

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

Public Meeting held April 10, 2025

Commissioners Present:

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

Pamela R. Scott

C-2018-3004042

v.

Duquesne Light Company

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Pamela R. Scott (Complainant or Ms. Scott), filed on November 15, 2024, to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which was served on the Parties on October 29, 2024. Therein, the ALJ denied the Formal Complaint (Complaint) filed by the Complainant on August 16, 2018, in the above-captioned proceeding. On November 27, 2024, Duquesne Light Company (Duquesne or the Company) filed Replies to Exceptions.

Also, before the Commission for consideration and disposition is the Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence (Petition to Reopen), filed by the Complainant on December 3, 2024.<sup>1</sup> Petition to Reopen at 1. On December 13, 2024, Duquesne filed an Answer to the Complainant’s Petition to Reopen (Answer to Petition).

For the reasons discussed below, we shall: (1) deny the Complainant’s Exceptions; (2) deny the Complainant’s Petition to Reopen; (3) adopt the Initial Decision of ALJ Watson; and (4) dismiss the Complaint, 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, which Duquesne uses in the ordinary course of business to measure electricity consumption. Duquesne, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns, and

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<sup>1</sup> On December 11, 2024, the Commission received a copy of the Petition to Reopen that was initially received by the Pennsylvania Governor’s Office on December 10, 2024.

maintains the meters in its distribution system. The Complainant is a Duquesne customer who objects to the installation of a smart meter at her property due to health and safety concerns. Complaint at 2.

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 required each such EDC 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 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 Implementation 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. See *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

On August 16, 2018, the Complainant filed the instant Complaint, indicating that Duquesne was threatening to shut off her electric service because she was refusing the installation of a smart meter at her home. The Complainant averred, *inter alia*, that smart meters cause her adverse health conditions. Complaint at 2. As relief, Ms. Scott requested that the Commission not allow Duquesne to shut off her service until this matter issue is resolved or until a state law is passed permitting an opt-out of smart meter installation. Complaint at 2-3; I.D. at 1-2.

On September 5, 2018, Duquesne filed an Answer and New Matter to the Complaint (Answer), essentially denying the material allegations in the Complaint while also contending that the Company is required by Act 129 to install smart meters at the Complainant's residence. I.D. at 2; Answer at 1-4. Duquesne averred that the Company notified the Complainant, via letters dated May 29, 2017, August 2, 2017, and May 3, 2018, of its plan to install a smart meter at the service address. Duquesne noted that on June 18, 2018, a field technician attempted to exchange the meter but discovered a lock on the meter. Duquesne continued that on or about July 17, 2018, the Company advised Ms. Scott, via a letter, that the Company requires clear access to its meters. Duquesne further noted that after the Complainant had contacted the Company and scheduled a meter exchange appointment, Ms. Scott filed the instant Complaint and, consequently, the Company has ceased all attempts to exchange the meter or terminate the Complainant's service. Answer at 3.

Also, on September 5, 2018, Duquesne filed Preliminary Objections in response to the Complaint (Preliminary Objections). On September 17, 2018, the Complainant filed an Answer to Duquesne's Preliminary Objections (Answer to PO).<sup>2</sup> On September 25, 2018, the Complainant filed a Reply to Duquesne's Answer (Reply to Answer).<sup>3</sup> I.D. at 2.

On October 15, 2018, the ALJ issued an Interim Order Denying Duquesne's Preliminary Objections (October 15, 2018 Interim Order). I.D. at 2.

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<sup>2</sup> Although the Initial Decision indicates that the Answer to PO was received on September 15, 2018, the Commission's case management system indicates that it was received on September 17, 2018. *See* I.D. at 2.

<sup>3</sup> Although the Initial Decision indicates that the Reply to Answer was received on September 24, 2018, the Commission's case management system indicates that it was received on September 25, 2018. *See* I.D. at 2.

On October 16, 2018, Duquesne filed a Motion to Compel Discovery Responses (Duquesne Motion to Compel).<sup>4</sup> On October 22, 2018, the Complainant filed an Answer to the Duquesne Motion to Compel. On November 8, 2018, the ALJ issued an Amended Interim Order Granting Duquesne's Motion to Compel Discovery Responses (November 8, 2018 Amended Interim Order), which, *inter alia*, directed the Complainant to serve upon counsel for Duquesne full and complete responses to the subject Duquesne Discovery Requests no later than November 30, 2018.<sup>5</sup> November 8, 2018 Amended Interim Order at 3.

Also, on November 8, 2018, a prehearing conference was held as scheduled.<sup>6</sup> The Complainant appeared *pro se* and the Company was represented by counsel. Additionally, on November 8, 2018, the ALJ issued an Interim Order Amending the Initial Litigation Schedule, which required the Parties to provide information about

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<sup>4</sup> On September 24, 2018, Duquesne served its First Set of Discovery Requests Directed to Complainant upon Ms. Scott (Duquesne Discovery Requests). On September 28, 2018, Duquesne filed a Certificate of Service (COS) certifying that a true copy of the Duquesne Discovery Requests was served on the Complainant. According to the Duquesne Motion to Compel, Ms. Scott objected to four of the Duquesne Discovery Requests, and the Company averred that the Complainant should be required to respond to those Discovery Requests. Duquesne Motion to Compel at 4-6.

<sup>5</sup> On November 7, 2018, the ALJ issued an Interim Order Granting Duquesne's Motion to Compel (November 7, 2018 Interim Order). According to the November 8, 2018 Amended Interim Order, the November 7, 2018 Interim Order incorrectly stated that the Complainant did not file a response to the Duquesne Motion to Compel. November 8, 2018 Amended Interim Order at 2-3.

<sup>6</sup> On September 24, 2018, Duquesne filed a Motion for Prehearing Conference (Motion for Prehearing Conference). On October 15, 2018, the Complainant filed an Answer to the Motion for Prehearing Conference. On October 17, 2018, the ALJ issued an Interim Order Granting Duquesne's Request for a Prehearing Conference. Consequently, by Prehearing Conference Notice dated October 17, 2018, a Telephonic Prehearing Conference was scheduled for November 8, 2018.

anticipated witnesses and testimony, conclude discovery, and file a status report by April 15, 2019.<sup>7</sup> I.D. at 3.

On April 5, 2019, the Complainant filed a Motion to Compel Discovery Responses (Complainant Motion to Compel).<sup>8,9</sup> On March 22, 2019, Duquesne filed an Answer to the Complainant's Motion to Compel. On April 3, 2019, the ALJ issued an Interim Order Granting In Part and Denying In Part Complainant's Motion to Compel Discovery Responses, which, *inter alia*, directed Duquesne to serve upon the Complainant full and complete responses to four Complainant Discovery Requests no later than April 15, 2019.

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<sup>7</sup> On October 15, 2018, the ALJ issued an Interim Order Establishing an Initial Litigation Schedule. I.D. at 2.

<sup>8</sup> On February 16, 2019, the Complainant served her First Set of Discovery Requests Directed to Respondent upon the Company (Complainant Discovery Requests). On February 21, 2019, Ms. Scott filed a COS certifying that a true copy of the Complainant Discovery Requests was served on counsel for the Company. According to the Complainant's Motion to Compel, the Company objected to fourteen of the Complainant Discovery Requests, and Ms. Scott averred that the Company should be required to respond to those Discovery Requests. Complainant Motion to Compel at 3-4, 11. *See* Complainant Motion to Compel at 4-11.

<sup>9</sup> We note that the Complainant's Motion to Compel is stamped multiple times, including once indicating "RECEIVED Pittsburgh Office of A.L.J." on March 18, 2019. However, according to the Commission's case management system, the Complainant's Motion to Compel was received on April 5, 2019.

On September 25, 2019, the ALJ issued an Amended Interim Order Establishing a Revised Litigation Schedule which provided, *inter alia*, that discovery would be completed before October 1, 2019.<sup>10</sup> I.D. at 3.

On October 1, 2019, Duquesne filed a second Motion to Compel Discovery Responses (Duquesne Second Motion to Compel) and a Motion to Preclude Witnesses Identified in Complainant's List of Potential Witnesses from Testifying (Duquesne Motion to Preclude).<sup>11</sup> On October 10, 2019, the Complainant filed a COS certifying service upon counsel for the Company of Ms. Scott's supplemental answers to Duquesne's Discovery Requests (Complainant COS). Consequently, on October 16, 2019, the ALJ issued an Interim Order which: (1) denied Duquesne's Second Motion to Compel as moot based upon the Complainant COS; and (2) provided that, if the Complainant failed to provide the Company with full and complete responses to its Discovery Requests, then Duquesne may file a new or supplemental motion to compel on or before October 31, 2019, and any response from the Complainant shall be filed on or before November 7, 2019. I.D. at 3-4.

On October 25, 2019, the Complainant provided an Answer to Duquesne's Second Motion to Compel and Motion to Preclude. On October 28, 2019, the ALJ issued

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<sup>10</sup> On April 15, 2019, Duquesne filed a Status Report, which indicated, *inter alia*, that the Complainant had not provided the Company with a witness list. On April 17, 2019, the Complainant filed a Status Report (Complainant Status Report). Although the Initial Decision indicates that the Complainant Status Report was received on April 13, 2019, the Commission's case management system indicates that it was received on April 17, 2019. *See* I.D. at 3. On July 23, 2019, the ALJ issued an Interim Order Establishing a Revised Litigation Schedule, which extended the Complainant's deadline to identify her fact and expert witnesses until August 16, 2019. I.D. at 3.

<sup>11</sup> Although the Initial Decision indicates that the Duquesne Motion to Compel and Motion to Preclude was received on September 30, 2019, the Commission's case management system indicates that it was received on October 1, 2019. *See* I.D. at 3.

an Interim Order which granted, in part, and denied, in part, without prejudice, the Duquesne Motion to Preclude (October 28, 2019 Interim Order).

On October 30, 2019, Duquesne filed a third Motion to Compel Discovery Responses (Duquesne Third Motion to Compel), seeking an order compelling the Complainant to provide full and complete responses to Duquesne's Discovery Request Nos. 22, 23, and 24. The Complainant did not file a response. On December 20, 2019, the ALJ issued an Interim Order granting Duquesne's Third Motion to Compel, which, *inter alia*, directed the Complainant to serve upon counsel for Duquesne full and complete responses to Duquesne Discovery Request Nos. 22, 23, and 24. I.D. at 4.

On January 24, 2020, Duquesne filed a Motion *in Limine* to Preclude Mr. Joshua Hart from Testifying as an Expert Witness (Motion *in Limine*). In its Motion *in Limine*, Duquesne averred, *inter alia*, that: (1) Joshua Hart was not qualified to offer expert testimony about alleged "adverse health effects from smart meter installations;" and, (2) in response to the Company's request for Mr. Hart's expert report, the Complainant provided an email from Mr. Hart to the California Council on Science and Technology, dated January 27, 2011 (Hart Email). The Motion *in Limine* included a Notice to Plead directing the Complainant to file a response within twenty (20) days of service (*i.e.*, no later than February 13, 2020). I.D. at 4-5.

By Telephonic Hearing Notice dated January 30, 2020 (Hearing Notice), an Initial Telephonic Hearing was scheduled for March 12, 2020. I.D. at 5. The Hearing Notice instructed the Parties, *inter alia*, that all copies of any hearing exhibits to which the Party will refer during the hearing must be sent to every other party at least five (5) business days before the hearing. Hearing Notice at 2.

On February 18, 2020, the Complainant filed an untimely Answer to Duquesne's Motion *in Limine*. On February 25, 2020, the ALJ issued an Interim Order

granting, in part, and denying, in part Duquesne's Motion *in Limine* (February 25, 2020 Interim Order), which, *inter alia*, precluded the Complainant from presenting testimony from Mr. Hart beyond the fair scope of the Hart Email. I.D. at 5.

On March 3, 2020, the ALJ issued a Corrected Supplemental Interim Order granting, in part, and denying, in part, Duquesne's Motion *in Limine* (March 3, 2020 Corrected Supplemental Interim Order).<sup>12</sup> The March 3, 2020 Corrected Supplemental Interim Order acknowledged the Complainant's Answer to Duquesne's Motion *in Limine*, and directed the Parties to comply, in all respects, with the February 25, 2020 Interim Order. March 3, 2020 Corrected Supplemental Interim Order at 4.

On March 4, 2020, the ALJ issued an Interim Order Confirming the Requirements for the Evidentiary Hearing, which, *inter alia*, restated the directive of the Hearing Notice that the Parties exchange documents and proposed exhibits at least five (5) business days before the hearing. I.D. at 5-6.

On March 12, 2020, the evidentiary hearing was held as scheduled. I.D. at 6. The Company was represented by counsel and presented the testimony of two expert witnesses (Dr. Benjamin Cotts and Dr. Gabor Mezei) and four fact witnesses (Mr. Michael Belanger, Mr. Steve Wright, Mr. Michael Secchiutti, and Mr. Ronald Dornin). I.D. at 10-11, Finding of Fact (FOF) Nos. 15, 23 (citing Tr. at 183-208, 211-28, 288, 324-37, 339-47). The Complainant appeared *pro se* and testified as a fact witness on her own behalf. I.D. at 9, FOF No. 9 (citing Tr. at 99-182). Although the Complainant offered Mr. Hart as an expert witness, Duquesne moved to preclude Mr. Hart from testifying as an expert witness, and Mr. Hart was not accepted as

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<sup>12</sup> On March 3, 2020, the Complainant filed correspondence in response to the February 25, 2020 Interim Order. Consequently, on March 3, 2020, the ALJ issued a Supplemental Interim Order granting, in part, and denying, in part, Duquesne's Motion *in Limine*, which addressed the correspondence, but included a typographical error. The March 3, 2020 Corrected Supplemental Interim Order corrected the typographical error.

an expert witness. However, Mr. Hart was allowed to testify as a fact witness. I.D. at 25 (citing Tr. at 40, 46-47, 54-55, 64, 77, 76-79).

On June 15, 2020, the ALJ issued an Interim Order permitting the Parties to file briefs on or before July 24, 2020 (June 15, 2020 Interim Order).<sup>13</sup> I.D. at 6.

On July 1, 2020, the ALJ issued an Interim Order Closing the Hearing Record (July 1, 2020 Interim Order). On July 6, 2020, Duquesne filed correspondence in response to the July 1, 2020 Interim Order. Consequently, on or about July 6, 2020, the ALJ issued an Interim Order Re-Opening the Hearing Record and Permitting the Parties to File Main Briefs (July 6, 2020 Interim Order).<sup>14</sup>

On July 15, 2020, the Complainant filed a Petition for Extension of Time to File a Main Brief (Petition for Extension). Also, on July 15, 2020, Duquesne filed an Answer to the Complainant's Petition for Extension. On July 24, 2020, Duquesne filed a Brief. On July 27, 2020, the Complainant untimely filed a brief (Complainant Brief).<sup>15</sup> On September 24, 2020, the ALJ issued a second Interim Order Closing the Hearing Record. I.D. at 6.

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

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<sup>13</sup> Although the Initial Decision indicates that the June 15, 2020 Interim Order was issued June 11, 2020, it is dated June 15, 2020, and it was added to the Commission's case management system on June 15, 2020. *See* I.D. at 6.

<sup>14</sup> Although July 6, 2020 Interim Order is dated "June 6, 2020," it was added to the Commission's case management system on *July* 6, 2020. Given the context and circumstances of the July 6, 2020 Interim Order, we consider the date of "June 6, 2020" to be an inadvertent misstatement.

<sup>15</sup> Although the Initial Decision indicates that the Complainant Brief was received on July 24, 2020, the Commission's case management system indicates that it was received on July 27, 2020. *See* I.D. at 6.

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 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 the Complainant of the lifting of the stay and their procedural rights and obligations under the Commission's Regulations. I.D. at 6-8.

On December 1, 2023, the ALJ issued a second Interim Order Reopening the Hearing Record (December 1, 2023 Interim Order), which: (1) ordered that the evidentiary hearing record be reopened; and (2) directed the Parties to file their supplemental briefs and other appropriate requests for relief, if any, on or before January 8, 2024. I.D. at 8; December 1, 2023 Interim Order at 5, Ordering Paragraph Nos. 1, 2.

On January 8, 2024, the Complainant filed a Supplemental Brief (Complainant Supplemental Brief). Also, on January 8, 2024, Duquesne filed a Supplemental Brief (Duquesne Supplemental Brief). On June 3, 2024, the ALJ issued an Interim Order Closing the Hearing Record. I.D. at 8.

In the Initial Decision, issued on October 29, 2024, the ALJ dismissed, with prejudice, the Complaint, finding that the Complainant failed to carry her burden of proof establishing that Duquesne: (1) violated the Code or a Commission Regulation or Order in requiring installation of a smart meter at her property; and (2) provided unsafe or unreasonable service, in violation of 66 Pa.C.S. § 1501. I.D. at 1, 32, 34-35.

As previously noted, the Complainant filed Exceptions on November 15, 2024, and Duquesne filed Replies to Exceptions on November 27, 2024.

Also, as noted, *supra*, on December 3, 2024, the Complainant filed the Petition to Reopen, and Duquesne filed an Answer to the Petition to Reopen on December 13, 2024.

### **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 (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 Burlison 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, Burlison*, 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<sup>16</sup> 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).

## **2. Burden of Proof Applied to Section 1501<sup>17</sup> 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)

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<sup>16</sup> 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)).

<sup>17</sup> 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).

(*Povacz I*), 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) (*Randall and Albrecht*). 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 983-84.

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service<sup>18</sup> 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

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<sup>18</sup> 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).

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 of the Code.<sup>19</sup> 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 983-984; *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*).

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<sup>19</sup> 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*).

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. [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. Cmwltth.] 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).<sup>20</sup>

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<sup>20</sup> 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. Cmwltth. 2017).

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 by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)<sup>21</sup> from the AMI meter.<sup>22</sup>

### 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 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

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<sup>21</sup> RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

<sup>22</sup> 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), slip op. at 11).

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 Supreme 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 ninety-seven Findings of Fact and reached fourteen Conclusions of Law (COL). I.D. at 8-21, 32-34. 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 first addressed the Complainant's argument that a smart meter should not be installed at her home, based primarily upon her personal beliefs, including that smart meters present health and safety issues. The ALJ noted the Supreme Court's ruling in *Povacz II* that Act 129 mandates smart meter deployment and installation by EDCs. I.D. at 24 (citing *Povacz II* at 992). Accordingly, the ALJ found that the Complainant's argument must fail because Ms. Scott did not: (1) present any evidence or cite any authority to support her averment that Duquesne was not required to install a smart meter at her residence or that she was permitted to opt-out from the smart meter program; and (2) demonstrate that the Company violated any provision of the Code, a Commission Order, or a Commission Regulation. I.D. at 24.

The ALJ also noted that the Supreme Court has found that: (1) customers may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code, even though Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence; (2) complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence; and (3) inconclusive evidence, or evidence that does not lead to a conclusion of a definite result one way or the other, does not meet the minimal requirements of the preponderance of the evidence standard. I.D. at 25 (citing 66 Pa.C.S. § 1501; *Povacz II* at 1005).

The ALJ then summarized the testimony of the Complainant's witness, Mr. Hart. Specifically, the ALJ noted that the Complainant offered Mr. Hart as an expert witness on the public health effects of smart meter installations even though he is not a medical doctor, epidemiologist, public health professional, certified electrician, or electrical engineer. I.D. at 25 (citing Tr. at 40, 46-47, 54-55). Further, the ALJ noted Mr. Hart's testimony that he has never: (1) met Ms. Scott; (2) seen any of Ms. Scott's medical records regarding her alleged health symptoms, including her alleged electro-hypersensitivity syndrome (EHS); or (3) spoken with Ms. Scott's treating

physicians. Moreover, the ALJ noted that Mr. Hart was not accepted as an expert witness, but was allowed to testify as a fact witness, after Duquesne moved to preclude Mr. Hart from testifying as an expert witness due to his lack of qualifications.<sup>23</sup> I.D. at 25 (citing Tr. at 56, 61-62, 64, 76-79).

The ALJ then summarized the Complainant's testimony as a fact witness. Specifically, the ALJ noted the Complainant's assertions that smart meters: (1) emit RF "24/7;" and (2) have adverse health effects on people who suffer from EHS. Further, the Complainant noted that Ms. Scott claims that she suffers from EHS but has not been diagnosed with EHS by a medical doctor, and Duquesne's witness, Dr. Mezei, explained that EHS is not a recognized medical diagnosis. Moreover, the ALJ noted that the Complainant did not provide: (1) medical records or any records establishing a link between RF and her alleged health problems; and (2) evidence to support her claim that the Company's smart meters catch fire or cause fires. I.D. at 26 (Tr. at 138, 160, 166-67, 174-76, 180-81, 316-17).

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<sup>23</sup> The ALJ noted that a person qualifies as an expert witness if the witness has a "reasonable pretension to specialized knowledge" on the matter at issue, based on education, occupation, or practical experience. I.D. at 25-26, n. 24 (citing *Ruzzi v. Butler Petroleum Company*, 588 A.2d 1, 10 (Pa. 1991); *Kursis v. Baldwin-Lima-Hamilton Corporation*, 319 A.2d 914, 924 (Pa. 1974)). The ALJ continued that Pennsylvania courts have held that testimony regarding the existence or nonexistence of a disease or disorder requires the training and experience of a medical expert. I.D. at 26, n. 24 (citing *Travellers Ins. Co. v. Heppenstall Co.*, 61 A.2d 809 (Pa. 1948); *Collins v. Cooper*, 746 A.2d 615 (Pa. Super. 2000)). The ALJ noted that Mr. Hart was excluded from testifying as an expert witness because his testimony established that he possessed no medical training or experience, and therefore, Mr. Hart was not qualified to testify as an expert about the alleged public health effects of smart meter installations. Specifically, the ALJ noted that Mr. Hart testified that he: (1) is not a medical doctor, epidemiologist, or public health professional; and (2) has little knowledge of the Complainant's alleged medical issues because he never met Ms. Scott, spoke to her treating physicians, or reviewed her medical records. I.D. at 26, n. 24 (citing Tr. at 54-56, 61-62).

The ALJ then addressed whether Duquesne’s smart meter practices are adequate, efficient, safe, and reasonable, as required by Section 1501 of the Code, 66 Pa.C.S. § 1501. Specifically, the ALJ found that the evidence establishes that the Company has provided adequate, efficient, safe, and reasonable service to the Complainant. Further, the ALJ found that the Complainant’s health and safety claims must be rejected because Ms. Scott presented no credible evidence to support her allegations. Moreover, the ALJ found that Duquesne presented overwhelming evidence that: (1) the Company’s smart meters comply with all health and safety standards; and (2) the Company provided reasonable service to the Complainant. I.D. at 27 (citing 66 Pa.C.S. § 1501).

The ALJ also found that the following claims raised by the Complainant were not relevant to the material issues, or were contradicted by the record evidence: (1) Act 129 does not require the Company to install a smart meter at her residence and suggested that it may violate the Fourth and Fourteenth Amendments to the United States Constitution (U.S. Constitution) and Article I of the Pennsylvania Constitution; (2) the Federal Communications Commission’s (FCC’s) RF safety standards are too high; (3) “smart meters actually consume energy unlike analog meters;” (4) the ZigBee radio violates Act 129;<sup>24</sup> and (5) on August 18, 2018, the Company attempted to install a smart meter at her property, although Ms. Scott later admitted that she was not at home at this time. I.D. at 27 (citing Tr. at 113, 118-19, 134, 141, 144, 158-59, and 169-72).

The ALJ also noted that he accepted the expert testimony of two Duquesne witnesses: (1) Dr. Cotts, as an expert witness in the field of electrical engineering, physics, and electromagnetics, with an emphasis on the field effects of electromagnetic frequency and RF; and (2) Dr. Mezei, as an expert witness in the field of epidemiology,

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<sup>24</sup> Duquesne’s smart meter contains a Local Area Network (LAN) radio and a ZigBee radio. I.D. at 14, FOF No. 42 (citing Tr. at 186-87).

health sciences, and research with an emphasis on electromagnetic fields and RF fields. I.D. at 28, n.35 (citing Tr. at 234-35, 295).

The ALJ also noted the Commission's ruling that when presented with a challenge to smart meter installation, the ALJ will determine whether there is sufficient evidence on the record to support a finding that the Complainant was adversely affected by the smart meter or whether the utility's use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 28 (citing *Kreider* at 23; *Frompovich* at 10). Further, the ALJ noted the Commonwealth Court's ruling in *Povacz I* that a complainant in smart meter matters bears the burden to prove, by a preponderance of the evidence, that installation of a wireless smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 28 (citing *Povacz I* at 491).

The ALJ found that: (1) the Complainant presented no expert testimony to corroborate her health or safety allegations; (2) to the extent the Complainant relied upon hearsay or other inadmissible evidence to attempt to support her claims, such evidence was properly objected to upon hearsay and relevance grounds and cannot support a finding of fact; and (3) Duquesne rebutted the Complainant's allegations regarding the Company's smart meters. Accordingly, the ALJ reasoned that the Complainant failed to demonstrate that the installation of a smart meter at her home would constitute unsafe, unreasonable, or inadequate service under Section 1501 of the Code. I.D. at 29.

The ALJ also found that the Complainant's health, safety, and privacy concerns consisted solely of Ms. Scott's lay opinions and beliefs. The ALJ explained that assertions, personal opinions, or perceptions do not constitute evidence. Accordingly, the ALJ concluded that there is no record evidence to support the Complainant's claim that installation of a smart meter at the service location would constitute a violation of

Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 29 (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987) (*Pittsburgh*)).

The ALJ then addressed the Complainant's request for relief in her Complaint (*i.e.*, her objection to the installation of a smart meter at her home). Specifically, the ALJ noted that Ms. Scott's sole request for relief or accommodation was that the Commission not permit Duquesne to terminate her service until this dispute is resolved due to the misinterpretation of state law or until a state law is passed to specifically allow an opt-out from smart meter programs. I.D. at 29.

The ALJ referenced the Supreme Court's conclusion in *Povacz II*, that Act 129 mandates the installation of smart meter technology and that a customer may not elect to prevent the installation of a smart meter. I.D. at 30. The ALJ further noted that in *Povacz II*, the Supreme Court stated the following:

[A] customer can file a claim under Section 1501 that smart meter technology service is unsafe and/or unreasonable. If the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff.

I.D. at 30 (citing *Povacz II* at 1034-38). In the present case, the ALJ found that the Complainant failed to present substantial evidence that the installation of a smart meter would be unsafe or unreasonable under Section 1501 of the Code, 66 Pa.C.S. § 1501. Accordingly, the ALJ concluded that, under the circumstances, the Commission is unable to provide Ms. Scott with an administrative remedy. I.D. at 30.

Finally, the ALJ addressed the termination of service for failure to provide meter access. Specifically, the ALJ cited the following rules in Duquesne's Tariff:

(1) Rule 22<sup>25</sup> authorizes Company representatives to access Duquesne's equipment for many specific reasons; and (2) Rule 33<sup>26</sup> authorizes Duquesne to terminate service and remove its equipment from the customer's property if the Company is blocked proper access to its equipment. I.D. at 30-31 (citing Duquesne Exh. C<sup>27</sup>). Further, the ALJ noted that the Commission has recognized that a utility can terminate a customer's service if the customer prevents the utility from accessing its equipment. I.D. at 31 (citing *Beglin v. Pennsylvania Electric Company*, Docket No. C-2018-3005272 (Final Order entered August 13, 2020); *Landis v. PPL Electric Utilities Corporation*, Docket No. C-2018-3002142 (Opinion and Order entered May 21, 2020); 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3)). The ALJ found that the evidence established that the Complainant prevented Duquesne from exchanging the meter on Ms. Scott's

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<sup>25</sup> We note that based on the record in this proceeding, the Tariff Rule 22 cited to by the ALJ here was set forth in Duquesne Tariff Electric – Pa. P.U.C. No. 24 (Duquesne Superseded Tariff) at Sixth Revised Page No. 24, effective December 29, 2018. We further note that pursuant to the Commission proceeding in *Duquesne Light Company - Tariff Electric Pa. P.U.C. No. 25*, Docket No. R-2019-3013287 (Order entered November 14, 2019) (*November 2019 Order*), the Duquesne Superseded Tariff was superseded by Duquesne Tariff Electric – Pa. P.U.C. No. 25 (Duquesne Current Tariff), effective December 2, 2019. Tariff Rule 22 is set forth in the Duquesne Current Tariff at Original Page No. 28, effective December 2, 2019. However, the language for Tariff Rule 22 in the Duquesne Current Tariff is identical to that set forth in the Duquesne Superseded Tariff.

<sup>26</sup> Similarly, based on the record in this proceeding, the Tariff Rule 33 cited to by the ALJ was set forth in the Duquesne Superseded Tariff at Third Revised Page No. 26, effective December 29, 2018. Tariff Rule 33 is set forth in the Duquesne Current Tariff at Original Page No. 31, effective December 2, 2019. The language for Tariff Rule 33 in the Duquesne Current Tariff is identical to that set forth in the Duquesne Superseded Tariff.

<sup>27</sup> Duquesne Exhibit C contains select pages from the Duquesne Superseded Tariff that are relevant to this proceeding. Although the Duquesne Superseded Tariff was in effect at the commencement of this proceeding, it was no longer in effect at the time that Duquesne Exhibit C was entered into the record, as it had been superseded by the Duquesne Current Tariff, pursuant to the *November 2019 Order*. However, the provisions of the Duquesne Current Tariff that we cite to in this Opinion and Order contain language that is identical to that set forth in Duquesne Exhibit C (*i.e.*, the language in the Duquesne Superseded Tariff).

premises. As such, the ALJ directed that if the Complainant continues to prevent the meter exchange, then the Company may terminate Ms. Scott's service, subject to the applicable law and Duquesne's Commission-approved Tariffs. I.D. at 31-32.

The ALJ concluded that the Complainant was provided with a full and fair hearing and an opportunity to present evidence regarding her request for relief and her health and safety 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 after the hearing, the Commonwealth Court decided *Povacz I*, and the Supreme Court issued its opinion in *Povacz II*. Consequently, the record in this proceeding 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 32.

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 that the Complainant failed to establish a claim under Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 32. Accordingly, the ALJ dismissed Ms. Scott's Complaint with prejudice. I.D. at 35.

### C. The Complainant's Exceptions, Duquesne's Replies to Exceptions, and Disposition<sup>28</sup>

In her Exceptions, the Complainant generally disagrees with the ALJ regarding: (1) an opt-out of smart meter installations; (2) health and safety concerns and constitutional claims; (3) due process; (4) Rule 9B in Duquesne's tariff;<sup>29</sup> and (5) Finding of Fact Nos. 62, 70, and 94.<sup>30</sup> These arguments, along with Duquesne's replies and our dispositions, are summarized and addressed below.

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 an alleged adverse health effect 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.*

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<sup>28</sup> 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 exceptions 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) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

<sup>29</sup> In Duquesne Exhibit C, the language for Tariff Rule 9B was set forth in the Duquesne Superseded Tariff at Second Revised Page No. 15A, effective April 8, 2019. The language for Tariff Rule 9B that is now in effect is set forth in the Duquesne Current Tariff at Original Page No. 19, effective December 2, 2019, and such language is identical to that in the Duquesne Superseded Tariff.

<sup>30</sup> I.D. at 16, 17, 20.

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

**1. Complainant’s Argument Regarding an Opt-out**

**a. Exception No. 1**

In her Exception No. 1, the Complainant, essentially, restates her request to opt-out of smart meter installation and retain the analog meter currently installed on her home. According to the Complainant, the Supreme Court ruled that EDCs are permitted to provide opt-outs as a customer service policy. Exc. at 1-2 (citing Complainant Supplemental Brief at 3; *Povacz II*).

**b. Replies**

Duquesne argues that the ALJ correctly found that Act 129 mandates smart meter installation and does not provide the Complainant with an opt-out. The Company notes that the Commission has repeatedly ruled that the use of “shall” in Act 129 indicates the General Assembly’s direction that all customers receive a smart meter. R. Exc. at 9-11 (citing Duquesne Supplemental Brief at 25; *Povacz II*; *Evans v. PECO Energy Company*, Docket No. C-2013-2368477 (Final Order entered February 6, 2014); 66 Pa.C.S. § 2807(f)(2)). Further, Duquesne argues that the Complainant disregards *Povacz II*, which mandates smart meter installation for all electric customers within an electric distribution service area without the option to refuse such installation. R. Exc. at 11 (citing *Povacz II*, 280 A. 3d at 983). Moreover, Duquesne refers to several Commonwealth Court cases and Commission decisions to argue that Act 129 mandates smart meter installation. R. Exc. at 11-12 (citing *Myers v. Pa. PUC*, 306 A.3d 963, 964, 966 (Pa. Cmwlth. 2023); *Hoffman-Lorah v. Pa. PUC*,

301 A.3d 492 (Pa. Cmwlth. 2023); *Branagh v. Pa. PUC*, No. 1857 C.D. 2019, 2023 Pa. Commw. Unpub. LEXIS 352, at \*26; *Paul v. Pa. PUC*, 299 A.3d 1069 (Pa. Cmwlth. 2023); *Darula v. Pennsylvania Electric Company*, Docket No. C-2017-2618084 (Opinion and Order entered April 25, 2024); *Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019)). Accordingly, Duquesne contends that Ms. Scott is not entitled to the relief she seeks and, therefore, her Exception No. 1 should be rejected. R. Exc. at 12.

**c. Disposition**

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 that 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 the utility under Section 1501 of the Code, as a prerequisite to seeking an accommodation. To the extent the Complainant's argument challenges the 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 the Supreme Court has ruled that EDCs are permitted to provide opt-outs. 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 Health and Safety Concerns and Constitutional Claims**

**a. Exception No. 2**

In her Exception No. 2, the Complainant contends that the ALJ ignored her claims regarding adverse health effects and RF exposure. Ms. Scott refers to the Supreme Court's ruling in *Povacz II* to argue that she provided specific evidence to support a finding that she has been, and will continue to be, adversely affected by Duquesne's smart meter mesh network. Further, the Complainant asserts that she met and exceeded her burden of proof, by a preponderance of the evidence, that the installation of a smart meter on her property will constitute unsafe and unreasonable service, in violation of Section 1501 of the Code. Moreover, the Complainant avers that she presented conclusive evidence that represents a causal connection between her adverse health effects and exposure to the RF of the Company's smart meter. Exc. at 2-7 (citing Tr. at 104-12).

The Complainant continues to assert that she suffers from EHS and argues that she presented credible evidence to support her allegation that the installation of a smart meter at her home will result in additional harm to her health. Further, Ms. Scott

disputes the Company's evidence that its smart meters comply with all health and safety standards. Moreover, Ms. Scott submits that the reason no medical documentation was provided at the evidentiary hearing is that she did not seek a medical diagnosis until 2023. Furthermore, the Complainant maintains her position that the Fourteenth Amendment of the U.S. Constitution prohibits the installation of a smart meter at her property. Exc. at 6-7.

The Complainant also disputes the relevance of Finding of Fact No. 64 to this case, arguing that she does not use RF-emitting devices or appliances and there are no RF-emitting water or gas meters on her property. Exc. at 6 (citing I.D. at 17, FOF No. 64).

#### **b. Replies**

Duquesne contends that the Complainant did not satisfy her burden of proof for a Section 1501 claim. R. Exc. at 13 (citing Duquesne Supplemental Brief at 23; *Kreider* at 11; *Povacz II*, 280 A.3d at 984, 1006; *Commonwealth v. Williams*, 732 A.2d 1167, 1187 (Pa. 1999); *Bostard v. Metropolitan Edison Company*, Docket No. C-2018-3002753 (Order entered October 10, 2024)). Specifically, Duquesne argues that contrary to the Complainant's assertion otherwise, Ms. Scott failed to present any evidence establishing that a smart meter installation: (1) will adversely affect her health; or (2) constitutes unreasonable or unsafe service by the Company. Moreover, Duquesne argues that at the evidentiary hearing, the Complainant: (1) did not produce medical records or similar evidence indicating that she suffers from EHS or RF exposure; (2) only offered her opinion that she suffers from EHS and that the installation of a smart meter would exacerbate her condition; and (3) presented no expert testimony to corroborate her health or safety allegations or that RF emissions adversely affect her health. Accordingly, Duquesne agrees with the ALJ's finding that there is no record evidence to support the Complainant's claim that the installation of a smart meter at her home would

constitute a violation of Section 1501 of the Code. R. Exc. at 14-15 (citing I.D. at 29, COL No. 10; Tr. at 174-76, 180-81; *Lamagna v. Pennsylvania Electric Company*, Docket No. C-2017-2608014 (Initial Decision issued October 30, 2018); *Zimmerman v. PPL Electric Utilities Corporation*, Docket No. C-2017-2615038 (Initial Decision issued August 16, 2018); *Povacz II*, 280 A.3d at 1006).

Duquesne also submits that the ALJ properly found that Mr. Hart: (1) was precluded from testifying beyond the fair scope of the Hart Email; and (2) is not a medical doctor, epidemiologist, public health professional, certified electrician, or electrical engineer. R. Exc. at 15 (citing I.D. at 4-5; Tr. at 46-47, 54-55).

Duquesne maintains its position that the Complainant, to date, has failed to produce: (1) any medical record documentation evidencing a diagnosis or otherwise corroborating her claims; and (2) any expert testimony to corroborate her assertion that the installation of a smart meter causes or will cause her harm. Moreover, Duquesne argues that the Complainant's attempt to meet her burden through personal beliefs and opinions regarding her health is insufficient to meet the Supreme Court's standard for proving a violation of Section 1501 of the Code. Accordingly, Duquesne submits that the Complainant's Exception No. 2 should be rejected. R. Exc. at 15-16.

### **c. Disposition**

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 or expert testimony to support her personal opinions and allegations that smart meters pose a risk to health and safety or that the installation of a smart meter would be unsafe or unreasonable under Section 1501 of

the Code. *See* I.D. at 29-30. In her Exceptions, the Complainant, essentially, claims that the ALJ ignored testimony and improperly weighed evidence to corroborate her health and safety allegations. Exc. at 2-7. The ALJ found that the Complainant's claims concerning health, safety, and privacy consisted solely of Ms. Scott's lay opinions and beliefs, which do not constitute evidence. Accordingly, the ALJ found that there is no record evidence to conclude that the installation of a smart meter at the Complainant's property would constitute a violation of Section 1501 of the Code. I.D. at 29, 34, COL No. 10 (citing *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 or expert testimony to support her health and safety allegations that Duquesne's smart meter deployment, or the installation of a smart meter at the Complainant's service location, is unsafe or unreasonable under Section 1501 of the Code. I.D. at 27, 29-30. Thus, we agree with the ALJ that the Complainant failed to carry her burden of proving that Duquesne: (1) provided unsafe or unreasonable service; and (2) violated the Code or a Commission Regulation or Order, by installing a smart meter at the Complainant's property. I.D. at 34, COL Nos. 13-14. Indeed, absent credible evidence to substantiate Ms. Scott's allegations, the Complainant's personal opinions and beliefs do not prove, by a preponderance of the evidence, that Duquesne's service is unsafe or that the installation of a smart meter at the Complainant's home would constitute unsafe, unreasonable, or inadequate service under Section 1501 of the Code. *See Povacz II* at 1008. Therefore, we find that the Complainant's argument on this matter has no merit.

Regarding the Complainant's challenge to Finding of Fact No. 64, we note that Finding of Fact No. 64 states, as follows:

64. Complainant would be exposed to much higher levels of RF from many other existing sources, such as her phone,

wireless router, and local broadcast stations.  
DLC Ex. G-2, G-3.

I.D. at 17, FOF No. 64 (citing Duquesne Exh. G-2, G-3). The Complainant argues that she does not use wireless electronics in her home. However, Exhibits G-2, G-3, and the supporting testimony<sup>31</sup> relate not only to home electronics, but also to natural background EMF radiation. We find the testimony as to the level of background radiation as compared to the level of smart meter emissions is credible. Therefore, we find the Complainant's claim challenging the accuracy to Finding of Fact No. 64 is without merit.

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 (*i.e.*, the Fourteenth Amendment to the U.S. Constitution), we disagree. *See* Exc. at 6. We agree with the ALJ that the Complainant's assertion that Act 129 may violate the Fourth and Fourteenth Amendments to the U.S. Constitution is not relevant to the material issues or was contradicted by the record evidence. I.D. at 27. As a general matter, 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 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. 2, a constitutional right to refuse smart meter installation, we shall deny the Complainant's Exception on this issue.

In summary, 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 Duquesne

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<sup>31</sup> *See* Tr. 265-268.

provided unsafe or unreasonable service or violated the Code or any Commission Regulation or order. I.D. at 34, COL Nos. 13, 14 (citing 66 Pa.C.S. §§ 332, 1501). 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 Duquesne's installation of a smart meter would constitute the unreasonable or unsafe provision of service under Section 1501 of the Code. Therefore, we shall deny the Complainant's Exception No. 2.

### **3. Complainant's Argument Regarding Due Process**

#### **a. Exception No. 3**

In her Exception No. 3, the Complainant argues that the Parties were denied due process because the ALJ did not provide an opportunity to present additional evidence after the Supreme Court's ruling in *Povacz II*. I.D. at 7-8 (citing *Povacz II*).

#### **b. Replies**

Duquesne counters that the Complainant waived this issue because she did not: (1) request to reopen the evidentiary record in her Supplemental Brief; or (2) submit any other filing seeking to reopen the evidentiary record prior to filing her Exceptions. Duquesne adds that in the event the Complainant has not waived this argument, the argument still fails as a matter of law. Duquesne contends that the ALJ properly: (1) applied the preponderance of the evidence standard and conclusive causal connection standard to the Complainant's evidence; and (2) provided the Parties an opportunity to submit briefs after *Povacz II*. R. Exc. at 16-17 (citing I.D. at 21, COL No. 9; *Povacz II* at 1004, 1007). Accordingly, Duquesne submits that the Complainant's Exception on this matter should be rejected. R. Exc. at 18.

**c. Disposition**

The Complainant claims that the ALJ did not provide an opportunity for the Parties to present additional evidence after the Supreme Court's ruling in *Povacz II*. See I.D. at 7-8 (citing *Povacz II*). We disagree. As noted by Duquesne, after *Povacz II* was issued, the ALJ provided the Parties an opportunity to submit briefs. See R. Exc. at 17. Specifically, on December 1, 2023, the ALJ issued a second Interim Order Reopening the Hearing Record (*i.e.*, the December 1, 2023 Interim Order), which provided the Parties with an extension of time to file briefs or to supplement briefs filed, and to consider appropriate requests for relief, if any, on or before January 8, 2024. See December 1, 2023 Interim Order at 5. On January 8, 2024, Ms. Scott filed her Supplemental Brief. As noted by Duquesne, the Complainant did not request to reopen the evidentiary record in her Supplemental Brief. Moreover, Ms. Scott did not submit any other filing requesting to reopen the evidentiary record prior to filing her Exceptions. Accordingly, we agree with Duquesne that the Parties were afforded an opportunity to present additional evidence after the Supreme Court's ruling in *Povacz II* was issued.

We will now address the Complainant's argument that the Parties were denied due process. In the Commission's decision in *Lucey v. Metropolitan Edison Company*, 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.

In the present case, the Complainant was given notice of the pre-hearing conference, the evidentiary hearing, and other procedural matters throughout the case. The Complainant was given the opportunity to be heard at the hearing, and Ms. Scott participated in the hearing. During the hearing, the Complainant explained why she filed the Complaint and what relief she was seeking. Tr. at 99-160. Ms. Scott was offered the opportunity to cross-examine Duquesne's witnesses. Tr. at 200, 224, 279, 319, 335, 345. The Complainant was given the opportunity to present a closing argument and chose to submit a written brief in lieu of making an oral closing argument. Tr. at 353-54. The Complainant was free to seek expert testimony and submit exhibits at the hearing to be entered into the record. The Complainant presented Mr. Hart as a witness, and Mr. Hart was allowed to testify as a fact witness, although Ms. Scott was precluded from presenting testimony from Mr. Hart beyond the fair scope of the Hart Email. Tr. at 37, 40, 76-79. The Complainant offered several exhibits at the hearing, although some were determined to be hearsay. Tr. at 30, 114, 116, 131, 145, 159. Therefore, the Complainant's due process rights were exercised throughout the proceeding. Accordingly, to the extent that the Complainant argues, in her Exception No. 3, that the Parties were not afforded due process in this proceeding, such allegations are unfounded. Accordingly, this portion of the Complainant's Exception No. 3 is denied.

#### **4. Complainant’s Argument Regarding Duquesne Tariff Rule 9B<sup>32</sup>**

##### **a. Exception No. 3**

In her Exception No. 3, the Complainant also disagrees with the following language in Duquesne’s Tariff Rule 9B: “Customers may not decline smart meter installation for any reason. Instead, as their sole remedy, customers may designate an alternative location on the premises for the smart meter.” Exc. at 8-9 (citing Duquesne Exh. C at 3).<sup>33</sup> According to Ms. Scott, Rule 9B: (1) conflicts with the Supreme Court’s “intent to provide medical exemption accommodation” to complainants who meet their burden of proof; and (2) constitutes unsafe and unreasonable service because “it prevents the occurrence of safe and reasonable service for all complainants who carry their burden of proof to establish a violation of Section 1501 [of the Code].” Exc. at 8-9.

##### **b. Replies**

Duquesne argues that because the Complainant failed to satisfy her burden of proof, she is not entitled to an accommodation. Further, Duquesne counters that the ALJ properly recognized that Duquesne’s Tariff Rule 9B has been approved by the Commission. Moreover, Duquesne argues that the analysis in this case is not altered by Ms. Scott’s intention not to accept the accommodation offered by the Company’s tariff.<sup>34</sup>

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<sup>32</sup> As previously noted, Duquesne Tariff Rule 9B is now set forth in the Duquesne Current Tariff at Original Page No. 19, effective December 2, 2019.

<sup>33</sup> We note that in the cover letter to the Exceptions and the cover letter to the Petition to Reopen, the Complainant repeats this argument. *See* Exc. at cover letter; *see also* Petition to Reopen at cover letter.

<sup>34</sup> As noted above, the language for Duquesne Tariff Rule 9B, set forth in the Duquesne Current Tariff, is identical to the language in the Duquesne Superseded Tariff, which the Parties and the ALJ cited to in this proceeding.

Accordingly, Duquesne submits that the Complainant's argument on this matter should be rejected. R. Exc. at 18 (citing I.D. at 12, 30).

**c. Disposition**

As noted, *supra*, in *Povacz II*, the Supreme Court 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. *See Povacz II*, at 983-84. Here, as noted above, the Complainant's Exceptions fail to establish any violation by the utility under Section 1501 of the Code, as a prerequisite to seeking an accommodation. Moreover, as previously discussed, 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 Duquesne provided unsafe or unreasonable service or violated the Code or any Commission Regulation or Order. Therefore, we agree with Duquesne that because Ms. Scott failed to satisfy her burden of proof, she is not entitled to an accommodation. Thus, we find no merit in the Complainant's argument that Rule 9B in the Company's Commission-approved tariff conflicts with the Supreme Court's ruling in *Povacz II*. Accordingly, the Complainant's argument regarding Rule 9B in Duquesne's tariff, in her Exception No. 3, is denied.

**5. Complainant's Argument Regarding Finding of Fact Nos. 62 and 70**

**a. Exception No. 4**

In her Exception No. 4, the Complainant, essentially, challenges the accuracy to Finding of Fact Nos. 62 and 70. According to Ms. Scott, the ALJ erroneously concluded that Duquesne's smart meters: (1) "do not emit microwave RF emissions 24/7;" and (2) "the duty cycle is the only type of RF energy emission from

[Duquesne's] smart meters.” Exc. at 9-11 (citing I.D. at 16-18, FOF Nos. 62, 70; Duquesne Exh. at E-2; Tr. at 187, 192-93, 201-04).

**b. Replies**

Duquesne argues that the Company produced evidence that the estimated time that a Company meter would transmit energy during a 24-hour period, commonly referred to as the “duty cycle,” is slightly less than 3 minutes per day on average. R. Exc. at 18-19 (citing I.D. at FOF Nos. 70-71; Tr. at 192-94, 197). Further, Duquesne argues that the RF emissions from the Company’s smart meters are a fraction of the permissible limits set by the FCC and other organizations. R. Exc. at 19 (citing Duquesne Supplemental Brief at 8-12). Moreover, Duquesne argues that the ALJ: (1) properly accepted the Company’s evidence as credible, including spurious emissions; and (2) properly held that “[b]oth radios in the Company’s smart meters comply with the exposure limits set by the FCC, [the Institute of Electrical and Electronics Engineers (IEEE)], and [the International Commission on Non-Ionizing Radiation Protection (ICNIRP)], even if the radios operated all day long (which they do not).” R. Exc. at 19 (citing I.D. at FOF No. 62). Accordingly, Duquesne submits that the Complainant’s Exception No. 4 should be rejected. R. Exc. at 19.

**c. Disposition**

The Complainant’s argument challenging the accuracy of Finding of Fact Nos. 62 and 70 appears to be based on the testimony, in cross-examination, of two Duquesne witnesses, Mr. Belanger and Mr. Miller, regarding RF emissions from the

Company's smart meter. *See* Exc. at 9-11. Finding of Fact Nos. 62 and 70 are reprinted below:

62. Both [LAN and ZigBee] radios in the Company's smart meters comply with the exposure limits set by the FCC, IEEE, and ICNIRP, even if the radios operated all day long (which they do not). Tr. at 195, 198, 200, 259-60.

\* \* \*

70. The estimated time that a Duquesne Light smart meter would transmit energy during a 24-hour period – commonly called the “duty cycle” – was assessed through a study analyzing the deployment of roughly 13,000 OpenWay smart meters, which are being deployed by [Duquesne]. Tr. at 192-93; DLC Ex. E-2.

I.D. at 16-18, FOF Nos. 62, 70 (citing Duquesne Exh. E-2; Tr. at 192-93, 195, 198, 200, 259-60).

Mr. Belanger testified that the smart meter uses an internal LAN radio and ZigBee radio to transmit by way of RF fields, and the “duty cycle” refers to the “ratio of time that the radio is actually actively transmitting within any given time period.” Tr. at 188, 191; *See also* I.D. at 14, FOF No. 42 (citing Tr. at 186-87). Further, Mr. Belanger testified that based on data study of approximately 13,000 smart meters operating over a 24-hour period, the active “duty cycle” for a Duquesne smart meter is 2.99 minutes (or just less than three minutes) out of a 24-hour period, or 0.21% of a given day. Tr. at 191, 193-94, 197. Moreover, Mr. Belanger also testified that electronics within the Company's smart meter have a small level of operational transmissions and emissions, which the FCC refers to as “spurious emissions[,] ... that are not part of the intentional radio transmissions.” Furthermore, Mr. Belanger continued that the FCC has defined limits for both RF emissions and spurious emissions, and the Company's smart meters are submitted to the FCC for compliance and are certified

within the FCC's limits for RF emissions and spurious emissions. Tr. at 198, 201, 203. Additionally, Mr. Miller testified that the Company's smart meter complies with the IEEE and ICNIRP limits. Tr. at 259-60.

Mr. Belanger and Mr. Miller both testified that the Company's smart meter: (1) includes two internal radios that communicate through RF fields; (2) has constant "spurious emissions" that are not part of the radio transmissions; (3) has a duty cycle, or ratio of time that the internal radio is actively transmitting, of 0.21%, or 2.99 minutes out of a 24-hour day; (4) is certified within the FCC's limits for RF emissions and spurious emissions; and (5) complies with the IEEE and ICNIRP limits. Tr. at 188, 191, 193-94, 197-98, 201, 203, 259-60.

Upon review of the record, including the pertinent hearing testimony, we find no errors with Finding of Fact Nos. 62 and 70. Indeed, as noted in Finding of Fact Nos. 62 and 70, the Company's smart meter has two internal radios that, based on a study of approximately 13,000 smart meters, have a "duty cycle" of 0.21%, or 2.99 minutes out of a 24-hour day. *See* I.D. at 16-18, FOF Nos. 62, 70 (citing Tr. at 192-93, 195, 198, 200, 259-60; Duquesne Exh. at E-2). Moreover, contrary to the Complainant's arguments otherwise, there is no indication in Finding of Fact Nos. 62 or 70, or elsewhere in the Initial Decision, that the ALJ concluded that the Company's smart meters "do not emit microwave RF emissions 24/7" and "the 'duty cycle' is the only type of RF transmission emitted by [Duquesne] smart meters." *See* Exc. at 9, 11.

Therefore, we find the Complainant's claim challenging the accuracy of Finding of Fact Nos. 62 and 70 is without merit. Accordingly, the Complainant's Exception No. 4 is denied.

**6. Complainant's Argument Regarding Finding of Fact No. 94**

**a. Exception No. 5**

In her Exception No. 5, the Complainant challenges the accuracy of Finding of Fact No. 94. According to the Complainant, the ALJ erroneously concluded that Ms. Scott presented no evidence to support her claim that smart meters consume more energy than analog meters. Exc. at 11-12 (citing I.D. at 20, FOF No. 94).

**b. Replies**

Duquesne disagrees with the Complainant's reliance on the testimony of the Company's witnesses to support Ms. Scott's assertion that smart meters consume more energy than analog meters. Further, Duquesne argues that the Complainant presented no evidence to support her claim that smart meters consume more energy than analog meters. Moreover, Duquesne counters that even if the Complainant's argument were supported by record evidence, it has no bearing on the outcome of this case, as there is no evidence that the Company's meter violates any specific standard or Code provision. R. Exc. at 20 (citing I.D. at FOF Nos. 93-94; Tr. at 336-37, 348). Accordingly, Duquesne submits that the Complainant's Exception No. 5 should be rejected. R. Exc. at 20.

**c. Disposition**

The Complainant's argument challenging the accuracy to Finding of Fact No. 94 is based on the testimony, in cross-examination, of two Duquesne witnesses,

Mr. Secchiutti and Mr. Dornin. *See* Exc. at 11-12 (citing Tr. 335-37, 348). Finding of Fact No. 94 is reprinted below:

94. Complainant presented no evidence to support her claim that smart meters consume more energy than analog meters.

I.D. at 20, FOF No. 94.

At the evidentiary hearing, the Complainant asked Mr. Secchiutti how much electricity an analog meter consumes compared to a smart meter. In response, Mr. Secchiutti testified that he was unable to comment because he does not have meter consumption information. *See* Tr. at 335-37. Similarly, Ms. Scott asked Mr. Dornin about the power consumption of an encoder receiver transmitter, or ERT, compared to a smart meter, and Mr. Dornin testified that he was unable to provide an answer. *See* Tr. at 347.

Upon review of the record, including the pertinent hearing testimony, we find no error with Finding of Fact No. 94. Indeed, as noted by Duquesne, there is no record evidence supporting the Complainant's claim that smart meters consume more energy than analog meters. *See* I.D. at 20, FOF No. 94. Moreover, we agree with Duquesne that contrary to the Complainant's argument otherwise, the testimony of Mr. Secchiutti and Mr. Dornin does not demonstrate an error with Finding of Fact No. 94. Therefore, we find that the Complainant's claim challenging the accuracy to Finding of Fact No. 94 is without merit. Accordingly, we shall deny the Complainant's Exception No. 5.

## **D. Petition to Reopen, Answer to Petition, and Disposition**

### **1. Petition to Reopen<sup>35</sup>**

In her Petition to Reopen, Ms. Scott asserts that since the evidentiary hearing: (1) her knowledge regarding EHS and RF has expanded; (2) she has received a medical diagnosis of EHS; and (3) *Povacz II* created a new requirement that two expert witnesses are now necessary for a complainant to carry their burden of proof that the installation of a smart meter constitutes unsafe and unreasonable service and, therefore, violates Section 1501 of the Code. Accordingly, Ms. Scott requests that the record be reopened for the opportunity: (1) to present additional evidence; and (2) to “hire” a scientific expert witness and a medical expert witness. Petition to Reopen at 4-6 (citing *Povacz II*).

### **2. Answer to Petition**

In its Answer to Petition, Duquesne argues that the Petition to Reopen fails to meet the legal standard necessary to reopen this proceeding, which requires a material change of fact or law. Answer to Petition at 7. Further, Duquesne argues that contrary to Ms. Scott’s characterization of *Povacz II*, the Complainant was not required to meet a different burden of proof than the “preponderance of the evidence standard” used in RF emissions cases, and scientific and medical subject matter have been ripe for expert testimony since before *Povacz II*. Answer to Petition at 8-9 (citing *Randall and Albrecht; Nelson Hess v. PPL Electric Utilities Corporation*, Docket No. C-2018-3003337

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<sup>35</sup> We note that in the Petition, the Complainant repeats several arguments that were included in the Complainant’s Exceptions, including arguments regarding due process, the Company’s tariff, and bias. See Petition at *passim*. We address these arguments in the Disposition of the Complainant’s Exceptions, *supra*, in Sections (C)(1)(c), (C)(2)(c), (C)(3)(c), (C)(4)(c), (C)(5)(c), and (C)(6)(c), of this Opinion and Order.

(Opinion and Order entered October 8, 2020)). Moreover, Duquesne contends that the Complainant knew that: (1) the Company intended to introduce expert testimony; and (2) she had the opportunity to present her own expert testimony, if desired. Answer to Petition at 9-10 (citing October 15, 2018 Interim Order).

Duquesne also argues that the Complainant availed herself of the opportunity to present expert testimony at the hearing and during discovery by providing a list of proposed expert witnesses. Answer to Petition at 10 (citing Tr. at 46-47, 54-55, 64, 77, 76-79; October 28, 2019 Interim Order). Further, Duquesne argues that the Complainant's claim of additional scientific and medical knowledge regarding EHS and RF emissions fails to demonstrate a specific medical or scientific change of fact. Answer to Petition at 11 (citing Petition to Reopen at 4). Moreover, Duquesne challenges the Complainant's assertions regarding an EHS diagnosis, noting that Ms. Scott fails to identify the experts she intends to produce or what subjects her experts would testify about. Accordingly, Duquesne submits that the Complainant's Petition must be denied because Ms. Scott failed to demonstrate "good cause" as to why her alleged evidence should be admitted. Answer to Petition at 11.

### **3. Disposition**

Section 5.431 of the Commission's Regulations states "[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission. 52 Pa. Code § 5.431(a). Additionally, the Commission's Regulations provide that "[a]fter the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer of the Commission upon motion." 52 Pa. Code § 5.431(b). Petitions to reopen the record can be granted "if there is reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of the record." 52 Pa. Code § 5.571(d).

We are not persuaded that the Complainant's assertions are new or novel or that they show any change in fact or law that would warrant the reopening of the record as in the public interest.<sup>36</sup> 52 Pa. Code §§ 5.431(b) and 5.571(d)(2). The Complainant's request to reopen the record is largely premised on her assertion that *Povacz II* created a new standard for a complainant in a smart meter case to satisfy their burden of proof. As discussed, *supra*, after the Supreme Court's ruling in *Povacz II*, the ALJ issued an Interim Order Reopening the Hearing Record (*i.e.*, the December 1, 2023 Interim Order), in which the ALJ directed that: (1) the evidentiary hearing record in this proceeding be reopened; and (2) the Parties file their supplemental briefs and other appropriate requests for relief, if any, on or before January 8, 2024. December 1, 2023 Interim Order at 3-5, Ordering Paragraph Nos. 1, 2. Consequently, on January 8, 2024, the Complainant filed a Supplemental Brief.

It is important to emphasize that Ms. Scott had a full opportunity to present evidence in support of her Complaint, including after the Supreme Court's ruling in *Povacz II*. Indeed, in response to the ALJ's December 1, 2023 Interim Order, which reopened the record in this proceeding after the Supreme Court's ruling in *Povacz II*, the Complainant filed her Supplemental Brief, which acknowledged *Povacz II*. *See* Complainant Supplemental Brief at 3.

To the extent that Ms. Scott generally asserts increased knowledge regarding EHS and RF, and a diagnosis with EHS, the Complainant fails to identify the

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<sup>36</sup> As discussed, *supra*, 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 a smart 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 smart meter.

additional evidence and witnesses she proposes to introduce into the record to substantiate her assertions.

Accordingly, as we find no good cause shown to reopen the record at the Exceptions stage, the Complainant's Petition to Reopen will be denied.

#### **IV. Conclusion**

Based upon our review of the record and the applicable law, we shall: (1) deny the Complainant's Exceptions; (2) deny the Complainant's Petition to Reopen; (3) adopt the Initial Decision of ALJ Watson; and (4) dismiss the Complaint, with prejudice, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions filed by Pamela R. Scott, on November 15, 2024, at Docket No. C-2018-3004042, are denied, consistent with this Opinion and Order.
2. That the Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence, filed by Pamela R. Scott, on December 3, 2024, at Docket No. C-2018-3004042, is denied, consistent with this Opinion and Order.
3. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on October 29, 2024, at Docket No. C-2018-3004042, is adopted, consistent with this Opinion and Order.

4. That the Formal Complaint filed on August 16, 2018, by Pamela R. Scott against Duquesne Light Company, at Docket No. C-2018-3004042, is dismissed, with prejudice.

5. That this proceeding at Docket No. C-2018-3004042, be marked closed.

**BY THE COMMISSION,**

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 10, 2025

ORDER ENTERED: April 10, 2025