

**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.

David Coyle

C-2019-3014261

v.

West Penn Power Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on March 11, 2024, in the above-captioned proceeding. No Exceptions have been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the Initial Decision, consistent with this Opinion and Order.

## I. History of the Proceeding

On November 12, 2019, David Coyle (Complainant or Mr. Coyle) filed a Formal Complaint (Complaint) against West Penn Power Company (West Penn or Company). The Complainant alleged West Penn threatened to shut off his electric service due to his refusal to allow the installation of a smart meter at the service address. The Complainant alleged that there are two children and a pregnant woman living at the Natrona Heights, PA location (the Service Address). Complaint at 2. As relief, the Complainant requested additional alternatives to a smart meter or if other options were not available than the alternative of having a frequency blocker installed at the Service Address. Complaint at 3.

On December 3, 2019, West Penn filed an Answer and New Matter in its Answer. West Penn's Answer denied that it had an active intent to terminate the Complainant's service. Answer at 1-2. In addition, West Penn asserted that it had attempted to install a smart meter at the Service Address in compliance with Act 129 of 2008 (Act 129).<sup>1</sup> Answer at 2. However, the Complainant refused the installation of a smart meter. Consequently, West Penn contended that the Complainant's refusal to permit the installation of a smart meter constituted grounds for termination of service.<sup>2</sup> *Id.* In addition, West Penn argued that if the Commission found in the Complainant's favor and barred the Company from installing a smart meter, the Commission would be forcing the Company to be in violation of Act 129. New Matter (N.M.) ¶ 16. As relief, West Penn requested dismissal of the Complaint with prejudice. N.M. at 8.

---

<sup>1</sup> 66 Pa. C.S. § 2806.1–2807. Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa. C.S. § 2807(f)(1), (2).

<sup>2</sup> 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81; *West Penn Power Company Retail Electric Service Tariff*, Electric. Pa. PUC No. 40, pp. 46, 61. Issued May 1, 2014. Effective May 3, 2015.

In the New Matter, West Penn alleged, *inter alia*, that: (1) it was in the process of deploying smart meters in its service territory in accordance with Act 129; (2) on April 2, 2019, it sent correspondence to notify Mr. Coyle of the installation of a smart meter at the Service Address; (3) on October 5, 2019, Wellington Energy, a contractor for West Penn, informed West Penn that it had gone to the Service Address on May 2, 2019, to attempt to install a smart meter, but Mr. Coyle refused installation; (4) that on October 8, 2019, West Penn attempted to contact Mr. Coyle to address his concerns about a smart meter and left a message seeking a return call; however, no return call was received; (5) on October 9, 2019, it sent correspondence to Mr. Coyle to schedule installation of a smart meter at the Service Address; (6) on October 19, 2019, West Penn issued a pre-disconnection warning letter to Mr. Coyle pursuant to 66 Pa. C.S. § 1406, 52 Pa. Code § 56.81, and Rules 9 and 20 of the Company’s Commission-approved tariff;<sup>3</sup> (7) on October 29, 2019, a service termination notice was issued to Mr. Coyle, pursuant to 66 Pa. C.S. § 1406, 52 Pa. Code § 56.81, and Rules 9 and 20 of the Company’s Commission-approved tariff;<sup>4</sup> and (8) that when West Penn was served with Mr. Coyle’s Complaint on November 13, 2019, it ceased service termination efforts. N.M. at 2-3.

West Penn’s Answer and New Matter included a Notice to Plead cautioning Mr. Coyle that failure to file a response to the facts set forth in the Answer and New Matter may result in them being deemed as true, thereby requiring no other proof.<sup>5</sup> Mr. Coyle did not file a reply to West Penn’s New Matter.

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> “Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed admitted.” 52 Pa. Code § 5.63(b).

On December 3, 2019, West Penn also filed Preliminary Objections.

As grounds for the Preliminary Objections, West Penn stated the following:

[b]ecause Act 129 and the Commission's orders not only authorize but required the Company to develop and implement a smart meter procurement and installation plan, and do not allow a customer to opt out of having a smart meter installed, this Formal Complaint must be dismissed. As a matter of law, the Company is required to install a smart meter at the Service Location. As such, the Commission cannot find the Company to be in violation [of a Commission statute, regulation, or order] for having attempted to follow the law as it has done here.

Preliminary Objections ¶18.

West Penn argued that accepting all of the facts of Mr. Coyle's Complaint as true, those facts do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, upon which relief could be granted.<sup>6</sup> Essentially, West Penn objected that the Complaint was legally insufficient<sup>7</sup> and requested: (1) that the Complainant's request for an exemption from the installation of a smart meter be struck; or (2) that the Complaint be dismissed in its entirety with prejudice.

Mr. Coyle did not file a response to the Preliminary Objections.

On January 30, 2020, ALJ Johnson issued an Interim Order Holding Preliminary Objections in Abeyance (*Interim Order*) since Mr. Coyle was self-represented citing *Carlock v. The United Telephone Co. of Pennsylvania*,

---

<sup>6</sup> 66 Pa. C.S. § 701.

<sup>7</sup> 52 Pa. Code § 5.101(a)(3).

Docket No. F-00163617 (Opinion and Order entered July 14, 1993) (*Carlock*). The *Interim Order* specifically stated that West Penn's preliminary motion for dismissal of the Complaint was held in abeyance to afford the Complainant an opportunity to present his case.

The matter was scheduled for a telephone hearing on April 30, 2020, at 10:00 a.m. On March 17, 2020, the Commission's Pittsburgh offices were closed due to the COVID-19 pandemic. By letter electronically served on April 7, 2020, the Parties were informed that the April 30, 2020, hearing was cancelled and would be rescheduled due to the COVID-19 pandemic. *I.D.* at 5.

On May 13, 2020, this case was rescheduled before ALJ Johnson for a telephone hearing on July 7, 2020, at 10:00 a.m. On July 6, 2020, Mr. Coyle emailed the Office of Administrative Law Judge (OALJ) stating he had been involved in a motor vehicle accident that day. Accordingly, he requested a continuance of the July 7, 2020 telephone hearing and the request was granted. The case was rescheduled for a telephonic hearing on August 21, 2020, at 10:00 a.m. *Id.*

By email dated July 24, 2020, counsel for West Penn, Tori Giesler, Esquire, requested a continuance of the hearing scheduled for August 21, 2020, due to the unavailability of the Company's witness. Attorney Giesler represented that Mr. Coyle did not object to the continuance request. The August 21, 2020 hearing was cancelled and rescheduled for September 8, 2020. *Id.*

On September 8, 2020, the telephonic hearing convened as scheduled. Mr. Coyle was present with his wife, Rachel Coyle. Attorney Giesler and Lauren Lepkoski, Esquire, were present as counsel for West Penn along with their witness, John Ahr. Testimony was received from Mr. Coyle and his wife, but West Penn's

counsels did not cross-examine them. Tr. 16, 20. No exhibits were offered in this proceeding. I.D. at 6; Tr. 7. After Mr. Coyle rested his case, West Penn elected not to call its witness and rested its case. Tr. 21. From the bench, ALJ Johnson informed the Parties that considering the testimony presented and Mr. Coyle's legal argument, the ALJ was compelled to rule that Mr. Coyle had failed to carry his burden of proof, requiring the dismissal of the Complaint. *Id.* Therefore, West Penn's outstanding preliminary objections would be sustained, and dismissal of the Complaint memorialized in an Initial Decision. Tr. at 22. *Id.*

On November 4, 2020, due to appellate litigation pertaining to smart meters, the Commission, in the matter of Smart Meter Procurement and Installation at Docket No. M-2009- 2092655, issued an order staying smart meter proceedings involving challenges to electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code. (*November 4, 2020 Stay Order*). I.D. at 6. Accordingly, the issuance of the Initial Decision in the instant case was held in abeyance. On August 16, 2022, the Pennsylvania Supreme Court (Court) issued its Opinion in *Povacz v Pa. PUC*.<sup>8</sup> In *Povacz II*, the Court, in relevant part, concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, with no opt-out provisions. *Povacz II* at 992-993, 997. Additionally, the Court held that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence, which requires a customer to prove that a service or facility is, more likely than not, the cause of the problem described in their complaint. *Id.* at 999-1000. As a result of the Court's ruling in *Povacz II*, the Commission on November 9, 2023, issued an Order at Docket M-2009-2092655, lifting the stay implemented with the *November 4, 2020, Stay Order*, thereby permitting pending smart meter matters to proceed. I.D. at 6-7.

---

<sup>8</sup> *Povacz v Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

## II. Discussion

### A. Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company 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). 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*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). 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).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, also referred to as the burden of persuasion, to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always

remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

Section 1501 of the Code mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public.<sup>9</sup> Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.<sup>10</sup>

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service.<sup>11</sup> Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.<sup>12</sup>

---

<sup>9</sup> 66 Pa. C.S. § 1501.

<sup>10</sup> 66 Pa. C.S. § 1505.

<sup>11</sup> *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949 (Pa. Cmwlt. 1984).

<sup>12</sup> *Re Metropolitan Edison Company*, 80 Pa. PUC 663, 672 (1993).

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.<sup>13</sup> This is also the test to determine the adequacy of a utility's response to customer service complaints.<sup>14</sup>

In smart meter related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.”<sup>15</sup> When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ's role . . . will be to determine based on the record in [the] particular case whether [the utility's] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.”<sup>16</sup>

As noted above, the Commission's holdings on the burden of proof in smart meter matters was reiterated by the Court in *Povacz II*.<sup>17</sup>

---

<sup>13</sup> *Thurby v. West Penn Power*, C-2011-2254048 (Order entered April 4, 2013) (*Thurby*); *Bertsch v. PPL Elec. Utils. Corp.*, C-2011-2251784 (Final Order entered April 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket No. C-2008-2061244 (Order entered January 28, 2010).

<sup>14</sup> *Thurby*.

<sup>15</sup> *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Opinion and Order entered September 3, 2015) (*Kreider*); *see also, Romeo v. Pa. PUC*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

<sup>16</sup> *Kreider* at 23 (Opinion and Order entered January 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa.P.U.C. Lexis 160, at \*12-13 (1992)); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018).

<sup>17</sup> *Povacz II*.

## 1. Service Termination

Section 1406 of the Code permits a utility to terminate service under certain conditions. Section 1406, in relevant part, states:

- (a) Authorized termination. — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.

\* \* \*

- (4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair, or meter reading.<sup>18</sup>

Section 701 of the Code provides that any person may complain, in writing, about anything done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission. 66 Pa. C.S. § 701.

Under the Code the Commission is tasked with overseeing the character of service and the facilities. Specifically, Section 1501 sets forth the following:

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 also shall be reasonably continuous and without unreasonable interruptions

---

<sup>18</sup> 66 Pa. C.S. § 1406(a)(4); *see also*, 52 Pa. Code § 56.81(3).

or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. ...

66 Pa. C.S. § 1501.

## **B. ALJ's Initial Decision**

The ALJ made ten Findings of Fact and reached twelve Conclusions of Law. I.D. at 3, 5-6. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

The ALJ noted in his Initial Decision that the West Penn's preliminary objections are now ripe for disposition. In the Initial Decision the ALJ stated that in his Complaint, Mr. Coyle alleged West Penn was threatening to shut off his electric service because he refused installation of a smart meter. "In addition, the residence contains two children and a pregnant woman." Complaint ¶ 4. While not affirmatively raising the issue, Mr. Coyle's allegations seem to suggest that he is claiming that smart meters present a health risk,<sup>19</sup> and therefore, West Penn's attempt to install a smart meter at the Service Location violates the reasonable service provisions of the Code.<sup>20</sup> I.D. at 12.

Mr. Coyle did not present any evidence to establish that West Penn had violated the Code or any regulation or order of the Commission. Thus, he did not carry his burden of proof to establish that he was entitled to the relief requested from the Commission. Therefore, his Complaint must be dismissed in the ordering paragraphs below. *Id.*

---

<sup>19</sup> Under the holding in *DiSanto v. Dauphin*, 436 A.2d 197 (Pa. Super. 1981), the Commission must determine if there is a statutory or regulatory violation regardless of how inarticulately the issue is raised.

<sup>20</sup> 66 Pa. C.S. § 1501.

During the hearing, Mr. Coyle argued West Penn was forcing a smart meter upon him to receive service or face service termination. I.D. at 12; Tr. at 11. Mr. Coyle further argued, “and that it’s not the sense that we are concerned about safety. We know that the wireless signals from the devices are not good for our health.” *Id.* Thus, the safety of the installation of a smart meter from a health perspective is at issue. *Id.* Whether a smart meter is a safety hazard or presents a threat to one’s health involves scientific, technical, or other, specialized knowledge beyond that possessed by a layperson. *Id.* Expert testimony is needed to assist the factfinder to understand the evidence or to determine the issues surrounding the safety of smart meters.<sup>21</sup> *Id.* Mr. Coyle did not present any expert testimony or evidence to support a claim that the installation of a smart meter at the Service Address would present a safety or health hazard.<sup>22</sup> *Id.* Expert scientific testimony is needed to establish that installation of a smart meter at a residence presents a safety hazard. *Id.* Expert medical testimony is needed to explain a causal connection between one’s health and any harmful effects of a smart meter. *Id.* Without expert testimony and evidence, Mr. Coyle’s claims are reduced to unsubstantiated opinions. Assertions, personal opinions or perceptions do not constitute factual evidence.<sup>23</sup> *Id.*

Considering Mr. Coyle’s lack of expert testimony and evidence concerning the effects of a smart meter on one’s health, his claim that West Penn’s attempt to install a smart meter at the Service Location constituted unreasonable service under Section 1501 of the Code must be denied. I.D. at 13.

---

<sup>21</sup> When the issue at hand, here the safety of a smart meter, involves scientific, technical, or other specialized knowledge beyond that possessed by a layperson, expert testimony is needed to assist the factfinder to understand the evidence or to determine a fact in issue. *See* Pa.R.E. 702; *see also* *Povacz II*.

<sup>22</sup> *See* Pa.R.E. 702; *Povacz II*.

<sup>23</sup> *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Since Mr. Coyle did not file a reply to West Penn's New Matter, he must be deemed to have admitted that West Penn is in the process of deploying smart meters in accordance with its Commission-approved Smart Meter Procurement and Installation Plan (SMP). However, Mr. Coyle argued that the installation of a smart meter by West Penn at his residence is not mandatory under Act 129 as follows:

[t]here's nothing in Act 129 which mandates forced universal deployment of smart meters. Act 129 asks them to come up with a plan . . . which meant that they have a plan to supply smart meter construction.

So it's not a matter of law that West Penn is requiring to install a smart meter on our home.

It's a fabrication. In fact, there's nothing in the law that states some penalty that they have to pay for not installing a smart meter on our home. So why can't we just keep our present meter?

Also, West Penn Power is claiming that there's no opt out of having a smart meter installed, and I completely object to such language because Act 129 is not an opt out or opt in. You can opt in law.

I.D. at 13; Tr. at 13.

More importantly, the Court has now ruled in *Povacz II* that Act 129 does not provide for customers to opt-out of smart meter installation. Therefore, Mr. Coyle's request for relief, that is, additional options or alternatives to the installation of a smart meter at the Service Location, cannot be granted by the Commission. I.D. at 14.

In his second claim, Mr. Coyle alleges West Penn threatened him with service termination because he refused installation of a smart meter at his residence. In New Matter, West Penn did not dispute Mr. Coyle's allegation. Correspondingly,

as mentioned above, Mr. Coyle must be deemed to have admitted the following relevant facts of West Penn's New Matter.<sup>24</sup> On October 8, 2019, West Penn attempted to contact Mr. Coyle to address his concerns about a smart meter and left a message seeking a return call; however, no return call was received. N.M. ¶ 12. On October 9, 2019, West Penn sent correspondence to Mr. Coyle to schedule installation of a smart meter at the Service Location. *Id.* On October 19, 2019, West Penn sent a pre-disconnection warning letter to Mr. Coyle. *Id.* On October 29, 2019, West Penn sent a service termination notice to Mr. Coyle. Tr. 11; N.M. ¶ 12. Upon receipt of Mr. Coyle's Complaint on November 13, 2019, the Company ceased service termination efforts. *Id.*

Under Section 1406(a)(4) of the Code and Section 56.81(3) of the Commission's Regulations, a utility may terminate service to a customer, when the customer denies the utility access to the service location to replace a meter.<sup>25</sup> Although West Penn did not terminate Mr. Coyle's electric service, the threat of service termination was authorized under the Code and the Regulations because Mr. Coyle refused West Penn access to the Service Location for the purpose of installing a smart meter. Therefore, Mr. Coyle's threat of service termination issue must be dismissed without further discussion. I.D. at 15.

In his decision, the ALJ sustained West Penn's Preliminary Objections and dismissed the Complaint on the grounds that Mr. Coyle failed to sustain his burden of proof. I.D. at 17.

---

<sup>24</sup> See 52 Pa. Code § 5.63(b).

<sup>25</sup> 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

### C. Disposition

We note that any argument that we do not specifically address 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*, 625A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review of the pleadings and applicable law, we shall modify the Initial Decision consistent with this Opinion and Order.

Given review of the Complaint, the evidentiary hearing transcript, and the Initial Decision, we find that the Complainant failed to meet his burden of proof on the issues raised in the Complaint. Therefore, we agree with the Initial Decision to dismiss the Complaint.

However, we do not agree with the decision to also rule on the outstanding preliminary objections. The basis for dismissal in this case was the failure of the Complainant to meet his burden and not that the Complaint was legally insufficient. The standard for ruling on preliminary objections requires the facts as alleged be accepted as true.<sup>26</sup>

The appropriate disposition of this case, where a full evidentiary hearing was held and both parties rested their cases, is to rule on the merits rather than rule on the

---

<sup>26</sup> *County of Allegheny v. Comm of Pa.*, 490 A.2d 402, 408 (Pa. 1985).

preliminary objections.<sup>27</sup> While we appreciate the ALJ's interest in allowing the Complainant to respond to the preliminary objections orally given that he is appearing *pro se*, since an evidentiary hearing was ultimately held, the disposition of the Complaint should be based on the hearing and not the preliminary objections. The preliminary objections are moot.

For these reasons set forth above, we shall modify the Initial Decision consistent with this Opinion and Order.

### **III. Conclusion**

Based on our review of the ALJ's Initial Decision, the pleadings, and the applicable law, we shall modify the ALJ's Initial Decision consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on March 11, 2024, is modified consistent with this Opinion and Order.

---

<sup>27</sup> We note that ALJs are required to dispose of preliminary objections within 30 days. 52 Pa. Code § 5.101(g). At the time of the hearing, the 30-day period had passed.

2. That the proceeding at Docket No. C-2019-3014261 is marked closed.

**BY THE COMMISSION,**

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

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 9, 2024

ORDER ENTERED: June 10, 2024