

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

Public Meeting held April 24, 2025

Commissioners Present:

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

Siddhartha Banerjee

F-2022-3032337

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Siddhartha Banerjee (Complainant or Mr. Banerjee), filed on March 5, 2025, in the above-captioned proceeding. The Exceptions were timely filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Gail M. Chiodo, which the Commission served on the Parties on February 12, 2025. Therein, the ALJ denied the Formal Complaint (Complaint) filed by the Complainant on May 2, 2022, in the above-captioned proceeding. On March 14, 2025, PECO Energy Company (PECO or the Company) filed Replies to Exceptions. For the reasons discussed below, we shall: (1) deny the Complainant's

Exceptions; (2) adopt the Initial Decision of ALJ Chiodo, as modified by this Opinion and Order; and (3) dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PECO installed at the Complainant's residence for use in the ordinary course of business to measure the Complainant's electricity consumption. PECO is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns, and maintains the meters in its distribution system. PECO Energy Company Tariff Electric Pa. P.U.C. No. 8 (PECO Tariff), Rule 14.1 at Original Page No. 24, effective January 1, 2025. (PECO Tariff, Rule 14.1). Additionally, PECO's tariff also contains a Right of Access provision that provides as follows:

The Company's identified employees shall have access to the premises of the customer at all reasonable times for the purpose of reading meters, and for installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to the Company. In the event of an emergency, the Company shall have the right to access customer owned facilities and equipment for the purpose of restoring electric service, for the purpose of rendering the electric facilities safe and reliable, or for the purpose of reducing the likelihood of damage to the Company's facilities and equipment.

PECO Tariff, Rule 10.5 at Original Page No. 20, effective January 1, 2025 (Right of Access Provision). The Complainant is a PECO customer who currently has a smart meter at his residence that provides the function of automatic meter reading (AMR). However, the Complainant previously had a malfunctioning smart meter at his residence. Consequently, the Complainant had been notified of PECO's intent to replace the malfunctioning smart meter at his residence. Complaint at 2-4.

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 PECO, 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*). PECO sought and obtained the Commission's approval to complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. *See Petition of PECO Energy Company for Approval of Its Smart Meter Universal Deployment Plan*, Docket No. M-2009-2123944 (Final Order entered August 15, 2013, adopting Recommended Decision issued July 18, 2013).

II. History of the Proceeding

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501 (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the 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.

As noted, *supra*, on May 2, 2022, the Complainant filed the instant Complaint.¹ The Complaint was an appeal of an Informal Complaint filed with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3818611. BCS dismissed the Informal Complaint on March 16, 2022. I.D. at 1, 4. In his Complaint, Mr. Banerjee stated the following:

PECO is threatening shut-off of services for denying access. This is not true. We are asking for assurance that meter replacement will not cause problems for us in terms of health, safety and smooth functioning of our devices and appliances, infringement of privacy, damage to property and home.

* * *

PECO had, from their own record, replaced the meters on our property in 2014 and 2019. Following these meter replacements, several of our electronic devices and appliances began to malfunction and then fail and become unusable.

* * *

We also experienced increased hacking of accounts online.

Complaint at 2 (emphasis omitted). Further, the Complainant claimed to have found a 72-hour shut-off notice in their yard. Moreover, Mr. Banerjee averred that a PECO representative was rude, abusive, and unprofessional to him during a call. As relief, the Complainant requested, *inter alia*, that the Company consider alternatives to wireless smart meters, including not installing a smart meter or locating the new smart meter at a safe distance. I.D. at 1-2; Complaint at 2-4.

¹ We note that the Commission's case management system indicates the Complaint was received May 2, 2022, but was not served on the Parties until May 5, 2022. Therefore, pursuant to 52 Pa. Code § 5.61(a), PECO was provided twenty (20) days to file an Answer to the Complaint.

On May 25, 2022, PECO filed an Answer and New Matter to the Complaint (Answer), denying the material allegations in the Complaint while also contending that the Company is required by Act 129 to install smart meters at the Complainant's residence. PECO averred that the Company installed an AMI meter at the property on June 27, 2019, but as of August 21, 2021, that meter was no longer sending reads.² PECO noted that on September 8, 2021, a door card was provided to Mr. Banerjee, advising him to schedule an appointment for a new meter. PECO continued that on October 25, 2021, a Company meter maintenance representative contacted Mr. Banerjee to schedule an appointment for a new meter, but the Complainant did not make an appointment. PECO asserted that after multiple automated calls to Mr. Banerjee's home went unanswered, a 72-Hour Shut Off Notice was left at the Complainant's property on November 13, 2021 (November 2021 Termination Notice), for failure to provide access to the meter. PECO noted that on November 15, 2021, Mr. Banerjee scheduled an appointment, which he later cancelled. PECO continued that on January 3, 2022, a technician arrived at the property to exchange the meter, but the Complainant explained to the technician that: (1) he did not want an AMI meter installed at the property; (2) he wanted assurance from the Company that the AMI meter would not cause health, safety, or privacy issues; and (3) prior meter installations damaged his appliances. PECO further noted that the Complainant: (1) was provided with a claims form, which was not submitted; and (2) made additional appointments for meter installation, which were ultimately cancelled. I.D. at 2-3; Answer at 2-4.

On June 29, 2022, the ALJ issued a Stay of Proceeding Order, staying the proceeding pursuant to the *November 2020 Stay Order*.³

² PECO noted that the only other prior meter installation that occurred at the property was on April 25, 2002. Answer at 3, n.1

³ On May 25, 2022, PECO filed a Motion to Stay the Proceedings (Motion), which, *inter alia*, requested that the proceeding be stayed pursuant to the *November 2020 Stay Order*. I.D. at 3; Motion at 4.

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. Banerjee of the lifting of the stay and his procedural rights and obligations under the Commission's Regulations. I.D. at 3.

On February 20, 2024, a prehearing conference was held as scheduled.⁴ The Complainant appeared *pro se* and the Company was represented by counsel. During the prehearing conference: (1) the Parties requested that this matter be held in abeyance; and (2) counsel for PECO explained that the Company intended to have a design construction consultant contact the Complainant regarding possible relocation of the meter at the service location at Mr. Banerjee's expense. I.D. at 4 (citing Tr. at 7-9).

On February 23, 2024, the ALJ issued a Prehearing Order, which ordered, *inter alia*, that this proceeding be held in abeyance to allow the Parties to engage in informal discussions to determine whether this matter can be resolved. I.D. at 4.

On March 8, 2024, the ALJ received an email from PECO's counsel, with the Complainant copied, suggesting that a second prehearing conference be held to discuss the Complainant's request that the smart meter the Company removed from the Complainant's property on March 6, 2024, be turned over to Mr. Banerjee so that he could have the meter independently tested. PECO did not object to the Complainant's request, but expressed concern that the Company does not release its equipment to customers. Upon a further exchange of emails: (1) the Parties agreed to a date for a

⁴ By Prehearing Conference Notice dated December 14, 2023 (Prehearing Conference Notice), a Telephonic Prehearing Conference was scheduled for February 20, 2024. On December 18, 2023, the ALJ issued a Prehearing Conference Order, which ordered, *inter alia*, that a prehearing conference will be held in accordance with the Prehearing Conference Notice. I.D. at 3.

further prehearing conference;⁵ and (2) Mr. Banerjee was directed to be prepared to discuss, at the April 2024 Further Prehearing Conference, whether he obtained an expert to independently examine or test the meter, and any other details that would be helpful to discuss an orderly process to accomplish this request. On April 26, 2024, the April 2024 Further Prehearing Conference was cancelled via a Cancellation Notice⁶ I.D. at 4-5.

On August 9, 2024, the ALJ issued a Scheduling Order (Scheduling Order), which provided several procedures regarding the evidentiary hearing scheduled for October 1, 2024.⁷ The Scheduling Order, *inter alia*, directed that if Mr. Banerjee still sought to have the meter at issue independently examined, then he must make such a request by filing a motion with the Secretary's Bureau and serving the motion on PECO and the ALJ no later than August 19, 2024. I.D. at 5 (citing Scheduling Order at 8, Ordering Paragraph No. 12). The Scheduling Order further provided that: (1) if Mr. Banerjee intended to present any expert testimony at the hearing, including but not limited to medical or technical testimony, then he must provide to the Company the name and business address of that expert and a written summary of the expected testimony of that expert no later than September 3, 2024; and (2) if no expert testimony would be presented, then Mr. Banerjee must provide that in writing to the Company no later than September 3, 2024. The Scheduling Order also directed PECO to provide similar information to the Complainant, including any expert it intended to present. I.D. at 5

⁵ By Prehearing Conference Notice dated March 13, 2024, a Further Telephonic Prehearing Conference was scheduled for April 29, 2024 (April 2024 Further Prehearing Conference).

⁶ On April 25, 2024, Mr. Banerjee requested a continuance of the April 2024 Further Prehearing Conference. I.D. at 5.

⁷ By Hearing Notice dated August 9, 2024, a Further Telephonic Prehearing Conference was scheduled for October 1, 2024. Subsequently, by Hearing Type Change Notice also dated August 9, 2024 (Hearing Notice), the Further Telephonic Prehearing Conference was changed to a Telephonic Hearing. On August 12, 2024, a Corrected Hearing Notice was issued to correct information contained in the Hearing Notice.

(citing Scheduling Order at 8-9, Ordering Paragraph No. 13). The Complainant did not file a motion for an independent meter test by August 19, 2024. I.D. at 6.

On August 27, 2024, the ALJ issued an Amended Scheduling Order (Amended Scheduling Order).⁸ The Amended Scheduling Order amended Ordering Paragraph No. 12 in the Scheduling Order to reflect that if Mr. Banerjee still sought to have the meter at issue independently examined, then he must make such a request by filing a motion with the Secretary's Bureau and serving it on PECO and the ALJ no later than August 27, 2024. I.D. at 6 (citing Amended Scheduling Order, Ordering Paragraph No. 12). The Complainant did not file a motion requesting an independent meter examination. Further, the Complainant did not provide the name and business address of any expert that he intended to present at the hearing. I.D. at 6.

On October 1, 2024, the ALJ convened the hearing, as scheduled. The Complainant appeared without legal counsel and offered the testimony of his wife, Padmini Banerjee (Mrs. Banerjee), and himself (collectively, the Banerjees). The Complainant also offered several photographs that were admitted into the record evidence as Complainant Exhibit C-1.⁹ Complainant Exhibit C-1 is comprised of two photographs of a blank laptop computer screen, one photograph of an InSinkErator in a kitchen sink, and one photograph of a microwave inside a box. The Company was represented by counsel and did not present any testimony or exhibits. At the conclusion of the hearing, the ALJ provided the Parties the option to make a closing argument or

⁸ On August 19, 2024, the ALJ received an email from the Complainant, with counsel for PECO copied, stating that he still wanted the removed smart meter independently tested. The ALJ, in reply, referred Mr. Banerjee to the requirements of the Scheduling Order, and advised the Parties that, *sua sponte*, the deadline for the Complainant to file a motion, in compliance with the Scheduling Order, would be extended to no later than September 5, 2024. I.D. at 6.

⁹ The Complainant also offered several exhibits which were not admitted into evidence. I.D. at 7 (citing Tr. at 52-55, 60-62, 67-68, 70-71).

provide a written brief. PECO objected to this choice, arguing that closing arguments from the Parties should be sufficient. The ALJ overruled PECO's objection, explaining that the Parties were allowed to choose and would not be prejudiced by the choice. PECO chose to make a closing argument at the hearing. The Complainant chose to file a brief. I.D. at 6-7.

On October 2, 2024, the ALJ issued an Order Permitting the Complainant to File an Initial Brief (Order Permitting Brief), which, *inter alia*, permitted the Complainant to file a written brief on or before November 15, 2024. I.D. at 7.

On October 21, 2024, an 85-page Hearing Transcript was filed (Hearing Transcript).¹⁰ On October 23, 2024, Complainant Exhibit C-1 was filed. I.D. at 7.

On November 15, 2024, the ALJ received an email from the Complainant, which copied PECO, entitled "Closing Statement." The ALJ treated the Complainant's email as the Complainant's Brief (Complainant Brief).¹¹ Also, on November 15, 2024, the record closed. I.D. at 7-8.

In the Initial Decision, issued on February 12, 2024, ALJ Chiodo dismissed the Complaint due to the Complainant's failure to meet his burden of proof evidencing

¹⁰ We note that the Commission's case management system indicates that pages 1-19 of the Hearing Transcript were received on March 12, 2024.

¹¹ The Complainant Brief was not filed with the Secretary's Bureau, as instructed in the Order Permitting Brief. Consequently, the ALJ forwarded the Complainant Brief to the Secretary's Bureau, requesting that it be filed of record. I.D. at 7-8.

that: (1) PECO violated the Code or a Commission Regulation or Order; or
(2) Mr. Banerjee is entitled to the relief requested.¹² I.D. at 1, 20, 22.

As noted, *supra*, the Complainant filed Exceptions on March 5, 2025.
PECO filed Replies to Exceptions on March 14, 2025.

III. Discussion

A. Legal Standards

1. General Burden of Proof for Complaint Proceeding

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

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a

¹² We note that the Commission’s case management system indicates the Initial Decision was issued on February 12, 2025. Therefore, pursuant to 52 Pa. Code § 5.533, the Complainant was provided twenty (20) days to file Exceptions. It is noted that February 17, 2025, was a holiday. Therefore, Exceptions were due March 5, 2025.

Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

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

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion, to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also, Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-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

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*

PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court’s October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission’s March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, 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

Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632 (Opinion and Order entered April 20, 2017).

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).

facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

As previously noted, in *Povacz II*, the Pennsylvania Supreme Court not only affirmed the Commission’s determination that there is no “opt-out” provision for smart meter installation in either Act 129, the Code, Commission Regulations, or Orders, but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 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. Cmwlth.] 1990)[.] . . .

Although Act 129 does not provide an electric customer with the right to opt-out of the installation of a smart meter at their residence, they [sic] may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.

. . . .

Pursuant to [S]ection [1501 of the Code], an EDC (as a public utility) must provide service that is, inter alia, both safe and reasonable. **To carry their burden of proof on a Section 1501 [of the Code] claim, a smart meter challenger may be required to present medical documentation and/or expert testimony demonstrating that the furnishing of a smart meter constitutes unsafe or unreasonable service** in violation of Section 1501 [of the Code] under the circumstances presented. *Susan Kreider v. PECO Energy Co.*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. Jan. 28, 2016).

Povacz II, 280 A. 3d at 999-1000 (emphasis added; footnote omitted).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. Cmwlth. 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 I*”). Therein, a federal district court rejected the customers’ “Fourteenth Amendment bodily integrity argument because their complaint failed to identify an arbitrary deprivation of a recognized liberty or property interest” and to aver that the city’s decision to employ smart

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, n. 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.*

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

B. ALJ's Initial Decision

In the Initial Decision, ALJ Chiodo made twenty (20) Findings of Fact (FOF) and reached eleven (11) Conclusions of Law (COL). *See I.D.* at 8-11, 21-22. 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.

At the outset, the ALJ noted the Complainant's acknowledgement that the Supreme Court ruled that Act 129 does not provide an opt-out of smart meter installation. As such, the ALJ found that to the extent that the Complainant requested to opt-out of a smart meter installation, that claim is denied because the Supreme Court's ruling is controlling that Act 129 does not provide electric customers with the ability to opt-out of smart meter installation. I.D. at 16 (citing Complainant Brief at 1; *Povacz II*).

The ALJ addressed the Complainant's argument that smart meters: (1) caused the Banerjees' health to deteriorate; and (2) caused certain electronic devices and appliances to stop working. Further, the ALJ noted Mr. Banerjee's acknowledgment of his lack of presenting expert testimony by postulating that expert testimony is not necessary because: (1) the Pennsylvania courts rejected expert testimony in other litigants' cases; and (2) he and Mrs. Banerjee described what they have experienced since the smart meter installation. I.D. at 16 (citing Complainant Brief at 1). Moreover, the ALJ highlighted that: (1) Mrs. Banerjee testified that she and Mr. Banerjee began experiencing health problems in 2014, when they believe PECO installed their first smart meter; (2) PECO stipulated that on March 6, 2024, the Company replaced the smart meter that was installed in 2019 with another smart meter because the existing meter had not sent readings since August 21, 2021, and bills had been estimated since then; and (3) assuming *arguendo* that the first smart meter was installed in 2014, the outcome of this decision would not change because no testimony was presented providing any causal link between the smart meter and Mr. and Mrs. Banerjee's alleged health concerns. I.D. at 16-17, n. 10 (citing Tr. at 35-36, 54; Answer at ¶ 2). Furthermore, the ALJ noted Mr. Banerjee's contention that: (1) he and Mrs. Banerjee would have been unaware that PECO intended to terminate their electric service if they had not found the termination notice in their yard; and (2) customer service representatives were rude during phone calls. I.D. at 16-17 (citing Tr. at 28, 37).

The ALJ also noted PECO's argument that the Complainant failed to: (1) meet his burden of proof to show any violation of the Code, Commission Regulation, or Commission Order; (2) present requisite expert testimony and medical documentation demonstrating that installation of the Company's smart meter constitutes unsafe or unreasonable service; and (3) present any testimony showing a causal connection between the smart meter and adverse health effects, as required by the Supreme Court, that the burden has not shifted to the Company to defend against such evidence. I.D. at 17 (citing Tr. at 79-80).

The ALJ found that the record evidence demonstrates that the Complainant failed to establish a *prima facie* case evidencing that PECO's installation of a smart meter constitutes a violation of Section 1501 of the Code. The ALJ noted that the Complainant did not present any reliable or credible evidence supporting any of the issues raised in the Complaint, including expert testimony demonstrating that smart meters are unhealthy or unsafe. Further, the ALJ cited *Povacz II* to note that the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the smart meter. I.D. at 17-18 (citing *Povacz II*, 280 A.3d at 1006).

The ALJ found that in the instant case, in addition to the absence of expert testimony presented by the Complainant, there is no evidence that the Complainant is qualified to offer expert testimony as an engineer, doctor, or other medical professional. Further, the ALJ noted Mrs. Banerjee's claims of adverse health effects are reduced to unsubstantiated opinions because there was no expert medical testimony to explain a causal connection between her health and Mr. Banerjee's health, and any alleged harmful effects of a smart meter. The ALJ highlighted that assertions, personal opinions, or perceptions do not constitute factual evidence, and the Commission has ruled that the same cannot be relied upon as substantial evidence. I.D. at 18-19 (citing *Norman v.*

Philadelphia Gas Works, Docket No. C-2018-2640719 (Opinion and Order entered October 7, 2021) (*Norman*) at 30; *Povacz II*, 280 A.3d at 1005).

The ALJ gave no weight to the Complainant's evidence (*i.e.*, the photographs of appliances and devices), finding that there is no reliable or credible evidence of any link between the smart meter and the broken appliances or devices in the photographs. The ALJ added that photographs of broken appliances and devices do not establish the necessary causal link. I.D. at 19 (citing Complainant Exh. C-1).

Next, the ALJ addressed the Complainant's claim that PECO provided inadequate notice of its intent to terminate service for lack of access to the Company's equipment. Specifically, the ALJ found that the Complainant did not meet his *prima facie* burden of proof that PECO violated the Code, a Commission Regulation, or a Commission Order. The ALJ noted that a utility may threaten to terminate service to a customer if a customer does not permit access to meters, service connections, or other property of the public utility for the purpose of replacement, repair, maintenance, or meter reading, including the installation of a smart meter. I.D. at 19 (citing 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3)). Here, the ALJ reasoned that although the Banerjees implied that the Company purposely left or threw the termination notice in their yard, they also acknowledged in their testimony that it was very rainy and windy on the day that they found the termination notice (which may not be the same day it was placed on their home), thereby making it plausible that the notice may have been placed on their door and then blew away due to the weather. Additionally, the ALJ noted that the Complainant's service was not terminated at any relevant time. I.D. at 19-20 (citing Tr. at 68).

The ALJ also found that the Complainant presented no factual testimony to support his claim that the Company's customer service was rude when Mr. Banerjee contacted PECO about not wanting a smart meter at his home. Accordingly, the ALJ

found that there is no evidence to find that the Company provided unreasonable customer service during Mr. Banerjee's contacts with PECO. I.D. at 20 (citing Tr. at 29).

The ALJ concluded that the Complainant failed to: (1) provide any reliable, credible evidence in support of his health and safety concerns related to smart meters; and (2) demonstrate that the installation of a smart meter at the service location constitutes unreasonable or inadequate service under Section 1501 of the Code. Accordingly, the ALJ dismissed the Complainant, finding that the Complainant failed to carry his burden of proof to establish that he is entitled to the relief requested from the Commission. I.D. at 20 (citing *Fenimore v. Pa. Elec. Co.*, Docket No. C-2022-3030605 (Final Order entered October 22, 2024)).

C. Exceptions

The Complainant's Exceptions consist of: (1) a six-page, largely single-spaced document; (2) a copy of the Complainant's Brief;²⁰ and (3) a Certificate of Service (COS).²¹

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

²⁰ See Exc. at 7-8.

²¹ We note that upon review of the Commission's case management system, the COS is saved as two separate single-page documents: (1) one document indicates the Parties served a copy of the Exceptions; and (2) one document is a signed copy of 52 Pa. Code § 1.58. Both documents were filed on the same day as the Complainant's Exceptions (*i.e.*, March 5, 2025).

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

In his Exceptions, the Complainant refers to a significant portion of the “History of the Proceeding” section in the Initial Decision, disputing and clarifying the ALJ’s summary of Mr. Banerjee’s arguments and position. Generally, the Complainant: (1) argues that whether or not he met his burden of proof is moot because he never sought to have the smart meter removed from his home; (2) contends that the Company’s removal of the malfunctioning smart meter from his home, on March 6, 2024, was unlawful; (3) avers that having an expert test the original malfunctioning smart meter was not his main focus; (4) disagrees with the focus placed on providing credible testimony in support of his concerns; (5) reiterates his claim that PECO service representatives were rude and abusive towards him and Mrs. Banerjee; and (6) repeats his position that PECO has not provided written assurance that the Company’s smart meters will not adversely impact his health, privacy, security, and electronic devices. Exc. at 1-6 (citing I.D. at 1-2, 4-5).

The Complainant also disputes Finding of Fact Nos. 18 and 19(a), which state as follows:

18. Mr. and Mrs. Banerjee never had an electrician come to their property to determine whether any electrical issues might be causing their appliances to malfunction. (Tr. at 4).

19. Exhibit C-1 consists of four photographs that can be described as follows:

(a) Two photographs are screenshots of a blank laptop computer screen, one purportedly taken on June 23, 2024, and the other on September 24, 2024,

which the Complainant claims the smart meter caused the computer screens to go blank. (Tr. at 57-60).⁴

⁴ For the record, PECO's counsel wished to note that although the photographs were allegedly taken on different dates, the photographs appear identical including the mouse marker in the exact same position. (Tr. at 60-61).

I.D. at 10, FOF Nos. 18, 19(a). Mr. Banerjee disagrees with Finding of Fact No. 18, countering that an electrician confirmed that electrical issues are not causing the Complainant's appliances to malfunction. Regarding Finding of Fact No. 19(a), the Complainant states that the cursor cannot be controlled on a blank screen. Exc. at 5 (citing I.D. at 10, FOF Nos. 18, 19).

The Complainant also disagrees with the ALJ's reasoning that based on the Banerjees' testimony, it is entirely plausible that the November 2021 Termination Notice blew into the yard due to the inclement weather. Additionally, for the first time in this proceeding, the Complainant states that the November 2021 Termination Notice had the wrong account number on it. Exc. at 5 (citing I.D. at 19-20).

D. Replies to Exceptions

In its Replies, PECO counters that the Complainant's claim is barred by Pennsylvania law. PECO summarizes that on August 21, 2021, it was determined that the AMI meter was malfunctioning and not sending reads, and that the Complainant refused access to replace the meter without receiving written assurances from the Company that the AMI meter would not interfere with his health, privacy, or appliances. PECO submits that it is well settled that under Act 129, the Company is required to install AMI meters for its electric distribution customers. PECO further submits that the

Company is not obligated to provide the Complainant with written assurances regarding AMI meters. R. Exc. at 3-4.

PECO contends that only EDCs are authorized to select and install a specific type of electric meter, and the Company's system no longer supports a non-AMI meter. Further, PECO disagrees with the Complainant's argument that the Company's replacement of the malfunctioning smart meter at the Complainant's residence, on March 6, 2024, was unlawful. Moreover, PECO refers to the Right of Access Provision in its tariff to argue that the Company is not required to notify its customers of meter maintenance on their property if the meter is accessible.²² R. Exc. at 4-5 (citing *Povacz II*; Right of Access Provision).

PECO also argues that a customer does not have the right to opt-out of the installation of an AMI meter and that the Complainant's contention that the Company must relocate the meter at its cost is without merit. R. Exc. at 5 (citing *Mary Paul v. Pa. PUC*, 460 C.D. 2019 (2023); *Janice Denito Branagh v. Pa. PUC*, 1857 C.D. 2019 (2023)). Further, PECO argues that the Complainant has failed to: (1) make a *prima facie* case for an accommodation; (2) proffer any expert evidence in support of his claim; and (3) meet his burden of proof regarding an accommodation. R. Exc. at 5 (citing *Povacz II* at 49). Moreover, PECO argues that contrary to the Complainant's averment that he is entitled to relocation of a smart meter because his broken meter was replaced without his consent, the Company attempted to contact the Complainant several times to schedule an inspection of the property for a meter relocation, but Mr. Banerjee did not comply with any suggested or scheduled appointments, and the Company is not required

²² We note that in its Replies to Exceptions, PECO introduces its citation to the Right of Access Provision as "PECO's Tariff, 105. Right of Access." R. Exc. at 4 (emphasis added). Given the context of this statement and the Right of Access Provision, we believe PECO intended to refer to Rule 10.5 in the Company's tariff. Accordingly, we find PECO's reference here to "105. Right of Access" to be an inadvertent misstatement.

to relocate the meter at its own expense, even assuming *arguendo*, that the Complainant did meet his burden of proof regarding an accommodation. R. Exc. at 5-6.

Accordingly, PECO submits that the Complainant has failed to meet his burden of proving that the Company violated any Commission statute, Regulation, or law, and therefore, the Complainant's Exceptions should be denied. R. Exc. at 6.

E. Disposition

As an initial matter, we shall deny the Complainant's Exceptions to the extent that the Complainant attempts to argue that the ALJ provided an incorrect and insufficient description of Mr. Banerjee's arguments and position when the ALJ summarized the Parties' filings in the procedural history in the Initial Decision. We find no error with the ALJ's description of the Parties' positions when the ALJ summarized the Parties' filings in the procedural history in the Initial Decision.

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

In the present case, the Complainant initially sought an alternative to the Company's wireless smart meter, including not installing the smart meter. Complaint at 4. Subsequently, the Complainant acknowledged the Supreme Court's ruling that

Act 129 does not provide an opt-out of smart meter installation. Complainant Brief at 1. Accordingly, the ALJ denied the Complainant's request for an opt-out of a smart meter installation, finding that the Supreme Court's ruling is controlling that Act 129 does not provide an ability to opt-out of smart meter installation). I.D. at 16 (citing *Povacz II*). We agree with the ALJ's analysis and conclusion that PECO is required to install smart meters in accordance with Act 129, and electric customers may not opt-out of smart meter installation. I.D. at 22, COL No. 9.

As noted, *supra*, in *Povacz II*, the Supreme Court expressly concluded that the complainant's assertion of the right to "opt-out" of Act 129 was unfounded. The Supreme Court further found that a customer may seek an accommodation to smart meter installation, provided that the customer first established a violation under Section 1501 of the Code. Therein, the Supreme Court stated:

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

Povacz II at 983-84. Therefore, by establishing that there is no "opt-out" permitting a customer to refuse smart meter installation, the Supreme Court's holding in *Povacz II* is controlling on the question. Accordingly, to the extent the Complainant asserts a right to opt out of Act 129 to refuse smart meter installation, we shall deny the Complainant's Exceptions.

As discussed, *infra*, we agree with the ALJ's analysis and conclusion that the Complainant did not meet his 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 of the Code. I.D. at 17, 19-20, 22, COL No. 11. Although the Complainant expressed that he does not want a smart meter at his property, we agree with the ALJ's analysis and conclusion that, under the provisions of Act 129, PECO, an EDC, is required to deploy smart meters to all electric distribution customers.²³ I.D. at 22, COL No. 9 (citing *Povacz I*). Further, we agree with the ALJ's conclusion that the Complainant has not provided any proof to demonstrate how PECO, which is required to comply with Act 129 by installing a smart meter at the Complainant's residence, violated the Code, a Commission Regulation, or a Commission Order. I.D. at 19, 22, COL No. 11.

Indeed, the Commission declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Implementation Order* at 14. The Commission 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 PECO and the ALJ that under Act 129, the Company is required to install smart meters for all of its customers, including Mr. Banerjee. R. Exc. at 3-4; I.D. at 22, COL No. 9. Therefore, we find no error in the ALJ's determination that the installation of the smart meter was mandatory, as set forth in the Initial Decision.

Next, we will address the Complainant's claim that the Company's installation of a smart meter at his home constitutes unsafe and unreasonable service. At the hearing, Mrs. Banerjee claimed that after a smart meter was first installed on her home in 2014: (1) she began to suffer from adverse health symptoms; (2) electronic

²³ As discussed, *supra*, PECO claimed that it installed an AMI smart meter at the Complainant's property on June 27, 2019. However, that meter was no longer sending reads as of August 21, 2021. See I.D. at 9, FOF No. 10-11; Answer at 3.

devices and appliances began to malfunction or stop working; and (3) her email accounts and bank accounts were hacked. Tr. at 34-36, 40. Similarly, in his Brief, the Complainant echoed Mrs. Banerjee's testimony, averring that since the first smart meter was installed on their property, both he and his wife: (1) have experienced adverse health symptoms; (2) have "lost" electronic devices and appliances; and (3) have been electronically hacked. Complainant Brief at 1-2. In his Exceptions, the Complainant generally attempts to advance his argument that the Company's smart meters have caused, and continue to cause, unreasonable and adverse health effects and a safety risk. Exc. at 1-5. Therefore, each of the Banerjees' claims arise, if at all, as a claim under Section 1501, asserting unreasonable or unsafe provision of service. 66 Pa.C.S. § 1501.

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

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

The Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Povacz II* at 1008. Once the parties have presented their evidence, the onus then falls on the fact-finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.

In the present case, the ALJ's analysis and disposition turned on the Complainant's failure to establish a *prima facie* case that PECO's installation of a smart meter constitutes a violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. *See I.D.* at 17. In his Exceptions, Mr. Banerjee, essentially, challenges the ALJ's finding that the Complainant failed to carry his burden to establish that he is entitled to the relief requested from the Commission. The ALJ found that the Complainant did not provide any: (1) reliable or credible evidence on any of the issues raised in the Complaint; (2) expert testimony demonstrating that smart meters are unhealthy or unsafe; or (3) evidence that Mr. Banerjee is qualified to offer expert testimony as an engineer, doctor, or other medical professional. Further, the ALJ found that the Complainant's photographs of broken appliances and a blank laptop screen do not establish a necessary causal link with the smart meter.²⁴ Moreover, the ALJ found that absent expert testimony

²⁴ As previously noted, the Complainant's Exhibit shows the following images: (1) a microwave; (2) a laptop screen; and (3) a kitchen sink with InSinkErator. Complainant Exh. C-1.

and any credible evidence, the Complainant’s claims are unsubstantiated opinions.²⁵ I.D. at 17-19. Accordingly, the ALJ found that personal assertions, opinions, or perceptions do not constitute factual evidence and cannot be relied upon as substantial evidence. I.D. at 18, 21, COL. No. 5 (citing *Povacz II*; *Norman*). We concur.

Upon review, we agree with the ALJ’s well-reasoned analysis in the Initial Decision and the ALJ’s conclusion that the Complainant failed to present any credible evidence or expert testimony to support his allegations that PECO’s smart meter deployment is unsafe or unreasonable, in violation of Section 1501 of the Code. Thus, we agree with the ALJ that the Complainant failed to carry his burden of proving that PECO violated the Code or a Commission Regulation or Order, by installing a smart meter at the Complainant’s property. I.D. at 20, 22, COL. No. 11. Indeed, absent expert testimony and credible evidence to substantiate the Complainant’s allegations, the Banerjees’ personal testimony and photographs of random electronics and appliances do not prove, by a preponderance of the evidence, that PECO’s service is unsafe and that a causal connection exists between the allegedly unsafe service and the alleged harm. *See Povacz II* at 1007. Therefore, we find that the Complainant’s argument on this matter has no merit.

To prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See 2019 Povacz Order*. Here, the ALJ pointed out that the Complainant presented no evidence or expert testimony to corroborate his health or safety allegations. I.D. at 18.

²⁵ We note that although Mrs. Banerjee testified to adverse health effects, she does not have any medical background to offer a medical expert opinion whether there is a medical correlation between the smart meter and any alleged health problems experienced by the Banerjees. I.D. at 9, FOF No. 7; Tr. at 40-44.

Accordingly, the ALJ properly found that the Complainant failed to present credible evidence to establish that the installation of a smart meter would be unsafe or unreasonable under Section 1501 of the Code. Therefore, the ALJ properly concluded that the Complainant failed to establish a violation of Section 1501 of the Code. Specifically, we affirm the ALJ's conclusion, in Conclusion of Law No. 11, that the Complainant failed to carry his burden of proof establishing that PECO violated the Code or a Commission Regulation or Order. I.D. at 20, 22, COL No. 11.

Regarding the Complainant's argument challenging the accuracy of Finding of Fact No. 18, at the hearing, Mrs. Banerjee testified that an electrician did not visit the Banerjee's property to determine that PECO's meter was causing problems. Tr. at 41. On review, we find that Finding of Fact No. 18 correctly reflects the testimony of Mrs. Banerjee. However, we find that there is a typographical error in Finding of Fact No. 18. Although the pertinent hearing testimony is on page 41 of the Hearing Transcript, Finding of Fact No. 18 cites to page 4. Therefore, Finding of Fact No. 18 should state, as follows:

18. Mr. and Mrs. Banerjee never had an electrician come to their property to determine whether any electrical issues might be causing their appliances to malfunction. (Tr. at 41).

We shall modify Finding of Fact No. 18 to reflect the correct page number of the Hearing Transcript. However, this correction is immaterial to our finding that Finding of Fact No. 18 correctly reflects Mrs. Banerjee's testimony that the Banerjees have not had an electrician come to their property to determine whether any electrical issues might be causing their appliances to malfunction. This is a minor typographical error and does not affect the rights of the Parties in the proceeding. The Initial Decision is modified to correct this typographical error. The Complainant's remaining argument challenging the accuracy of Finding of Fact No. 18 is denied.

Further, there is no error in Finding of Fact No. 19(a). We find that Finding of Fact No. 19(a) correctly reflects that: (1) Complainant Exhibit C-1 includes two photographs of a blank laptop screen, purportedly taken on June 23, 2024, and September 23, 2024; (2) Mr. Banerjee claimed that the smart meter caused the screens to go blank; and (3) counsel for PECO noted that both photographs appear identical and the mouse marker is in the same position. Tr. at 57-60. Accordingly, we find no merit to the Complainant's argument challenging the accuracy of Finding of Fact No. 19(a).

To the extent that the Complainant disagrees with the ALJ's finding regarding the November 2021 Termination Notice, we agree with the ALJ's reasoning that it is plausible that the November 2021 Termination Notice blew into the yard. I.D. at 19-20. Indeed, as noted by the ALJ, both the Complainant and Mrs. Banerjee testified that when they found the November 2021 Termination Notice in their yard, it was very windy and pouring rain. Tr. at 37, 68. Additionally, the Complainant presented no evidence or testimony at the hearing to support his claim that the November 2021 Termination Notice had the wrong account number, raised for the first time in this proceeding in his Exceptions.

Finally, regarding the Complainant's argument that PECO's replacement of the malfunctioning smart meter at the Banerjees' property with another smart meter was unlawful, this argument is rejected. As discussed, *supra*, PECO stipulated that on March 6, 2024, a Company representative switched out the existing smart meter with a new smart meter because the existing smart meter was no longer providing the Company with proper readings. Tr. at 6-7, 53-54. It is indisputable that a public utility may threaten service termination to a customer if a customer does not permit a public utility access to meters, service connections, or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading. *See* 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3). Accordingly, to the extent that the Complainant argues that PECO was unlawful in its removal and replacement of the malfunctioning

smart meter at the service address on March 6, 2024, we shall deny the Complainant's Exceptions on this issue without further discussion.

In summary, we find nothing in the Complainant's Exceptions to refute the ALJ's conclusion that Mr. Banerjee failed to demonstrate that the installation of a smart meter constitutes unsafe or unreasonable service, in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. Therefore, for all of the foregoing reasons, we shall: (1) deny the Complainant's Exceptions; (2) adopt the Initial Decision, as modified to correct a typographical error in Finding of Fact No. 18; and (3) dismiss the Complaint, with prejudice.

IV. Conclusion

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

IT IS ORDERED:

1. That the Exceptions filed by Siddhartha Banerjee on March 5, 2025, at Docket No. F-2022-3032337, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Gail M. Chiodo, issued on February 12, 2025, at Docket No. F-2022-3032337, is adopted, as modified by this Opinion and Order.

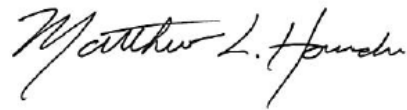
3. That Finding of Fact No. 18 shall be modified to read, as follows: "Mr. and Mrs. Banerjee never had an electrician come to their property to determine

whether any electrical issues might be causing their appliances to malfunction.
(Tr. at 41).”

4. That the Formal Complaint, filed on May 2, 2022, by Siddhartha Banerjee against PECO Energy Company, at Docket No. F-2022-3032337, is denied and dismissed, with prejudice.

5. That this proceeding at Docket No. F-2022-3032337 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: April 24, 2025

ORDER ENTERED: April 24, 2025