

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

Public Meeting held March 13, 2025

Commissioners Present:

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

Jessica Janosek

C-2019-3010124

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Jessica Janosek (Complainant or Ms. Janosek), filed on October 22, 2024, in the above-captioned proceeding. The Exceptions were timely filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which the Commission served on the Parties on October 2, 2024. No Replies to Exceptions were filed. For the reasons discussed below, we shall: (1) deny the Complainant's Exceptions; (2) adopt the Initial Decision of ALJ Watson; and (3) dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Formal Complaint (Complaint) concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that West Penn Power Company (West Penn or the Company) proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. West Penn, now a part of FirstEnergy Pennsylvania Electric Company (FirstEnergy PA), 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* FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at Original Page No. 44, effective January 1, 2024.¹

The Complainant is a West Penn customer who has been notified of West Penn's intent to install a smart meter at their residence that provides the function of automatic meter reading (AMR). The Complainant requested that West Penn not install a smart meter at her home due to health concerns. 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

¹ At the time of initiation of the instant proceeding, FirstEnergy PA consisted of four separate companies: Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company. *See Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid- Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et al.*, Docket Nos. A-2023-3038771, *et al.* (Final Order entered December 7, 2023). Nonetheless, in this Opinion and Order, we shall refer to the Company as West Penn.

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, [EDCs] shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the [EDC] proposes to install in accordance with paragraph (2).

(2) [EDCs] 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 West Penn, to universally deploy smart meter technology within their respective service territories in the Commonwealth in

accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Implementation Order*). West Penn sought and obtained the Commission's approval to complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Its Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding

On May 23, 2019, the Complainant filed the instant Complaint.² In her Complaint, Ms. Janosek indicated that: (1) West Penn is threatening to, or already has, shut off her electric service; and (2) she has a reliability, safety, or quality problem with her electric service. The Complainant elaborated that she and her children began to experience adverse health effects after a smart meter had been installed at her property on February 10.³ The Complainant continued that "West Penn put the analog meter back" on February 25, but, on March 4, she received a call informing her that she must accept a smart meter or her electric service will be shut off. Complaint at 2-3. As relief, the

² We note that the Commission's case management system indicates the Complaint was received May 23, 2019, but was not served on the Parties until May 24, 2019. Therefore, pursuant to 52 Pa. Code § 5.61(a), West Penn was provided twenty days to file an Answer to the Complaint. It is noted that May 27, 2019, was a holiday. Therefore, an Answer to the Complaint was due June 13, 2019.

³ We note that in the Complaint, the Complainant referred to dates without a calendar year. *See* Complaint at 2-3.

Complainant requested, essentially, an opt-out of the smart meter installation and to continue electric service with an analog meter.⁴ Complaint at 3; *see also* I.D. at 1.

On June 13, 2019, West Penn timely filed an Answer and New Matter to the Complaint (Answer). In its Answer, West Penn, *inter alia*, admitted that the Company provides residential electric service to the Complainant but denied a reliability, safety, or quality problem with the Complainant's electric service. Answer at 2. West Penn averred that on February 15, 2019, the Company replaced the analog meter at the service location with a smart meter. West Penn continued that on February 24, 2019, in response to a report from the Complainant of a "noisy, high-pitched sound" coming from the smart meter, a troubleshooter for the Company visited the property and removed the smart meter and installed an analog meter until further action could be taken. West Penn continued that on March 4, 2019, a smart meter representative contacted the Complainant, advising that the Company must replace the analog meter with a smart meter. Answer at 3-4. West Penn averred that on May 9, 2019, the Company sent a pre-disconnection warning letter, pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81, and Rules 9 and 20 of the Company's tariff. West Penn continued that the Complainant contacted the Company multiple times between May 11, 2019 and May 13, 2019, indicating, essentially, her opposition to the installation of a smart meter. Answer at 4-5. Additionally, West Penn averred that it is required by Act 129 to deploy smart meters, and that neither the Company's Commission-approved Smart Meter Deployment Plan (SMDP) nor the law permit the Company to refrain from the smart meter installation requirement or allow for an opt-out from smart meter installation. Answer at 5, 8-9 (citing 66 Pa.C.S. §§ 1406(a)(4), 2806.1, 2807(f)(1), (2); 52 Pa. Code § 56.81(3)); I.D. at 2.

⁴ We note that in the Complaint, the Complainant did not indicate legal representation. *See* Complaint at 5, ¶ 8.

On June 21, 2019, the Complainant filed a Reply to West Penn’s Answer (Reply to Answer).⁵ In her Reply to Answer, the Complainant, *inter alia*, stressed her opposition to the installation of a smart meter at her home and reiterated her request to retain an analog meter. Reply to Answer at 1-2.

On August 9, 2019, a Prehearing Conference was held as scheduled.⁶ The Complainant and counsel for West Penn participated. I.D. at 2.

On November 4, 2019, a second Prehearing Conference was held as scheduled.⁷ The Complainant and counsel for West Penn participated.

On November 6, 2019, the Commission issued a Telephonic Hearing Notice, scheduling an evidentiary hearing for February 6, 2020.⁸ I.D. at 3.

⁵ The Initial Decision indicates that the Complainant did not file a response to West Penn’s Answer. *See* I.D. at 2. However, according to the Commission’s case management system, the Reply to Answer was filed on June 21, 2019. We note that the Reply to Answer was saved in a folder labeled “Confidential.”

⁶ By Prehearing Conference Notice/Judge Change Notice dated July 11, 2019: (1) a Telephonic Prehearing Conference was scheduled for August 9, 2019; and (2) the case was reassigned from ALJ Mary Long to ALJ Emily DeVoe. I.D. at 2.

⁷ On October 16, 2019, the ALJ issued an Interim Order scheduling a second Telephonic Prehearing Conference for November 4, 2019. I.D. at 2.

⁸ Subsequently, by Hearing Judge Change Notice issued dated January 24, 2024, the instant matter was reassigned from ALJ DeVoe to ALJ Mark A. Hoyer. By second Hearing Judge Change Notice issued dated January 24, 2024, the instant matter was reassigned from ALJ Hoyer to ALJ Watson. I.D. at 3.

On February 6, 2020, the ALJ convened the hearing, as scheduled. The Complainant appeared without legal counsel and offered her own testimony.⁹ The Complainant also offered Complainant Exhibits F-2, F-3, F-4, F-5, G, and J, which were admitted into the record evidence.¹⁰ The Company was represented by counsel, presented the testimony of one witness, Mr. John Ahr, and offered Respondent Exhibit JCA-1, JCA-2, JCA-3, JCA-4, JCA-5, and JCA-6, which was admitted into the record as evidence. I.D. at 3; Tr. at 87-8, 97, 137, 181-82. The ALJ also took judicial notice of Act 129. Tr. at 122.

On July 1, 2020, the ALJ issued an Interim Order directing the Parties to file main briefs on or before August 7, 2020. On August 7, 2020, West Penn filed a Main Brief. The Complainant did not file a brief. I.D. at 3.

On October 19, 2020, the ALJ issued an Interim Order Closing the Hearing Record. I.D. at 3.

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, 66 Pa.C.S. § 1501 (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the

⁹ We note at the hearing, Mr. Michael Burdette was present on behalf of the Complainant. Mr. Burdette stated that he was only present as support for Ms. Janosek and was not an attorney. The ALJ advised Mr. Burdette that it was up to Ms. Janosek to call him to testify as a witness. *See* Tr. at 28-30. The Complainant did not call Mr. Burdette to testify during the hearing.

¹⁰ We note that the Complainant offered several exhibits which were not admitted into evidence. *See* Tr. at 3-4, 39, 47, 49, 59, 92-3, 103, 108, 111, 113-14, 120, 122, 127, 129, 131-32.

Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. Notice was provided on November 14, 2023, informing Ms. Janosek of the lifting of the stay and her procedural rights and obligations under the Commission's Regulations. I.D. at 4-5.

On December 22, 2023, the Complainant filed a letter requesting an extension of time to find legal representation to file a brief. On December 28, 2023, the ALJ issued an Interim Order Reopening the Hearing Record, which provided the Parties with an extension of time to file briefs or supplemental briefs and to consider appropriate request for relief, if any, on or before February 1, 2024. On February 1, 2024, the Complainant filed a Main Brief. Also, on February 1, 2024, West Penn filed a Supplemental Brief. I.D. at 5.

On June 3, 2024, the ALJ issued a second Interim Order Closing the Hearing Record. I.D. at 6.

In the Initial Decision, issued on October 2, 2024, ALJ Watson dismissed the Complaint due to the Complainant's failure to meet her burden of proof. I.D. at 1, 19-20.

As noted above, the Complainant filed Exceptions on October 22, 2024. No Replies to Exceptions were filed.¹¹

¹¹ On October 22, 2024, West Penn filed a letter stating that it would not be filing Exceptions in this proceeding.

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*, 754 A.2d 1283 (Pa. Super. 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 (Final Order entered August 25, 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, Burluson 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, Burluson*, 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-finder¹² 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. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501¹³ 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), and thereby affirmed the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) (*2019 Povacz Order*); *Laura Sunstein Murphy v. PECO Energy Company*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, Docket No. C-2016-2537666 (Opinion and Order entered May 9, 2019). By *Povacz II*, the Supreme Court affirmatively established that there is no "opt-out" provision for

¹² 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)).

¹³ 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 (Opinion and Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

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 983-84.

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service¹⁴ and facilities” and to make 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,

¹⁴ 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 the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code.¹⁵ 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; *See Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013); *see also*, *Frompovich v. PECO Energy Company*, 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 *2019 Povacz 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.

¹⁵ 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*).

[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)[.] . . .

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).¹⁶

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *2019 Povacz 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

¹⁶ 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*).

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)¹⁷ from the AMI meter.¹⁸

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 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. Ill. 2014) (“*Naperville I*”). 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, n. 8. As the Supreme Court denied allocatur as to any constitutional claims, the Commonwealth Court’s holding stands.

¹⁷ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

¹⁸ See 2019 *Povacz 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).

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.*

B. ALJ's Initial Decision

In the Initial Decision, ALJ Watson made nineteen (19) Findings of Fact (FOF) and reached twelve (12) Conclusions of Law (COL). *See* I.D. at 6-8, 18-20. 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 noted that at the hearing, the Complainant argued that she and her children suffered adverse health symptoms after a smart meter was installed at her property on or about the month of February 2019, and those symptoms lessened after the smart meter was removed approximately two weeks later. The ALJ highlighted that the Complainant did not offer any admissible medical, scientific, or engineering expert testimony regarding smart meters causing physical symptoms, but the Complainant did offer several articles and writings of physical health hazards caused by smart meters. I.D. at 11.

The ALJ noted the Supreme Court's ruling in *Povacz II* that: (1) Act 129 mandates universal smart meter deployment by EDCs; (2) customers have no right to refuse smart meter installation; (3) a claim that a smart meter is harmful to a customer's health must be supported by expert testimony; and (4) neither fear nor inconclusive

scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 11-13 (citing *Povacz II* at 992, 997, 1005; 66 Pa.C.S. §§ 2807(f)(1)-(2)). Further, the ALJ noted the Supreme Court's reasoning in *Povacz II* that allowing fear to support a finding or conclusion that smart meter technology is unsafe, absent substantial evidence of causality between emissions and adverse human health effects, eliminates the requirement that a customer prove that the utility is responsible or accountable for the problem described in the complaint. The ALJ continued that failing to meet that requirement (*i.e.*, the requirement to prove causality by substantial evidence) would render Section 332(a) of the Code ineffective. Further, the ALJ noted the Supreme Court's finding that an allegation of specific personal harm by a customer (versus a generic claim of 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 unsafe service or facility and the alleged harm. I.D. at 13 (citing *Povacz II* at 1007).

The ALJ noted that the primary evidence offered by the Complainant was her personal testimony regarding her health and the health of her children. The ALJ referred to the Supreme Court's explanation in *Povacz II* that testimony regarding personal beliefs or perceptions are insufficient evidence to conclude that the smart meter installed at the Complainant's property is unsafe or constitutes unsafe and unreasonable service, in violation of Section 1501 of the Code. I.D. at 13 (citing 66 Pa.C.S. § 1501). Accordingly, the ALJ dismissed this claim, finding that assertions, personal opinions, or perceptions do not constitute factual evidence, and self-represented complainants must provide relevant and necessary information. I.D. at 13-14 (citing *Pennsylvania Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987) (*Pittsburgh*); *Applications of Transource Pennsylvania, LLC for approval of the Siting and Construction of the 230 kV Transmission Line Associated with the Independence Energy Connection – East and West Projects in portions of York and Franklin Counties, Pennsylvania*, Docket

No. A-2017-2640195 (Opinion and Order entered May 24, 2021); *Groch v. Unemployment Compensation Board of Review*, 472 A.2d 286 (Pa. Cmwlth 1984); *Vann v. Unemployment Compensation Board of Review*, 494 A.2d 1081 (Pa. 1985)).

The ALJ further noted the Supreme Court’s conclusion in *Povacz II* that Act 129 mandates EDCs, like West Penn, to “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.” I.D. at 14 (citing *Povacz II* at 1014). However, the ALJ pointed out that even if the customer establishes, by a preponderance of the evidence, that smart meter service violates Section 1501 of the Code, 66 Pa.C.S. § 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff. The ALJ found that West Penn must install smart meters for all of its customers, including Ms. Janosek, finding that nothing in the Company’s tariff permits an opt-out of smart meter installation, and the only accommodation set forth in the tariff is for the meter to be relocated to a different location at the customer’s expense. I.D. at 14 (citing *Povacz II* at 1014).

The ALJ also noted the Supreme Court’s decision in *Povacz II* resolved any issue about the Commission’s burden of proof standard in smart meter complaint cases, which requires a Complainant to prove, by a preponderance of the evidence, that there was a conclusive, causal connection between the RF emissions of smart meters and adverse health effects. The ALJ found that the Commission lacks the jurisdiction to consider the claims raised by the Complainant, finding that *Povacz II* resolved the Complainant’s claim that West Penn would violate her constitutional rights by installing a smart meter. I.D. at 14-15 (citing *Povacz II* at 1004, 1007; *Naperville II*).

The ALJ also found that West Penn is not a state actor that can violate the Complainant’s constitutional rights, finding that the Supreme Court’s ruling in *Povacz II* did not disturb the Commonwealth Court’s finding that “[c]onstitutional protections

apply against state actors.” I.D. at 15 (citing *Povacz II*; *Povacz I*, A.3d 486 n.9). The ALJ noted that if the Commission had jurisdiction to decide such claims, in order for there to be a deprivation of constitutional rights, then “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.” I.D. at 15-16 (citing *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (*Corley*); *Demor*, 942 A.2d 898, 899-900 (Pa. Super. 2008); *W. Pa. Socialist Workers 1982 Campaign v. Conn. General Life Ins. Co.*, 485 A.2d 1, 5-6 (Pa. Super. 1984); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351-53 (1974)). The ALJ further noted that if the Commission had jurisdiction to consider this claim, then West Penn’s installation of the smart meter is not a state action that can violate the Complainant’s constitutional rights. I.D. at 16.

The ALJ also found that the Complainant’s assertion that West Penn violated the Americans with Disabilities Act (ADA) is outside the Commission’s jurisdiction, noting that the Commission has previously recognized that it has no jurisdiction to act under the ADA. I.D. at 16 (citing *Frompovich*). Further, the ALJ found that the Complainant’s claims under the ADA cannot serve as the basis for finding that West Penn violated the Code, noting that the Complainant acknowledged she has not filed a claim against West Penn under the ADA. I.D. at 16-17 (citing Tr. at 112-14). Moreover, the ALJ addressed the Complainant’s allegation that West Penn was required to provide her with accommodations under, *inter alia*, the ADA and the “Constitution Fourth Amendment.” The ALJ found that the Commission is without authority to provide the Complainant the requested relief (*i.e.*, to retain the analog meter and forego smart meter installation). I.D. at 17.

The ALJ also found that the Complainant failed to present any credible evidence to support her allegations that West Penn’s smart meter deployment is unsafe or violated Section 1501 of the Code, 66 Pa.C.S. § 1501. Further, the ALJ found that the

Complainant failed to establish her burden of proof to show that smart meter deployment is unreasonable or constitutes inadequate utility service, noting that at the evidentiary hearing, the Complainant failed to provide any reliable credible evidence in support of her alleged health and safety concerns relating to smart meters. Moreover, the ALJ noted that the Complainant did not present: (1) expert testimony to corroborate the health and safety allegations in her Complaint; or (2) evidence that she is qualified to offer expert testimony as an engineer, doctor, or other medical professional. Accordingly, the ALJ found that the Commission is unable to provide Ms. Janosek with an administrative remedy, finding that the Complainant failed to present substantial evidence that the installation of a smart meter would be unsafe or unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 17.

The ALJ also found that the Complainant was provided with 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 of the Code, 66 Pa.C.S. § 1501. The ALJ highlighted that subsequent to the hearing, the Commonwealth Court decided the *Povacz I* case and, ultimately, the Supreme Court issued its opinion in *Povacz II*. Consequently, the record was reopened and the Parties were provided with an extension of time to file briefs or supplemental briefs and to advance any appropriate requests for relief. I.D. at 17-18.

Accordingly, the ALJ concluded that the Commission is unable to provide an accommodation to the Complainant, finding that the record in the instant case is complete and the Complainant failed to establish a claim under Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 18.

C. Exceptions¹⁹

The Complainant's Exceptions consist of: (1) twelve typed paragraphs on four pages; (2) two attachments, labeled as Exhibits A and B; and (3) a Certificate of Service statement, signed by Mr. Luciana.²⁰ The Exceptions, generally, underscore the Complainant's assertions of a Section 1501 violation of the provision of reasonable and safe service based on alleged adverse health effects, and a constitutional right to refuse the installation.

To the extent the Complainant's Exceptions rely upon extra-record materials, 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 uses in their Exceptions will not be considered. *Apollo Gas*.

In her Exceptions, the Complainant refers to her testimony and exhibits to restate her claim that after a smart meter was installed at her home, she began to experience adverse health effects, including tinnitus, migraines, heart palpitations, agitation, and confusion. Exc. at 1 (citing Complainant Exhs. F-2, F-4). Further, the Complainant disagrees with the ALJ's finding that Ms. Janosek's testimony and evidence, including medical documentation and medical journals, do not constitute factual evidence. Exc. at 2 (citing I.D. at 11, 13-14; *Romeo; Kreider*). Accordingly, the

¹⁹ The Exceptions are signed by Mr. Joseph L. Luciana, III, identified as the legal representation for the Complainant. See Exc. at 1, 3, 8. As previously noted, the Complainant did not indicate legal representation in her Complaint, and the Complainant appeared *pro se* at the two prehearing conferences and the evidentiary hearing. See Complaint at 5, ¶ 8; I.D. at 2-3.

²⁰ We note that attached to the Exceptions is page 294 of the Complainant's Main Brief. See Exc. at 8.

Complainant requests that, essentially, the Commission remand this matter to the ALJ: (1) for further consideration of Ms. Janosek’s adverse health effects; and (2) to allow the Complainant “a reasonable opportunity to locate *pro bono* expert testimony to satisfy her burden of proof.” Exc. at 2-3 (citing *Povacz II*).

The Complainant also requests that the Commission remand this matter to the ALJ: (1) for further consideration of a reasonable accommodation pursuant to, *inter alia*, the ADA; (2) to address the availability of financial aid for relocation of a smart meter on her property; and (3) to “permit discovery of West Penn’s customer service policies with respect to granting of reasonable accommodations” and “financial aid.” Exc. at 3.

D. Disposition

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).

As a general matter, in cases involving a challenge to smart meter installation, the standard burden of proof applicable in complaint proceedings applies. However, case law addressing the specific claims raised in challenges to smart meter installation has also developed. Claims challenging the installation of a smart meter can generally be categorized as claiming one or more of the following: (1) a right to opt out of the smart meter installation; (2) a Section 1501 violation of the provision of reasonable and safe service based on either alleged adverse health effects or unsafe technology;

(3) a constitutional right to refuse the installation; and/or, (4) a right to choose which type of technology to install. *See generally, Povacz II.*

In the present case, the Complainant argued that she does not want a smart meter installed at her home because of health concerns and requested to keep the analog meter currently installed at her home. Complaint at 2-3. The ALJ found, in pertinent part, that: (1) neither Act 129, nor West Penn's tariff, provide for customers to opt-out of smart meter installation; (2) based on the Supreme Court's ruling in *Povacz II*, Act 129 requires the system-wide deployment and installation of smart meter technology by EDCs; and (3) West Penn is required to install smart meters for all of its customers, in accordance with Act 129 and the Company's SMDP. I.D. at 11-12, 14, 18, COL Nos. 2-3 (citing *Povacz II*; 66 Pa.C.S. § 2807). Here, we agree with the ALJ's analysis and conclusion that West Penn is required to install smart meters in accordance with its SMDP, and customers may not opt-out of smart meter installation. I.D. at 18, COL Nos. 2-3.

As noted, *supra*, in *Povacz II*, the 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. 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 Exceptions.

As discussed, *infra*, we agree with the ALJ’s analysis and conclusion that the Complainant did not meet her burden of proof to show that the Company: (1) violated the Code, or a Commission Regulation or Order; and (2) provided unsafe or unreasonable service, in violation of Section 1501. I.D. at 19-20, COL Nos. 11-12 (citing 66 Pa.C.S. §§ 332, 1501). Although the Complainant expressed that she does not want the analog meter currently installed at her home replaced with a smart meter installed at her home, we agree with the ALJ’s analysis and conclusion that, under the provisions of Act 129, West Penn is required to deploy smart meters, consistent with 66 Pa.C.S. § 2807(f). I.D. at 12, 14, 22, COL No. 2 (citing *Povacz II*). Further, we agree with the ALJ’s conclusion that the Complainant has not provided how West Penn, which is required to comply with Act 129 and 66 Pa.C.S. § 2807 by installing smart meters at the Complainant’s residence, violated the Code, a Commission Regulation, or a Commission Order. I.D. at 17-19, COL No. 11 (citing 66 Pa.C.S. § 332).

Indeed, the Commission declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.” *Smart Meter Implementation Order* at 14. We also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.” *Smart Meter Implementation Order* at 9, 14. Moreover, we agree with the ALJ that under

Act 129, West Penn is required to install smart meters for all of its customers, including Ms. Janosek. I.D. at 14. Therefore, we find no error in the ALJ's determination that the installation of the smart meter was mandatory, as set forth in the Initial Decision.

Next, we will address the Complainant's claim that the Company's installation of a smart meter at her home or on her property constitutes unsafe and unreasonable service. In her Complaint, the Complainant argued that she does not want a smart meter installed on her home because of health concerns and is requesting to keep the analog meter currently installed on her home. Complaint at 2-3. At the hearing, Ms. Janosek testified that she began suffering unbearable and continuous adverse health symptoms after a smart meter was installed at her home, and after the smart meter was removed and replaced with an analog meter approximately two weeks later, her symptoms lessened to the point where she felt better. Tr. at 48-50. Therefore, each of the Complainant's claims arise, if at all, as a claim under Section 1501, asserting unreasonable or unsafe provision of service. 66 Pa. Code § 1501.

As noted, *supra*, in affirming the Commission's 2019 *Povacz Order*, the 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 999-1000. 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 Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof, by a preponderance of the evidence. The Supreme 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. *Povacz II* at 1005. The Supreme 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 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. *Povacz II* at 1008. 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.

In the present case, the ALJ’s analysis and disposition turned on the Complainant’s failure to present any credible evidence to support her personal opinions and allegations that smart meters pose a risk to health and safety. *See I.D.* at 17. In her Exceptions, the Complainant, essentially, challenges the ALJ’s finding that the Complainant failed to present expert testimony or factual evidence to corroborate her health and safety allegations.²¹ *Exc.* at 1-2 (citing *I.D.* at 11, 13-14). The ALJ found that

²¹ The Complainant’s Exhibits show: (1) that Ms. Janosek visited a MedExpress for headache and tinnitus treatment on two separate occasions in February 2019; (2) that Ms. Janosek was awarded Social Security Disability as of December 15, 2016; and (3) a proposal for moving the meter on Ms. Janosek’s property. *Tr.* at 84-8, 96-7, 137; Complainant Exhs. F-2, F-3, F-4, F-5, G, J.

the Complainant provided her personal testimony about her health and the health of her children and when her children noticed her symptoms. Accordingly, the ALJ concluded that personal beliefs or perceptions do not constitute sufficient evidence to conclude that the smart meter installed at the Complainant's property is unsafe and violates the safe and reasonable mandate of Section 1501 of the Code. I.D. at 13, 19, COL. No. 7 (citing *Povacz II; Pittsburgh*; 66 Pa.C.S. § 1501). We concur.

Upon review, we agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainant failed to present any credible evidence to support her allegations that West Penn's smart meter deployment is unsafe or violates Section 1501 of the Code. Thus, we agree with the ALJ that the Complainant failed to carry her burden of proving that West Penn violated the Code or a Commission Regulation or Order, by installing a smart meter at the Complainant's property. I.D. at 17, 19, COL. No. 11. Indeed, absent credible evidence to substantiate Ms. Janosek's allegations, the Complainant's personal testimony does not prove, by a preponderance of the evidence, that West Penn's service is unsafe and that a causal connection exists between the allegedly unsafe service and the alleged harm. *See Povacz II* at 1007. Therefore, we find that the Complainant's argument on this matter has no merit.

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 pointed out that the Complainant presented no expert testimony to corroborate her health or safety allegations. Further, the ALJ highlighted that the Complainant failed to evidence that she is qualified to offer expert testimony as an engineer, doctor, or other medical professional. I.D. at 17. Accordingly, the ALJ properly found that the Complainant failed to present substantial evidence to establish

that the installation of a smart meter would be unsafe or unreasonable under Section 1501 of the Code. Therefore, the ALJ properly concluded that the Complainant failed to establish a violation of Section 1501 of the Code. I.D. at 17.

Specifically, we affirm the ALJ's conclusion, in COL No. 12, that the Complainant failed to sustain her burden of proof establishing that West Penn provided unsafe or unreasonable service, in violation of 66 Pa.C.S. § 1501. I.D. at 20, COL No. 12. Similarly, the Complainant failed to offer any competent or factual evidence of record to support a finding that the installation of a smart meter at the Complainant's home by West Penn violated the Code, or a Commission Regulation or Order. I.D. at 19, COL No. 11.

Further, we agree with the ALJ that West Penn is not a "state actor" that can violate the Complainant's constitutional rights. I.D. at 15 (citing *Povacz II*; *Corley*). In *Povacz II*, the 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. The Commonwealth Court's decision is binding on the question. Accordingly, to the extent the Complainant asserts a constitutional right to refuse smart meter installation, we shall deny the Complainant's Exceptions on this issue without further discussion.

To the extent the Complainant raises the ADA as a bar to smart meter installation, we disagree. As noted by the ALJ, the Commission does not have the authority to provide the relief requested by the Complainant, and the Commission has previously recognized that it has no jurisdiction to act under the ADA. I.D. at 16-17 (citing *Frompovich*). Therefore, the Complainant's claim on this matter is denied.

In summary, we find nothing in the Complainant's Exceptions to refute the ALJ's conclusion that the Complainant failed to demonstrate that the installation of a

smart meter constitutes unsafe or unreasonable service, in violation of Section 1501. Therefore, for all the foregoing reasons, we shall deny the Complainant's Exceptions and adopt the Initial Decision.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall deny the Complainant's Exceptions and adopt the Initial Decision of ALJ Watson, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Jessica Janosek on October 22, 2024, at Docket No. C-2019-3010124, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on October 2, 2024, at Docket No. C-2019-3010124, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint, filed on May 23, 2019, by Jessica Janosek against West Penn Power Company, at Docket No. C-2019-3010124, is denied.

4. That this proceeding at Docket No. C-2019-3010124 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 13, 2025

ORDER ENTERED: March 13, 2025