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July 15, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: Liza Mousios and Roy Cumming v. Metropolitan Edison Company
Docket No. C-2019-3007989 and C-2019-3007995**

Dear Secretary Chiavetta:

Enclosed for filing please find the Replies of FirstEnergy Pennsylvania Electric Company, (“Met-Ed Rate District¹”) to the Exceptions of Liza Mousios and Roy Cumming regarding the above-referenced matter. This document has been served on all parties as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

Tori L. Giesler

TLG/mlr

Enclosures

c: As Per Certificate of Service
Office of Special Assistants (via email at ra-OSA@pa.gov)

¹ On January 1, 2024, FirstEnergy Corp.'s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company (“FE PA”). Due to the merger transaction, FE PA became successor in interest to all matters previously belonging to the individual Pennsylvania operating companies. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Liza Mousios,	:	
	:	
Complainant,	:	
v.	:	
	:	Docket No. C-2019-3007989
Metropolitan Edison Company,	:	
	:	
Respondent.	:	
	:	
Roy Cumming,	:	
	:	
Complainant,	:	
v.	:	
	:	
Metropolitan Edison Company,	:	Docket No. C-2019-3007995
	:	
Respondent.	:	

**REPLY EXCEPTIONS OF METROPOLITAN EDISON COMPANY TO THE
EXCEPTIONS OF LIZA MOUSIOS AND ROY CUMMING**



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Date: July 15, 2024

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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. REPLY TO EXCEPTION 1: THE COMPLAINANTS DID NOT IDENTIFY ANY CONCLUSIONS OF LAW OR FINDINGS OF FACT FROM THE INITIAL DECISION TO WARRANT GRANTING ANY OF THEIR EXCEPTIONS.....	2
III. REPLY TO EXCEPTION 2: THE COMPLAINANTS’ EXCEPTIONS WITH RESPECT TO THE ALJ’S EVIDENTIARY DECISIONS ARE MERITLESS AND SHOULD BE DENIED	3
IV. REPLY TO EXCEPTION NO. 3: THE COMPLAINANTS’ CITED CASE LAW IS NOT DETERMINATIVE IN THIS PROCEEDING AND SHOULD BE REJECTED.....	5
V. REPLY TO EXCEPTION NO. 4: THE COMPLAINANTS’ EXCEPTIONS IGNORE THE COURT’S HOLDING IN <i>POVACZ II</i>.....	7
VI. REPLY TO EXCEPTION NO. 5: THE COMPLAINANTS’ CLAIMS REGARDING THE COMPANY’S PROVISION OF TESTIMONY AND EXHIBITS IN THIS PROCEEDING ARE MERITLESS	10
VII. REPLY TO EXCEPTION 6: THE COMMISSION HAS JURISDICTION TO DECIDE THIS COMPLAINT	11
VIII. REPLY TO EXCEPTION 7: THE COMPANY IS NOT A STATE ACTOR THAT CAN VIOLATE THE COMPLAINANTS’ CONSTITUTIONAL RIGHTS.....	12
IX. THE COMPLAINANTS INCORRECTLY ARGUE THAT THE COMMISSION HAS JURISIDICION TO HEAR CLAIMS ARISING UNDER THE ADA	12
X. CONCLUSION	13

I. INTRODUCTION

FirstEnergy Pennsylvania Electric Company, on behalf of its Met-Ed Rate District² (the “Company”) hereby file its Replies to the Exceptions of Liza Mousios and Roy Cumming (“Complainants”). The Company was served with the Complainants’ Exceptions on June 18, 2024 and July 8, 2024.³ Through the Exceptions, the Complainants take issue with much of the well-reasoned Initial Decision (“ID”) issued by the Administrative Law Judge Darlene Davis Heep (hereinafter, the “ALJ”) on June 13, 2024. The ID dismissed the Complaints of the Complainants, holding that Act 129⁴ mandates the systemwide installation of smart meters (ID, p. 16), and that the Complainants did not demonstrate 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 (“RF”) produced by the Company’s Advanced Metering Infrastructure (“AMI”). (ID, pp. 16-17.)

Additionally, the ID noted several other reasons supporting dismissal of the Complaint, including the Court’s holding in *Povacz II*, which concluded that a customer may not elect to prevent the installation of a smart meter.⁵ (ID, pp. 10-11). Moreover, the ID explained the Court’s holding in *Povacz II* as applied to the Complainants’ alleged health concerns related to smart

² On January 1, 2024, FirstEnergy Corp.’s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies’ tariffs were consolidated into a single tariff, with each former operating company’s rates becoming its own rate district. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

³ On or around June 18, 2024, the Complainants served a document entitled “Concise Statement of Errors with Brief” in apparent response to the ID. On or around June 26, 2024, the Company was served with a document titled “Exceptions” by the Complainants. On or around June 30, 2024, the Complainants served the Company with a document entitled “Addendum to Exceptions and Motion for Recusal.” For the purposes of these Replies, the Company is addressing all of these document as if they will be treated as Exceptions by the Commission for ease of review.

On July 8, 2024, the Company was served with a

⁴ 66 Pa.C.S. §§ 2806.1–2807 (the “Act” or “Act 129”).

⁵ *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022) (“*Povacz II*”).

meters. In turn, the ID held that “[n]o 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.” (ID, p. 16). Furthermore, the ID correctly explained that “[t]he 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.” (ID, p. 16).

As explained herein, the Complainants’ Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) deny the Complainants’ Exceptions and adopt the ID without modification.⁶

II. REPLY TO EXCEPTION 1: THE COMPLAINANTS DID NOT IDENTIFY ANY CONCLUSIONS OF LAW OR FINDINGS OF FACT FROM THE INITIAL DECISION TO WARRANT GRANTING ANY OF THEIR EXCEPTIONS

The Commission’s regulations dictate that:

- (a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.
- (b) **Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision.** Supporting reasons for the exceptions shall follow each specific exception.
- (c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief

⁶ There is substantial subject matter overlap throughout the Complainants’ Exceptions. Accordingly, the Company responds to the Complainants’ Exceptions by subject matter rather than individually by the number of the Exception. Moreover, given the number of filings the Complainants have made in response to the ID, the Company will address each of the Complainants’ filings as if they were Exceptions.

in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).⁷

Through their Exceptions, the Complainants do not reference a single Finding of Fact or Conclusion of Law in the ID to which exception is being taken. Therefore, the Complainants' Exceptions violate the Commission's regulations and should be rejected. Indeed, the lion's share of the Complainant's Exceptions do not appear to be targeted at any specific passage, finding, or conclusion rendered in the ID. Rather, the Exceptions appear to largely target the ALJ's June 4, 2024 *Order Admitting Exhibits*. The *Order Admitting Exhibits* is not an initial, tentative, or recommended decision in which the Complainants can except to under the Commission's regulations.⁸

For these reasons, the Company respectfully submits that the Complainants' Exceptions are improper and in violation of the Commission's regulations and should be denied.

III. REPLY TO EXCEPTION 2: THE COMPLAINANTS' EXCEPTIONS WITH RESPECT TO THE ALJ'S EVIDENTIARY DECISIONS ARE MERITLESS AND SHOULD BE DENIED

In their Exceptions, the Complainants take issue with several evidentiary decisions made by the ALJ. (Complainants' Statement of Errors Nos. 2 – 17). Namely, the Complainants appear to seek a post-hearing opportunity to submit, resubmit, or reargue various documents. As discussed in the Company's Main Brief ("MB"), the Complainants have repeatedly disregarded the procedural orders issued in this proceeding. Indeed, the Complainants failed to file any direct testimony or timely file exhibits, and thus, submitted extremely limited evidence upon which the ALJ could have relied upon. That being said, on June 4, 2024, the ALJ issued an *Order Admitting Exhibits* which admitted all of the Complainants' late-submitted exhibits into the record. *Order*

⁷ 52 Pa. Code § 5.533(a)-(c).

⁸ 52 Pa. Code § 5.533(c).

Admitting Exhibits, pp. 1-2. To the extent that the Complainants disagree with how their exhibits were titled in the *Order Admitting Exhibits*, such disagreement is of no moment here, and certainly not grounds to grant their Exceptions. Moreover, the Company notes that the *Order Admitting Exhibits* referred to the Complainants' Exhibits the same way they were titled by the Complainants upon submission.

Furthermore, and as discussed in Section II of these Replies, *supra*, the Complainants do not identify any of their purported evidentiary concerns as they relate to the ID. The reason for this is simple: they cannot. Rather, the bulk of the Complainants' Exceptions appear to target the June 4, 2024 *Order Admitting Exhibits*. The Commission's regulations permit exceptions in response to initial, tentative, and recommended decisions.⁹ The Commission's regulations do not permit exceptions in response to evidentiary-related orders. In improperly excepting to the *Order Admitting Exhibits*, the Complainants do not actually identify a single Finding of Fact or Conclusion of Law in the ID that they take issue with. Thus, the Company respectfully submits that the Complainants' evidentiary-related Exceptions, as identified above, cannot properly be considered by the Commission.

Lastly, certain of the Complainants' Exceptions promote the supposed admissibility of hearsay evidence or extra-record evidence. (Complainants' Statement of Errors Nos. 4, 5, 6, 9, 11). The Complainants appear to recognize as much, explaining that "Judge Heep disallowed into evidence compelling photos which begin on page 528 of the original brief sent to the [Commission]." (Complainants' Statement of Errors No. 11). Similarly, the Complainants explain that they are "adding to the previous brief with the previous exhibits and photos, by adding another document..." (Complainants' Statement of Errors No. 14). Such purported evidence is extra-

⁹ See n. 7, *supra*.

record and, even if it was not, does not warrant granting the Complainants' Exceptions. Relatedly, much of the Complainants' referenced documents constitute hearsay evidence. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. *See* Pa.R.E. 801(c). In the Complainants' Statement of Errors Nos. 4, 5, and 6, as well as the Complainants' Exceptions Nos. 5, 31, 33 and 34, the Complainants identify: (1) a "report from Doctor Natalie Sadler, MD;" (2) a brief by "Wes Zimmerman;" and (3) "Holder's Reply Exceptions." (Complainants' Statement of Errors Nos. 4, 5, and 6). It is clear on the face of these referenced documents that they constitute hearsay. Indeed, the Complainants did not offer the testimony of "Doctor Natalie Sadler, MD," nor any testimony by "Wes Zimmerman," nor testimony by "Holder." Simple hearsay evidence *may* support an agency's finding of fact so long as the hearsay is admitted into the record without objection and is corroborated by competent evidence in the record.¹⁰ Here, however, there is no evidence to corroborate these documents, nor were they admitted into the record without objection. As such, the Company submits that these Exceptions should be denied by the Commission and the ID adopted without modification.

IV. REPLY TO EXCEPTION NO. 3: THE COMPLAINANTS' CITED CASE LAW IS NOT DETERMINATIVE IN THIS PROCEEDING AND SHOULD BE REJECTED

In their Exceptions, the Complainants refer to *Children's Health Defense v. Federal Commc'n Comm'n*,¹¹ (Complainants' Statement of Errors No. 10; Complainants' Exception Nos. 7 and 14). That case is irrelevant to the Commission's determination in this proceeding. In *Children's Health*, the District of Columbia's Circuit Court of Appeals evaluated a request for judicial review

¹⁰ *See Walker v. Unemployment Compensation Board of Review*, 367 A. 2d 366, 370 (Pa. Cmwlth. 1976).

¹¹ 25 F.4th 1045 (D.C. Cir. 2022) ("*Children's Health*").

of a Federal Communications Commission (“FCC”) antenna regulation.¹² First, the petitioners in *Children’s Health* argued that the FCC did not establish statutory authority for the disputed regulation, which is not at issue here. Second, the petitioners in *Children’s Health* argued that the order issued by the FCC lacked a “reasoned foundation” and that the FCC disregarded the alleged human health consequences of its action.¹³ These claims were dismissed.¹⁴ Therefore, the Company submits that *Children’s Health* is not applicable – and certainly not determinative – in the instant case.

The Complainants also make reference to another Order issued by the D.C. Circuit in *Environmental Health Trust v. FCC*.¹⁵ This is not a new argument, and was evaluated by the Supreme Court of Pennsylvania in *Povacz II*. In *Povacz II*, the Court explained that:

Customers rely on Environmental Health Trust as supporting their argument that smart meters are unsafe because FCC standards for RF emissions are outdated. We conclude that Environmental Health Trust provides no guidance on the matter at hand because the circuit court did not reach the merits of the question before it, i.e., whether the 1996 FCC limits for RF radiation exposure adequately protect against purported negative effects unrelated to cancer caused by exposure to RF radiation. Rather, the circuit court found that the FCC violated the requirements of the ADA by failing "to respond to record evidence that exposure to RF radiation at levels below the [FCC's] current limits may cause negative health effects unrelated to cancer" with a reasoned explanation for its contrary conclusion. Opining that the FCC's "factual premise — the non-existence of non-thermal biological effects — underlying the current RF guidelines may no longer be accurate[.]" the circuit court chastised the FCC for its silence as to why it determined, "in light of evidence suggesting the contrary, that exposure to RF radiation at levels below the [1996 limits] does not cause negative health effects unrelated to cancer." According to the circuit court, that silence deprived the court of a "basis on which to review the reasonableness of the [FCC's] decision" that its guidelines remain adequate. The court explained that, because an agency's rulemaking decision must have a reasoned basis, an agency cannot, in rendering a written decision, ignore evidence suggesting that a major factual premise of its position may no longer be correct. **At most, therefore, Environmental Health Trust suggests that the science regarding a causal connection between RF emissions and adverse human health effects has**

¹² *Children’s Health*, at 1048.

¹³ *Id.*, at 1051.

¹⁴ *Id.*, at 1051-1052.

¹⁵ 9 F.4th 898 (D.C. Cir. 2021).

evolved since 1996, the last year FCC limits for RF emissions were updated. However, it does not support a claim that RF emissions at or below the 1996 FCC limits cause adverse human health effects and in no way overcomes the record facts that Customers failed to adduce sufficient evidence to meet the preponderance of the evidence standard.¹⁶

There is nothing in *Children's Health*, nor *Environmental Health Trust*, to support the Complainants' claims in this Pennsylvania smart meter complaint proceeding before the state Commission. Indeed, both of the aforementioned cases relate to the rulemaking process implemented by the FCC, which is not at issue here. In any event, the Complainants failed to meet their burden of proof in the first instance, as correctly held by the ID. (ID, pp. 16-17.)

To the extent that the Complainants dispute the FCC's regulatory authority or its rulemaking process, singular complaint litigation before the state Public Utility Commission is an inappropriate place to voice these concerns. To the extent that the Complainants contend that the Company's smart meters do not comply with relevant FCC standards, there is no record evidence to support that contention.

As such, the Complainants' Exception(s) on these points point should be denied, and the ID should be adopted without modification.

V. REPLY TO EXCEPTION NO. 4: THE COMPLAINANTS' EXCEPTIONS IGNORE THE COURT'S HOLDING IN *POVACZ II*

The Complainants' Exceptions ignore that Act 129 mandates the installation of smart meters system-wide.

The Complainants' requested relief cannot be granted by the Commission because the Company's customers are not permitted to opt-out of or rescind smart meter installation. Through the Complaint and throughout their Exceptions, the Complainants appear to request that the

¹⁶ *Povacz II*, at 1008-1009 (Internal citations omitted)

Company allow them to opt-out of installation of a smart meter at the Service Address.¹⁷ The Company is legally required to install the smart meters by the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Deployment Plan.¹⁸ On June 24, 2009, the Commission issued its Smart Meter Implementation Order, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans.¹⁹

On December 31, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, "the Companies") filed their Joint Petition for Approval of their Smart Meter Deployment Plan in compliance with the *Smart Meter Implementation Order*, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98.5% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.²⁰

On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which, *inter alia*, accelerated the smart meter deployment schedule laid out in their original Deployment Plan. Under the Revised Deployment Plan, the Companies proposed to deploy

¹⁷ The Complainants reside at the same address on Marienstein Road in Revere, Pennsylvania ("Service Address").

¹⁸ See 66 Pa.C.S. § 2807(f); *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 (Order June 9, 2010).

¹⁹ See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

²⁰ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

170,000 smart meters by the end of 2015.²¹ The Commission entered its Opinion and Order approving the Revised Deployment Plan on June 25, 2014.²²

Nothing in the Public Utility Code, the Commission's orders and regulations, or the Company's Smart Meter Deployment Plan states that a customer can opt-out of, or rescind, a smart meter installation, contrary to the Complainants' assertions. Indeed, on August 16, 2022, the Supreme Court of Pennsylvania issued its Opinion affirming in part and reversing in part the Commonwealth Court's decision in *Povacz I*.²³ Specifically, the Supreme Court in *Povacz II* held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company ("EDC") cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff."²⁴

The Complainants do not engage with the Court's holding in *Povacz II* in their Exceptions. Rather, they rely on an incorrect reading of Act 129, partially premised on the various federal laws and other sources. This position is meritless. As clearly and wholly explained by the Court in *Povacz II*:

Considering the overall goal of Act 129 to promote energy efficiency and conservation in Pennsylvania, the plain language of Section 2807(f)(2) mandates the system-wide installation of smart meter technology, including smart meters, with no opt-out provision.²⁵

²¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, p. 8 (Order entered June 25, 2014) ("*2014 Smart Meter Order*").

²² See *2014 Smart Meter Order*.

²³ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) ("*Povacz I*").

²⁴ See *Povacz II*, 280 A.3d 975, 1012-1014 (Pa. 2022).

²⁵ *Povacz II*, at 998.

Therefore, the Company must install the smart meter at the Service Address of the Complainants. Moreover, even if the Complainants were to prove a Section 1501 violation – which they have not and cannot – they would only be entitled to “an accommodation to the extent allowed by Act 129 and a utility’s tariff.”²⁶ The only accommodation permitted under the Company’s Commission-approved tariff is installing the smart meter at a different location at the customer’s expense.²⁷ This option has been available to the Complainants throughout this proceeding.

Therefore, the Complainants’ Exception(s) related to the mandatory installation of smart meters should be summarily denied, and the ID should be adopted without modification.

VI. REPLY TO EXCEPTION NO. 5: THE COMPLAINANTS’ CLAIMS REGARDING THE COMPANY’S PROVISION OF TESTIMONY AND EXHIBITS IN THIS PROCEEDING ARE MERITLESS

In their Exceptions, the Complainants argue that “Met-Ed did not share its exhibits with complainants because it is above the law.” (Complainants’ Statement of Errors No. 16). This is misleading. The Company did not file Rebuttal Testimony in this proceeding, but did file a letter on July 22, 2020, explaining that:

Please be advised that due to the fact that the Complainants have failed to present direct testimony in this proceeding in accordance with the established litigation schedule in the above referenced matter despite numerous extensions of time for them to do so, Metropolitan Edison Company (“Met-Ed”) will not be serving rebuttal testimony.

See Metropolitan Edison Company Letter, Docket Nos. C-2019-3007989, *et al.* (filed on July 22, 2020). This was the second letter filed by the Company indicating that it would not be serving

²⁶ *Povacz II*, at 1014; *See* 66 Pa. C.S. § 1501.

²⁷ FirstEnergy Pennsylvania Electric Company Tariff Rule 4, Electric Pa. P.U.C. No. 1, Original Page 40 (“A Customer desiring the removal, relocation or change of Company facilities or interruption shall submit a request to the Company. The Company may accept or reject said request in its sole and exclusive discretion. If the Company accepts said request, the Customer shall pay in advance the Company’s total estimated cost for any Customer requested temporary interruption in the Customer’s service due to construction, maintenance or other activities.”).

Rebuttal Testimony due to the Complainants' failure to present any written direct testimony consistent with the procedural schedule.²⁸ It was also not the last letter the Company filed to this effect.²⁹ The lack of a fulsome evidentiary record in this longstanding complaint case is due to the Complainants' repeated failure to adhere to procedural mandates and deadlines established and reestablished throughout this case. Had the Complainants submitted testimony to respond to, the Company would have done so.

For these reasons, the Complainants' Exception(s) on this point should be rejected and the ID should be adopted without modification.

VII. REPLY TO EXCEPTION 6: THE COMMISSION HAS JURISDICTION TO DECIDE THIS COMPLAINT

The Complainants contend that the ALJ, in ruling on the Complaint, was "out of her jurisdiction --- thereby lacking immunity and potentially liable for a toxic tort action." (Complainants' Statement of Errors No. 21). This argument is meritless and should be rejected. The Commission – and by logical extension its ALJs – has been delegated the exclusive authority to adjudicate issues "issues involving the reasonableness, adequacy, and sufficiency" of a public utility's facilities and services.³⁰ Indeed, ALJs at the Commission have presided over Commission-jurisdictional smart-meter related customer complaint cases for years.³¹ The Complainants' citations to federal court cases involving the Federal Trade Commission ("FTC") and the Securities and Exchange Commission ("SEC") are irrelevant to the Commission's jurisdiction in this well-

²⁸ See *Metropolitan Edison Company Letter*, Docket Nos. C-2019-3007989, *et al.* (filed on Mar. 19, 2020).

²⁹ See *Metropolitan Edison Company Letter*, Docket Nos. C-2019-3007989, *et al.* (filed on January 16, 2024).

³⁰ See *Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980); See also *Hess v. Pa. PUC*, 107 A.3d 246, 259 (Pa. Cmwlth. 2014) *citing, inter alia, County of Chester v. Phila. Electric Co.*, 218 A.2d 331, 333 (Pa. 1966) ("Legislature has vested in the [Commission] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities.").

³¹ See *e.g., Zonca v. Metropolitan Edison Co.*, 2024 PA. PUC LEXIS 147, Docket NO. C-2019-3007961 (Opinion and Order entered May 9, 2024); *Day v. Duquesne Light Co.*, 2024 PA. PUC LEXIS 101, Docket No. C-2018-3003960 (Opinion and Order entered Apr. 4, 2024); *Kline v. PPL Electric Utilities Corp.*, 2020 PA. PUC LEXIS 504, Docket No. C-2017-2621072 (Opinion and Order entered Oct. 8, 2020).

tread area of Pennsylvania utility law. (Complainants’ Statement of Errors Nos. 20-21; Complainants’ Exception Nos. 2).

VIII. REPLY TO EXCEPTION 7: THE COMPANY IS NOT A STATE ACTOR THAT CAN VIOLATE THE COMPLAINANTS’ CONSTITUTIONAL RIGHTS

In their Exceptions, the Complainants appear to argue that the installation of a smart meter may violate their constitutional rights. (Complainants’ Exception Nos. 19-22.) To the extent that the Complainants intended to make this argument, such contentions are meritless. Indeed, the Court’s decision in *Povacz II* rebuffs this contention and resolves the Complainants’ constitutional claims against the Company. The Commonwealth Court previously found that “[c]onstitutional protections apply against state actors,” and “PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers.”³² This finding was not disturbed by the Supreme Court’s *Povacz II* decision. Therefore, because PECO and the Company are similarly-situated EDCs, the Company is not a state actor that can violate the Complainants’ constitutional rights, despite their arguments to the contrary. As such, the Complainants’ Exception(s) related to the allegedly unconstitutional conduct of the Company should be denied. For these reasons, the Complainants’ Exceptions regarding the constitutionality of the Company’s conduct should be rejected.

IX. THE COMPLAINANTS INCORRECTLY ARGUE THAT THE COMMISSION HAS JURISDICTION TO HEAR CLAIMS ARISING UNDER THE ADA

The Complainants argue that the ALJ’s legal conclusions with respect to the Commission lacking jurisdiction to hear claims arising under the ADA were “felonious.” (Complainants’ Exception Nos. 1 and 3.) This position is meritless and this issue is well settled. Determinations

³² *Povacz I*, 241 A.3d 481, 486 n.9 (Pa. Cmwlth. 2020).

regarding the Americans with Disabilities Act, or disability law, generally, are beyond the scope of the Commission's limited jurisdiction and should not be considered here.³³

X. CONCLUSION

WHEREFORE, for the foregoing reasons, and those set forth in the Initial Decision, the Exceptions of Liza Mousios and Roy Cumming should be denied.



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Date: July 15, 2024

Counsel for FirstEnergy Pennsylvania
Electric Company (Met-Ed Rate District)

³³ *Frompovich v. PECO Energy Company*, 2018 Pa. PUC LEXIS 160, *69, Docket No. C-2015-2474602 (Order Entered May 3, 2018) (“We find the Complainant's Exceptions on this issue to be meritless. We affirm the ALJ's conclusion that it is beyond the jurisdiction of Commission to determine whether the Complainant has a disability or a cause of action under the American with Disabilities Act.”)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Liza Mousios,	:	
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Complainant,	:	
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Metropolitan Edison Company,	:	Docket No. C-2019-3007995
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Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic and First-Class Mail, postage prepaid, as follows:

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Dated: July 15, 2024



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