extra-record materials – specifically: (1) the document and cover letter filed by the Complainant on May 19, 2023; (2) the website links that the Complainant cites to on pages 6 and 27 of the Exceptions; and (3) the attachments to the Exceptions entitled: (a) “ATTACHMENT I STATE ACTION DOCTRINE;” (b) ATTACHMENT II SELECT QUOTATIONS of the PA

Commonwealth Court; and (c) ATTACHMENT III TESTIMONIES GIVEN BY EMINENT SCIENTIFIC AND PUBLIC HEALTH EXPERTS CONCERNING SMART METER SAFETY – as the use of this extra-record information by the Commission would violate Met-Ed’s due process rights. Exc. at 6, 27, 36-47.

It is well-established that parties cannot introduce new evidence at the exceptions stage. *Apollo Gas* at *8-14. The website links referenced by the Complainant and the attachments to the Exceptions are introduced for the first time in her Exceptions and are not in the record. Exc. at 27, 36-47. As noted earlier, the record closed on August 14, 2020. I.D. at 3. Furthermore, the Complainant’s filing on May 19, 2023, does not constitute an Exception, and was filed more than two years after the record closed on August 14, 2020. As such, the Complainant’s extra-record evidence cannot be admitted into the record at this current procedural stage of the case. Therefore, we must reject this extra-record evidence introduced at the Exception stage. *Apollo Gas*.

2. Substance of the Exceptions

At the onset, we will address the Complainant’s claim that the ALJ did not sufficiently acknowledge all the Complainant’s arguments and considerations. We note that the ALJ was aware of the position and arguments put forth by the Complainant; however, it is up to the ALJ to determine whether, and to what extent, further discussion and analysis is warranted. *See*, 52 Pa. Code §§ 5.403, 5.404. Here, it appears that the ALJ did not believe that further consideration of these matters was necessary. Accordingly, we find the Complainant’s claim that the ALJ overlooked any of the Complainants’ arguments and considerations is without merit. Regarding the Complainants’ argument in support of her allegation of a biased position of the Commission, we are of the opinion that this argument is without merit and must be denied. We note that our decisions in each smart meter installation case are considered on an individual basis established on the facts in the record of each proceeding.

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 an opt-out of the smart meter installation. Complaint at 3. At the hearing, the Complainant testified that she believes Act 129 requires a smart meter. The Complainant further testified that, by virtue of the Company's attempt to install a smart meter under Act 129, she believes that Met-Ed has provided unsafe and unreasonable service. Tr. at 18. As such, the ALJ found that there is no dispute that Act 129 does not provide for customers to opt-out of smart meter installation. I.D. at 9. Therefore, the ALJ concluded that there is no specific provision in the Code or the Commission's Regulations or Orders that provides that an EDC may opt-out of smart meter installation. I.D. at 12, COL No. 13.

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 her burden of proof to show that the Company: (1) violated the Code, or a Commission Regulation or Order; and (2) provided unsafe or unreasonable service, in violation of

Section 1501. I.D. at 13, COL Nos. 16-17.

Although the Complainant expressed that she does not want a smart meter installed on her home or on her property, we agree with the ALJ's analysis and conclusion that, under the provisions of Act 129, Met-Ed is required to deploy smart meters, consistent with 66 Pa. C.S. § 2807(f)(2). I.D. at 8, 12, COL No. 14. Further, we agree with the ALJ's conclusion that the Complainant has not provided how Met-Ed, 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 15, COL No. 16.

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 and Met-Ed that under Act 129, the Company is required to install smart meters for all of its customers. R. Exc. at 8-9; I.D. at 8. 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.

To the extent that the Complainant claims that Met-Ed is not permitted or authorized to terminate the Complainant's electric service under 52 Pa. Code. § 56.81(3) and 66 Pa. C.S. § 1406(a)(4), because the Complainant did not provide consent for the Company to install a smart meter, we find this claim meritless. We agree with the ALJ that a utility may issue written notice of termination to a customer if a customer does not permit access to meters, service connections, or other property of the utility, for the purpose of a smart meter installation. I.D. at 12, COL No. 15. Furthermore, we agree with Met-Ed that, under the Company's Commission-approved tariff, the Commission's Regulations, and Chapter 14 of the Code, the Company is authorized to terminate the

Complainant's service if it is denied reasonable access to its meters. R. Exc. at 10 (citing 52 Pa. Code § 56.81(3) and 66 Pa. C.S. § 1406(a)(4)).

Next, we will address the Complainant's claim that the Company's installation of a smart meter on her home or property constitutes unsafe and unreasonable service. In her Complaint, Ms. Zonca alleged that smart meters present health, safety, and privacy concerns. Complaint at 2; Tr. at 12-13, 15. The Complainant's Exceptions, while largely premised upon alleged constitutional grounds and the Commission's misinterpretation of Act 129 and Section 2807(f) of the Code, argue that the installation and operation of a smart meter on her property will: (1) cause unreasonable and adverse health effects; and (2) create an unreasonable risk to the Complainant's safety, security, and privacy. Exc. at 10, 12-16, 18, 27-35. Therefore, each of the Complainants' claims arise, if at all, as a claim under Section 1501 asserting unreasonable or unsafe provision of service. 66 Pa. C.S. § 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 the Complainant's failure to present any competent or credible evidence to support her personal beliefs and general concerns that smart meters pose a risk to health, safety, and privacy. *See, I.D.* at 9-10. The ALJ concluded that the Complainant failed to

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.

demonstrate that Met-Ed's installation of a smart meter at her home constitutes unreasonable or inadequate service, the Complainant's claim that Met-Ed provided unsafe or unreasonable service cannot stand and must be denied. I.D. at 10. 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 of proof regarding her claim that the installation of a smart meter at her property will result in unsafe or unreasonable service, in violation of 66 Pa. C.S. § 1501. I.D. at 13, COL No. 17.

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 Complainant's evidence consisted solely of her personal feelings and beliefs, and assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 9, 12, COL No. 11.

Specifically, we affirm the ALJ's finding in COL No. 17, that the Complainant failed to show that the installation of a smart meter at the service address constituted unsafe or unreasonable service, in violation of the Code. I.D. at 13. Similarly, the Complainant failed to offer any competent or factual evidence of record to support a finding that the installation of a smart meter at the service address by Met-Ed violated the Code, or a Commission Regulation or Order. I.D. at 13, COL No. 16. 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.

Upon review of the record, and based on the foregoing discussion, we find the Complainant's claims fail to establish that the Company violated any provision of the

Code, a Commission Regulation or Order, or a Commission-approved tariff. Therefore, for all the foregoing reasons, we shall deny the Complainant's Exceptions.

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 Lauren Zonca on December 7, 2023, at Docket No. C-2019-3007961, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on September 11, 2020, at Docket No. C-2019-3007961, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed on February 8, 2019, by Lauren Zonca against Metropolitan Edison Company, at Docket No. C-2019-3007961, is denied.

4. That this proceeding at Docket No. C-2019-3007961 be 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: May 9, 2024

ORDER ENTERED: May 9, 2024