

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jessica Janosek

v.

West Penn Power Company

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C-2019-3010124

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Complainant filed a Formal Complaint against Respondent objecting to the installation of a smart meter at her residence. This decision dismisses the Formal Complaint due to Complainant's failure to meet her burden of proof.

BACKGROUND

On May 23, 2019, Jessica Janosek (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or Company), alleging that exposure to smart meters present various negative health consequences to Complainant and her children. As relief, Complainant requests that her electric service not be terminated and that she be permitted to keep her analog meter.

On June 13, 2019, Respondent filed an Answer and New Matter to the Complaint, averring that Complainant has refused to permit the installation of a smart meter at her residence. Respondent further averred it is required by Act 129 of 2008,¹ to install a smart meter. In its New Matter, Respondent averred that the Commission is without authority to grant the relief requested by Complainant and that Respondent has not violated any Code, Commission regulation or order.

Complainant did not file a response to the New Matter of Respondent.

On July 11, 2019, a Prehearing Conference/Judge Change Notice was issued scheduling a prehearing conference for August 9, 2019, and reassigning the case from Administrative Law Judge Mary Long to Administrative Law Judge Emily DeVoe.

On July 17, 2019, an interim order was entered establishing a litigation schedule in this proceeding. On the same date, an interim order was entered setting requirements for the prehearing conference scheduled for August 9, 2019.

On August 9, 2019, the prehearing conference was held as scheduled. Complainant and Lauren Lepkoski, Esquire, counsel for Respondent participated.

On October 16, 2019, an interim order was entered scheduling a second prehearing conference for November 4, 2019.

On November 4, 2019, the second prehearing conference was held as scheduled. Complainant and Tori Giesler, Esquire, counsel for Respondent participated.

¹ 66 Pa.C.S. §§ 2803, 2806.1, 2807, 2811, 2813-2815 (Act 129).

On November 6, 2019, a Call-In Telephone Hearing Notice was entered scheduling an evidentiary hearing for February 6, 2020.

On January 24, 2020, a Judge Change Notice was issued reassigning the case from Administrative Law Judge Emily DeVoe to Administrative Law Judge Mark Hoyer.

On January 24, 2020, a Judge Change Notice was issued reassigning the case from Administrative Law Judge Mark Hoyer to the undersigned presiding officer.

The evidentiary hearing convened as scheduled on February 6, 2020, and was concluded on that date. The undersigned presided at the hearing. Complainant appeared without legal counsel and presented testimony. Complainant Exhibits F-2, F-3, F-4, F-5, G and J were admitted into evidence. Respondent was represented by Tori Giesler, Esquire and Lauren Lepkoski, Esquire. Respondent presented one witness, John C. Ahr, who is employed by FirstEnergy Service Company with the title Advisor, Regulatory Compliance – Smart Meters. Respondent Exhibits JCA-1, JCA-2, JCA-3, JCA-4, JCA-5, and JCA-6 were admitted into evidence.

On July 1, 2020, an interim order was entered permitting the parties to file main briefs on or before August 7, 2020. Respondent filed a brief on August 7, 2020. Complainant did not file a brief.

On October 19, 2020, an interim order was entered closing the hearing record in this proceeding.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania. Public Utility*

Commission,² (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129, codified at 66 Pa.C.S. § 2807(f). In the *Povacz I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission's Order in the *Povacz I*, and related cases.³

In light of the Commonwealth Court's decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020, Stay Order*). The *November 4, 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. The *November 4, 2020, Stay Order* applied to and was docketed at the instant case.

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 Pennsylvania Supreme Court issued a decision in *Povacz v. Pennsylvania. Public Utility Commission (Povacz II)*.⁴ In *Povacz II*, the Pennsylvania Supreme Court resolved many of the outstanding legal issues in many

² *Povacz v. Pa. Pub. Util. Comm'n*, 241 A.3d 481 (Pa. Cmwlth. 2020).

³ *Povacz I* at 495.

⁴ *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

smart meter cases. The court held, among other things, that under Act 129, customers have no right to refuse smart meter installation.⁵ The court further clarified the burden of proof required to support a claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code.⁶ Specifically, the Court held that to prove that a smart meter is unsafe service under Section 1501, a complainant must support that allegation with medical or expert testimony.

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.

Under the circumstances, an interim order was entered on December 28, 2023, re-opening the evidentiary hearing record and permitting the Parties to file briefs or supplemental briefs and any other appropriate requests for relief, on or before February 1, 2024.

On February 1, 2024, Complainant filed a brief. On February 1, 2024, Respondent filed a supplemental brief. No further requests for relief were subsequently filed by either party in this proceeding.

⁵ *Id.* at 997.

⁶ 66 Pa.C.S. § 1501.

On June 3, 2024, an Interim Order was entered closing the evidentiary record in this proceeding.

FINDINGS OF FACT

1. Complainant is Jessica Janosek who resides at 937 Keisterville Road, Keisterville, Pennsylvania.

2. Respondent is West Penn Power Company, an electrical distribution company that provides residential electrical service to Complainant at the service address.

3. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans. Tr. 155-156.

4. Act 129 provides a list of required smart meter functionality, which was supplemented by Commission order. Tr. 155-156.

5. West Penn's Smart Meter Technology Procurement and Installation Plan was filed on August 14, 2009. Tr. 158.

6. The Commission approved West Penn's smart meter deployment plan, with modifications, on June 30, 2011. Tr. 158-159.

7. 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 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% 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. Tr. 159-160.

8. 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. Tr. 161.

9. Customers may not elect to opt-out of the installation of smart meters. Tr. 163.

10. Respondent's smart meters comply with all applicable requirements and standards for smart meters adopted by the Federal Communications Commission and the American National Standards Institute Tests. Tr. 167.

11. Respondent's smart meters are Underwriters Laboratories (UL) certified, which means the meters were tested for Compliant UL standard 2735. Tr. 166.

12. Respondent is permitted to terminate service where a customer denies it access to its smart meters. Tr. 167.

13. Respondent ceased termination procedures once the Formal Complaint was filed. Tr. 173-174.

14. A smart meter was installed at Complainant's home in approximately February of 2019. Tr. 50.

15. The smart meter was removed approximately two weeks later and has not been reinstalled. Tr. 50-51.

16. Complainant suffers from various health conditions, including migraine headaches and heart palpitations. Tr. 48-49.

17. After the smart meter was removed, the triggering effects that made Complainant's migraine headaches last for eleven days and her heart palpitations, went away. Tr. 59-60.

18. When Complainant visits her mother's house, where a smart meter exists, she experiences similar symptoms. Tr. 59-60.

19. Complainant's children also suffer from various medical conditions. Tr. 63-66, 71-74.

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁷ The preponderance of evidence standard requires proof by a

⁷ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

greater weight of the evidence.⁸ This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.⁹

The first step in carrying the burden of proof is establishing a prima facie case that the Company violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establish a prima facie case does it become the responsibility of the respondent to provide rebuttal evidence.¹⁰ In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹¹ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.¹² Although the factual burden may shift during a proceeding, the Complainant always maintains the overarching burden of proof. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."¹³ A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.¹⁴

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility

⁸ *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

⁹ *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008).

¹⁰ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

¹¹ *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

¹² *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

¹³ *Lansberry*, 578 A.2d at 602.

¹⁴ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, C-2014-2431410 (Opinion and Order entered Dec. 3, 2015).

[is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”¹⁵ Section 1501 of the Public Utility Code states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”¹⁶ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.¹⁷ Relatedly, the Court in *Povacz II* made clear that Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, and that Complainants seeking smart meter related relief must carry a two-fold burden of proof for Section 1501 claims involving the safety of smart meters and radio frequency (“RF”) emissions.¹⁸

First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer’s evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm.¹⁹ Once the parties have presented their evidence,

¹⁵ 66 Pa.C.S. § 701.

¹⁶ 66 Pa.C.S. § 1501.

¹⁷ *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160 (Opinion and Order entered May 3, 2018).

¹⁸ *See Povacz II*.

¹⁹ *Povacz II*, at 1008.

the onus then falls on the ALJ to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm.²⁰ The Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.²¹ Further, the Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, they may be entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff.²²

The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services.²³

In the hearing, Complainant argued that she and her children suffered negative medical consequences after the smart meter was installed at the service address in approximately February of 2019, and that the symptoms dissipated after the smart meter was removed approximately two weeks later. Complainant did not offer any admissible medical, scientific or engineering expert testimony about smart meters causing physical symptoms but did offer various articles and writings warning of physical health hazards caused by smart meters.

Whether Act 129 mandates installation of smart meters and if customers are permitted to opt-out of the installation of a smart meter was resolved by the Pennsylvania

²⁰ *Povacz II*, at 1006.

²¹ *Povacz II*, at 1005.

²² *Povacz II*, at 1015.

²³ *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

Supreme Court in *Povacz II*. The Supreme Court, in *Povacz II*, concluded that Act 129²⁴ mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, such as West Penn Power Company.²⁵

Specifically, the Supreme Court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides instructions for furnishing smart meters to all customers. In short, the Supreme Court found that under Act 129, customers have no right to refuse smart meter installation.²⁶ Accordingly, the Supreme Court reversed the Commonwealth Court and affirmed the Commission's interpretation that Act 129 mandates universal smart meter installation.²⁷

The Supreme Court in *Povacz II* noted that a claim that a smart meter is harmful to a customer's health must be supported by expert testimony.

Importantly, the Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501:

To the extent Customers challenge the safety of smart meters based on their individualized concerns about adverse effects, we conclude that neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.31 Allowing fear — however reasonable given the inconclusiveness of scientific research and studies — to support a finding or conclusion that smart meter technology is unsafe, in the absence of substantial evidence of causality between RF emissions and adverse human health effects,

²⁴ 66 Pa.C.S. § 2807(f).

²⁵ *Povacz II* at 992.

²⁶ *Id.* at 997.

²⁷ *Id.*

eliminates the requirement that a customer prove the utility is responsible or accountable for the problem described in the complaint.^[28]

The Court reasoned that allowing fear to support a finding or conclusion that smart meter technology is unsafe, in the absence of substantial evidence of causality between emissions and adverse human health effects, eliminates the requirement that a customer prove the utility is responsible or accountable for the problem described in the complaint. Failing to meet that requirement – to prove causality by substantial evidence – would render ineffective and useless Section 332(a) of the Code. Relatedly, the Supreme Court noted that an allegation of specific personal harm by an individual customer (versus a more generic claim that there is harm to the general public) does not diminish the need to prove, by a preponderance of the evidence – with expert opinion testimony – that the service or facility is unsafe and that a causal connection exists between the allegedly unsafe service or facility and alleged harm.²⁹

The primary evidence offered by Complainant is her personal testimony about her health and the health of her children and when her children noticed her symptoms. As explained in *Povacz II*, testimony regarding personal beliefs or perceptions are not enough evidence to conclude that the smart meter installed at Complainant’s property is unsafe and violates the safe and reasonable service mandate of Section 1501 of the Public Utility Code.³⁰ Assertions, personal opinions or perceptions

²⁸ *Id.* at 1005.

²⁹ *Povacz II* at 1007.

³⁰ 66 Pa.C.S. § 1501.

do not constitute factual evidence.³¹ Even self-represented complainants must provide relevant and necessary information.³² Accordingly, this claim must be dismissed.

The *Povacz II* decision resolved the issue of whether the Company is required by Act 129 to install smart meters for all of its customers, including the Complainant. In *Povacz II*, the Supreme Court “conclude[d] that Act 129 does mandate that EDCs,” like the Company, “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.”³³ Moreover, even “[i]f the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”³⁴ Nothing in the Company’s tariff permits an opt-out of the smart meter’s installation. The only accommodation set forth in the Company’s tariff is for the meter to be relocated to a different location and for the customer to pay for the estimated relocation costs.³⁵ As a result, the Company must install smart meters for all of its customers, including the Complainant, under Act 129.

In addition, the Supreme Court’s decision resolved any issue about the Commission’s burden of proof standard in smart meter complaint cases, which requires Complainant to prove, by a preponderance of the evidence, that there was a “conclusive

³¹ *Pennsylvania Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). *See also Applications of Transource*, Docket No. A-2017-2640195 (Opinion and Order entered May 24, 2021) (discussing the distinction between expert and lay testimony to establish facts that are technical in nature.).

³² *Groch v. Unemployment Comp. Bd. of Rev.*, 472 A.2d 286 (Pa. Cmwlth 1984); *Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081 (Pa. 1985) (Self-represented litigants assume the risk of proceeding without counsel.).

³³ *Povacz II* at 1014.

³⁴ *Id.*

³⁵ *Id.*

causal connection” between the smart meters’ RF emissions and adverse health effects. As noted by the Supreme Court, the Commission has been using the “conclusive causal connection” standard in RF emission cases “for almost three decades.”³⁶ In these types of cases “where scientific evidence is required to establish the safety of a service or facility, use of the evidentiary standard of ‘conclusive causal connection’ to assess the evidence is correct.”³⁷

In addition, the *Povacz II* decision resolved the Complainant’s claim that the Company would violate her constitutional rights by installing the smart meter. Although Complainant raised constitutional arguments in this case, the Commission lacks jurisdiction to consider these claims.³⁸

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.”³⁹ 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 Complainant’s constitutional rights. Even if the Commission had jurisdiction to decide these claims, in order for there to be a deprivation of constitutional rights, “the deprivation must be caused by the exercise of some right or privilege created by the state” and “the party charged with the deprivation must be a person who may fairly said to be a state actor.”⁴⁰ Here, Respondent is not a state actor. In *Jackson v. Metropolitan*

³⁶ *Id.* at 1004.

³⁷ *Id.* 1007.

³⁸ *See Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. Ill. 2014).

³⁹ *Povacz v. Pa. PUC*, 241 A.3d 481, 486 n.9 (Pa. Cmwlth. 2020).

⁴⁰ *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (emphasis added) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 937 (1982)); *see Commonwealth v.*

Edison Co., the U.S. Supreme Court found that a Pennsylvania electric utility, Metropolitan Edison Company, was not a state actor, even though it arguably had “monopoly power” and “provided an essential public service required to be supplied on a reasonably continuous basis.”⁴¹ Even if the Commission had jurisdiction to consider this claim, Respondent’s installation of the smart meter is not a state action that can violate the Complainant’s constitutional rights.

In addition, Complainant’s assertion that West Penn has violated the ADA is outside the jurisdiction of the Commission. The Commission has previously recognized that it has no jurisdiction to act under the ADA.⁴² The Commission held in *Frompovich*:

[I]t 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. See I.D. at 18. If Ms. Frompovich believes that she has a valid ADA claim against PECO, she must work through the federal courts or one of the federal enforcement agencies, which include the Department of Labor, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission or the Department of Justice, but not this Commission.^[43]

Furthermore, at the hearing, Complainant acknowledged that she has not filed a claim against the Company under the ADA.⁴⁴ Complainant’s claims under the ADA

Demor, 942 A.2d 898, 899-900 (Pa. Super. 2008) (applying principles outlined in *Corley* to Fourth Amendment analysis); *W. Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co.*, 485 A.2d 1, 5-6 (Pa. Super. 1984) (“[T]he search and seizure provisions of Article 1, section 8, have been held inapplicable to the conduct of private parties.”) (citations omitted).

⁴¹ *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974).

⁴² *See Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *69 (Order entered May 3, 2018).

⁴³ *Frompovich*, 2018 Pa. PUC LEXIS at *69.

⁴⁴ Tr. 112-114.

cannot serve as the basis for finding that the Company has violated the Public Utility Code, the Commission's regulations or a Commission order.

Complainant also alleged the Respondent was required to provide her with accommodations under the United Nations Universal Declaration of Human Rights, the Americans with Disabilities Act and the "Constitution Fourth Amendment," specifically that she could retain her analog meter and forego the installation of a smart meter. As stated above, the Commission is without authority to provide the relief requested.

In addition, Complainant failed to present any credible evidence to support her allegations that the Company's smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. Complainant alleged various health and safety concerns related to smart meters but failed to provide any reliable credible evidence in support of these allegations at the evidentiary hearing. As such, the Complainant failed to establish her burden of proof to show that the deployment of smart meters is unreasonable or constitutes inadequate utility service. Complainant presented no expert testimony to corroborate her health and safety allegations contained in the Complaint. In addition, the Complainant presented no evidence that she is qualified to offer expert testimony as an engineer, doctor or other medical professional. As such, Complainant failed to present substantial evidence that the installation of a smart meter would be unsafe or unreasonable under Section 1501. As Complainant failed to establish a violation of Section 1501, the Commission is unable, under the circumstances, to provide her with an administrative remedy.

Complainant was provided an opportunity to present evidence regarding her request for relief as well as her claims, including whether the installation of a smart meter would be unsafe or unreasonable under Section 1501. After the conclusion of the hearing, the Commonwealth Court decided the *Povacz I* case and ultimately the Pennsylvania Supreme Court issued its opinion in *Povacz II*. Subsequently, the record

was reopened, and the parties were provided with an extension of time to file briefs or supplement briefs filed in this proceeding and to advance any appropriate requests for relief.

The record in the instant case is complete and Complainant failed to establish a claim under Section 1501. Under the circumstances, the Commission is unable to provide an accommodation to Complainant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.
2. Respondent is required to install smart meters in accordance with its Smart Meter Deployment Plan. *Povacz, v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
3. Customers cannot “opt out” of the installation of a smart meter. *Povacz, v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
4. Allegations that a smart meter would cause harm to a customer must be supported by expert scientific or medical testimony. *Povacz, v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
5. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence

which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

6. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

7. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

8. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102, 1501.

9. Electric distribution companies are required to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f).

10. A utility may issue written notice of termination to a customer if a customer does not permit access to meters, service connections, or other property of the public utility for the purpose of replacement, maintenance, repair, or meter reading, including the installation of a smart meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

11. Complainant failed to carry her burden of proof establishing that Respondent violated the Public Utility Code or a regulation or order of the Commission in installing a smart meter at Complainant’s property. 66 Pa.C.S. § 332.

12. Complainant failed to carry her burden of proof establishing that West Penn Power Company provided unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Jessica Janosek in Jessica Janosek v. West Penn Power Company at Docket C-2019-3010124, is dismissed.

2. That the Secretary mark the docket closed.

Date: October 2, 2024

/s/
Jeffrey A. Watson
Administrative Law Judge