

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

Public Meeting held August 1, 2024

Commissioners Present:

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

Thomas and Norma Mosley

C-2018-3001526

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rescission (Petition) filed by Thomas and Norma Mosley (collectively, the Petitioners or the Complainants or the Mosleys) on February 16, 2024, seeking reconsideration/modification of the Final Order entered

December 18, 2023 (*December 2023 Order*), relative to the above-captioned proceeding.¹ The Petition was 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 16, 2020.² On June 3, 2024, Met-Ed filed an Answer to the Petition (Answer).³ For the reasons discussed below, we shall deny the Petition.

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 Petitioners' residence and use in the ordinary course of business to measure the Petitioners' electricity consumption.⁴ 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

¹ By Secretarial Letter issued May 22, 2024 (*May 2024 Secretarial Letter*), the Commission's Secretary: (1) notified the Parties that there was no Certificate of Service or other indication that the Petition was served on the Respondent (*i.e.* Metropolitan Edison Company (Met-Ed or the Company)); and (2) enclosed the Petition, in order to constitute service under 52 Pa. Code § 5.572. Therefore, pursuant to 52 Pa. Code § 5.61, Met-Ed was given ten days from the date of the letter, or until June 1, 2024, to file an Answer to the Petition. *See*, *May 2024 Secretarial Letter*. Given that June 1, 2024, was a Saturday, an Answer to the Petition was due on Monday, June 3, 2024.

² We note that the Petition is signed solely by Mrs. Mosley. *See*, Petition at 2.

³ Initially, on October 6, 2020, Met-Ed filed a letter stating that it would not be filing Exceptions to the matter.

⁴ We note that, although both Mr. Mosley and Mrs. Mosley are listed under the "Customer (Complainant) Information" section, the Verification is signed and dated solely by Mrs. Mosley. Complaint at ¶¶ 1, 9.

Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at 44.⁵ The Petitioners are Met-Ed customers who have been notified of Met-Ed's intent to install a smart meter at their residence that provides the function of automatic meter reading (AMR). The Petitioners requested that Met-Ed not install a smart meter at their residence due to, *inter alia*, health and privacy concerns. Complaint at 3, 17-19, 23.

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 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.

⁵ At the time of initiation of the instant proceeding, FirstEnergy consisted of four separate companies: Met Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company. *See, Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et.al.*, Docket Nos. A-2023-3038771, *et. al* (Final Order entered December 7, 2023). Nonetheless, in this Opinion and Order, we shall refer to the Company as Met-Ed.

- (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 April 25, 2018, the Mosleys filed the instant Complaint.⁶ In their Complaint, the Mosleys alleged, *inter alia*, that the installation of a smart meter on their home will result in adverse health symptoms and present a threat to their safety and privacy. Complaint at 3, 9-10, 17-19, 22-23. The Mosleys further alleged that contrary to the utility's argument that there is no "opt-out" of smart meter installation, utility customers must: (1) be offered a smart meter; or (2) request a smart meter and "opt-in" to smart meter installation. *Id.* at 16. The Mosleys also alleged that the smart meter program is a violation of the Fourth Amendment and Fourteenth Amendment to the United States Constitution (U.S. Constitution). *Id.* at 17-18, 21. As relief, the Mosleys requested, *inter alia*: (1) that Met-Ed not shut off their electric service; and (2) to retain their analog meter. Complaint at 3. I.D. at 1.

On May 21, 2018, Met-Ed filed an Answer and New Matter to the Complaint (Answer), essentially denying material allegations in the Complaint and contending that the Company is required by Act 129 to install smart meters at the service address. Answer at 1-3, 8; I.D. at 1.

Also, on May 21, 2018, 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 Mosleys failed to state a claim upon which the Commission can grant relief, the Complaint is legally insufficient and, therefore, must be dismissed. Preliminary

⁶ Upon review of the Commission's case management system, the Complaint was served on the Respondent on April 30, 2018. Therefore, pursuant to 52 Pa. Code § 5.61(a), Met-Ed was provided twenty (20) days to file an Answer to the Complaint. Therefore, given that May 20, 2018, was a Sunday, an Answer to the Complaint was due Monday May 21, 2018.

Objection at 2-3, 8; I.D. at 1. On June 27, 2018, the Complainants filed an Answer to Met-Ed's Preliminary Objection. On July 24, 2018, the ALJ issued an Interim Order denying Met-Ed's Preliminary Objection and referring the matter for mediation. I.D. at 2.

On August 20, 2018, correspondence was filed with the Commission on the Complainants' behalf. I.D. at 2.

On October 18, 2018, the ALJ issued an Interim Order establishing a procedural schedule. Subsequently, the Mosleys filed correspondence regarding their Complaint: (1) on December 31, 2018; (2) on or about January 2, 2019; (3) on January 14, 2019; (4) on January 17, 2019; (5) on or about February 6, 2019; (6) on February 13, 2019; (7) on February 26, 2019; (8) on March 4, 2019; (9) on March 11, 2019; (10) on March 14, 2019; (11) on March 15, 2019; (12) on March 18, 2019; (13) on or about April 4, 2019; (14) on April 11, 2019; (15) on April 29, 2019; and (16) on May 14, 2019.⁷ I.D. at 2.

On March 13, 2019, the ALJ issued two Interim Orders: (1) one revising the procedural schedule; and (2) one permitting either Party to request a prehearing conference. On July 26, 2019, the ALJ issued an Interim Order revising the procedural schedule. I.D. at 2.

On August 14, 2019, the Mosleys filed a variety of handwritten and printed documents styled as "Evidentiary Hearing and Litigation Papers." I.D. at 2-3. The ALJ

⁷ The ALJ noted that these documents were identified in his Initial Decision by the date stamp applied by the Commission's Secretary's Bureau. I.D. at 2.

noted that these documents were not offered by the Mosleys at the hearing for admission into the record.⁸ I.D. at 3.

On August 21, 2019, the Mosleys filed additional correspondence comprised of, essentially, copies of: (1) USPS tracking history details; and (2) receipts from various retailers.

By Hearing Notice dated September 3, 2019 (Hearing Notice), an Initial Telephonic Hearing was scheduled for November 6, 2019, at 10:00 a.m. The Hearing Notice included the date, location, and time of the hearing. Hearing Notice at 1.

On September 4, 2019, September 25, 2019, and October 18, 2019, the Mosleys filed additional correspondence regarding their Complaint. I.D. at 3.

On or about October 1, 2019, the ALJ issued an Interim Order Confirming Requirements for Evidentiary Hearing. On October 31, 2019, the Mosleys filed a request for clarification. Consequently, on November 1, 2019, the ALJ issued an Interim Order Addressing the Mosleys' Request for Clarification.

On November 6, 2019, the evidentiary hearing was held as scheduled. Mrs. Mosley appeared *pro se*, presented her case through her own testimony, and offered four exhibits which were entered into the record (Complainant Exhibits 4a; 4b; 4c; and 7,

⁸ According to the ALJ, it is not clear from the record whether, or to what extent, the Complainants intended these documents to be written testimony and/or proposed exhibits. The ALJ further noted that at the evidentiary hearing, the Complainants provided oral testimony and identified several documents contained in the August 14, 2019, filing as proposed exhibits. I.D. at 3.

pages 31-39).⁹ I.D. at 3; Tr. at 100, 124. The Company was represented by counsel and presented the oral testimony of one witness, Mr. John Ahr (Mr. Ahr), as well as Mr. Ahr's written testimony, which was entered into the record (Met-Ed Exhibit 1). The Company also offered three exhibits which were entered into the record (Met-Ed Exhibits JCA-1, JCA-2, and JCA-3). I.D. at 3; Tr. at 134, 155-57. Additionally, the ALJ took judicial notice of: (1) House Bill No. 1565, Session 2017; and (2) the entirety of the Code. I.D. at 3 (citing Tr. at 44, 123).

On November 20, 2019, the Mosleys filed a Brief (Mosley First Brief).¹⁰ On December 20, 2019, the ALJ issued an Interim Order, which: (1) required that any briefs be filed on or before January 22, 2020; and (2) provided that no reply briefs would be accepted unless authorized by the Presiding Officer. On January 10, 2020, the Mosleys filed a Second Brief (Mosley Second Brief).¹¹ On January 22, 2020, Met-Ed filed its Main Brief (Met-Ed Brief). I.D. at 3-4.

On May 27, 2020, the ALJ issued an Interim Order Closing the Hearing Record. I.D. at 4.

⁹ According to the ALJ, although Complainant Exhibit 4c was initially admitted into the hearing record, it was ultimately not admitted upon further consideration. I.D. at 3 (citing Tr. at 81, 124-25).

¹⁰ According to the ALJ, the Mosley First Brief included extra-record information which was not considered in preparing the Initial Decision. I.D. at 4.

¹¹ According to the ALJ: (1) the Mosley Second Brief included extra-record information which was not considered in preparing the Initial Decision; and (2) on January 29, 2020, the Mosleys filed additional correspondence in response to Met-Ed's Brief, which was disregarded in its entirety because it was filed after January 22, 2020, which was the deadline for filing briefs, and the ALJ did not authorize the filing of reply briefs. I.D. at 4.

In the Initial Decision issued on September 16, 2020, the ALJ recommended that the Commission dismiss the Complaint due to the failure of the Mosleys to meet their burden of proof. I.D. at 1, 18.¹²

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.

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*). Also, on November 14, 2023, a Notice was provided (Notice) informing the Mosleys of the lifting of the stay and their procedural rights and obligations under the Commission's regulations. The 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." Notice at 2.

As previously noted, on December 18, 2023, the Commission entered the *December 2023 Final Order*, which stated that in accordance with the provisions of Section 332(h) of the Code, 66 Pa.C.S. § 332(h), the Initial Decision of ALJ Watson

¹² 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 Complainants 20-days in which file exceptions.

became final without further Commission action and, therefore, dismissed the Complaint with prejudice. *See, December 2023 Final Order.*

On December 29, 2023, Mrs. Mosley filed additional correspondence.¹³

By Secretarial Letter issued on January 30, 2024 (*January 2024 Secretarial Letter*), the Commission notified the Mosleys, *inter alia*, that: (1) the deadline to file exceptions had expired; (2) pursuant to Section 5.572(c) of the Code, 52 Pa. Code § 5.572(c), the deadline to file a petition for reconsideration of the Complaint has expired; and (3) if the Mosleys wish to pursue their Complaint further, they may file a Petition for Rescission, pursuant to 52 Pa. Code § 5.572(d). *January 2024 Secretarial Letter.*

As previously noted, the Mosleys filed their Petition on February 16, 2024, and Met-Ed filed its Answer on June 3, 2024. Also, on June 3, 2024, Mrs. Mosley filed additional correspondence. Additionally, on June 11, 2024, Mrs. Mosley filed a Reply to Answer.¹⁴

¹³ Upon review of Mrs. Mosley's correspondence filing on December 29, 2023, we find that the filing fails to sufficiently comply with the filing requirements set forth in the Commission's Regulations, and is further deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(d) and (e), we shall strike the contents of the filing from our consideration of the Petition.

¹⁴ Upon review of Mrs. Mosley's filings on June 11, 2024, and June 3, 2024, we find that both filings fail to sufficiently comply with the filing requirements set forth in the Commission's Regulations, and are further deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(d) and (e), we shall strike the contents of both filings from our consideration of the Petition.

III. Discussion

A. Legal Standards

With respect to petitions for rehearing, reconsideration, rescission and amendment of Commission orders, the Code establishes a party's right to seek relief within fifteen days following the service of a Commission order pursuant to Subsection 703(f). 66 Pa. Code § 703(f) (relating to rehearing).¹⁵ Upon the filing of a petition for relief pursuant to Section 703(f), the Commission may affirm, rescind, or modify its original order. 66 Pa.C.S. § 703(f). The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa.C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of Commission Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572(c) of Commission Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas or others within fifteen days of the service of a Commission order, or under Section 5.572(d) as a petition for rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission under the same standard.

¹⁵ Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for rehearing pursuant to Section 703(f) of the Code typically include an allegation of new evidence. 66 Pa. Code § 703(f); *see, West Penn Power Co. v. Pa. PUC*, 659 A. 2d 1055 (Cmwlth. 1995).

In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See, City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *see also, West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*); *see also, Richard Feleccia v. PPL Electric Utilities Corporation, d/b/a PPL Utilities and Barbara A. Lima*, Docket No. C-20016210 (Opinion and Order entered March 7, 2003) (*Feleccia*).

The Commission’s application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Duick* as follows:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part on the grounds that the decision or ruling of the Commission on a matter or issue was either unwise or in error.

In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein the Court said,

[b]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of these appellants ... and dismissed by the Commission ... and not appealed from. Parties, ..., cannot be permitted, by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them and not appealed from. ...

Pennsylvania Railroad Co. v. Public Service Commission,
118 Pa. Super. 380 (1935).

What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559; *see also*, *AT&T v Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990). With respect to petitions for rescission, specifically, we have stated that in order “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” *Feleccia*, slip op. at 3 (citing *Duick* at 559).

A Commission decision to deny a petition for rescission or amendment is a matter squarely within its discretion, subject to being overturned only where a reviewing court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power*, 659 A.2d at 1065.

B. ALJ’s Initial Decision

In the Initial Decision, ALJ Watson made eighteen Findings of Fact (FOF) and reached eighteen Conclusions of Law (COL). I.D. at 4-7, 16-19. 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.

At the outset, the ALJ summarized: (1) Act 129; (2) Section 2807(f)(2) of the Code; and (3) the Company’s Commission-approved Smart Meter Deployment Plan

(SMDP) which, *inter alia*, does not provide an opt-out for customers. I.D. at 9-10 (citing Met-Ed Exhs. 1 at 9, JCA-1 at 9, 47; 66 Pa.C.S. §§ 101 et seq, 2807(f)(2)).

The ALJ addressed Mrs. Mosley’s argument that there is no federal mandate for smart meters. Specifically, the ALJ noted that Mrs. Mosley testified that it was her understanding that residential customers needed to opt-in to receive a smart meter, pursuant to the “Energy Policy Act of 2005” and the “2007 Energy Bill.” I.D. at 10 (citing Tr. at 36-37). Further, the ALJ addressed Mrs. Mosley’s arguments that: (1) Act 129 is fraudulent and based on false information, noting that Mrs. Mosley did not specify which information was allegedly false; (2) customers must opt-in to smart meter installations per Act 129 and, by making smart meters mandatory, the Commission has implemented Act 129 in an “unauthorized way;” (3) the smart meter mandate is, essentially, unreasonable and fraudulent because the terms were not fully disclosed to her; and (4) forcing people to pay to opt-out of smart meter installation is a violation of her Fourth Amendment rights under the U.S. Constitution, adding that there is no record evidence demonstrating that anyone was requiring Mrs. Mosley to pay to opt-out of smart meter installation. I.D. at 10-11 (citing Tr. at 44-45, 51-52).

The ALJ noted that Commission precedent supports the Company’s conclusion that the Commission cannot grant exceptions to the statutory directive that smart meters be installed at all service locations and allow customers to opt-out. I.D. at 11 (citing *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011)). Further, the ALJ noted that neither the Company’s Commission-approved SMDP nor Act 129 provide for such opt-outs to occur. I.D. at 11 (citing Met-Ed Exh. JCA-1; 66 Pa.C.S. § 2807(f)). Moreover, the ALJ noted that in a similar complaint proceeding, the Commission held that: (1) there is no provision in the Code or the Commission’s Regulations or Orders which 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 11 (citing *Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019) (*Hoffman-Lorah*)).

The ALJ found that it is well-settled that smart meters are required by Act 129 and Commission Orders. Additionally, the ALJ reasoned that because the Mosleys presented no evidence to demonstrate that Met-Ed's refusal to allow the Mosleys an opt-out of smart meter installation is a violation of the Company's SMDP or other Commission Order, the Mosleys' claim on this matter must be dismissed. I.D. at 11.

The ALJ then turned to the Mosleys' health, safety, and privacy concerns regarding smart meters. The ALJ noted that the Complainants' evidence, which consisted primarily of Mrs. Mosley's unsubstantiated lay opinions, failed to meet their burden of proof to show that the proposed installation of a smart meter at the service location constitutes unreasonable or inadequate service. I.D. at 11-12. As such, the ALJ found that the Mosleys failed to demonstrate that the installation of a smart meter at their residence would constitute unreasonable or inadequate service under Section 1501. I.D. at 12 (citing 66 Pa.C.S. § 1501).

The ALJ summarized Mrs. Mosley's testimony that smart meters, essentially: (1) pose a threat to personal privacy; (2) could start a fire in her home; and (3) are too powerful for the electricity in her home. I.D. at 12 (citing Tr. at 51, 101, 105-06). Further, the ALJ noted that Mrs. Mosley testified that she has a history of: (1) severe asthma and migraines; (2) spinal operations; (3) heart operations; and (4) artificial valves in her heart. Moreover, the ALJ noted that Mrs. Mosley testified that she is sensitive to the "EMF and RF fields" emitted by smart meters and cannot go into any structure where a smart meter has been installed. I.D. at 13 (Tr. at 57-58, 91-93).

Furthermore, the ALJ noted that Mrs. Mosley testified that she fears for her health and has suffered from stress and anxiety. I.D. at 13 (Tr. at 92, 104).

The ALJ also noted that Mrs. Mosley offered some of her medical records into evidence. I.D. at 13 (citing Complainant Exh. 7 at 31-39). Specifically, the ALJ cited the writing of Mrs. Mosley's doctor regarding the forthcoming installation of a smart meter on her home:

She is very distressed by the thought. I have no competence to evaluate the effect of such 'smart meter' on people's health. In general, however, I can see that this is very distressing for [Mrs. Mosley] generating high anxiety in her case and that could definitely affect her well-being and overall health.

I.D. at 13 (citing Complainant Exh. 7 at 32). Further, the ALJ pointed out that although the medical records offered by Mrs. Mosley were entered into the hearing record without objection, the statements and opinions written by her doctor are hearsay because the doctor was not present to be recognized as an expert or explain the basis for his opinion. Moreover, the ALJ pointed-out that the doctor stated that he is not competent to evaluate the health effects of smart meters. As such, the ALJ did not give weight to Mrs. Mosley's doctor's opinions contained in her medical reports. I.D. at 13.

The ALJ also noted that the Company's witness, Mr. Ahr, testified that: (1) the only information accessible to the Company through a smart meter is the customer's electricity usage; (2) the smart meters installed by the Company comply with all safety requirements and standards established by the Federal Communications Commission (FCC), meet the American National Standards Institute (ANSI) standards, and are Underwriters Laboratories (UL) certified; and (3) he was unaware of smart meters causing any fires in Met-Ed's service territory. I.D. at 14 (citing Met-Ed Exh. 1 at 11-12; Tr. at 146).

The ALJ also noted that the Company's Commission-approved Privacy Policy, which was also admitted into evidence, explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information. Further, the ALJ noted that Met-Ed's Privacy Policy states that the Company will not share sensitive customer information (including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number) with third parties without the customer's consent. I.D. at 14 (citing Met-Ed Exh. JCA-2 at 2-3; Tr. at 146-49). Moreover, the ALJ noted that the Privacy Policy explains that when a customer's usage data is transmitted across the smart meter network, the security protections in place include several security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring. I.D. at 14 (citing Met-Ed Exh. JCA-2 at 3-4; Tr. at 148).

The ALJ found that there is no competent evidence in the hearing record to support her privacy, safety, or health concerns, except for Mrs. Mosley's own lay testimony and her unsupported assertions and beliefs. The ALJ noted that assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 15 (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

The ALJ also found that as a lay witness, Mrs. Mosley is not qualified to testify or offer information contained in reports and other sources related to any issues outside of her direct personal knowledge. The ALJ cited Pennsylvania Rules of Evidence (Pa.R.E.) 701 to note that a lay witness is limited to giving opinion testimony that is rationally based on the witness's own perceptions. I.D. at 15 (citing Pa.R.E. 701). The ALJ continued that although the Pa.R.E. are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical

matters “without personal knowledge or specialized training.” I.D. at 15 (citing *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Pa.R.E. 602, 701, and 702 generally applicable in agency proceedings)). The ALJ added that lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge. I.D. at 15 (citing Pa.R.E. 701).

The ALJ found that here, much of Mrs. Mosley’s testimony was related to issues outside the scope of her personal knowledge and based on hearsay, and all such testimony was properly excluded upon objection. I.D. at 15. The ALJ concluded that although the Mosleys undoubtedly suffer from various medical issues, there is insufficient evidence in the hearing record to show that the installation of a smart meter at the service location would constitute unreasonable or inadequate service under Section 1501. Accordingly, the ALJ recommended that the Complaint be dismissed, with prejudice. I.D. at 16.

C. The Petition¹⁶

The Petition is comprised of two handwritten pages and a copy of the language from 52 Pa. Code § 5.572.¹⁷ Petition at 1-3. In response to the Initial Decision, Mrs. Mosley argues that her health and the health of her husband have been

¹⁶ We acknowledge that the format of the Mosleys’ Petition does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.572(a), which requires that petitions “specify, in numbered paragraphs, the findings or orders involved and the points relied upon by the petitioner, with appropriate record references and specific requests for findings or orders desired.” 52 Pa. Code § 5.572(a). Nevertheless, particularly because the Petitioners are appearing *pro se*, we will accept the Petition 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.

¹⁷ As noted, *supra*, the Petition is signed solely by Mrs. Mosley. *See*, Petition at 2.

“compromised enough” by smart meters in “other homes, stores, churches, restaurants, etc.,” adding that she and her husband are limited to only going to doctors and hospitals. Petition at 1. Mrs. Mosley further avers that she is preventing the smart meter installation on her property because a smart meter, according to Mrs. Mosley, is “a weaponized EMF device that emits dangerous ‘pulsed radiation’ and [is] hazardous to human health.” *Id.*

Mrs. Mosley also states the following:

The electrification of the Earth & non-stop wireless tech advancements is a taboo subject. Society is too invested in and dependent upon the infrastructure to question it, but if we ignore it, its at our own peril. The human body is itself a delicate electrical machine. Fatigue, insomnia & heart palpitations are but a few of many EMF health effects. How many Kids must have heart attacks on sporting fields? How Many? As for myself I Live in Heart Failure every minute of my Life. I had one open heart operation and I don't want ignorant persons deciding my next one by putting a smart meter on my house. My husband has gone into A-Fib 3 times and had 3 ablations and last rites given to him twice. Your Smart Meter would absolutely compromise our health even more! [sic]

Petition at 2. Mrs. Mosley closes her Petition by stating that she will continue to fight to keep an analog meter on her home and requests that she be left alone. *Id.*

D. Met-Ed's Answer

In its Answer, Met-Ed argues that the Petition should be denied because the Petitioners failed to file Exceptions to the Initial Decision and waived all of the arguments raised in their Petition. Met-Ed refers to Section 703 of the Code, 66 Pa. Code § 703(g), and the *Duick* standard to assert that the Commission will not grant reconsideration based on an argument that the same party abandoned earlier. Answer at 7 (citing *Albert S. Merritt v. Duquesne Light Company*, Docket No. F-2009-2122659

(Order entered March 31, 2011) at 9-10; *Feleccia*, itself citing *Duick* at 559; 66 Pa.C.S. § 703(g)). Met-Ed continues that if the Petitioners disagreed with the Initial Decision dismissing the Complaint, they had an opportunity to file Exceptions but failed to do so. Therefore, Met-Ed posits that because the Petitioners waived any arguments that were raised or could have been raised in the Exceptions stage and cannot “re-raise” them here, the Petition should be denied. Answer at 8.

Met-Ed also argues that the Petition should be denied because the Petitioners fail to establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law. Answer at 8 (citing *Feleccia*). Specifically, Met-Ed refers to the Initial Decision to note that the ALJ considered and rejected the Petitioners’ arguments that the installation of a smart meter would constitute unreasonable or inadequate service. Answer at 8 (citing Petition at 1-2; I.D. at 11-16). More specifically, Met-Ed highlights that in response to the Petitioners’ claim that the installation of a smart meter would cause, contribute to, or exacerbate adverse health effects, the ALJ observed as follows:

[...] Ms. Mosley testified she suffers from various conditions including “severe asthma” and migraines, has had operations on her spine and heart, and has artificial valves in her heart. She testified that she is sensitive to the “EMF and RF fields” emitted by smart meters and cannot go into any structure where a smart meter has been installed. She testified she fears for her health and has suffered stress and anxiety as a result this case. She offered some of her medical records into evidence. Notably, her doctor writes, “Norma mentioned that a new ‘smart meter’ instead of analog electric meter is about to be installed outside her home. She is very distressed by that thought. I have no competence to evaluate the effect of such ‘smart meter’ on people’s health. In general, however, I can see that this is very distressing for Norma generating high

anxiety in her case and that could definitely affect her well-being and overall health.

Answer at 8-9 (citing I.D. at 13, footnotes omitted). Met-Ed adds that the ALJ rejected these claims because Mrs. Mosley's testimony was: (1) based on hearsay; (2) largely related to issues outside the scope of her personal knowledge; and (3) properly excluded upon objection. Answer at 9 (citing I.D. at 15). Further, Met-Ed refers to the ALJ's conclusion that "there is insufficient evidence in the hearing record to show that the installation of a smart meter at the service location would constitute unreasonable or inadequate service under Section 1501." Answer at 9 (citing I.D. at 16). Moreover, Met-Ed refers to the *December 2023 Final Order* adopting the Initial Decision, which became final without further Commission action due to the Petitioners' failure to file Exceptions. Answer at 9.

In summary, Met-Ed avers that the Petition simply repeats the same health-related arguments that were previously considered and rejected by the ALJ in his Initial Decision. Therefore, Met-Ed argues that the Commission should deny the Petition because the Petitioners fail to establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law. Answer at 9-10. Met-Ed adds that to the extent that there was any change in law, the Petitioners disregard the Pennsylvania Supreme Court's holding in *Povacz II*. Answer at 10 (citing *Povacz II* at 1014).

E. Disposition

Initially, we note that any argument or Exception 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*,

625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Based upon our review of the Petition and the record in this proceeding, we find that the Petitioners have failed to allege any new or novel arguments or other basis that would persuade us to reverse, modify, or amend the *December 2023 Final Order*, which became the final action of the Commission, pursuant to Section 332(h) of the Code, 66 Pa.C.S. § 332(h). Therefore, we shall decline to exercise our discretion to disturb the *December 2023 Final Order*.

The averments that Mrs. Mosley provides in her Petition are largely premised on alleged adverse health effects from smart meter installations, which echo the health and safety concerns expressed by the Mosleys in support of their Complaint. As discussed, *supra*, the ALJ recommended that the Commission dismiss the Complaint, finding that aside from Mrs. Mosley's lay testimony pertaining to issues outside the scope of her personal knowledge, and her unsupported assertions and beliefs, there is no competent evidence in the hearing record to support Mrs. Mosley's health or safety concerns or to show that the installation of a smart meter at her residence would constitute unreasonable or inadequate service under Section 1501, 66 Pa.C.S. § 1501. *See*, I.D. at 15-16. We note that Mrs. Mosley's Petition never specifically addresses the Initial Decision. Instead, Mrs. Mosley's Petition, essentially, repeats her health and safety concerns, to which she averred in her Complaint and in her testimony, in opposition to Met-Ed's smart meter installation. *See*, Complaint at 9-10, 22-23. Notwithstanding, we find that the Petitioners fail to make any new or novel arguments that would persuade us to reverse, modify, or amend the *December 2023 Final Order*, or that the ALJ erred in recommending that the Commission dismiss the Mosleys' Complaint.

Given that the content of the Petition does not allege any new or novel arguments that would persuade us to reverse, modify, or amend the *December 2023 Final Order*, we perceive no grounds on which to rescind or reconsider the dismissal of the Mosleys' Complaint. Indeed, the Petitioners' unsubstantiated and repeated assertions regarding the dismissal of their Complaint for failure to meet their burden of proving that the installation of a smart meter at the service location would constitute unreasonable or inadequate service under Section 1501 is insufficient to justify modifying or amending the *December 2023 Final Order*. Therefore, we shall deny the Mosleys' Petition as it does not raise any new or novel arguments or other basis that persuades us to rescind the *December 2023 Final Order*. Accordingly, we believe that it is reasonable to deny the Petition under the circumstances in this case.

IV. Conclusion

For the reasons set forth above, we shall deny the Petition for Rescission filed by Thomas and Norma Mosley, consistent with this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Petition for Rescission filed by Thomas and Norma Mosley on February 16, 2024, at Docket No. C-2018-3001526, is denied, consistent with this Opinion and Order.

2. That this proceeding, at Docket No. C-2018-3001526, 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: August 1, 2024

ORDER ENTERED: August 1, 2024