

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Liza Mousios	:	
	:	C-2019-3007989
v.	:	
	:	
Metropolitan Edison Company	:	
	:	
	:	
Roy Cumming	:	
	:	
v.	:	C-2019-3007995
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This Decision denies the consolidated Complaints where the Complainants are seeking to prevent installation of a smart meter at their residence and the removal or relocation of the smart meter at the neighboring home. Also, claims under the Americans with Disabilities Act are dismissed for lack of jurisdiction.

## HISTORY OF THE PROCEEDINGS

Liza Mousios and Roy Cummings each filed a Complaint against Metropolitan Edison Company<sup>1</sup> on February 11, 2019. The Complainants are seeking to prevent installation of an AMI (advanced metering infrastructure) meter, also known as a “smart meter,” at their residence and to have the neighbors’ smart meter removed or moved to a different location. They also seek an accommodation under the Americans with Disabilities Act.

The Complaints were initially assigned to, and consolidated by, Administrative Law Judge Emily I. DeVoe. On October 1, 2019, a Call-In Evidentiary Hearing Notice was issued setting the hearing for October 28-29, 2019. A Pre-hearing Order setting forth procedural information was issued on October 4, 2019.

By letter received by the Commission on October 7, 2019, the Complainants refused a telephonic hearing and demanded an in-person hearing.

The telephonic hearing was cancelled, and this matter was transferred to the undersigned on October 21, 2019. Also, on October 21, 2019, an in-person hearing was scheduled for January 14-15, 2020, beginning at 9:30 a.m. each day.

The Complainants filed a Motion to Delay the hearing on November 20, 2019. They asked for a continuance until smart meter cases pending before the Commonwealth Court have been adjudicated. The Motion to Delay was denied by order on December 13, 2019.

On January 3, 2020, Complainants filed a Motion to Stay Hearing, asserting that the matter should be stayed until another pending smart meter matter was decided. Also, therein, the Complainants indicated that they needed additional time for their expert witness, Mr.

---

<sup>1</sup> The latest correspondence from the company refers to Respondent Metropolitan Edison Company as “FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District.” See January 18, 2024 correspondence. The Respondent will be referred to as “Metropolitan Edison Company,” “Met-Ed” or “the Company” for purposes of this decision.

William Bathgate, to perform various measurements concerning smart meters. They contended that Mr. Bathgate could not travel due to the weather and his schedule until the spring of 2020.

On January 8, 2020, Complainant Liza Mousios telephoned the Commission and requested that the hearing be conducted in writing. She averred that she was also speaking on behalf of Mr. Cumming. Ms. Mousios also stated in the phone call that she is ill and cannot attend the hearing in person. Ms. Mousios also averred that Mr. Cumming had no objection to a "hearing in writing."

On January 9, 2020, an Order was issued that granted, in part, and denied, in part, the relief requested by the Complainants. The Complainants' request for written proceedings was granted. The request to delay the hearing until the decision on another smart meter matter was issued was denied. The in-person hearing scheduled for January 14 and 15, 2020 was cancelled and (an order specifying) a modified procedural schedule for written testimony was issued.

On January 15, 2020, Complainants filed a "Motion for Supplemental Exhibits for Continuing In-Writing Hearing."

On January 29, 2020, the Complainants filed a "Motion for Judge Heep to Vacate Her Own Violation of Complainants' Right to Due Process and Right to Preserve Their Issues on Appeal In Her Preventing Their Use of Their Expert Witness" and "Motion and Request to Deputy Chief Administrative Law Judge Christopher Pell for a Different Judge Such As Administrative Judge DeVoe Whom We Previously Had."

On January 31, 2020, an Order was issued that denied the Complainants' request for Disqualification of a Presiding Officer. The Order also granted the Complainants additional time to submit written testimony and exhibits.

Work from home orders were issued by the Commission in March of 2020 due to the COVID-19 pandemic. Efforts were made by the Commission to contact all parties with

pending actions who had not provided an email address to obtain an email address. It was also suggested that parties sign up for the Commission's electronic service. Commission records contained an email address for the Complainants as Mr. Cumming had previously contacted the Commission on behalf of himself and Ms. Mousios by email and documents were sent to the Complainants at that email address.

In a document entitled Addendum to Brief of Complainants filed with the Commission on February 14, 2020, Ms. Mousios reiterated her request for a hearing in writing.

Given the COVID-19 restrictions, on April 14, 2020, the undersigned issued an Order extending deadlines and due dates for written testimony and other evidence.

On June 2, 2020, the Complainants emailed to the Commission a Motion to Stay the proceedings. On June 4, 2020, the Complainants emailed to the Commission a Motion for Recusal. On June 5, 2020, Met-Ed filed an Answer to the Motion to Stay, objecting to a stay of the proceedings. On June 15, 2020, an Order was issued that denied both the Motion to Stay and the Motion for Recusal.

On June 24, 2020, the Complainants filed a Motion to Dismiss and Motion to Disqualify. On June 29, 2020, the Complainants filed an Amended Motion to Dismiss and Demand for Judge's Ruling on Complainants' Motion to Compel Answers to Interrogatories filed on March 25, 2020. These motions were dismissed by Order dated July 2, 2020, which also extended the deadline for the Complainants to submit expert Rebuttal Testimony and provided the email address to which the Complainant's may send any evidence or pleadings.

A Briefing Order was issued on August 10, 2020, which required that the parties file Main Briefs on or before September 9, 2020 and that the parties file Reply Briefs by September 30, 2020. On September 2, 2020, Metropolitan Edison submitted Objections to Discovery Requests of the Complainants. Metropolitan Edison filed a Main Brief and a Reply Briefs by the due dates.

On October 8, 2020 the Commonwealth Court issued ruling regarding smart meter procurement and installation in *Povacz v Pennsylvania Public Utility Commission*, 241 A.2d 481 (Pa. Cmwlth. 2020) (*Povacz I*). On October 8, 2020, in consideration of the Commonwealth Court rulings, an order was issued allowing the parties in this matter to file Supplemental Briefs no later than October 30, 2020.

On October 16, 2020, Metropolitan Edison filed a Motion to Stay the Proceedings pending an Order of the Pennsylvania Supreme Court or final orders of the Commission in light of the *Povacz I* decision.

In light of the Commonwealth Court’s decision in *Povacz I*, the Commission entered an Order pursuant to 66 Pa.C.S. § 501, staying formal complaint proceedings “presently before the Commission involving challenges to electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. § 1501.” *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 4, 2020) (November 2020 Order). On November 4, 2020, a list of the docket numbers of matters stayed was issued. This matter was on that list.

The Commission, as well as all other parties in *Povacz I*, subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania.

On August 16, 2022, the Supreme Court issued an Opinion and Order in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). In *Povacz II*, the Supreme Court reversed the Commonwealth Court and affirmed the Commission’s determinations in all respects. The Supreme Court found that Act 129<sup>2</sup> does mandate smart meter installation and remanded the case to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court noted that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with

---

<sup>2</sup> 66 Pa.C.S. §§ 2806.1–2807 (the Act or Act 129).

the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code, 66 Pa.C.S. § 1501.

By order entered November 14, 2023, the Commission lifted the stay “on all formal complaint proceedings pending before the Commission challenging an electric distribution company’s deployment of smart meter technology as being in violation of the Pennsylvania Public Utility Code, Commission Regulations or Commission Order.” *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 14, 2023) (November 2023 Order).

A Commission Notice dated November 14, 2023 and issued in each stayed matter provided that the parties shall proceed according to the Commission regulations governing formal proceedings as directed by the presiding Administrative Law Judge.

In a letter dated November 13, 2023, and received and filed on December 13, 2023, Ms. Mousios stated that she was filing a lawsuit regarding her claims. On January 16, 2024, Met-Ed filed a letter stating that the Company was not filing supplemental testimony.

By Order dated December 13, 2023, Met-Ed’s objections to certain discovery requests of the Complainants were sustained in part and overruled in part. Met-Ed was ordered to provide the Complainants with the requested information no later than January 9, 2024. The Order also provided that parties may exchange Supplemental or Amended Direct Testimony no later than February 6, 2024, that parties may exchange Supplemental or Amended Rebuttal Testimony no later than February 20, 2024, that Supplemental Main Briefs may be filed no later than March 12, 2024 and that Supplemental Reply Briefs may be filed no later than March 19, 2024. The December 13, 2023 Order further provided, *inter alia*, that no later than January 16, 2024, any party not submitting Supplemental or Amended testimony must provide the other party and the Administrative Law Judge with a copy of any previously exchanged testimony that the party would like to be considered or offered into evidence.

On January 10, 2024, Met-Ed filed a letter stating that it had served the Complainants with the responses to discovery as required by the December 13, 2023 Order. On January 16, 2024, Met-Ed filed a letter stating that it would not file rebuttal testimony because the company had not received testimony from the Complainants.

On January 18, 2024, Met-Ed filed a letter stating that the company had provided additional information to the Complainants in response to an interrogatory addressed in the December 13, 2023 Order.

The record closed on March 22, 2024, three days after the Reply Brief due date to allow sufficient time for the Complainants to submit a reply brief by mail.

#### FINDINGS OF FACT

1. Complainants are Liza Mousios and Roy Cummings, who reside at the same service address on Marienstein Road in Revere, Pennsylvania (service address).
2. Respondent is Metropolitan Edison, an electric distribution company (EDC) that provides residential electrical service to Complainant at the service address.
3. The Commission approved the original Met-Ed Smart Meter Technology Procurement and Installation Plan, with modifications, on June 9, 2010. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).
4. On June 16, 2014, the Companies submitted their Revised SMDP and on June 25, 2014, the Commission approved the plan. *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)

## DISCUSSION

### Legal Standards

The Pennsylvania Public Utility Code requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. As explained in *Country Place Waste Treatment Co., Inc. v. Pennsylvania Public Utility Commission*, 654 A.2d 72 (Pa. Cmwlth. 1995):

Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.

654 A.2d at 76 (citation omitted).

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof. The Complainants seek relief from the Commission, and, therefore, have the burden of proof in these proceedings.

“Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant’s evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility’s evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980); *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

If a respondent submits evidence of “co-equal” weight to counter a complainant’s evidence, the complainant has not satisfied the burden of proof unless additional evidence opposing the respondent’s evidence is presented. *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

Any decision of the Commission must be supported by substantial evidence. *See, e.g.*, 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

### Smart Meter Technology

Act 129 of 2008<sup>3</sup> directed electric distribution companies (EDCs) to file Smart Meter technology procurement and installation plans with the Commission for approval. The

---

<sup>3</sup> *See* n.2 *supra*.

Commission ordered EDCs with greater than 100,000 customers to comply with the guidelines established for smart meter technology procurement and installation on June 18, 2009. EDCs were required to file a Smart Meter technology procurement and installation plan. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655.

The Commission approved the smart meter installation plan developed by Met-Ed. *See Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944 (Smart Meter Plan). Under the Smart Meter plan, Met-Ed installed AMI or “smart meters.” Met-Ed also 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).

In response to challenges to smart meter installation, the Commission concluded that there is no provision in the Code or the Commission’s Regulations or Orders that allows a PECO customer to “opt out” of smart meter installation. *See Povacz v. PECO Energy Co.*, Docket No. C-2012-2317176 (Order and Opinion entered Jan. 24, 2013). 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 983-984.

Therefore, although Act 129 does not give a customer the right to opt-out of the installation of a smart meter, the customer may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code, which 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

When raising a Section 1501 claim in a smart meter case, the Pennsylvania Supreme Court sets forth the burden a complainant must meet in order to prove his or her case. The Supreme Court in *Povacz II* held:

Specific to smart meters and RF emissions, the burden is two-fold. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects and, second, 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. Once the customer produces such evidence, the utility may then defend 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. The fact finder must then weigh the evidence and decide whether it is more likely than not that the smart meter causes harm to the customer.

*Povacz II* at 1006 (internal citations omitted).

Where there is a Section 1501 claim 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 radio frequency fields (RFs) from the AMI meter. The Supreme Court went on to state that a conclusive causal connection exists when:

the proffered evidence [ ] support[s] the conclusion that a causal connection existed between a service or facility and the alleged harm. It is not possible for evidence that is inconclusive to be

sufficient to meet the preponderance of the evidence standard. Inconclusive means that the evidence does not lead to a conclusion of a definite result one way or the other. While the preponderance of the evidence standard is not stringent, it does require that the plaintiff's evidence ever so slightly (like, with the weight of a feather) supports the plaintiff's contention. Evidence that does not support a conclusion (or is inconclusive) cannot meet that minimal burden.

*Povacz II* at 1006 (internal citations omitted).

The Complainants, who have the same service address<sup>4</sup> and filed a joint brief, are challenging the installation of a smart meter at the service address and at the home of the neighbors. They assert that Ms. Mousios has “suffered immediately and severely as soon as and as long as the smart meters were deployed in my neighborhood as evidenced from the prior letters I have written and the letters my physicians have submitted.” Complainants Brief at 2.

The Complainants also contend that Act 129 does not require installation of smart meters. They reference the section of Act 129 of 2008 (the Act), Pa.C.S. § 2807(f)(2) which states:

(f)(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 request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f)(2). It is the Complainants' contention that, given the above statutory language, Met-Ed has no legal basis on which to deploy smart meters and that the devices cause damage to their health. They argue that they did not request a smart meter, do not want to pay for a smart meter, are not living in new construction and are not concerned with the depreciative value of the smart meters. Complainants Brief at 1.

---

<sup>4</sup> See May 14, 2019 Order of ALJ DeVoe.

Ms. Mousios and Mr. Cumming also contend that the Commission “forces the plain language of § 2807(f)(2)(iii) into a mandatory smart-meter narrative which has thereby aided and abetted most EDCs to force smart meters on all customers, even over their objections.” Complainant’s Brief at 2. They further assert that “depreciation” as used in Act 129 is an accounting term, not language that mandates that customers have smart meters. Complainants Brief at 2,4.

The Complainants also reference an excerpt of the legislative history that appeared in the Pennsylvania Senate Journal on October 8, 2008, pages 2626-2631, from which they quote the following comments pertinent to smart meters and concerns about customers, as follows:

Senator TOMLINSON.

It also contains language in there that we will have smart meters. **It is not mandated**, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.**

Senator BOSCOLA.

**We also made sure that smart meters would not be mandated for every single ratepayer.** Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households.

Senator FUMO

In addition, **we did not mandate smart meters, but we made them optional.** We did say in new construction, where they really are practical, they will be put in.

Complainants Brief at 6-7 *referencing* PA Legislative Journal -Senate, October 8, 2008 at 2626, 2627 and 2629. (Emphasis added by Complainants). Ultimately, the Complainants contend that they should be able to opt out of having a smart meter installed.

Ms. Mousios and Mr. Cumming also submitted various articles written regarding the effects of radiofrequency fields. *See* Complainant Exhibits 1,2,5,6, 7. Included in the Complainants' exhibits was a resume of William S. Bathgate, which refers to him as an electrical engineer. Complainants Exhibit 4.

The Complainants also submitted a letter from William Kracht, DO, of the Woodlands Healing Research Center, Family Environmental and Preventive Medicine. The letter states that Ms. Mousios has been living in her car or tent since the installation of the smart meter at the adjacent neighboring home. It further states that Ms. Mousios was treated for various medical conditions prior to installation of the meters but that she developed additional ailments once the meter was installed. The letter also states that the symptoms improved once Ms. Mousios moved to her car or a tent away from the smart meter and further avers that Ms. Mousios has electromagnetic hypersensitivity. The letter also recommends that the smart meter be removed, and that the neighbor's smart meter be relocated. Complainants Exhibit 3.

Met-Ed asserts in its Main Brief that the Complainants failed to meet their burden of proof and that the Complaints should be dismissed. "Shall" rather than "depreciation" is the operative term in 66 Pa.C.S. § 2807(f)(2) according to Met-Ed. The company also notes that there is no express opt-out language in § 2807(f)(2). Met-Ed Main Brief at 17-18.

Met-Ed also avers that the Complainants have not presented any evidence to support allegations that their various medical and health concerns are related to radio frequency fields and smart meters. Finally, the company argues that the Complainants have failed to demonstrate that installation of a smart meter at their residence or that of their neighbors constitutes unreasonable or inadequate service under Section 1502.

In accordance with the Installation Plans approved by the Commission, Met-Ed could install a smart meter at the service address and the residence neighboring the service address. FOF 3 and FOF 4. The Pennsylvania Supreme Court has ruled, after reviewing the language of the Act and considering the legislative intent, that Act 129 mandates 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. *Povacz II*, at 999-1000. Consequently, there is no opt-out of installation of a smart meter for the Complainants available here.

The Pennsylvania Supreme Court does recognize, however, that a customer with concerns about smart meters may seek an accommodation from the Commission or EDC, but to obtain one, the customer must establish by a preponderance of the evidence that installation of a smart meter violates 66 Pa.C.S. § 1501. While the Complainants have put forth arguments and contentions that the smart meters have caused some ill health effects, the evidence presented is not “substantial evidence” as required to meet the burden of proof. *See* 2 Pa.C.S. § 704. The evidence submitted by the Complainants does not meet the required evidentiary standard.

There is no sworn testimony to accompany the resume of Mr. Bathgate, DO. The articles submitted by the Complainants that generally address electromagnetic fields do not constitute substantial evidence to support their claim of ill health effects from the specific meters in question. Additionally, the articles are given little weight because they are not corroborated by sworn testimony.<sup>5</sup>

The letter from William Kracht, DO, is also not probative given that it is not a sworn statement and is not substantiated by a sworn statement or expert report. Therefore, the unsworn letter submitted does not constitute “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” as required by the Pennsylvania Supreme Court. *Povacz II* at 1006.<sup>6</sup>

---

<sup>5</sup> Under general evidentiary rules, articles submitted by the Complainants may be considered hearsay and not allowed into evidence. *See* Pa.R.E., Rule 801. In administrative settings, rules of evidence may be relaxed. *See* 2 Pa.C.S. § 505. However, for hearsay to be considered “substantial evidence,” the “information admitted into evidence must have sufficient indicia of reliability. . . .” *Gibson v. W.C.A.B.*, 861 A.2d 938, 944 (Pa. 2004). The articles submitted lack corroboration and therefore lack a sufficient “indicia of reliability.”

<sup>6</sup> A sworn medical statement, expert report or testimony may have required further consideration of an accommodation under § 1501 or triggered additional responses or action from Met-Ed. However, the Complainants bear the burden of proof here. 66 Pa.C.S. § 332(a)

The Complainants cannot opt out of installation of a smart meter and the Complainants have not met the *Povacz II* burden of proof set forth by the Pennsylvania Supreme Court with respect to a Section 1501 claim. No substantial evidence was presented to establish that the smart meters installed by Met-Ed will cause or have caused adverse health effects or harm to human health, or, particularly, to the Complainants. Therefore, the Complainants cannot prevail, and these claims will be dismissed.

The Commission also cannot provide a remedy of accommodation under the federal Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq. The Commission lacks jurisdiction to hear claims brought under the ADA. See *White v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3003468 at 19 (Opinion and Order entered May 21, 2020). Therefore, the Complainants cannot prevail, and these claims will also be dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Act 129 subject matter of this Complaint. 66 Pa.C.S. § 701.
2. As the proponent of a rule or order, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).
3. Act 129 mandates the systemwide installation of smart meters. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
4. While Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates 66 Pa.C.S. § 1501; *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
5. The Complainants have not demonstrated by a preponderance of the evidence a "conclusive causal connection" between the adverse health effects or harm to human

health and the radio frequency fields (RFs) from the Met-Ed AMI. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022); 2 Pa.C.S. § 704; 66 Pa.C.S. § 332(a).

6. Complainants have not presented substantial evidence in support of their claims and therefore have not met their burden of proof. 2 Pa.C.S. § 704; 66 Pa.C.S. § 332(a).

7. The Commission lacks jurisdiction to hear claims brought under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* See *White v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3003468 at 19 (Opinion and Order entered May 21, 2020).

### ORDER

THEREFORE,

IT IS ORDERED

1. That the Formal Complaint of Liza Mousios filed in *Liza Mousios v. Metropolitan Edison Company* at C-2019-3007989 is denied.

2. That the Formal Complaint of Roy Cumming filed in *Roy Cumming v. Metropolitan Edison Company* at Docket No. C-2019-3007995 is denied.

2. That Docket Nos. C-2019-3007989 and C-2019-3007995 be marked closed.

Date: June 13, 2024

\_\_\_\_\_  
/s/  
Darlene D. Heep  
Administrative Law Judge