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April 23, 2025

VIA ELECTRONIC FILING

Matt Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Terry and Betty Bente v. FirstEnergy Pennsylvania Electric Company
Docket No. C-2025-3054387

Dear Secretary Homsher:

Enclosed please find the Preliminary Objections of FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District to the Formal Complaint of Terry and Betty Bente to be filed in the above-referenced matter. A copy of the document has also been served upon the Complainant, as indicated by the Certificate of Service.

If you have any questions, please contact me.

Respectfully submitted,

James Austin Meehan

JAM/mlr

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente	:	
	:	
v.	:	Docket No. C-2025-3054387
	:	
FirstEnergy Pennsylvania Electric Company	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY.

Dated: April 23, 2025



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Company (Met-Ed Rate District)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry and Betty Bente	:	
	:	
v.	:	Docket No. C-2025-3054387
	:	
FirstEnergy Pennsylvania Electric Company	:	
	:	
	:	
	:	
	:	

**PRELIMINARY OBJECTIONS OF
FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY
ON BEHALF OF ITS
MET-ED RATE DISTRICT TO THE
SECOND FORMAL COMPLAINT OF TERRY AND BETTY BENTE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District (“Company”) hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Second Complaint”) filed by Terry and Betty Bente (“Complainants”) in its entirety and with prejudice.

The instant Second Complaint challenges the Company’s planned installation of smart meters at the Complainants’ service address at 865 Hilltown Road, Biglerville, PA 17307 (“Service Location”). As relief, the Complainants request that the Company does not install a smart meter at their Service Location.

1. The Complainants previously filed a Formal Complaint disputing the Company’s planned installation of a smart meter at the same property at Docket No. C-2017-2614219 (“First

Complaint”). The case was fully litigated before the Commission. On November 7, 2024, the Commission entered an Opinion and Order dismissing the First Complaint with prejudice and adopting the Initial Decision rendered by Administrative Law Judge Jeffrey A. Watson (the “ALJ”). *See Bente v. West Penn Power Co.*, Docket No. C-2017-2614219 (Initial Decision issued April 10, 2024), (Opinion and Order entered November 7, 2024) (“*First Complaint Order*”).

As explained herein, the Commission should summarily dismiss the Second Complaint because the issues regarding the installation of a smart meter at this property, as well as the alleged concerns of the Complainants, are barred by the Commission’s prior Order dismissing the First Complaint, pursuant to 66 Pa.C.S. § 316. Further, the Second Complaint’s requested relief cannot be granted as customers of the Company are not permitted to opt-out of smart meter installation.

In support thereof, the Company states as follows:

I. BACKGROUND

2. FirstEnergy Pennsylvania Electric Company is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

3. On April 3, 2025, the Company was served with the above-captioned Second Complaint, which challenges the Company’s planned installation of a smart meter at the Service Location. (*See Complaint* ¶¶ 4-5; attachments). A true and correct copy of the Second Complaint is attached hereto as **Appendix A**.¹

4. The Company herein files these Preliminary Objections to the Second Complaint. For the reasons explained below, the Company respectfully requests that the Commission summarily dismiss the Second Complaint because the issues regarding the installation of a smart

¹ Due to customer privacy concerns, any account numbers in the Second Complaint have been redacted.

meter at the Service Location, as well as the concerns already alleged therein, are barred by the Commission's *First Complaint Order* pursuant to 66 Pa.C.S. § 316. Additionally, the Second Complaint's requested relief cannot be granted by the Commission and, therefore, the Second Complaint is legally insufficient.

II. STANDARD OF REVIEW

5. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth.

2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

7. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTIONS

A. PRELIMINARY OBJECTION NO. 1 – THE SECOND COMPLAINT SHOULD BE DISMISSED BECAUSE IT IS BARRED BY SECTION 316 OF THE PUBLIC UTILITY CODE AND, THEREFORE, IS LEGALLY INSUFFICIENT

8. The Company incorporates by reference paragraphs 1 through 6 as if fully set forth herein.

9. The Second Complaint should be dismissed in its entirety because it is barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, and, therefore, is legally insufficient. *See* 52 Pa. Code § 5.101(a)(4).

10. As explained previously, the Complainants challenge the Company's planned installation of smart meters at the Service Location. (*See Appendix A ¶ 5.*) The Complainants effectively request that they be permitted to opt-out of smart meter installation at the Service Location (*See Appendix A ¶ 5.*).

11. Over seven years ago, on July 12, 2017, the Company was served with the First Complaint filed by the Complainants, which, like the instant Complaint, challenged the Company's planned installation of smart meters at the Complainants' Service Location. The First

Complaint was docketed at Docket No. C-2017-2614219. A true and correct copy of the First Complaint is attached hereto as **Appendix B**.²

12. By Secretarial Letter dated April 10, 2024, the ALJ's Initial Decision at Docket No. C-2017-2614219, which dismissed the First Complaint because the Complainants failed to prove by a preponderance of the evidence that the installation of a smart meter constitutes unsafe or unreasonable service under Section 1501 of the Code or that it violates any other provision of the Code, Commission Regulation, Commission Order, or the Company's Commission-approved Tariff. A true and correct copy of that Initial Decision is attached hereto as **Appendix C**.

13. The Complainants filed Exceptions to the Initial Decision on April 24, 2024.

14. The Company submitted its Reply Exceptions on May 10, 2024

15. On November 7, 2024, the Commission entered the *First Complaint Order* adopting the Initial Decision without further Commission action and dismissing the First Complaint with prejudice. A true and correct copy of the Commission's *First Complaint Order* is attached hereto as **Appendix D**.

16. The Complainants never filed a petition for review with the Commonwealth Court challenging the *First Complaint Order*.

17. The Complainants reside at the Service Location, which is the same service address that they resided at during the adjudication of the First Complaint. (See **Appendix A ¶ 1**; **Appendix B ¶ 1**.)

18. Further, the Complainants dispute the installation of a smart meter at their property located at 865 Hilltown Road, Biglerville, PA 17307, which is the same address in dispute in the First Complaint. (See **Appendix A ¶ 1**; **Appendix B ¶ 1**.)

² Due to customer privacy concerns, any account numbers in the First Complaint have been redacted.

19. In both the First and Second Complaints, the Complainants request that the Company abstain from installing a smart meter at their property and request that they effectively be permitted to opt-out of smart meter installation at the Service Location.

20. Under Section 5.101(a)(4) of the Commission's regulations, a party may file a preliminary objection for "legal insufficiency." 52 Pa. Code § 5.101(a)(4).

21. Pursuant to 66 Pa.C.S. § 316, the instant Complaint is barred by the *First Complaint Order*. Section 316 states, in relevant part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316.³

22. Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. *See Moore, Jr. v. PECO Energy Co.*, Docket No. C-2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), *adopted without modification*, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012); *see also Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Initial Decision issued Feb. 24, 2020), *adopted without modification*, Docket No. C-2019-3014786 (Order entered May 21, 2020).

23. Section 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *See Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989) (citing 66 Pa.C.S. § 316).

³ To the extent that this argument is found to be more appropriately addressed in a motion for judgment on the pleadings, the Company has raised this affirmative defense in its New Matter to the Complaint and respectfully requests that its Preliminary Objection be treated as a Motion for Judgment on the Pleadings in the interest of administrative and judicial efficiency. *See Raintree Farm Solar v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621826 (Initial Decision dated Nov. 9, 2017), *adopted*, Docket No. C-2017-2621826 (Order entered Jan. 16, 2018).

24. The *First Complaint Order* was not set aside, annulled, or modified by judicial review. It was also not appealed to the Commonwealth Court. Therefore, the *First Complaint Order* remains conclusive upon all parties affected thereby. See *Lehigh Valley*, 563 A.2d at 556 (citation omitted).

25. As noted above, the account holder, Service Location, and the service account listed in the instant Complaint are identical to those at issue in the First Complaint. Further, to the extent that the Complainants' issues are any different in the instant Complaint compared to their First Complaint, the Complainants could have and should have raised all of their concerns regarding the installation of a smart meter at 865 Hilltown Road, Biglerville, PA 17307. As such, through the Second Complaint, the Complainant is seeking to litigate the same factual and legal issues, related to the same account holder, Service Location, and service account, which were raised or could have been raised in the First Complaint.

26. Thus, the Complainants' claims and issues are barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316.

27. For these reasons, the Second Complaint should be dismissed because the claims and issues raised therein are already subject to a prior Commission Order that remains conclusive and binding upon the Complainants.

B. PRELIMINARY OBJECTION NO. 2 – THE SECOND COMPLAINT'S REQUESTED RELIEF CANNOT BE GRANTED BY THE COMMISSION AND, THEREFORE, IS LEGALLY INSUFFICIENT.

28. The Company incorporates by reference paragraphs 1 through 26 as if fully set forth herein.

29. The Second Complaint's requested relief cannot be granted by the Commission because the Company's customers are not permitted to opt-out of smart meter installation at their Service Location.

30. Through the Second Complaint, the Complainants request the Commission allow them to effectively opt-out of smart meter installation.

31. The Company is legally required to install the smart meters by the Public Utility Code, the Commission's orders, and the Company's Commission-approved Smart Meter Deployment Plan. *See* 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order June 9, 2010).

32. On June 24, 2009, the Commission issued its Smart Meter Implementation Order, which set forth requirements for the smart meter plans and procedures for the submission, review, and approval of the smart meter plans. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

33. On December 31, 2012, Met-Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, "the Companies") filed their Joint Petition for Approval of their Smart Meter Deployment Plan in compliance with the *Smart Meter Implementation Order*, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98.5% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.⁴

⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

34. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which, *inter alia*, accelerated the smart meter deployment schedule laid out in their original Deployment Plan. Under the Revised Deployment Plan, the Companies proposed to deploy 170,000 smart meters by the end of 2015.⁵ The Commission entered its Opinion and Order approving the Revised Deployment Plan on June 25, 2014. *See 2014 Smart Meter Order*.

35. Nothing in the Public Utility Code, the Commission’s orders and regulations, or the Company’s Smart Meter Deployment Plan states that a customer can opt-out of, or rescind, a smart meter installation.

36. Indeed, on August 16, 2022, the Supreme Court of Pennsylvania issued its Opinion affirming in part and reversing in part the Commonwealth Court’s decision in *Povacz*.⁶ Specifically, the Supreme Court in *Povacz* held that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company (“EDC”) cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only “entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.”⁷

37. Therefore, the Company must install a smart meter at the Complainants’ Service Location.

⁵ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, p. 8 (Order entered June 25, 2014) (“*2014 Smart Meter Order*”).

⁶ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020).

⁷ *See Povacz v. Pa. PUC*, 280 A.3d 975, 1012-1014 (Pa. 2022).

38. Further, even if the Complainants established that the installation of the smart meters would violate Section 1501 of the Public Utility Code, the Complainants could only receive an accommodation that is permitted under Act 129 and the Company's Commission-approved tariff. Here, the Company's Commission-approved tariff allows a customer, such as the Complainants, to request that the meters be relocated to mutually-agreeable locations, subject to the customer bearing the estimated expenses of relocating the Company-owned facilities, including the meters, to those new locations. *See* FirstEnergy Pennsylvania Electric Company Tariff Rule 4, Electric Pa. P.U.C. No. 1, First Revised Page 34.

39. As such, the Complainants' requested relief, *i.e.*, an opt-out of smart meter installation, is inconsistent with the Public Utility Code, the Commission's orders and regulations, the Company's Smart Meter Deployment Plan, and the Company's Commission-approved tariff and, therefore, cannot be granted by the Commission.


40. For these reasons, the Second Complaint should be dismissed because the Commission cannot grant the requested relief therein.

IV. CONCLUSION

WHEREFORE, FirstEnergy Pennsylvania Electric Company respectfully requests that the above-captioned Formal Complaint filed by Terry and Betty Bente be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Dated: April 23, 2025

Respectfully submitted,



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APPENDIX A

**FORMAL COMPLAINT FILED BY TERRY AND
BETTY BENTE AGAINST FE PA AT DOCKET NO.
C-2025-3054387
(INSTANT COMPLAINT)**



FORMAL COMPLAINT - FILLABLE FORM

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.



Please complete this fillable form.

1. CUSTOMER (COMPLAINANT) INFORMATION

Provide your contact information and utility account number. *It is your responsibility to update the PUC with any changes to your address and to where you want documents sent to you.*

Name _____

Street/P.O. Box _____ Apt# _____

City _____ State _____ Zip _____

County _____

Telephone Number(s) Where We Can Contact You During the Day:

Home: _____ Mobile: _____

Email Address _____

Utility Account Number (from your bill) _____

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____ Apt# _____

City _____ State _____ Zip _____

2. NAME OF UTILITY OR COMPANY (RESPONDENT)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

3. TYPE OF UTILITY SERVICE

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|---|--|
| <input type="checkbox"/> Electric | <input type="checkbox"/> Storm Water |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Steam Heat |
| <input type="checkbox"/> Water | <input type="checkbox"/> Motor Carrier (taxi, moving company, limo) |
| <input type="checkbox"/> Wastewater/Sewer | <input type="checkbox"/> Telephone/Telecommunications (local, long distance) |

Note: The PUC does not regulate high-speed internet service, cell phones or cable TV.

4. REASON FOR COMPLAINT

What kind of problem are you having with the utility or company?

Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain). If you need additional space, use the space provided on Page 9. Please indicate the number of the question that you are answering."

5. REQUESTED RELIEF

How do you want your complaint to be resolved?

Explain what you want the PUC to order the utility or company to do. If you need additional space, use the space provided on Page 9. Please indicate the number of the question that you are answering.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. PROTECTION FROM ABUSE (PFA)/DOMESTIC VIOLENCE

Has a court granted you a PFA order or any other order which provides clear evidence of domestic violence against you that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Has a court granted a PFA order or any other order for your personal safety or welfare?

Yes If your answer is “yes,” attach a copy of the current PFA order to this Formal Complaint form. *Due to the confidential nature of the PFA, you cannot eFile your Formal Complaint. You will need to print out this form and mail it to the Secretary of the Commission.*

No

Note: You **MUST** answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

7. PRIOR UTILITY CONTACT

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

Yes

No

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

Yes

No

Note: You **MUST** contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water or wastewater utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why. If you need additional space, use the space provided on Page 9. Please indicate the number of the question that you are answering."

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. TWO OPTIONS TO FILE YOUR FORMAL COMPLAINT — CHOOSE ONE

OPTION 1

Electronically by eFile

One option is to create an account on the PUC's eFiling system, or, use your existing eFiling account. **This is the quickest and easiest way to receive, file and submit documents.**

eFiling permits consumers, utilities and attorneys to file certain documents electronically with the PUC without filing paper copies, serve documents electronically on other parties if they agree to such service, and to receive electronic service of documents from the PUC.

You agree to open and use an eFiling account - free of charge through the PUC's website. By selecting this method, you will electronically receive documents.

Visit <https://efiling.puc.pa.gov/> to learn more and create an eFiling account.

You will automatically receive eService with your eFiling account.

OPTION 2

Mail

Mail the completed form with your original signature and any attachments to this address and retain the tracking information as proof of submission:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

If you select the option to mail your formal complaint, you are required to select the method by which you would like the PUC to communicate with you. You must choose one of the three options on the next page for ways you would like to receive documents.

9. THREE OPTIONS TO RECEIVE DOCUMENTS — CHOOSE ONE

It is **REQUIRED** to select **ONE** of the following options for receiving all hearing notices, orders and related documents from the PUC:

OPTION 1

eFILING: This is the **quickest and easiest way to receive all documents**. You agree to open and use an eFiling account - free of charge through the PUC's website. By selecting this method you will electronically receive documents. To create an eFiling account, visit <https://efiling.puc.pa.gov/>.

You will automatically receive eService with your eFiling account.

OPTION 2

FIRST CLASS MAIL: You agree to receive all documents by First Class Mail (using the address you provided on Page 1).

Check the box and initial here _____ if you are selecting **FIRST CLASS MAIL** service.

OPTION 3

EMAIL: You agree to receive all documents by email (using the email address you provided on page 1). Keep in mind, you will only be able to **receive documents** by email from the PUC. You will not be able to email documents to the Commission.

To **file documents**, you must submit them through an eFiling account or mail them. To create an eFiling account, visit <https://efiling.puc.pa.gov/>.

Check the box and initial here _____ if you are selecting **EMAIL** service.

Please Note: It is important to select **ONE** of the three options above.
IF AN OPTION IS NOT SELECTED, THIS MAY DELAY THE PROCESSING OF YOUR COMPLAINT.

10. LEGAL REPRESENTATION

If you are filing a Formal Complaint as an individual on your own behalf, you are **NOT** required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's contact information, which is required. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____ Apt# _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

Email Address _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are **required** to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

11. VERIFICATION AND SIGNATURE

You must sign and date your complaint. If you eFile your complaint, you must print or type your name in the box provided below. Date the form. The PUC's eFiling system will accept an electronic signature. The eFiling system will not accept a complaint form without a signature and date.

Verification:

I _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Betty Bente _____ 3-17-2025 _____
 (Signature of Complainant) (Date)

Terry Bente _____
 Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

APPEALING A BCS DECISION?

If you are appealing a BCS decision: follow the directions in the cover letter you received from the PUC Secretary's Bureau with the formal complaint form. **ONLY** formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. **All other formal complaints MUST be eFiled or mailed.**

QUESTIONS?

If you have any questions about filling out this form, please contact the **Secretary's Bureau at 717-772-7777.**

REMINDERS

- Save and keep a copy of your Formal Complaint for your records.
- You may add any additional information, such as copies of bills, as one (1) separate attachment to your complaint.
- To protect your personal information, please know that your complaint form and the utility's answer will not be published to the PUC's website.
- Check the Consumer Complaints Procedures Guide for checklists and tips to help you successfully follow the complaint-filing process.
(<https://www.puc.pa.gov/media/1492/consumer-complaints-procedures-guide-2021.pdf>)
- Once your complaint case moves to the PUC's Office of Administrative Law Judge, any filings you make should be marked **confidential** if you do not want them published to the website.

ADDITIONAL SPACE (IF NEEDED)

A large, empty rectangular box with a thin black border, occupying most of the page below the header. It is intended for providing additional space if needed.

4. Reason for Complaint

Our 2017 smart meter Formal Complaint was based on arguing our right to an accommodation under Section 1501 of the Public Utility Code due to our specific health issues and under the ADA. Our former case, PUC docket C-2017-2614219, which was dismissed in 2024, included mention of our ongoing issues with the underground power lines to our home for which we have had to file a new complaint (as of January 16, 2025). To install a smart meter on our home while this powerline issue remains would be hazardous, but in light of the dismissal of our prior (smart meter) case, we seek to further protect ourselves and our home from any likelihood of a smart meter being installed now or in the future.

We have learned a great deal in the past eight years since our first Formal Complaint was filed. We now understand better that we must be able to demonstrate that by installing a smart meter on our home, Metropolitan Edison Company/First Energy Corp. (Met-Ed) is in violation of a Code, or a Commission Regulation or Order. We therefore file this new Formal Complaint, asking that Met-Ed not shut off our power and to not install a smart meter on our home for to do so Met-Ed will be in violation of the following (which we did not previously specify or address in our 2017 Formal Complaint and therefore are new reasons for our Complaint):

- 1) **PA Act 129 of 2008**, as written, passed and intended by the General Assembly, as is historically documented in the House and Senate Journals and is further validated by the July 2020 testimony of Mr. Thomas Yewcic (*Yewcic v Penelec, Tr. 7/22/2020, C-2018-3001276*) who was present for the passage of House Bill 2200 that became Act 129: all of which documented – contrary to the PA Supreme Court ruling in *Povacz, et. al.*, - that Act 129 was an OPT-IN law and did NOT MANDATE smart meters for all customers. Therefore no “opt-out” is required. And we maintain that a) Met-Ed must uphold the *actual* PA law and b) we do NOT OPT-IN to having a smart meter on our home, in accordance with the PA law of which all parties involved in these cases are well aware. The *Povacz* ruling does NOT make this matter “moot” as *the evidence from the historic record was not presented, discussed or ruled upon* in the PA Supreme Court ruling.
- 2) **The Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments of the United States Constitution**, which, under the Supremacy Clause of Article VI establishes that the federal constitution - and federal law generally - take precedence over state laws, and even state constitutions. All agencies must uphold our Constitutional Rights.
 - a) **The right to protect oneself from harm or possible harm is the most fundamental of individual liberties** without which health, happiness and the enjoyment of life would be made unjustifiably difficult or impossible – hence protections under these Amendments.
 - b) As both Met-Ed and the PUC are well aware of the volumes of evidence of the harmful nature of being exposed 24/7 to the signals from wireless devices including and especially smart meters, and yet have continued to force this technology on their

customers with flagrant disregard for human health and safety, the electric utilities, under color of law, are at a minimum engaging in public endangerment, abuse of authority, willful deprivation, coercion, and gross negligence.

- c) These violations therefore give rise to actionable cause under the Ninth and Fourteenth Amendments to the Constitution of the United States as secured by USC 18 Section 241, USC 42 Section 1983, USC 42 Section 1985(3), and USC 42 Section 1986.
- 3) **The Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL)**, which prohibits unfair and deceptive practices. The claim that smart meters are "required by law" is misleading and coercive. While the Supreme Court alleged that Act 129 mandates installation, utilities must not misrepresent consumers' ability to seek accommodations. Misrepresenting consumer rights and failing to disclose alternative metering options constitute violations of UTPCPL. There may be additional unfair and deceptive practices with regard to energy-saving features of smart meters that have not been realized despite being a selling point of smart meters, and many overall energy savings issues (including lifetime expectancy of the devices and generation of electronic waste), contrary to the goals of Act 129.
- 4) **66 Pa.C.S. § 315(c) - Burden of Proof for Utility Safety Claims**, as utilities have not met their burden of proving that smart meters are safe.
- 5) **52 Pa. Code § 57.28(a)(1) - Duty to Warn of Danger**, by failing to warn consumers of potential health and safety hazards posed by smart meters.
- 6) **52 Pa. Code § 57.259 (b) and (c) – Properly Informing Customers of Pros and Cons.** EGSs and EDCs are required to ensure that customers are informed of the advantages and **disadvantages** of advanced metering – **prior** to participation in the advanced (smart) metering program
- 7) **52 Pa. Code § 57.251 – Participation in the Advanced Metering Program is Voluntary.** This subsection specifically states it “**does not require the public to participate in an advanced metering program.**” There is nothing in the code that specifies or limits a time frame to the applicability of this code.
- 8) **52 Pa. Code § 57.255 – Written Request is Required to get a Smart Meter.** Just as PA Act 129 specifies that a smart meter will be furnished “upon request from a customer who agrees to pay for it at the time of the request”, this code – which does not specify a time frame for its relevance or implementation – states “Upon written request from **both** a customer **and** the EGS of that customer, the EDC shall make available and install for use a qualified advanced meter or meter-related device.” EGS is the Electric Generation Supplier.

We note here the word “**and**” which means that **both** the customer **and** the EGS must concur in this request before the request can be acted upon.

- 9) **66 Pa.C.S. § 3301(a)-(b) - Civil Penalties for Unsafe Service**, as utilities may be penalized for providing unsafe or unreasonable service.
- 10) **66 Pa.C.S. § 1406(a)(4) & 52 Pa. Code § 56.81(3) - Unauthorized Service Termination**, as utilities cannot legally terminate service solely due to a customer’s refusal to accept a smart meter.
- 11) **66 Pa.C.S. § 102 - Definition of "Service"**, as smart meters fundamentally alter the nature of electric service in ways not explicitly approved by statute.

We undertake this present Formal Complaint fully cognizant that we cannot expect a fair and impartial ruling in this present administrative law court because a) the PA PUC altered Act 129 of 2008 when they put forth their 2009 Implementation Order and therefore has a vested interest in thwarting all attempts to correct this matter, and b) the PA PUC gets 94% of its budget from assessments on the gross revenues of the utilities, rendering it a “captured agency” beholden to the financial interests of the utilities it is supposed to regulate. The PUC’s actions with regard to altering the wording and intent of the PA law constitute an **unauthorized expansion of regulatory power** and a **misrepresentation of statutory authority**. Because the PUC presides over the administrative law court, these ongoing conflicts of interest preclude justice for Complainants, but Complainants are forced into this present structure before any higher court will hear the case as all remedies from the lower courts must first be exhausted.

As Met-Ed is well-apprised of the wrong-doing of the PA PUC and yet continues to participate in the illegal forcing of smart meters on Pennsylvania homes, they are equally complicit in this wrong-doing and the perpetuation of undue suffering to their customers. We hope that with Robert F. Kennedy, Jr as Secretary of Health for our country, more education and justice will be forthcoming to protect us from the harms from wireless devices, but in the meantime, we have to take whatever measures are available to us to protect ourselves – hence this Formal Complaint.

5. Relief Requested

1. We are requesting that Met-Ed not shut off the power and not install a smart meter or any wireless transmitting device on our house or property.
2. We request to retain our electromechanical analog meter and to be able to call in or otherwise provide monthly readings to Met-Ed for billing purposes.
3. In accordance with Act 129 of 2008 as discussed above, we did not request a smart meter and did not agree to pay for one; our house is not new construction, and there is nothing else in the law mandating installation of smart meters on our home. To install a smart meter on our home would be in violation of the law as stated in Act 129 of 2008, 66 Pa. C.S. § 2807(f)(2) and in violation of other PA Codes and Constitutional Rights (Amendments) as outlined above.
4. We request that the Commission issue an Order granting the relief requested in (1) – (3) above and any other remedy that the Commission deems just and appropriate.

APPENDIX B

**FORMAL COMPLAINT FILED BY BENTE
AGAINST MET-ED AT DOCKET NO. C-2017-
2614219
(FIRST COMPLAINT)**

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space. We want our analog meter left in place. Please see attached Notice Of No Consent.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. **Legal Representation**

If you are filing a Formal Complaint as an individual on your own behalf, you are **not** required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are **required** to have a lawyer represent them at a hearing **and** to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. **If you do not sign the Formal Complaint, the PUC will not accept it.**

Verification:

I Terry and Betty Bente, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

TERRY BENTE Betty Bente
BETTY BENTE Betty Bente 07-11-17
 (Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
 Pennsylvania Public Utility Commission
 400 North Street
 Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

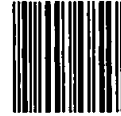
Keep a copy of your Formal Complaint for your records.

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FROM: (PLEASE PRINT) PHONE () 717-372-3275
Jerry and Betty Berne
865 Hilltown Rd
Biglerville, PA

PAYMENT BY ACCOUNT (if applicable)

DELIVERY OPTIONS (Customer Use Only)

SIGNATURE REQUIRED Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature, OR 2) Purchases additional insurance, OR 3) Purchases COD service, OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

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 Sunday/Holiday Delivery Required (additional fee, where available)
 10:30 AM Delivery Required (additional fee, where available)
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Pennsylvania Public Utility
Commission
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PO ZIP Code 17303	Scheduled Delivery Date (MM/DD/YY) 7/13/17	Postage \$ 23.75	
Date Accepted (MM/DD/YY) 7/12/17	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 3:00 PM <input type="checkbox"/> 12 NOON	Insurance Fee \$	COD Fee \$
Time Accepted 10:25 AM	10:30 AM Delivery Fee	Return Receipt Fee	Live Animal Transportation Fee



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Agency PUC

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APPENDIX C

**THE APRIL 10, 2024 *INITIAL DECISION*
DISMISSING THE FIRST COMPLAINT FILED
BY TERRY AND BETTY BENTE III AGAINST
MET-ED**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terry Bente and Betty Bente	:	
	:	
v.	:	C-2017-2614219
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

Terry Bente and Betty Bente (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) on July 12, 2017, alleging that if a smart meter were installed at their home, it would pose a risk of significant radiation exposure and would exacerbate their health conditions. Complainants further averred that Respondent was threatening to terminate their electric service for their refusal to permit the installation of a smart meter at their home. Complainants averred that smart meters are unsafe and present health

concerns. As relief, Complainants requested that they be permitted to keep their analog meter in place.

On August 3, 2017, Respondent filed an answer and new matter to the Complaint admitting that Respondent provides residential retail electric service to Complainants, has provided termination notices to Complainants, and that Complainants have refused to allow Respondent to install a smart meter at Complainants' residence. Respondent denied the remaining material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008¹ to install a smart meter.

On August 3, 2017, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the prayer for relief to "opt out" of the installation of a smart meter is not a legally recoverable cause of action and that the Complaint was not legally sufficient to state a cause of action against Respondent. Respondent averred that the Commission does not have the power to grant the relief requested by Complainants.

On August 17, 2017, Complainants filed a letter with the Commission requesting an extension of time to file a responsive pleading to the New Matter filed by Respondent.

A Motion Judge Assignment Notice was issued and received by the undersigned presiding officer on September 7, 2017, assigning the undersigned presiding officer to this proceeding.

On September 27, 2017, an Interim Order was entered denying the preliminary objections filed by Metropolitan Edison Company. In addition, Complainants' request for an extension of time to file a responsive pleading to the new matter of Respondent was granted and Complainants were permitted to file their responsive pleading no later than October 11, 2017.

On October 13, 2017, an Interim Order was entered referring this proceeding for mediation review.

¹ 66 Pa.C.S. §§ 2806.1–2807.

On December 12, 2017, Respondent filed a certificate of service indicating that interrogatories and requests for production of documents (Set 1) were served upon Complainants. On January 5, 2018, the undersigned presiding officer received a copy of a letter from Complainants directed to counsel for Respondent and a certificate of service, both dated December 29, 2017, certifying service of Complainants' answers to interrogatories and requests for production of documents were served upon Respondent.

On January 17, 2018, Respondent filed a Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Respondent (Motion to Compel). The Motion to Compel contained a notice to plead, notifying Complainants to file a response to the Motion within five days of service. No response to the motion was filed by Complainants.

On January 24, 2018, an Interim Order was entered granting the Motion to Compel and Complainants were ordered to serve full and complete answers to Respondent on or before February 7, 2018.

On March 26, 2018, the undersigned Presiding Officer received correspondence from counsel for Respondent requesting a continuance of the hearing scheduled for April 18 and 19, 2018 and advising that Complainants consented to the request.

On March 29, 2018, an Interim Order was entered continuing the hearing scheduled for April 18 and 19, 2018, suspending the litigation schedule, and requiring the Parties to confer and propose a new litigation schedule and proposed hearing dates.

On July 29, 2019, an Interim Order was entered requiring the Parties to identify fact and expert witnesses and exchange witness information not later than October 11, 2019, and to conclude discovery by November 22, 2019. The Parties were also directed to submit status reports on or before December 20, 2019.

On September 19, 2019, Complainants filed a letter they titled “Request for Motion to Compel Responses to Interrogatories and Document Requests by Metropolitan Edison.” Complainants averred that discovery requests were received by counsel for Respondent on January 31, 2018, and they requested that Respondent provide complete discovery responses to the interrogatories and document requests propounded by Complainants.

On October 11, 2019, Respondent filed a letter in response stating Respondent was unaware of discovery requests being sought by Complainants and that there were no entries in the docket evidencing that any discovery requests were served upon Respondent.

A review of the docket indicated that no certificate of service was filed by Complainants evidencing that discovery requests were served upon Respondent. In addition, the discovery requests were not attached to the Complainants’ September 19, 2019, letter.

On November 26, 2019, an Interim Order was entered denying, without prejudice, the relief sought in Complainant’s September 19, 2019, letter.

Complainants also filed an additional letter they titled “Request for Motion of Enlargement of Time for Discovery and Dispositive Motions to Outstanding Responses of Metropolitan Edison, First Set of Plaintiffs’ Requests for Interrogatories and Production of Documents” (request for extension) dated November 20, 2019. The request for extension was sent to the Commission and included a statement that a copy was provided to Respondent. The undersigned presiding officer was not served with a copy.

The request for extension essentially stated that Respondent provided over 400 pages of documents to Complainants on November 19, 2019, in response to discovery requests served upon Respondent by Complainants. Complainants stated it was impossible for them to critically evaluate Respondent’s answers and documents “with discovery set to conclude on or before November 22, 2019, as per Interim Order of July 29, 2019.” As relief, Complainants requested an “Enlargement of And Dispositive Motions to enable them to fairly evaluate the Company’s Discovery responses.”

On December 18, 2019, Complainants filed a status report. Complainants again requested “An Enlargement of and Dispositive Motions to enable them to fairly evaluate Company’s Discovery responses.”

Respondent filed a Status Report on December 27, 2019. Respondent stated that Complainants failed to provide their witness information as previously ordered and that no additional time was needed to schedule this matter for hearing.

On January 17, 2020, an Interim Order was entered denying the “Request for Motion of Enlargement of Time for Discovery and Dispositive Motions to Outstanding Responses of Metropolitan Edison, First Set of Plaintiffs’ Requests for Interrogatories and Production of Documents” filed by Complainants. The Parties were directed to promptly contact all their respective witnesses and identify all dates in April of 2020 which the witnesses would be able to provide testimony in this proceeding and to submit status reports on or before January 31, 2020.

The Public Utility Commission offices closed on March 16, 2020, because of the Covid-19 Pandemic. Hearings were being conducted by telephone at that time and service of documents was being made electronically.

On July 13, 2020, the evidentiary hearing was held as scheduled and concluded on that date. Complainants appeared without legal counsel and presented testimony. The Parties stipulated to the admission of pages 1 through 34 of Complainant Exhibit 3. Complainants withdrew their request to admit Complainant Exhibit 3, page 35. In addition, Official Notice was taken of Complainant Exhibit 8. Respondent was represented by Tori Giesler, Esquire, and Lauren Lepkowski, Esquire. Respondent Exhibit JCA-1 was admitted into evidence. In addition, Official Notice was taken of JCA-1, 2, 3, and 4. Upon conclusion of the hearing, the parties were advised that a briefing schedule would be established. The deadline to file briefs in this proceeding, after extensions, was set for September 18, 2020. On September 18, 2020,

Respondent filed a main brief. On September 18, 2020, Complainants filed a lengthy “Rebuttal Letter” which was treated as a main brief.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*,² the first of several appeals involving PECO Energy Company’s (PECO) deployment of smart meter technology pursuant to Act 129. In the *Povacz I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission’s March 28, 2019, and May 9, 2019, Orders in cases involving complainants Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall.³

On October 19, 2020, an Interim Order was entered closing the evidentiary hearing record in the instant proceeding.

In light of the Commonwealth Court’s decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020 Stay Order*). *The November 4, 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. *The November 4 2020, Stay Order* applied to and was docketed at the instant case.

The Commission, as well as all other parties in *Povacz I*, subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania.

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

³ *Povacz I*, at 495.

On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion in *Povacz v. Pennsylvania Public Utility Commission*,⁴ affirming the Commission’s determinations in all respects. The Supreme Court reversed the Commonwealth Court’s determination that Act 129 does not mandate smart meter installation and that Court’s remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code.⁵ The Supreme Court did, however, affirm the Commonwealth Court’s conclusion that the “[c]ustomers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects.”⁶

Given the Supreme Court’s decision in *Povacz II*, the Commission lifted the stay implemented by the *November 4, 2020 Stay Order* on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

Under the circumstances, an Interim Order was entered on December 18, 2023, reopening the record and providing the Parties with an extension of time to file briefs or to supplement briefs previously filed and to consider appropriate requests for relief, if any, on or before January 19, 2024.

On January 19, 2024, Respondent filed a supplemental brief in this proceeding. No additional filings were made by Complainants. The record closed by Interim Order entered on March 12, 2024.

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

⁵ 66 Pa.C.S. § 1501.

⁶ *Povacz II*, at 1014.

FINDINGS OF FACT

1. Complainants are Terry Bente and Betty Bente who reside at 865 Hilltown Road, Biglerville, Pennsylvania (service address or service location).

2. Respondent is Metropolitan Edison Company, an electrical distribution company that provides residential electrical service to Complainant at the service address.

3. Respondent's Commission-approved Smart Meter Deployment Plan called for 98.5% of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company's (the Companies) smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022. Tr. 124-25.

4. The Commission approved the original Smart Meter Technology Procurement and Installation Plan, with modifications, on June 9, 2010.⁷

5. On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters. Tr. 118-19.

6. Respondent presented the testimony of John C. Ahr who has a degree in electrical engineering and has worked for Met-Ed since 1984 in various positions, including: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter

⁷ See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered June 9, 2010).

Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters. Tr. 109-10.

7. Respondent's smart meters comply with all safety requirements and standards established by various entities, including the Federal Communications Commission (FCC), the American National Standards Institute (ANSI), and Underwriters Laboratories (UL). Tr. 127-28.

8. Itron Inc., who is the manufacturer of the smart meters utilized by Respondent, enlisted certified personnel to perform all required testing. Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards. Tr. 127-28.

9. Complainants have not consented to the installation of a smart meter at the service location, and Respondent has not installed a smart meter there. Tr. 32-33, 43.

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, "the proponent of a rule or order has the burden of proof."⁸ It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."⁹ The preponderance of evidence standard requires proof by a greater weight of the evidence.¹⁰ This standard is satisfied

⁸ 66 Pa.C.S. § 332(a),

⁹ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

¹⁰ *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

by presenting evidence more convincing, by even the smallest amount, than that presented by another party.¹¹

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.¹² Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof.¹³

Act 129 was enacted to reduce energy consumption and demand.¹⁴ Act 129 addresses electric distribution and default service provider responsibilities, including smart meter technology.¹⁵ In pertinent part, Act 129 imposes the following requirements concerning an electric distribution company's obligation to furnish smart meter technology to its customers:

(f) Smart meter technology and time of use rates.

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

¹¹ *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

¹² *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944).

¹³ *See Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (Order entered Oct. 9, 1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148 (Opinion and Order entered Oct. 29, 2008).

¹⁴ *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017).

¹⁵ 66 Pa.C.S. § 2807(f); *Romeo*, 154 A.3d at 424.

(2) Electric distribution companies shall furnish smart meter technology as follows:

- (i) Upon request from customer that agreed 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.^[16]

In smart meter related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.”¹⁷

In *Povacz II*, the Pennsylvania Supreme Court concluded 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 radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer’s evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm.¹⁸ 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.¹⁹ The Supreme Court

¹⁶ 66 Pa.C.S. § 2807(f).

¹⁷ *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Opinion and Order entered Sept. 3, 2015); *see also Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue.”)

¹⁸ *Povacz II*.

¹⁹ *Id.* at 1006.

concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.²⁰

Mandatory Installation of Smart Meters

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).²¹ Act 129 required EDCs with at least 100,000 customers, such as Respondent, to file a smart meter technology procurement and installation plan (SMP Plan) with the Commission for approval.²² Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.²³

Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.²⁴

On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order; (2) approve the Companies’ proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the

²⁰ *Id.* at 1005.

²¹ 66 Pa.C.S. § 101–3316.

²² 66 Pa.C.S. § 2807(f).

²³ 66 Pa.C.S. § 2807(f)(2).

²⁴ 66 Pa. C.S. § 2806.1–2807; *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (Implementation Order).

Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.²⁵

On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *inter alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.²⁶ Under the Revised Deployment Plan, the Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁷ In its June 25, 2014, Opinion and Order, the Commission recognized the benefits of early deployment of smart meters and approved the revised Smart Meter Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.^[28]

In this proceeding, the Complainants alleged they have experienced significant radiation exposure and adverse health conditions, and expressed concerns that they would be exacerbated following installation of a smart meter at their home. Complainants further averred that Respondent was threatening to terminate their electric service for their refusal to permit the installation of a smart meter at their home. Complainants averred that smart meters are unsafe

²⁵ See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 9, 2010).

²⁶ See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014).

²⁷ *Id.*

²⁸ *Id.* at 16.

and present health concerns. As relief, Complainants request that they be permitted to opt out of the smart meter installation and be able to keep their analog meter in place.

At the evidentiary hearing, Mr. Bente testified that he has concerns about radio frequencies used in smart meters that could be considered harmful to Complainants, especially given Ms. Bente's past medical history and prior exposure to radiation.²⁹ Mr. Bente also expressed his concerns that smart meters present a fire hazard.³⁰

Neither the Company's Commission-approved Smart Meter Deployment Plan nor Act 129 provide for customer opt-outs.³¹ Furthermore, Section 2807(f)(2)(i) provides, in pertinent part, that electric distribution companies shall furnish Smart Meter technology to its customers.³²

Met-Ed has an absolute obligation to install smart meters at all of its customers' service locations under Act 129.³³ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.³⁴ Further, both Act 129 and the Commission's *Implementation Order* require that electric distribution companies install wireless smart meters with specific functionalities. As evidenced by the Commission's approval of the Company's Smart Meter Deployment Plan,³⁵ Met-Ed's smart meters adhere to the requirements of Act 129 and the Commission's

²⁹ Tr. 31.

³⁰ Tr. 32.

³¹ See, e.g., *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered Mar. 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Final Order entered Mar. 3, 2011).

³² 66 Pa.C.S. § 2807(f)(2)(i).

³³ 66 Pa.C.S. § 2806.1–2807.

³⁴ *Id.*

³⁵ See Met-Ed Exhibit JCA-1 (Smart Meter Deployment Plan) (containing a copy of Met-Ed's Final Smart Meter Deployment Plan, approved by the Commission at Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 filed June 16, 2014).

Implementation Order.³⁶ Therefore, Met-Ed must install a smart meter at the Complainants' Service Location so that the Company remains in compliance with Act 129, related Commission orders, and its Commission-approved Smart Meter Deployment Plan.

As explained above, in *Povacz II*, the Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.³⁷

Complainants failed to present any evidence or cite any authority to support their averment that Respondent was not required to install a smart meter at their residence. Based upon the authority addressed above, this claim must fail.

Unsafe, Unreasonable or Inadequate Service under Section 1501

The Supreme Court noted that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code.³⁸ 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.³⁹ The Supreme Court opined that while a customer's evidence does not

³⁶ See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014).

³⁷ *Povacz II*, at 992.

³⁸ 66 Pa.C.S. § 1501.

³⁹ *Povacz II*, at 1005.

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.⁴⁰

The Supreme Court noted 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 radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm.⁴¹ 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.⁴² The Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.⁴³

Complainants aver that the installation of the smart meter would violate Section 1501 of the Public Utility Code.⁴⁴ At the hearing, the Complainants presented testimony in support of their allegations,⁴⁵ contending they have health concerns about the smart meters because of: (1) their prior exposure to radiation and RF fields; and (2) a purported lack of information and studies on the safety of the smart meters.⁴⁶ Complainants also alleged that they

⁴⁰ *Id.* at 1008.

⁴¹ *Id.*

⁴² *Id.* at 1006.

⁴³ *Id.* at 1005.

⁴⁴ 66 Pa.C.S. § 1501.

⁴⁵ *See* Tr. 24-108.

⁴⁶ *See, e.g.*, Tr. 28-31, 43-46.

have “concern[s]” about the smart meters’ “accuracy of billing” and “possibly being a fire hazard.”⁴⁷ Accordingly, Complainants argue they should be permitted to opt out of the smart meter’s installation.⁴⁸

Pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate and reasonable service 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. Section 1501 of the Code provides, in pertinent part:

§ 1501. Character of service and facilities

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 also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.^[49]

Complainants presented no expert testimony to corroborate their health and safety allegations. To the extent the Complainant relied upon hearsay or other inadmissible evidence to attempt to support their claims, this evidence was properly objected to upon hearsay and relevance grounds and cannot support a finding of fact.

Although Complainants provided lay testimony and explained their concerns if a smart meter would be installed at their property, Complainants failed to present expert opinion

⁴⁷ Tr. 32.

⁴⁸ See Tr. 32-33.

⁴⁹ 66 Pa.C.S. § 1501.

evidence that radio frequency emissions from smart meters cause adverse health effects. Complainants also failed to present expert opinion evidence that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions was the cause of the potential harm claimed by Complainant.

Furthermore, nothing in the record demonstrates that the Complainants possess the requisite technical expertise to testify about these alleged health and safety issues. Complainants simply expressed their concerns about the alleged adverse health effects that could be caused by the smart meters' RF fields. Such bald assertions, personal opinions, or perceptions do not constitute evidence.⁵⁰ Further, testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims.⁵¹ Thus, the Complainants failed to establish a *prima facie* case that the smart meter's installation would violate Section 1501 of the Public Utility Code.

By contrast, Respondent rebutted the Complainant's allegations by providing evidence, including expert testimony of Mr. Ahr that established the subject smart meters comply with all safety requirements and standards established by various entities including the FCC, ANSI and UL.⁵² As such, the Complainants failed to establish their burden of proof to show that the deployment of smart meters is unsafe or unreasonable or that it would constitute inadequate utility service. Complainants further failed to establish that Respondent violated any Commission regulation, order or Code provision.

To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission.⁵³ This must be shown by a preponderance of the evidence.⁵⁴ Complainants failed to carry their burden of

⁵⁰ See *Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000).

⁵¹ See *Cuthbert v. City of Phila.*, 209 A.2d 261 (Pa. 1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 159 A.2d 206 (Pa. 1960).

⁵² Tr. 126-28.

⁵³ 66 Pa.C.S. § 701.

⁵⁴ *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

proof establishing that Respondent violated the Public Utility Code or a regulation or order of the Commission in installing a smart meter at Complainant's property.⁵⁵

As discussed above, in order to prove that smart meters are unsafe or unreasonable under Section 1501, a complainant must present substantial evidence that either: (1) there is a "conclusive causal connection between [smart meter emissions] and adverse human health effects;" or (2) the installation of a smart meter "would create a proven exposure to harm."⁵⁶ In this case, Complainants raised concerns about health, safety, and privacy, but these claims consisted solely of Complainant's lay opinions and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence.⁵⁷ As such, there is no record evidence to support Complainants' claim that installation of a smart meter at the service location would constitute a violation of Section 1501.

Whether Complainant is Entitled to An Accommodation

Complainants filed their Complaint objecting to the installation of a smart meter at their residence. The only relief or accommodation requested by Complainants was that they be permitted to keep their analog meter in place at their residence. At the hearing, Mr. Bente stated that if he was forced to accept a smart meter, he would want it installed at the end of his driveway on an existing electric pole, with all wires being placed underground. He acknowledged that he could have the meter located away from his house with Complainants being responsible for the relocation costs, but he stated that he objected to Respondents tariff provision requiring Complainants to bear the relocation costs.⁵⁸

⁵⁵ 66 Pa.C.S. § 332.

⁵⁶ *Povac I* at 493.

⁵⁷ *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁵⁸ Tr. 33, 38-40.

Given its interpretation of Act 129 as mandating the installation of smart meter technology, the Court in *Povacz II* concluded that a customer may not elect to prevent the installation of a smart meter. However, the Court stated:

As in this case, 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.^[59]

Here, Complainants failed to present substantial evidence that the installation of a smart meter would be unsafe or unreasonable under Section 1501. As Complainants failed to establish a violation of Section 1501, the Commission is unable, under the circumstances, to provide them with an administrative remedy.

Since Complainants failed to prove any actual harm or risk of harm, Complainant's interest in not having a smart meter placed at their home, as planned by Respondent, is essentially a request for protection against a speculative risk for which there is no remedy. Under the circumstances, the Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 701, 1501, 2807.
2. The proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

⁵⁹ *Povacz II* at 1034-1038.

3. “A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

5. In smart meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Opinion and Order entered Sept. 3, 2015).

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

7. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701.

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

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

10. There is no specific provision in the Code or the Commission's regulations or orders that provides that an electric distribution customer may opt-out of smart meter installation. 66 Pa.C.S. § 2807; *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

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

12. Electric distribution companies are required to install smart meters system wide. 66 Pa.C.S. § 2807(f); *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

13. While Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates 66 Pa.C.S. § 1501. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

14. 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 radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

15. Neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

16. Complainants have failed to sustain their burden of proof in this matter. 66 Pa.C.S. § 332; . *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Terry Bente and Betty Bente filed at Terry Bente and Betty Bente v. Metropolitan Edison Company at Docket No. C-2017-2614219 is dismissed.
2. That Docket No. C-2017-2614219 be marked closed.

Date: April 10, 2024

_____/s/
Jeffrey A. Watson
Administrative Law Judge

APPENDIX D

**THE NOVEMBER 7, 2024 *FIRST COMPLAINT*
ORDER ADOPTING THE *INITIAL DECISION* OF
THE ALJ AND DISMISSING BENTE'S FIRST
COMPLAINT AGAINST MET-ED**

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

Public Meeting held November 7, 2024

Commissioners Present:

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

Terry and Betty Bente

C-2017-2614219

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Terry and Betty Bente (Complainants or Mr. Bente and/or Mrs. Bente) filed on April 24, 2024, in the above-captioned proceeding. The Exceptions were timely filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, which the Commission served on the Parties on April 10, 2024. On May 10, 2024, Metropolitan Edison Company (Met-Ed

or the Company) timely filed Reply Exceptions.¹ For the reasons discussed below, we shall deny the Complainants' Exceptions; adopt the Initial Decision of ALJ Watson; and dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Formal Complaint (Complaint) concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Met-Ed proposes to install at the Complainants' residence and use in the ordinary course of business to measure the Complainants' electricity consumption. Met-Ed, an electric distribution company (EDC), subject to the jurisdiction of the Commission, owns, maintains, installs, and operates the meters in its distribution system. *See*, FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at 44.²

The Complainants are Met-Ed customers who have been notified of Met-Ed's intent to install a smart meter at their residence that provides the function of automatic meter reading (AMR). The Complainants requested that Met-Ed not install a smart meter at their home due to health and safety concerns. Complaint at 2.

¹ Initially, on April 30, 2024, Met-Ed filed a letter stating that it would not be filing Exceptions to the matter.

² At the time of initiation of the instant proceeding, FirstEnergy consisted of four separate companies: Met-Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company. *See Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et al.*, Docket Nos. A-2023-3038771, *et al.* (Final Order entered December 7, 2023). Nonetheless, in this Opinion and Order, we shall refer to the Company as Met-Ed.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, [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 Met-Ed, to universally deploy smart meter

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

II. History of the Proceeding

On July 12, 2017, the Complainants filed the instant Complaint, indicating that: (1) Met-Ed is threatening to, or already has, shut off their electric service; and (2) they have a reliability, safety, or quality problem with their electric service. The Complainants state that they suffer from "significant radiation exposure" and any further exposure would exacerbate their existing health conditions. As relief, the Complainants requested, essentially, an opt-out of the smart meter installation and to keep the analog meter currently installed on their home. Complaint at 2-3; *see also*, I.D. at 1-2.

On August 3, 2017, Met-Ed filed an Answer and New Matter to the Complaint (Answer), essentially denying material allegations in the Complaint. Met-Ed, *inter alia*, admitted that the Company provides residential electric service to the Complainants and issued service termination notices to the Complainants because they refused to allow the Company access to its meter to replace it with a smart meter. Further, Met-Ed contended that the Company is required by Act 129 to deploy smart meters, consistent with 66 Pa.C.S. § 2807. Moreover, Met-Ed argued that neither the

Company's Commission-approved Smart Meter Deployment Plan (SMDP) nor the law permit the Company to refrain from the smart meter installation requirement or allow for an opt-out from smart meter installation. Answer at 2-4 (citing 66 Pa.C.S. §§ 1406(a)(4), 2807; 52 Pa. Code § 56.81(3)); I.D. at 2.

Also, on August 3, 2017, Met-Ed filed a Preliminary Objection in response to the Complaint (Preliminary Objection), essentially repeating its legal argument that, in accordance with Act 129 and the Commission's orders, the Company is required to develop and implement a smart meter installation plan. Met-Ed also argued that because the Complainants failed to allege that the Company committed or omitted an act in violation of its tariff or a Commission Statute, Regulation, or order, the Complaint is legally insufficient and, therefore, must be dismissed. Preliminary Objection at 5-6; I.D. at 2.

On September 27, 2017, the ALJ issued an Interim Order which: (1) denied Met-Ed's Preliminary Objection; and (2) provided the Complainants until October 11, 2017 to file a responsive pleading to Met-Ed's Answer.³ I.D. at 2. On October 10, 2017, the Complainants filed a response to Met-Ed's Answer and Preliminary Objection.⁴

³ On August 17, 2017, the Complainants filed a letter requesting an extension of time to file a responsive pleading to Met-Ed's Answer. I.D. at 2.

⁴ As previously noted, on September 27, 2017, the ALJ issued an Interim Order denying Met-Ed's Preliminary Objection. I.D. at 2.

On January 17, 2018, Met-Ed filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel).⁵ On January 24, 2018, the ALJ issued an Interim Order granting Met-Ed's Motion to Compel, which ordered that the Complainants serve full and complete answers to all of the Discovery Requests on or before February 7, 2018. I.D. at 3.

On March 29, 2018, the ALJ issued an Interim Order Granting Met-Ed's Request for Continuance.⁶ I.D. at 3.

On July 29, 2019, the ALJ issued an Interim Order (July 2019 Interim Order), which directed the Parties to: (1) identify and distribute fact and expert information no later than October 11, 2019; (2) conclude discovery by November 22, 2019; and (3) submit status reports on or before December 20, 2019. I.D. at 3.

On September 19, 2019, the Complainants filed a single-page letter in which they requested that the Company provide complete discovery responses to the interrogatories and document requests propounded by the Complainants (Complainants

⁵ On December 12, 2017, Met-Ed filed a Cover Letter and Certificate of Service indicating that the Company forwarded to the Complainants Interrogatories and Requests for Production of Documents (Set I) (Discovery Requests). I.D. at 3. According to Met-Ed's Motion to Compel, the Complainants provided: (1) objections to most of the Discovery Requests; and (2) partial responses to the Discovery Requests. Motion to Compel at 2-3. Copies of Met-Ed's Discovery Requests, the Complainants' objections to the Discovery Requests, and the Complainants' partial responses to the Discovery Requests are attached to the Motion to Compel. *See*, Motion to Compel at 11-79.

⁶ By Cancellation/Reschedule Hearing Notice dated December 7, 2017, an Initial Telephonic Hearing was scheduled for April 18 and 19, 2018. According to the Initial Decision, on March 26, 2018, the ALJ received correspondence from counsel for the Company requesting a continuance of the hearing scheduled for April 18 and 19, 2018. I.D. at 3.

Letter).⁷ I.D. at 4. According to the Initial Decision, a subsequent review of the docket for the instant proceeding indicated that no certificate of service was filed by the Complainants evidencing that discovery requests were served upon the Company. On November 26, 2019, the ALJ issued an Interim Order denying, without prejudice, the relief sought by the Complainants in the Complainants' Letter. *Id.*

On November 22, 2019, the Complainants filed a second letter (Complainants Second Letter), essentially stating that the Company provided several pages of documents in response to the Complainants Letter, and it was not possible for the Complainants to review all of the documents and responses by November 22, 2019, in accordance with the July 2019 Interim Order. I.D. at 4.

On December 18, 2019, the Complainants filed a Status Report, in which the Complainants repeated their request in the Complainants Second Letter. On December 27, 2019, Met-Ed filed a Status Report in which the Company stated, *inter alia*, that the Complainants failed to provide their witness information, as previously directed in the July 2019 Interim Order. On January 17, 2020, the ALJ issued an Interim Order which, *inter alia*, denied the relief requested in the Complainants' Second Letter. I.D. at 5.

On March 19, 2020, the Complainants filed a letter requesting a motion for continuation and judicial adjudication.

⁷ On October 15, 2019, Met-Ed filed a response to the Complainants Letter stating, *inter alia*, that the Company was unaware of discovery requests being sought by the Complainants. I.D. at 4.

On May 5, 2020, the Commission issued a Telephonic Hearing Cancellation/Reschedule Notice (Hearing Notice), scheduling a hearing for July 13 and 15, 2020, at 10:00 a.m. for both days.⁸ I.D. at 5.

On July 13, 2020, the ALJ convened the hearing, as scheduled, and concluded the hearing on that date. The Complainants appeared *pro se* and testified on their own behalf. The Company was represented by counsel, presented the testimony of one witness, Mr. John Ahr (Mr. Ahr), and offered one exhibit, JCA-1, which was admitted into the record as evidence. I.D. at 5; Tr. at 109. During the hearing, the Parties stipulated to admitting pages 1 through 34 of Bente Exhibit 3 into the record.⁹ Additionally, the ALJ took official notice of: (1) Bente Exhibit 8; and (2) several public documents, marked as PD-1, PD-2, PD-3, and PD-4. I.D. at 5; Tr. at 61, 93-94, 114-119, 121-122, 138.

Upon the conclusion of the hearing, the Parties were advised that briefs in this proceeding were due on or before September 18, 2020. On September 18, 2020, Met-Ed filed a Main Brief.¹⁰ I.D. at 5.

On October 19, 2020, the ALJ issued an 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

⁸ By Hearing Notice dated February 3, 2020, a Telephonic Hearing was scheduled for April 21, 2020. On April 13, 2020, the ALJ issued an Interim Order which, *inter alia*, cancelled the hearing scheduled for April 21, 2020.

⁹ The Complainants agreed to withdraw page 35 of Bente Exhibit 3. I.D. at 5; Tr. at 60-61.

¹⁰ Also, on September 18, 2020, the Complainants filed a “Rebuttal Letter,” which was treated as a main brief. 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 (*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 Mr. Bente and Mrs. Bente of the lifting of the stay and their procedural rights and obligations under the Commission's regulations. I.D. at 6-7.

On December 18, 2023, the ALJ issued an Interim Order Re-Opening the Evidentiary Record, which provided the Parties with an extension of time to file briefs or supplement briefs previously filed, and to consider appropriate request for relief, if any, on or before January 19, 2024. On January 19, 2024, Met-Ed filed a supplemental brief. No additional filings were made by the Complainants. I.D. at 7.

On March 12, 2024, the ALJ issued an Interim Order Closing the Record. I.D. at 7. On March 21, 2024, the ALJ issued a second Interim Order Closing the Record.

In the Initial Decision, issued on April 10, 2024, ALJ Watson dismissed the Complaint due to the Complainants' failure to meet their burden of proof. I.D. at 1, 22.

As noted above, the Complainants filed Exceptions on April 24, 2024, and Met-Ed filed Reply Exceptions on May 10, 2024. On May 15, 2024, the Complainants

filed additional correspondence in response to Met-Ed's Reply to Exceptions.¹¹ On June 7, 2024, the Complainants filed a copy of their original Exceptions.¹²

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

¹¹ While our Regulations at 52 Pa. Code §§ 5.533 and 5.535 set forth the procedure to file Exceptions and Reply Exceptions, such Regulations do not contemplate or permit the filing of a reply or response to Reply Exceptions in order to establish a sense of finality to a proceeding. As a result, the document submittal filed in response to Met-Ed's Reply Exceptions are in violation of the Commission's Rules of Practice and, therefore, are immaterial to our disposition, and will not be considered. *See*, 52 Pa. Code § 1.4(e).

¹² On May 28, 2024, the Commission issued a Secretarial Letter (*May 2024 Secretarial Letter*) directing that the Complainants file a copy of their original Exceptions with the Commission no later than June 12, 2024. Upon internal review, the *May 2024 Secretarial Letter* was issued as the result of an administrative oversight.

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 Complainants’ evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See, Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant’s claim. *See Milkie*, 768 A.2d at 1220; *see also, Burluson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion, to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also, Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder¹³ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501¹⁴ 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

¹³ 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)).

¹⁴ The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See*, 52 Pa. Code § 57.28(a)(1). *See, Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632* (Opinion and Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court’s October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481), and thereby affirmed the Commission’s March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) (*2019 Povacz Order*); *Laura Sunstein Murphy v. PECO Energy Company*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, Docket No. C-2016-2537666 (Opinion and Order entered May 9, 2019). By *Povacz II*, the Supreme Court affirmatively established that there is no “opt-out” provision for 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 service¹⁵ 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

¹⁵ 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.¹⁶ Therein, the Supreme Court stated:

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

Povacz II, at 983-84; *See Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013); *see also, Frompovich v. PECO Energy Company*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018) (*Frompovich*).

¹⁶ 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. Cmwth.] 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).¹⁷

¹⁷ 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. Cmwth. 2017) (*Romeo*).

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)¹⁸ from the AMI meter.¹⁹

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

¹⁸ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

¹⁹ See *2019 Povacz Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

meters was arbitrary. *Id.* at 839 (internal quotations marks omitted).

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

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

B. ALJ's Initial Decision

In the Initial Decision, ALJ Watson made nine Findings of Fact (FOF) and reached sixteen Conclusions of Law (COL). *See I.D.* at 8-9, 20-22. 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 summarized the Complainants' allegations that: (1) they have experienced significant radiation exposure and adverse health conditions, which would exacerbate their conditions following the installation of a smart meter at their home; (2) Met-Ed was threatening to terminate their electric service for their refusal to permit the installation of a smart meter at their home; and (3) smart meters are unsafe and present health concerns. Further, the ALJ noted that the Complainants requested that they be permitted to opt-out of the smart meter installation and be able to keep their

analog meter. I.D. at 13-14. Moreover, the ALJ noted that at the hearing, Mr. Bente testified that he has concerns that smart meters: (1) use potentially harmful RFs, particularly to Ms. Bente given her past medical history and prior exposure to radiation; and (2) present a fire hazard. I.D. at 14 (citing Tr. at 31-32).

The ALJ also noted that neither Act 129 nor Met-Ed's Commission-approved Smart Meter Deployment Plan (SMDP) provide for opt-outs and EDCs shall furnish smart meter technology to its customers. I.D. at 14 (citing *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011) (*Negley*); 66 Pa.C.S. § 2807(f)(2)(i)). Further, the ALJ noted that the Company has an obligation to install smart meters at all of its service locations under Act 129, and neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment, permit customers to opt-out from smart meter installation. I.D. at 14 (citing 66 Pa.C.S. §§ 2806.1-2807). Moreover, the ALJ pointed out that both Act 129 and the Commission's *Smart Meter Implementation Order* require that EDCs install wireless smart meters with specific functionalities. Additionally, the ALJ referred to a copy of Met-Ed's Commission-approved SMDP to note that the Company's smart meters adhere to the requirements of Act 129 and the *Smart Meter Implementation Order*. I.D. at 14-15 (citing Exh. JCA-1; *2014 Smart Meter Order*; *Smart Meter Implementation Order*).

Accordingly, the ALJ reasoned that for Met-Ed to remain in compliance with Act 129, related Commission orders, and its Commission-approved SMDP, the Company must install a smart meter at the Complainants' service address. The ALJ added that in *Povacz II*, the Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. I.D. at 15 (citing *Povacz II* at 992).

As such, the ALJ found that the Complainants failed to present any evidence or cite any authority to support their averment that Met-Ed was not required to install a smart meter at their home. I.D. at 15.

The ALJ then addressed the Complainants' averment that the installation of the smart meter would violate Section 1501 of the Code. I.D. at 16 (citing 66 Pa.C.S. § 1501). Specifically, the ALJ noted that at the hearing, the Complainants presented testimony in support of their allegations that smart meters present: (1) health concerns based on: (a) their prior exposure to radiation and RF fields; and (b) a purported lack of information and safety studies; (2) concerns about the accuracy of billing; and (3) a fire hazard. I.D. at 16-17 (citing Tr. at 28-32, 43-46). Further, the ALJ acknowledged the Complainants' argument that they should be permitted to opt-out of smart meter installation. I.D. at 17 (citing Tr. at 32-33).

The ALJ pointed out that the Complainants presented no expert testimony to corroborate their health and safety allegations and simply attempted to rely upon hearsay or other inadmissible evidence to support their claims. The ALJ continued that this evidence was properly objected to upon hearsay and relevance grounds and cannot support a finding of fact. I.D. at 17 (citing 66 Pa.C.S. § 1501). Further, the ALJ found that the Complainants provided lay testimony and expressed concerns about the installation of a smart meter on their property, but failed to present expert opinion evidence that RF emissions from smart meters: (1) cause adverse health effects; or (2) were the cause of the potential harm, either alone or cumulative to other sources of RF emissions. I.D. at 17-18.

The ALJ also found that nothing in the record supports that the Complainants possess the requisite technical expertise to testify regarding their alleged health and safety issues. The ALJ continued that the Complainants simply expressed their concerns about the alleged adverse health effects from the RF fields of smart meters,

and such bald assertions, personal opinions, or perceptions do not constitute evidence. I.D. at 18 (citing *Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196 (Pa. Cmwlth. 2000)). The ALJ added that such testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims. I.D. at 18 (citing *Cuthbert v. City of Philadelphia*, 209 A.2d 261 (Pa. 1965); *B & K Inc. v. Commonwealth Department of Highways*, 159 A.2d 206 (Pa. 1960)). As such, the ALJ found that the Complainants failed to establish a *prima facie* case that the smart meter's installation would violate Section 1501 of the Code. I.D. at 18.

The ALJ determined that Met-Ed successfully rebutted the Complainants' allegations by providing evidence, including the expert testimony of its witness, Mr. Ahr, which established that smart meters comply with all safety requirements and standards established by various entities, including the Federal Communications Commission (FCC), the American National Standards Institute (ANSI) and Underwriters Laboratories (UL). I.D. at 18 (citing Tr. at 126-28). As such, the ALJ found that the Complainants failed to: (1) establish their burden to demonstrate that the deployment of smart meters is unsafe or unreasonable, or that it would constitute inadequate utility service; and (2) carry their burden of establishing that the Company violated the Code or any Commission Regulation or Order. I.D. at 18-19 (citing *Charles A. Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990); 66 Pa.C.S. § 332).

The ALJ found that the Complainants' health, safety, and privacy concerns consisted solely of the Complainants' lay opinions and beliefs assertions, and personal opinions or perceptions do not constitute evidence. I.D. at 19 (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). Accordingly, the ALJ found that there is no record evidence to support the Complainants' claim that installation of a smart meter at the service location would constitute a violation of Section 1501. I.D. at 19.

Finally, the ALJ addressed Mr. Bente's statement at the hearing that if he is legally obligated to accept a smart meter, then he would want the smart meter installed at the end of his driveway on an existing electric pole, with all wires placed underground. The ALJ noted Mr. Bente's objection to the Company's tariff provision requiring the Complainants to bear the relocation costs. I.D. at 19 (citing Tr. at 33, 38-40).

The ALJ pointed out that in *Povacz II*, the Supreme Court concluded that a customer may not elect to prevent a smart meter installation. I.D. at 20 (citing *Povacz II* at 1034-38). Further, the ALJ found that the Commission is unable to provide the Complainants with an administrative remedy because the Complainants failed to present substantial evidence that the installation of a smart meter would be unsafe or unreasonable under Section 1501. Moreover, the ALJ found that the Complainants' interest in not having a smart meter placed at their residence is, essentially, a request for protection against a speculative risk, for which there is no remedy. Therefore, the ALJ reasoned that the Complaint must be dismissed. I.D. at 20.

C. Exceptions²⁰

In their Exceptions, the Complainants contend that the FCC has shown noncompliance in providing "21st Century Human Exposure to [RF] Electromagnetic Fields for 5th or 6th generation wireless technology." Exc. at 1-3 (citing *Children's Health Defense v. Federal Communications Commission*, 25 F.4th 1045 (D.C. Cir. 2022) (*Children's Health*)) (emphasis omitted). Further, the Complainants claim that Met-Ed's

²⁰ We acknowledge that the format of the Complainants' 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 Complainants are 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.

witness, Mr. Ahr, “lacks 5th and 6th generation guidelines relating to wireless technologies to be able to make any inference to health exposures.” Exc. at 3-4 (citing *United Keetoowah Band of Cherokee Indians in Oklahoma v. Federal Communications Commission*, 933 F.3d 728 (D.C. Cir 2019) (*United Keetoowah*)). Moreover, the Complainants question the removal of barriers to infrastructure development. Exc. at 4-5 (citing *United Keetoowah*). Furthermore, the Complainants contend that, essentially, it is impossible for the Commission or the Company to know safe limits for RF radiation from smart meters because the FCC offers no recent studies establishing acceptable tolerance and risk limits for humans and the environment. Exc. at 5-6. Additionally, the Complainants state the following:

The Company chose not to provide a medical expert witness to substantiate no medical harms from its outdated FCC guidelines. Even had they done so, no expert medical witness opinion (other than that of the attending physician) constitutes a valid basis for physical evaluation of a particular individual’s risk from RF radiation in the face of no valid scientific measurements for it and past cumulative radiation exposures.

Exc. at 6.

The Complainants also disagree with the ALJ’s determination that there is no record evidence to support their claim that the installation of a smart meter at their residence would constitute a violation of Section 1501. Exc. at 6-7 (citing I.D. at 6-7). The Complainants note that Mr. Bente testified that he was the victim of experimental radiation studies which impaired his hearing and left him with tinnitus. Exc. at 7-8. Further, the Complainants maintain that since the deployment of smart meters in their neighborhood, a restful sleep is impossible on some nights due to “nonstop, high-pitched frequencies.” Exc. at 8. Moreover, the Complainants claim that the underground wiring at their property is not designed for smart meter frequencies. Exc. at 8.

The Complainants also accuse Met-Ed of “extortion,” arguing that “the mandate for smart meters and wrongful use of fear of loss of electrical service violates [t]he Hobbs Act.” Exc. at 9 (citing 18 U.S.C. § 1951) (emphasis omitted). According to the Complainants, smart meters and the Company itself are susceptible to “hacker intrusion.” Exc. at 9.

Finally, the Complainants assert that the Americans with Disabilities Act (ADA) is an accommodation for Mr. Bente’s health concerns.²¹ Exc. at 7. The Complainants add that they do not “relinquish” any of their rights afforded under the ADA, the United States Constitution (U.S. Constitution), Bill of Rights, and the Pennsylvania Constitution. Exc. at 13.

D. Replies to Exceptions

In its Replies, Met-Ed counters that there is nothing in *Children’s Health* or *United Keetoowah* to support the Complainants’ claims in the instant proceeding, adding that both *Children’s Health* and *United Keetoowah* related to the rulemaking process implemented by the FCC, which is not at issue here. Exc. at 2-3 (citing *Children’s Health; United Keetoowah*). Further, Met-Ed refers to pages 3 through 6 of the Complainants’ Exceptions to note that the block-quote citations: (1) are inappropriate to the instant case at hand and are of no relevance to the ALJ’s determination that the Complainants failed to meet their burden of proof; (2) all relate to litigation around the FCC’s rulemaking authority and process; and (3) do not relate to *Povacz II*, nor to the alleged negative health affects the Complainants claim to have experienced, or will experience, as the result of a smart meter installation at their home. R. Exc. at 3 (citing

²¹ We note that in their Exceptions, the Complainants state that the ADA provides a way for “Act 109” to accommodate their health concerns. Exc. at 7 (emphasis added). Given the context of this statement and the proceeding, we believe the Complainants intended to refer to Act 129. Accordingly, we find the Complainants’ reference here to “Act 109” to be an inadvertent misstatement. See, Exc. at 7.

Exc. at 3-6). Moreover, Met-Ed states that to the extent that the Complainants dispute: (1) the FCC's regulatory authority or its rulemaking process, singular complaint litigation before the Commission is an inappropriate venue to voice such concerns; and (2) the Company's smart meters do not comply with relevant FCC standards, there is no record evidence to support the same. R. Exc. at 3 (citing Tr. at 127).

Met-Ed also contends that the Complainants, in their Exceptions, attempt to inappropriately shift the burden of proof in this proceeding. In this regard, Met-Ed addresses the general burden of proof applied to complaint proceedings and to Section 1501 complaints challenging smart meter cases to argue that under Section 332(a) of the Code, the Complainants maintain the burden of proof in this proceeding. R. Exc. at 4-6 (citing *Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 98 (Order entered March 14, 1980); *Norfolk; Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Lansberry*, 578 A.2d 600, 602; *Pa. P.U.C. v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (Initial Decision issued August 21, 2015); *Frompovich; Kreider; Povacz II*; 66 Pa.C.S. §§ 332(a), 701, 1501). Met-Ed adds that the only accommodation allowed under the Company's Commission-approved tariff is installing the smart meter at a different location at the customer's expense. R. Exc. at 6.

Met-Ed also argues that the Complainants presented no expert testimony, as appropriately acknowledged by the ALJ, and nothing in the record demonstrates that the Complainants possess the requisite technical expertise to testify about their alleged health and safety issues. R. Exc. at 6 (citing I.D. at 17-18). Further, Met-Ed argues that under *Povacz II*, the Complainants have wholly failed to carry their burden "out-of-hand." R. Exc. at 6. Met-Ed continues that even if the Complainants did present expert testimony, or were experts themselves, they wholly failed to present an expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, by themselves or cumulative to other sources of RF emissions, caused them harm. R. Exc. at 6-7. Moreover, Met-Ed argues that the Complainants have only presented

assertions, personal opinions, or perceptions, which do not constitute evidence and are insufficient for the Complainants to carry their burden of proof. R. Exc. at 7 (citing I.D. at 19).

Met-Ed also notes that contrary to the Complainants' arguments, the Company's witness, Mr. Ahr, explained that: (1) Act 129 does not allow for any customers to opt-out of smart meter installation and to retain an analog meter; and (2) the Company's smart meters comply with all safety requirements and standards established by agencies such as the Federal Communications Agency. R. Exc. at 7 (citing Tr. at 127). Further, Met-Ed notes that Mr. Ahr explained that should the Complainants seek relocation of the smart meter, it will be at their cost. R. Exc. at 7.

Met-Ed also notes that the Complainants ignore that Act 129 mandates the installation of smart meters system-wide. R. Exc. at 7. Specifically, Met-Ed states that the Complainants' requested relief (that the Company allow them to opt-out of a smart meter installation at the service address) cannot be granted because: (1) the Company is legally required to install smart meters by the Code, the Commission's orders, and the Company's Commission-approved SMDP; and (2) customers of the Company are not permitted to opt-out of, or rescind, smart meter installation. R. Exc. at 7-9 (citing *2014 Smart Meter Order; Smart Meter Installation Order; Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010); 66 Pa.C.S. § 2807(f)). Further, Met-Ed argues that nothing in the Code, the Commission's Regulations or orders, or the Company's SMDP states that a customer may opt-out of, or rescind, a smart meter installation. Moreover, Met-Ed points out that the Complainants, in their Exceptions, do not engage with the Supreme Court of Pennsylvania's holding in *Povacz II*, but instead rely on an incorrect reading of Act 129, partially premised on the various federal laws and other sources. R. Exc. at 9 (citing *Povacz II* at 998). Accordingly, Met-

Ed contends that the Complainants' Exceptions related to the mandatory installation of smart meters should be denied and the Initial Decision adopted, without modification. R. Exc. at 10.

Met-Ed also provides that, to the extent that the Complainants argue that the installation of a smart meter at their service address may violate their constitutional rights, such contentions are meritless. R. Exc. at 10 (citing Exc. at 11). Met-Ed adds that based on the Supreme Court's decision in *Povacz II*, the Company is not a state actor that can violate the Complainants' constitutional rights. Accordingly, Met-Ed argues that the Exceptions related to the allegedly unconstitutional conduct of the Company should be denied. R. Exc. at 11 (citing 52 Pa. § 5.533(b)).

E. Disposition

At the onset, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

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

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

In the present case, the Complainants stated that they do not want a smart meter installed on their home because of health and safety concerns and are requesting to keep the analog meter currently installed on their home. Complaint at 2-3. At the hearing, Mr. Bente testified that given his and Mrs. Bente's past medical history and exposures to radiation, his concern is the RFs used in smart meters could present additional harm to them both. Mr. Bente also expressed concern over the safety and billing accuracy of smart meters. Tr. at 31-32. The ALJ found, in pertinent part, that: (1) neither Act 129, nor Met-Ed's Commission-approved SMDP, nor subsequent Commission orders related to smart meter installation and deployment provide for customers to opt-out of smart meter installation; (2) Section 2807(f)(2)(i) of the Code provides, in pertinent part, that EDCs shall furnish smart meter technology to their customers; and (3) Act 129 and the Commission's *Smart Meter Implementation Order* require that EDCs install wireless smart meters with specific functionalities. I.D. at 14-15 (citing *Lutherschmidt; Negley; Smart Meter Implementation Order; 2014 Smart Meter Order*; 66 Pa.C.S. §§ 2806.1-2807). Therefore, the ALJ concluded that there is no specific provision in the Code or the Commission's Regulations or Orders that provides that an electric distribution customer may opt-out of smart meter installation. I.D. at 22, COL No. 10. We agree.

As noted, *supra*, in *Povacz II*, the Pennsylvania 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* at 280 A. 3d at 983-84. Here, as discussed, *infra*, we agree with the ALJ's analysis and conclusion that the Complainants did not meet their burden of proof to show that the Company: (1) violated the Code, or a Commission

Regulation or Order; and (2) provided unsafe or unreasonable service, in violation of Section 1501. I.D. at 18-20, 22, COL No. 16 (citing 66 Pa.C.S. §§ 332, 1501).

Although the Complainants expressed that they do not want the analog meter currently installed on their home replaced with a smart meter installed on their home, we agree with the ALJ's analysis and conclusion that, under the provisions of Act 129, Met-Ed is required to deploy smart meters, consistent with 66 Pa.C.S. § 2807(f)(2)(i). I.D. at 14-15, 22, COL No. 12. Similarly, we agree with the ALJ's conclusion that the Complainants failed to present any evidence or cite any authority to substantiate their averment that Met-Ed was not required to install a smart meter at their residence. I.D. at 15. Moreover, we agree with the ALJ's conclusion that the Complainants have not provided how Met-Ed, which is required to comply with Act 129 and 66 Pa.C.S. § 2807 by installing smart meters at the Complainants' residence, violated the Code, a Commission Regulation, or a Commission Order. *Id.* at 18-19.

Indeed, we declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Implementation Order* at 14. We also "recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment." *Smart Meter Implementation Order* at 9, 14. Moreover, we agree with the ALJ and Met-Ed that under Act 129, related Commission Orders, and the Company's Commission-approved SMDP, the Company is required to install smart meters for all of its customers. I.D. at 15; R. Exc. at 7-8. Therefore, we find no error in the ALJ's determination that the installation of the smart meter was mandatory, as set forth in the Initial Decision.

To the extent that the Complainants argue that Met-Ed's witness, Mr. Ahr, lacks credibility as an expert witness, we find this claim meritless. We note that Mr. Ahr testified that he has a degree in electrical engineering, and has been working for Met-Ed

since 1984 in several positions, including, *inter alia*, his current position as Advisor in Regulatory Compliance of Smart Meters. *See*, I.D. at 8-9, FOF No. 6 (citing Tr. at 109-10). Further, as noted by the ALJ, Mr. Ahr provided expert testimony that established the smart meters comply with all safety standards and requirements established by various entities, including the FCC, ANSI, and UL. *See*, I.D. at 18 (citing Tr. at 126-28).

Next, we will address the Complainants' claim that the Company's installation of a smart meter on their home or property constitutes unsafe and unreasonable service. In their Complaint, the Complainants alleged that smart meters present health and safety issues. Complaint at 2; Tr. at 31-32. In their Exceptions, the Complainants, generally, attempt to advance their argument that the installation and operation of a smart meter on their home will: (1) cause unreasonable and adverse health effects; and (2) create an unreasonable risk to their safety and security. Exc. at 4-9. Therefore, each of the Complainants' claims arise, if at all, as a claim under Section 1501, asserting unreasonable or unsafe provision of service. 66 Pa. Code § 1501.

As noted, *supra*, in affirming the Commission's 2019 *Povacz Order*, the Pennsylvania Supreme Court held in *Povacz II* that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specifically, against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the AMI meter. *See, Povacz II* at 999-1000. In that context, the lay opinion of the Complainants does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.*

The Pennsylvania Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof, by a preponderance of the

evidence. The Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Povacz II* at 1005. The Court further opined that while a customer’s evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Pennsylvania Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer’s evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *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 Complainants’ failure to present any competent or credible evidence to support their personal opinions and general concerns that smart meters pose a risk to health and safety. *See, I.D.* at 18-20. In their Exceptions, the Complainants disagree with the ALJ’s finding that the Complainants presented no record evidence to support their claim that a smart meter installation at their home would constitute a violation of Section 1501 of the Code. Exc. at 6-7 (citing *I.D.* at 19). The ALJ concluded that because the Complainants failed to demonstrate that Met-Ed’s installation of a smart meter at their home constitutes unreasonable or inadequate service under Section 1501, the Commission is unable to

provide the Complainants with an administrative remedy. The ALJ continued that because the Complainants failed to prove any actual harm or risk of harm, their interest in not having a smart meter placed on their home is, essentially, a request for protection against a speculative risk, for which there is no remedy. Thus, the ALJ concluded that the Complaint must be denied. I.D. at 20. We concur. Upon review, we agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainants did not meet their burden of proof regarding their claim that the installation of a smart meter at their property will result in unsafe or unreasonable service, in violation of 66 Pa.C.S. § 1501. I.D. at 18-20, 22, COL No. 16.

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 Complainants must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See, 2019 Povacz Order*. Here, the ALJ pointed out that the Complainants presented no expert testimony to corroborate their health and safety allegations. Further, the ALJ highlighted that the Complainants failed to present expert opinion evidence that RF emissions from smart meters: (1) cause adverse health effects; and (2) were the cause of the potential harm alleged by the Complainants, either alone or cumulative to other sources of RF emissions. I.D. at 17-18. Moreover, the ALJ noted that nothing in the record supports that the Complainants possess the requisite technical expertise to testify about their alleged health and safety issues. Furthermore, the ALJ found that the Complainants simply raised concerns about health and safety based on the RF fields of smart meters. Additionally, the ALJ properly concluded that the Complainants' claims consisted solely of their lay opinions and beliefs, and assertions, personal opinions, or perceptions do not constitute evidence. As such, the ALJ properly concluded that the Complainants failed to establish a *prima facie* case that the installation of a smart meter would violate Section 1501 of the Code. I.D. at 17-18.

Specifically, we affirm the ALJ's conclusion, in COL No. 16, that the Complainants failed to sustain their burden of proof in this matter. I.D. at 22. Similarly, the Complainants failed to offer any competent or factual evidence of record to support a finding that the planned installation of a smart meter at the service address by Met-Ed violated the Code, or a Commission Regulation or Order. *See* I.D. at 18-19. We find nothing in the Complainants' Exceptions to refute the ALJ's conclusion that the Complainants failed to sustain their burden of proof. Therefore, for all the foregoing reasons, we shall deny the Complainants' Exceptions and adopt the Initial Decision.

IV. Conclusion

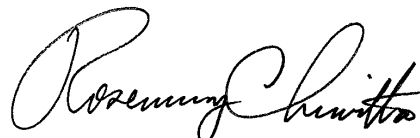
Based upon our review of the record and the applicable law, we shall deny the Complainants' Exceptions and adopt the Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Terry and Betty Bente on April 24, 2024, at Docket No. C-2017-2614219, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 10, 2024, at Docket No. C-2017-2614219, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed on July 12, 2017, by Terry and Betty Bente against Metropolitan Edison Company, at Docket No. C-2017-2614219, is denied.

4. That this proceeding at Docket No. C-2017-2614219 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 7, 2024

ORDER ENTERED: November 7, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TERRY AND BETTE BENTE

v.

**FIRSTENERGY PENNSYLVANIA
ELECTRIC COMPANY**

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Docket No. C-2025-3054387

CERTIFICATE OF SERVICE

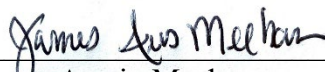
I hereby certify that I have this day served a true copy of the Preliminary Objections of FirstEnergy Pennsylvania Electric Company on behalf of its Met-Ed Rate District to the Complaint of Terry and Betty Bente, upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service electronic mail, as follows:

Terry and Betty Bente
Sidi_Ala_Banhr@yahoo.com

Dated: April 23, 2025

Respectfully submitted,



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