PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 7, 2024

Commissioners Present:

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

Miranda Edwards C-2018-3002741

v.

Duquesne Electric Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Ms. Miranda Edwards (Ms. Edwards or the Complainant) on July 9, 2024, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which was served on the Parties on June 24, 2024, in the above-captioned proceeding. Replies to Exceptions were filed by Duquesne Electric Company (Duquesne or the Company) on July 24, 2024. In his Initial Decision, ALJ Watson recommended that the Commission dismiss, with prejudice, the Formal Complaint (Complaint) filed by the Complainant on June 14, 2018, and amended on March 4, 2019. For the reasons discussed below, we

shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ Watson, and dismiss the Complaint, with prejudice, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Duquesne proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant refuses to have a smart meter installed for health, safety and privacy reasons. In her Amended Complaint, the Complainant requested, *inter alia*: (1) that the Commission allow the Complainant to opt out of the installation of a smart meter at the service address; and (2) that the Commission prevent Duquesne from terminating the Complainant's service as a result of her refusal of the installation of a smart meter. Amended Complaint at 7.

Duquesne is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns and maintains the meters in its distribution system. *See*, Duquesne's Tariff Electric Pa. P.U.C. No. 25.

The Complainant, Miranda Edwards, is a Duquesne customer who has been notified of Duquesne's intent to install a smart meter at the service address. Answer to Amended Complaint at 2-3.

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.
>
> (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 Duquesne, 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 Installation Order*). Duquesne sought and obtained the Commission's

approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by late 2018. *Petition of Duquesne Light Company for Approval of Its Final Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2123948 (Opinion and Order entered May 6, 2013) (*2013 Smart Meter Order*); *See also, Petition of Duquesne Light Company for Approval to Modify its Smart Meter Procurement and Installation Plan*, Docket No. P-2015-2497267 (Opinion and Order entered April 7, 2017) (*2017 Smart Meter Order*).

II. History of the Proceeding[1]

On June 14, 2018, Miranda Edwards filed her Complaint against Duquesne with the Commission at Docket No. C-2018-3002741 seeking to prevent the installation of a smart meter at the service address due to alleged health, safety, and privacy concerns. I.D. at 1-2.

On July 5, 2018, Duquesne filed its Answer and New Matter denying the material allegations in the Complaint and requesting the scheduling of a prehearing conference. On July 5, 2018, Duquesne also filed Preliminary Objections. I.D. at 2.

On July 10, 2018, Duquesne filed a Motion for Prehearing Conference. No objection or response was filed by the Complainant to the Motion for Prehearing Conference filed by Duquesne. I.D. at 2-3.

On July 12, 2018, the Complainant requested additional time to file responses to the Preliminary Objections. On August 6, 2018, the Complainant filed a

[1] A more complete discussion of the history of this proceeding is presented in the Initial Decision at 1-25.

response to the Preliminary Objections. On August 15, 2018, the Complainant filed a reply to the Company's Answer and New Matter. I.D. at 3.

On October 24, 2018, an Interim Order was entered, granting in part and denying in part Duquesne's preliminary objections and granting Duquesne's request for a prehearing conference. The preliminary objections were granted to the limited extent that the Complainant claims that Duquesne has violated her rights under the Fourth Amendment to the United States Constitution. I.D. at 3.

On October 25, 2018, a Notice was issued to schedule a prehearing conference. I.D. at 3.

The Complainant filed a letter along with a Request for Cancellation of Prehearing Conference directed to the Commission Secretary dated November 9, 2018, requesting cancellation of the prehearing conference. The Complainant stated, among other things, that the scheduling of a prehearing conference was "inappropriate," that she did not consent to a prehearing conference, and that the schedule proposed in the Motion by Duquesne was "more of a waste of time than not." I.D. at 3-4 (citing the Complainant's Letter dated November 9, 2018, at 1, 3).

On November 20, 2018, an Interim Order was entered granting the request of the Complainant cancelling the prehearing conference scheduled for November 29, 2018. I.D. at 4.

On or about March 4, 2019, the Complainant served Duquesne with an Amended Complaint. On March 25, 2019, Duquesne filed an Answer and New Matter to the Amended Complaint.[2] I.D. at 5.

On April 2, 2019, the Complainant filed correspondence in response to the Company's Answer and New Matter to the Amended Complaint and included a request for summary judgment. I.D. at 6.

On April 22, 2019, Duquesne filed a Motion to Strike Complainant's request for summary judgment, which was granted by Interim Order entered June 25, 2019. I.D. at 6.

On December 23, 2019, Duquesne filed a motion to compel discovery responses averring that the Complainant failed to provide full and complete responses to Duquesne's First Set of Discovery Requests 16, 18, 19 and 20. On January 9, 2020, the Complainant filed her Responses to Duquesne's Motion To Compel Discovery Responses. I.D. at 6.

The Complainant filed a Motion to Stay the proceedings on December 23, 2019. On January 9, 2020, Duquesne filed an Answer in Opposition to

[2] The Amended Complaint was not initially served upon the ALJ, nor was it filed in the Commission's online docket for this case. Prior to the evidentiary hearing, the ALJ's office contacted the parties who provided a copy of the Amended Complaint served upon Duquesne. At the hearing, the ALJ questioned the parties about the Amended Complaint. (Tr. at 51-59). The Complainant explained that she e-filed her Amended Complaint with the Commission's Secretary's Bureau and had a confirmation number. (*Id*. at 54-55). Duquesne's counsel advised that he had received the Amended Complaint, filed an Answer and New Matter in response and did not object to moving forward with the Amended Complaint. (*Id*. at 55). The Amended Complaint was marked as Exhibit ALJ-1. I.D. at 5, n. 12 (citing Tr. at 59-60).

Stay of Proceedings. The Motion to Stay was denied by Interim Order entered February 21, 2020. I.D. at 6.

On January 9, 2020, the Complainant filed, via electronic filing, a Request for Entry of a Protective Order. The document was not served upon the ALJ. In addition, no notice to plead directed to Duquesne was attached to the Request. The Complainant did not set forth or detail the information sought to be protected or the way she was requesting that material or information be protected. I.D. at 6.

The Complainant filed a Second Motion to Stay on February 13, 2020, essentially requesting a continuance of the evidentiary hearing scheduled for February 27, 2020. 52 Pa. Code § 5.61(a)(1) provides that answers to motions shall be filed within the 20 days provided by §§ 5.102 and 5.103 (relating to motions for summary judgment and judgment on the pleadings; and motions). Accordingly, Duquesne's response was due on or before March 5, 2024, after the date of the scheduled evidentiary hearing. On February 24, 2020, Duquesne filed an Answer in Opposition to Complainant's Second Motion to Stay. I.D. at 6-7.

On February 21, 2020, an interim order was entered granting the motion to compel discovery responses filed by Duquesne on December 23, 2019, and denying the Complainant's objections and opposition to discovery request numbers 16, 18, 19 and 20. As the evidentiary hearing was scheduled for February 27, 2020, in the Second Interim Order Granting Respondents Second Motion To Compel Discovery Responses, the Complainant was directed to serve her discovery responses upon Duquesne, which were provided to the Complainant on July 10, 2018, no later than February 26, 2020, by first class mail and email transmission and file a certificate of service with the Commission Secretary on or before February 26, 2020. As the Parties had not agreed upon terms for a protective order as of the date of the order, Duquesne was ordered not to disclose the responses provided by the Complainant pursuant to the order to any person or entity,

except as necessary to complete its investigation and to present its defense related to this proceeding, and to take all appropriate actions to obtain confidentiality agreements from any person or entity to whom the information was disclosed. I.D. at 7.

Upon a review of the Docket in this proceeding, the ALJ discovered the Complainant's Request For Entry Of A Protective Order in the Record. To address Complainant's request for a protective order and other outstanding issues, prior to the evidentiary hearing, and for the evidentiary hearing to proceed as scheduled on February 27, 2020, an Interim Order was entered on February 21, 2020. I.D. at 7.

The Interim Order entered on February 21, 2020, directed the Parties to confer on or before February 26, 2020, and attempt to agree or stipulate to the terms of a Protective Order to address the disclosure and use of discovery materials and any other sensitive information sought to be protected in this proceeding and the way such information or materials were sought to be protected. The Parties were further directed, prior to the hearing in this proceeding on February 27, 2020, to submit a stipulated Protective Order or, in the event an agreement was not reached by the Parties, either Party was permitted to submit a request for a Protective Order and a proposed Protective Order to the ALJ. The Interim Order further provided that, in the event an agreement was not reached by the Parties, the Parties were directed to make themselves available by telephone at the telephone number provided to participate in the hearing, at 9:00 a.m., to continue their discussions to enter into a stipulated Protective Order. The Parties were directed to remain on the telephone conference until the start of the evidentiary hearing at 10:00 a.m. or until excused by the ALJ. The Parties were also reminded to serve all pleadings and requests for relief to the ALJ.[3] I.D. at 8.

[3] The Parties did not avail themselves of the opportunity to resolve these issues at 9 a.m. prior to the hearing, and it was necessary to address these issues upon convening the hearing at 10 a.m. I.D. at 8, n. 15.

On February 27, 2020, the evidentiary hearing was convened at 10 a.m., as scheduled. The Complainant presented her case through her own testimony and offered Exhibits A through I into evidence. Complainant Exhibits A and B were admitted into the record. Duquesne presented its case through the testimony of Mr. Michael Belanger, Mr. Steven Wright, Mr. Michael Tallent, Dr. Benjamin Cotts, Dr. Gabor Mezei, Mr. Michael Secchiutti, and Ms. Roxanne Morris, and offered Exhibits B-1, D-2, E-2, F-8, G-1, G-3, G-7, I-1, H-1, H-2, H-6, M-1, M-2, N, O, and Q, which were admitted into evidence. Prior to receiving evidence, the ALJ advised the Parties that they would address a proposed protective agreement and any other preliminary matters.[4] I.D. at 8.

After a lengthy discussion, it was determined that the Complainant did not comply with the Second Interim Order Granting Respondents Second Motion To Compel Discovery Responses entered on February 21, 2020 and consideration was given to the concern that the information from the Complainant was not provided to Duquesne and, in turn, not made available to Duquesne's expert witness in advance of the hearing.[5] The receipt of evidence was further delayed as the Parties were required to discuss the amended Complaint filed by the Complainant, but which was not served upon the ALJ, to make certain that the amended Complaint was properly considered in this proceeding.[6] After a short break was taken at the request of Complainant, the Parties were prepared to present evidence at 11:35 a.m.[7] I.D. at 8-9. The hearing was adjourned at 9:12 p.m.[8] I.D. at 12.

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[4] Tr. at 9. I.D. at 8, n. 16.

[5] Tr. 31-50. I.D. at 9, n. 17.

[6] The amended Complaint was marked as ALJ Exhibit 1 and entered into evidence. *See*, Tr. 50-62. I.D. at 9, n. 18.

[7] Tr. 63-66. I.D. at 9, n. 19.

[8] Tr. 454-459. I.D. at 12, n. 41.

On October 16, 2020, an interim order was entered granting Duquesne's Motion to Strike Improper and Inadmissible Material in the Complainant's Post-Hearing Brief and Reply Brief and denying the Complainant's Objections to Duquesne Light Company's Motion to Strike, filed by the Complainant on October 2, 2020. In addition, the evidentiary record was closed. I.D. at 13.

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. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and her procedural rights and obligations under the Commission's regulations.

By Interim Order entered on December 20, 2023, the ALJ reopened the record in this proceeding and permitted the Parties to file supplemental briefs and any other appropriate requests for relief, on or before January 19, 2024. I.D. at 15.

On January 19, 2024, the Complainant filed a supplemental brief. On January 19, 2024, Duquesne also filed its supplemental post hearing brief in this proceeding. I.D. at 15.

On January 19, 2024, the Complainant also filed a Motion To Recuse Administrative Law Judge Jeffrey A. Watson (Motion to Recuse). I.D. at 15.

On January 31, 2024, Duquesne filed its Answer in Opposition to Complainant's Motion to Recuse Administrative Law Judge Jeffrey A. Watson (Answer to Motion to Recuse). I.D. at 24.

On March 29, 2024, an Interim Order was entered denying the Complainant's Motion to Recuse, and closed the evidentiary record. I.D. at 25.

On June 24, 2024, the Commission served ALJ Watson's Initial Decision in *Miranda Edwards v. Duquesne Light Company*, Docket No. C-2018-3002741.

As noted above, on July 9, 2024, the Complainant filed Exceptions to the Initial Decision. On July 24, 2024, Duquesne filed Replies to Exceptions.

III. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a "preponderance of the evidence." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See, Id*. The burden of production may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See, Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See, Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional

evidence favorable to the complainant's claim. *See, Milkie*, 768 A.2d at 1220; *see also, Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See, Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See, Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also*, *Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore.* In determining whether a complainant has met the burden of persuasion, the fact-finder[9] may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See, Moore*, citing *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*).

[9] In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

2. Burden of Proof Applied to Section 1501[10] Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court's October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company,* C-2015-2475023 (*Povacz 2019 Order*); *Laura Sunstein Murphy v. PECO Energy Company*, C-2015-2475726 (*Laura Sunstein Murphy*); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, C-2016-2537666 (*Cynthia Randall*). By *Povacz II,* the Supreme Court affirmatively established that there is no "opt-out" provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II*, 280 A. 3d at 983-984.

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain "adequate, efficient, safe, and reasonable service[11] and facilities" and to make

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[10] The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See,* 52 Pa. Code § 57.28(a)(1). *See, Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

[11] The term "service" is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa.C.S. § 102. The statutory definition of "service" is also to be broadly construed by

repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code, provides, in pertinent part, as follows:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

As previously noted, in *Povacz II*, the Pennsylvania Supreme Court not only affirmed the Commission's determination that there is no "opt-out" provision for smart meter installation in either Act 129, the Code, Commission Regulations, or Orders, but also confirmed that challenges to smart meter installation, other than an "opt-out," may arise under Section 1501[12] of the Code. Therein, the Supreme Court stated:

> [W]e conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter

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the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

[12] The Commission has also determined that if a customer's formal complaint raises a claim under Section 1501, related to the safety of a utility's installation and use of a smart meter at the customer's residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000, citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. January 28, 2016) (*Kreider*).

> installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

Povacz II, at 983-984; *See, Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013) (*Povacz 2013 Order)*; *see also, Frompovich v. PECO Energy Co*., Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018) (*Frompovich*).

In applying Section 1501 to a complaint challenging the installation of smart meter technology, the Supreme Court affirmed the Commission's Opinion and Order in the *Povacz 2019 Order*, stating:

> A customer seeking affirmative relief from the [Commission] must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a [Commission] regulation or [o]rder, or a violation of a [Commission]-approved tariff. [*See*] 66 Pa.C.S. §§ 332(a), 701; *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, . . . 134 Pa. Commw. 218, 578 A.2d 600 ([Pa. Cmwlth.] 1990)[.] . . .
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> Although Act 129 does not provide an electric customer [] with the right to opt-out of the installation of a smart meter at their residence, they [sic] may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.
>
> . . . .
>
> Pursuant to [S]ection [1501 of the Code], an EDC (as a public utility) must provide service that is, *inter alia*, both safe and reasonable. **To carry their burden of proof on a Section 1501 [of the Code] claim, a smart meter challenger may be required to present medical documentation and/or expert testimony demonstrating that the furnishing of a smart meter constitutes unsafe or**

> **unreasonable service** in violation of Section 1501 [of the Code] under the circumstances presented. *Susan Kreider v. PECO Energy Co*., P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. Jan. 28, 2016).

Povacz II, 280 A. 3d at 999-1000 (emphasis added; footnote omitted).[13]

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *Povacz 2019 Order*, and was subsequently affirmed by the Supreme Court in *Povacz II*, that in order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused or will cause adverse health effects or harm to human health, the Complainant must demonstrate by a preponderance of the evidence a "conclusive causal connection" between the harm to human health and the radio frequency fields (RFs)[14] from the AMI meter.[15]

3. Other Relevant Legal Standards

In addition to establishing that a complaint challenging the installation of a smart meter may arise under Section 1501, the Supreme Court's decision in *Povacz II* acknowledged the Commonwealth Court's rejection of a constitutional claim for

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[13] With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

[14] RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

[15] *See, Povacz 2019 Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

exemption from smart meter installation predicated on a violation of "bodily integrity." The Supreme Court noted the Commonwealth Court's denial of a claim under the Fourteenth Amendment, stating:

> The Commonwealth Court rejected Customers' constitutional arguments, persuaded by the reasoning of *Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. III 2014) ("*Naperville II*"). Therein, a federal district court rejected the customers' "*Fourteenth Amendment* bodily integrity argument because their complaint failed to identify an arbitrary deprivation of a recognized liberty or property interest" and to aver that the city's decision to employ smart meters was arbitrary. *Id*. at 839 (internal quotations marks omitted).

Povacz II at 985, fn. 8. As the Supreme Court denied allocator as to any constitutional claims, the Commonwealth Court's holding stands.

Further, the Supreme Court noted that a customer must be connected to the distribution system to receive electric service confirming that EDCs operate in a universal basis. *Povacz II* at 993. As such, the Court concluded that by obtaining service from their incumbent EDC, customers contractually accept the EDC's Commission-approved Tariff, including the installation of smart meter technology. *Id* at 994. Therefore, the Supreme Court found that "the authority to select and install a certain type of electric meter rests solely with the EDCs, […] not the customer." *Id*.

Finally, we note that any argument or Exception that we do not specifically delineate 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).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Watson made eighty Findings of Fact (FOF) and reached eighteen Conclusions of Law (COL). I.D. at 25-34, 45-47. The Findings of Fact and Conclusions of Law 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.

The ALJ provided a comprehensive discussion of the evidentiary hearing and the Complainant's Motion to Recuse. I.D. at 17-24.

In his disposition, ALJ Watson addressed, *inter alia*, the following issues: (1) the proposed smart meter installation at the service address; and (2) the Complainant's concerns regarding service under Section 1501. I.D. at 36-44.

1. Smart Meter Installation

The ALJ noted that the Company established that Act 129 requires it to install smart meters throughout its service territory. I.D. at 37 (citing 66 Pa.C.S. § 2807(f)). The Company's Smart Meter Plan does not include a provision for a customer to opt-out of smart meter installation. Additionally, the ALJ noted, the Supreme Court of Pennsylvania has concluded that "Act 129 is mandatory, requiring the system-wide installation of smart meter technology by EDCs, including smart meters." I.D. at 37 (citing *Povacz II* at 1014).

The ALJ explained that Duquesne's tariff establishes that the Company can install a smart meter at the service address in accordance with Rule 9B of the tariff. The ALJ reasoned that considering Act 129, the Commission's Implementation Order, and the

Company's tariff, Duquesne is required to install a smart meter, and the Complainant cannot refuse the installation. I.D. at 38.

2. Adequate, Safe and Reasonable Service Under Section 1501

The ALJ provided that the Complainant testified that she called Duquesne's customer service number in April of 2018 and spoke to an unidentified Company representative, who was agitated and confrontational with the Complainant and denied the Complainant's request to speak to a manager. The Complainant could not identify the date of the alleged incident, or the individual involved. The ALJ concluded that the Complainant's testimony failed to establish a claim under Section 1501 regarding this alleged incident. I.D. at 39.

The ALJ noted that the Complainant argued that installation of a smart meter at the service address would cause adverse health effects, present a fire hazard, and would invade her privacy. I.D. at 40. The ALJ stated that the Complainant did not present medical or expert evidence to establish her claims. I.D. at 40-41 (citing Tr. at 147-48). The Complainant did not claim to be a member of a group that is allegedly vulnerable to harm from RF. *Id.* The Complainant presented her lay opinion that smart meters cause adverse health effects, present a fire hazard, and constitute an invasion of privacy. The ALJ concluded that the Complainant's personal beliefs alone do not constitute evidence sufficient to support her claims. I.D. at 41 (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Povacz II*).

The ALJ provided that contrary to the Complainant's claims, Duquesne established that the Company's meters have not caused fires. I.D. at 41 (citing Tr. at 235, 409). In addition, Duquesne testified that its smart meters gather gross consumption data used for monthly billing, but do not gather information about specific appliance use and do not include personally identifiable information such as customer

names or addresses. I.D. at 41 (citing Tr. at 262-63, 405). The ALJ further noted that Duquesne established that it uses numerous cybersecurity measures to protect the information collected by smart meters. I.D. at 41 (citing Tr. at 276).

The ALJ noted that Duquesne presented significant evidence to show that its smart meters do not pose a health risk. The ALJ was persuaded by the testimony of Duquesne's witness, Dr. Cotts, that the smart meter emits just a tiny fraction of the applicable RF limits set by the FCC and other agencies. I.D. at 42. The ALJ opined that Duquesne established through the testimony of its witness, Dr. Mezei, that there is no established connection between RF exposure below legally accepted limits and adverse health effects. Tr. at 42 (citing Tr. at 363-66).

Based on all the above, the ALJ recommended that the Commission dismiss the Amended Formal Complaint for failure by the Complainant to meet her burden of proof to show that the deployment of smart meters is unsafe or unreasonable, or that it would constitute inadequate utility service. I.D. at 44.

C. Exceptions, Replies, and Disposition

The Complainant's Exceptions consist of an Introduction, Evidentiary Standards and Criteria, six Exceptions, and a Conclusion section. The Introduction and Evidentiary Standards sections repeat arguments from the Complainant's briefs. Much of the Complainant's arguments have already been addressed by the PA Supreme Court in *Povacz II* or in other recent cases that have been before the Commission. The

Complainant's Exceptions[16] generally pertain to the following: (1) Act 129 and an opt-out request; (2) data privacy and Constitutional claims; (3) termination of service; (4) burden of proof; and (5) due process.

To the extent the Complainant's Exceptions include commentary alleging bias without foundation, such commentary is deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(e), we shall strike such statements from our consideration of the Complainant's Exceptions.

To the extent the Complainant used extra-record materials in her Exceptions, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). Accordingly, any extra-record information the Complainant used in her Exceptions will not be considered. *Apollo Gas*.

Where the Complainant has offered new arguments in her Exceptions not previously addressed in the record, we note that these cannot be considered after the record has been closed. 52 Pa Code § 5.431.

[16] We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and economical determination. The Complainant's Exceptions, in some cases, repeat arguments or overlap. Where appropriate, we have grouped the Exceptions by topic in our Dispositions.

1. Complainant's Arguments Regarding Act 129 and an Opt-out

a. Exception No. 1

In her Exception No. 1, the Complainant disagrees with the Commission's interpretation and application of Act 129. The Complainant also contends that the Pennsylvania Supreme Court's decision in *Povacz II* regarding Act 129 is "faulty." Exc.at 4-6.

b. Replies

Duquesne argues that the Complainant disregards well-settled law established in *Povacz II*, which mandates the installation of smart meters for all electric customers within Duquesne's territory. While the Complainant argues that there is no smart meter mandate under Act 129, Duquesne avers that this exact issue was settled by the ruling in *Povacz II*. R. Exc. at 9 (citing *Povacz II* at 983).

Duquesne provides that since the *Povacz II* decision, there have been numerous Pennsylvania Commonwealth Court cases and PUC decisions that have cited, with approval, to *Povacz II* and held that Act 129 mandates the installation of smart meters, in direct contradiction of what the Complainant seeks to argue here. R. Exc. at 9-10 (citing *Myers v. Pa. PUC*, 306 A.3d 963, 964 (Pa. Cmwlth. 2023); *Paul v. Pa. PUC*, 299 A3d 1069, 1071 (Pa. Cmwlth. 2023); *Suzanna Darula v. Pennsylvania Electric Company*, Docket No. C-2017-2618084, 2024 LEXIS 116 at *17).

c. Disposition

In *Povacz II*, the Pennsylvania Supreme Court expressly concluded that the complainant's assertion of the right to "opt-out" of Act 129 was unfounded. The

Supreme Court further found that a customer may seek an accommodation to smart meter installation, provided the customer first established a violation under Section 1501 of the Code. Therein, the Supreme Court stated:

> [W]e conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

Povacz II, at 983-84.

Therefore, by establishing that there is no "opt-out" permitting a customer to refuse smart meter installation, the Supreme Court's holding in *Povacz II* is controlling on the question. In the present case, the Complainant's Exceptions fail to establish any violation by Duquesne under Section 1501 of the Code, as a prerequisite to seeking an accommodation. To the extent the Complainant's arguments challenge the PA Supreme Court's holding in *Povacz II*, that there is no opt out from smart meter implementation, we reject the Complainant's arguments. *Povacz II* is settled law, and we find no merit in the Complainant's argument that *Povacz II* was wrongly decided. Accordingly, to the extent the Complainant asserts a right to opt out of Act 129 to refuse smart meter installation, we shall deny the Complainant's Exception No. 1.

2. Complainant's Arguments Regarding Data Privacy and Constitutional Claims

a. Exception Nos. 2 and 3

In her Exception No. 2, the Complainant contends that the ALJ erred by "brushing off Complainant's privacy- and security-related objections to smart meters in a perfunctory manner…" Exc. at 6. In her Exception No. 3, the Complainant contends, *inter alia*, that the Fourteenth Amendment of the U.S. Constitution prohibits the enforcement of Act 129. Exc. at 15.

b. Replies

Duquesne avers that it protects smart meter information and data. Duquesne explains that it collects only aggregate household information, not data about specific appliances or devices. R. Exc. at 14 (citing Duquesne Supplemental Post-Hearing Brief at 40). Duquesne submits that there is no personally identifiable information such as social security numbers, customer names or addresses, or bank account information in the consumption data or other messages that Duquesne sends through its smart meter network. R. Exc. at 14 (citing I.D. at 33, FOF No. 74).

Duquesne provides that the Commission addressed the specific issue of electronic surveillance in *Lauren Zonca v. Metropolitan Edison Company*, Docket No. C-2019-3007961, 2024 LEXIS 147, at *14 (Pa. PUC May 9, 2024) (*Zonca*). Duquesne notes that in *Zonca*, the complainant, (like the Complainant here) filed Exceptions arguing that the company's installation of a smart meter will violate the U.S. Constitution. The complainant's exceptions in *Zonca* were denied, as the Commission found that EDCs are not state actors and cannot violate the complainant's constitutional rights by installing a smart meter. R. Exc. at 12.

According to Duquesne, the United States Constitution only applies to "state action;" it does not apply to conduct by a private company like Duquesne, even if the company is regulated by the state. R. Exc. at 12 (citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349-350 (1974); *Schutz v. PPL Elec. Utilities Corp.*, Docket No. C-2018-3005659, 2019 WL 2744430, at *12 (Pa. PUC June 11, 2019)).

c. Disposition

We shall deny the Complainant's Exception No. 2, regarding data privacy. We note that Duquesne's witness, Mr. Tallent, Duquesne Chief Information Security Officer, testified that the information collected and transferred through the smart meter network does not include personally identifiable information such as the customer's name or address. The data would be "meaningless from the perspective of looking at that information and trying to divulge information about a particular customer." Tr. at 262. Mr. Tallent also testified about the security of the smart meter network maintained through access control, monitoring, encryption, authentication, and other cyber security practices. Tr. at 266-67.

Duquesne witness, Mr. Secchiutti, Duquesne Senior Manager of Smart Meter Operations, testified regarding Duquesne's Privacy Policy (Duquesne Exh. I-1). Mr. Secchiutti stated that according to the policy, Duquesne does not sell customer information to third parties. Duquesne may share data with a third party with whom Duquesne has a business relationship, such as an electricity supplier, but as Mr. Secchiutti explained, customers can opt-out of this sharing of their data. Tr. at 414-15.

The Complainant expressed her concern that the proposed smart meter "has a mechanism that emits an LED flicker which indicates rate of consumption." Exc. at 8. Contrary to the Complainant's claims, the LED or infrared light on the Itron meter that she was concerned about is not available for use by "any person with harmful intentions

and night-vision goggles" to monitor the Complainant's residence. Exc. at 8-9, Tr. at 162. Duquesne's witness, Mr. Secchiutti, testified that the light Ms. Edwards was concerned about is only used for testing and is not enabled in the field. Tr. at 410-11.

The ALJ noted that the Complainant offered no evidence to support her data privacy concerns other than her own opinion. I.D. at 44 (citing Tr. at 107). The ALJ provided that the Company established that it collects only aggregated household information, not data about specific appliances or devices the Complainant uses. I.D. at 44 (citing Tr. at 262-63). We find no error in the ALJ's conclusions regarding data privacy. We are not persuaded by the Complainant's argument in her Exceptions that she has demonstrated a privacy risk of the proposed smart meter to be installed by Duquesne. Thus, the Complainant's Exception No. 2 is denied.

To the extent the Complainant's Exceptions assert that the ALJ erred by not finding that the installation of a smart meter constitutes a violation of the Complainant's constitutional rights, we shall deny the Exceptions. *See*, Exc. at 1, 2, 6, 11, 15-16.

As a general matter, we agree with Duquesne's argument that the Company is not a state actor, and therefore, the Complainant fails to assert a constitutional claim. *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (additional citations omitted). Further, in *Povacz II*, the Pennsylvania Supreme Court noted the Commonwealth Court's conclusion that the assertion of a constitutional right to refuse installation of a smart meter was unfounded. *See, Povacz II* at 985, n. 8. As previously noted, the Commonwealth Court's decision is binding on the question. Accordingly, to the extent the Complainant asserts, in her Exception No. 3, a constitutional right to refuse smart meter installation, we shall deny the Complainant's Exceptions on this issue.

3. Complainant's Arguments Regarding the Termination of Service

a. Exception No. 4

In her Exception No. 4, and throughout her Exceptions, the Complainant argues that Duquesne is not permitted to terminate her electric service due to her refusal of the installation of a smart meter. Exc. at 2, 4, 8, 13, 14, 16-20, 23.

b. Replies

In reply, Duquesne avers that it has the legal right under its Commission-approved tariff, the Commission's regulations, and Chapter 14 of the Code to terminate the Complainant's service if it is denied reasonable access to its meters. R. Exc. at 17-18 (citing 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); Duquesne Supplemental Post-Hearing Brief at 30-31).

c. Disposition

We disagree with the Complainant's argument that the Company cannot lawfully terminate her electric service for failure to provide access to the meter. The Commission has stated that "[i]t is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided." *Frompovich*; *see also*, 66 Pa.C.S. § 1406(a)(4) (service termination is authorized for failure by a customer, after notice, to permit access to the meter, service connection, or other property of the public utility for replacement, maintenance, or repair). Accordingly, the Complainant's Exception No. 4, regarding termination of service where the customer prevents access for installation of the meter, is denied.

4. Complainant's Arguments Regarding the Burden of Proof

a. Exception No. 5

In her Exception No. 5, the Complainant argues that the ALJ erred by dismissing the Complainant's Complaint on the basis of concluding that Complainant "presented no medical or expert evidence to establish her claims." Exc. at 20 (citing I.D. at 40-41). The Complainant contends that her exhibits offered at the evidentiary hearing should have been admitted into the record. Exc. at 20.

b. Replies

Duquesne contends that the Complainant did not satisfy her burden of proof for a Section 1501 claim. Duquesne submits that the Complainant must first "present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and the RF emissions cause adverse health effect." R. Exc. at 19 (citing *Povacz II* at 1006). In addition, the Company submits the Complainant must then present "expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other source of EF emission, caused the harm." *Id.* According to Duquesne, the Complainant did neither. R. Exc. at 19.

Duquesne maintains that the Complainant's proposed exhibits were inadmissible for the reasons discussed at the hearing and do not support a finding of a "conclusive causal connection" between RF and alleged harm, as required to establish a Section 1501 claim under *Povacz II*. R. Exc. at 20.

c. Disposition

As noted, *supra*, in affirming the Commission's *2019 Povacz Order*, the Pennsylvania Supreme Court held in *Povacz II* that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specifically, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the AMI meter. *See*, *Povacz II* at 1006. In that context, the lay opinion of the Complainant does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.*

The Pennsylvania Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Id.* at 1005. The Court further opined that while a customer's evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Pennsylvania Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF 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. *Id.* Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.

To prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the AMI meter. *See*, *2019 Povacz Order*. Here the ALJ properly concluded that the Complainant has failed to carry her burden of proof that Duquesne violated the Code or a regulation or order of the Commission in installing a smart meter at her property. 66 Pa.C.S. § 332. I.D. at 47.

In the present case, the Complainant offered several exhibits that were deemed hearsay, and not subject to the hearsay exception. Tr. at 126-43. The Complainant did not offer the testimony of any expert witnesses.

Ms. Edwards testified at the hearing that she would not consent to the installation of a smart meter that "also carries an increased fire risk and potential health effects." Tr. at 79. In *Povacz II*, the Supreme Court opined that while a customer's evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Povacz II* at 1008. We agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainant failed to establish a conclusive causal connection as required by *Povacz II*. The ALJ reasoned that the Complainant provided no expert testimony or other credible evidence that establishes her claims. I.D. at 41 (citing *Povacz II* at 1006). Furthermore, the ALJ concluded that the Complainant failed to establish her burden of proof to show that the deployment of smart

meters is unsafe or unreasonable or that it would constitute inadequate utility service. I.D. at 44. We agree.

We find nothing in the Complainant's Exceptions to refute the ALJ's conclusion that the Complainant failed to meet her burden of proof that the installation of the new AMI meter would violate the Code or any Commission regulation or order. I.D. at 46, COL 18 (citing 66 Pa.C.S. §§ 332).

Therefore, upon review of the record, and based on the foregoing discussion, we find that the ALJ properly concluded that the Complainant failed to establish by a preponderance of the evidence that the Company's installation of a smart meter would constitute unreasonable or unsafe provision of service under Section 1501 of the Code. Therefore, we shall deny the Complainant's Exception No. 5 challenging the ALJ's dismissal of the Complaint for failure to satisfy the burden of proof.

5. Complainant's Argument Regarding Due Process and Complainant's Motion to Recuse

a. Exception No. 6

In her Exception No. 6, the Complainant argues that the ALJ deprived her of due process in her claim that Duquesne violated Section 1501. The Complainant repeats arguments here from her January 19, 2024 Motion to Recuse that was denied by ALJ Watson by Interim Order issued March 29, 2024. The Complainant contends that the ALJ erred in denying her Motion to Recuse. Exc. at 22. The Complainant repeats her argument from her Complaint and her Amended Complaint that a Commission employee prevented her from filing an informal complaint. Complaint at 3, Amended Complaint at 4. The Complainant argues that the ALJ misconstrued whether she filed an informal or formal complaint and has not corrected his error. Exc. at 25-26. Furthermore, the

Complainant contends that the ALJ "abused" the Complainant and showed favoritism towards Duquesne at the evidentiary hearing. Exc. at 23.

b. Replies

Duquesne contends that the Complainant, in her Exception No. 6, fails to identify any erroneous FOFs or COLs and the Complainant's recusal arguments have already been properly denied by the ALJ. Rather, Duquesne avers that the Complainant is simply repeating her arguments from her Motion to Recuse. R. Exc. at 21 (citing Motion to Recuse at ¶ 7).

Duquesne notes (as previously provided in its Answer in Opposition to Complainant's Motion to Recuse) that the Complainant was not rushed into filing a formal complaint, but rather the Complainant had more than enough time, specifically 1.5 years, to develop her case and present it at the hearing. Duquesne argues that despite the Complainant's continuous disgruntlement with ALJ Watson's alleged misinterpretation of her Complaint, she has yet to provide any factual or evidentiary basis on which to conclude that the alleged misrepresentation of her Complaint has deprived her in any way of the ability to adequately pursue her claims in this action. R. Exc. at 21-22 (citing Answer to Motion to Recuse at ¶¶ 7, 8).

Duquesne submits that the hearing record "speaks for itself" and the Company disagrees with the Complainant's contention that ALJ Watson "abused" the Complainant. Duquesne notes that the Complainant's actions contributed significantly to the length of the hearing and thus any dissatisfaction is attributable to the Complainant herself. R. Exc. at 22 (citing Answer to Motion to Recuse at ¶ 10, I.D. at 19-22). According to Duquesne, ALJ Watson properly denied the Complainant's Motion to Recuse, for her failure to follow procedural requirements by alleging any personal bias or

other sufficient grounds upon which ALJ Watson should be recused, as required under 52 Pa. Code § 5.482. R. Exc. at 22 (citing Answer to Motion to Recuse at ¶ 16).

c. Disposition

The Complainant argues that she was denied due process because the ALJ did not correctly acknowledge the exact nature of her initial complaint filing, showed favoritism towards Duquesne at the evidentiary hearing, and denied her Motion to Recuse.

In the Commission's decision in *Lucey v. Metropolitan Edison Co.*, Docket No. C-2018-3003679 (Opinion and Order entered October 8, 2020) (*Lucey*), the Commission provided the following regarding due process:

> As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984), citing *Township of Middleton v. The Institute District of the County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), aff'd 450 Pa. 282, 299 A.2d 599 (Pa. Cmwlth. 1973). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

Lucey at 17.

The Complainant was given notice of the pre-hearing conference (which she requested to be canceled), the evidentiary hearing, and other procedural matters

throughout the case. The Complainant was given the opportunity to be heard at the hearing. Ms. Edwards participated in the hearing. Tr. at 74. During the hearing, Ms. Edwards explained why she filed the Complaint and what relief she was seeking. Tr. at 74-143. The Complainant was offered the opportunity to cross-examine Duquesne's witnesses. Tr. at 199, 236, 280, 300, 390, 421, 450. Ms. Edwards was given the opportunity to present a closing argument. Tr. at 455-58. The Complainant was free to seek expert testimony and submit exhibits at the hearing to be entered into the record. The Complainant chose not to seek expert testimony. The Complainant offered exhibits at the hearing, although several of the Complainant's exhibits were determined to be hearsay. The Complainant's due process rights were exercised throughout the proceedings. Accordingly, we find that the Complainant's arguments in her Exceptions that she was not afforded due process are without merit.

The Complainant avers that the ALJ's statement, in an Interim Order dated October 24, 2018, is an example of an instance when "ALJ Watson ignored PA Code and PUC rules to weigh[t] this case against Complainant and in favor of [Duquesne]." Exc. at 22. The ALJ had stated in the Interim Order that the Complainant had filed a Formal Complaint and Duquesne had issued the Complainant a termination notice after the Complainant filed the Formal Complaint. The Complainant avers that the ALJ mischaracterized the matter by stating she had filed a Formal Complaint before the Company sent a termination notice. Exc. at 22. The ALJ discussed the issue in the Initial Decision, noting that it "was a harmless typographical error" and that the Complainant had made confusing and contradictory statements throughout the proceeding. I.D. at 16.

The Complainant testified that an employee of the Commission told her that she could not file an informal complaint and that it would have no effect on her situation. Tr. at 99. The Complainant could not identify the Commission employee with whom she spoke. *Id*. at 75, 100. The Complainant made confusing and contradictory statements, at times saying she filed an informal complaint, and other times averring that

the Commission actively prevented her from filing an informal complaint. In her Formal Complaint, the Complainant stated that she filed an informal complaint, as follows:

> On June 1 (I believe), I filed an informal complaint by phone with the PUC against [Duquesne].

Complaint at 3.

In her Amended Complaint, the Complainant averred that she "initiated the informal complaint process by phone with the PUC against [Duquesne]." In addition, she stated:

> I later surmised that the PUC representative with whom I spoke on June 1 may have actively prevented me from filing an informal complaint, in violation of PA Code §56.92, §56.142, §56.151, and §56.162-§56.166.

Amended Complaint at 4 (emphasis omitted).

In her Exception No. 6, she argues that she did not file an informal complaint and was prevented from doing so by Commission staff, submitting, as follows:

> If Complainant did file an informal complaint (which Complainant never averred was the case), [Duquesne] violated PA Code …If, as occurred, Complainant was prevented from filing an informal complaint by a PUC representative, the PUC representative violated PA Code…

Exc. at 23.

At the hearing, the Complainant testified that:

> On or about June 1st 2018, I initiated the formal complaint process by phone with the Pennsylvania Public Utility Commission against Duquesne Light.

Tr. at 97.

Whether the Complainant initially filed an informal or formal complaint has not violated the Complainant's due process or prevented the Complainant from filing a formal complaint. The ALJ noted the Complainant filed her Formal Complaint on June 14, 2018. I.D. at 1. The Company acknowledged the Complainant filed her Formal Complaint on June 14, 2018, and the Company filed an Answer to the Complaint on July 5, 2018. The Complainant has stated that she filed an informal complaint, then subsequently she avers that she did not file an informal complaint. As such, it is understandable that confusion regarding this matter could occur. *See*, I.D. at 16-17.

Additionally, the Complainant filed an Amended Complaint on March 4, 2019. The Company filed an answer to the Amended Complaint on March 25, 2019. The ALJ acknowledged the Amended Complaint at the evidentiary hearing and in the Initial Decision. Tr at 59-60; I.D. at 5, n. 12. The Complainant has filed a Formal Complaint and an Amended Formal Complaint and has fully participated in this proceeding to address her Formal Complaint and Amended Formal Complaint. As the ALJ stated in the I.D., although he referenced the Formal Complaint as an informal complaint in his Interim Order, this was simply a typographical error. *See*, I.D. at 16. This misunderstanding has not prevented the Complainant from pursuing her claim and has not violated the Complainant's due process. We shall deny her Exception regarding the issue of whether she filed an informal or formal complaint.

Regarding the Complainant's Motion to Recuse, we note that the Complainant did not provide sufficient evidence to grant the Motion to Recuse. In order to disqualify a presiding officer, the Complainant was required to provide affidavits alleging personal bias or other disqualification. 52 Pa. Code § 5.482.

We disagree with the Complainant's argument that the ALJ "abused" the Complainant throughout her 'initial telephonic hearing' and showed favoritism toward Respondent. Exc. at 23. The Complainant found it disparaging that the ALJ noted the time of day and stated, "Take your time," during the hearing. We note that the ALJ is tasked with the management of the hearing. 52 Pa. Code § 5.485. The ALJ noting the time during the proceeding is not contrary to his responsibilities. The Complainant did not comply with the ALJ's order regarding providing discovery. It is within the ALJ's responsibilities to point this out to the Complainant. *Id*. The telephonic hearing had several instances where the Parties could not be heard. It is reasonable that the ALJ raised his voice at those times. Tr. at 134. Upon review of the transcript, we note that the ALJ encouraged the Complainant to take her time and encouraged her to review her notes in preparation for her questions. Tr. at 141. At one point in the hearing, the Complainant was frustrated with herself and the ALJ stated to the Complainant "Don't worry about it at all. Nobody said it would be easy. Go ahead." *Id*. at 247.

Regarding the Complainant's statement that she was not made aware of the length, and did not consent to the length of the evidentiary hearing, we note that many of the issues consuming time during the hearing were a direct result of the Complainant's actions. The Complainant rejected the prehearing conference where she could have asked questions and might have become more familiar with the course of the proceeding. Before the hearing, the Complainant did not meet with Duquesne to develop the protective order as the ALJ had provided for in his Interim Order. The Complainant had sought a protective order regarding the identification of appliances she used at the service address. Tr. at 34. The ALJ had addressed the issue in his Interim Order dated

February 21, 2020, stating that Duquesne's counsel shall not disclose the information except as necessary to prepare its defense. *Id*. at 33.

The Complainant did not comply with the ALJ's order regarding discovery, which meant the matter had to be addressed at the evidentiary hearing. Tr. at 42-47.

The Complainant repeatedly questioned the ALJ's rulings at the hearing. Tr. at 103. The Complainant was unsure how to proceed with her case, stating "you're kind of giving me this open forum with no real structure." Tr. at 108. This might have been addressed at the Prehearing Conference where the Complainant could have asked questions about how the evidentiary hearing would proceed. There were numerous interruptions in the hearing that were caused by the Complainant. For example, as the hearing was in progress, she reviewed, and attempted to summarize documents that she read on the internet.[17] Tr. at 168.

In her Exception No. 6, in claiming that she was denied due process consideration, the Complainant avers that she could not view the hearing transcript due to the pandemic and that a copy would have been too costly to obtain. Exc. at 24-25. The ALJ had explained at the hearing that if any party wanted to purchase the transcript, they could contact his office to obtain the information regarding the reporting service to contact the reporting service directly. He also explained that parties are not obligated to purchase the transcript but could contact his office "and make arrangements to come to my office and view the transcript." Tr. at 15.

The Complainant avers that for a period of time she could not access the transcript, and she had no notice of when the Commission offices reopened. Exc. at 25.

[17] At the hearing, the ALJ sustained the Company's objection that such documents were hearsay. Tr. at 168-69.

We note that the Commission website provided updates of reopening. On December 20, 2023, the ALJ reopened the record and allowed the Parties to submit Supplemental Briefs. I.D. at 15. The Complainant had ample time to review the transcript before filing her Supplemental Brief. Answer to Motion to Recuse at 5; I.D. at 24-25.

The Complainant fully participated in the proceeding regarding her Amended Formal Complaint. The Complainant did not provide evidence sufficient to recuse ALJ Watson. We do not find that the ALJ showed favoritism to the Company. The ALJ acted within his responsibilities to manage the evidentiary hearing. We conclude that the Complainant was granted due process consideration throughout the proceeding and the Complainant's Motion to Recuse ALJ Watson was appropriately denied. Accordingly, we shall deny the Complainant's Exception No. 6.

IV. Conclusion

In light of the above discussion, we shall: (1) deny the Complainant's Exceptions; (2) adopt the ALJ's Initial Decision; and (3) dismiss the Complaint, with prejudice, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

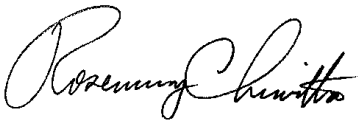
1. That the Exceptions filed by Miranda Edwards on July 9, 2024, to the Initial Decision of Administrative Law Judge Jeffrey A. Watson issued on June 24, 2024, at Docket No. C-2018-3002741, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on June 24, 2024, at Docket No. C-2018-3002741, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Miranda Edwards, on June 14, 2018, and amended on March 4, 2019, at Docket No. C-2018-3002741, is dismissed with prejudice.

4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 7, 2024

ORDER ENTERED: November 7, 2024