

**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

Liza Mousios

C-2019-3007989

v.

Metropolitan Edison Company

Roy Cumming

C-2019-3007995

v.

Metropolitan Edison Company

**OPINION AND ORDER**

## Table of Contents

I.	Background.....	2
II.	History of the Proceeding.....	5
III.	Discussion.....	17
	A. Legal Standards .....	17
	1. General Burden of Proof for Complaint Proceeding .....	17
	2. Burden of Proof Applied to Section 1501 Complaint Challenging Smart Meter Installation .....	20
	3. Other Relevant Legal Standards.....	24
	B. ALJ’s Initial Decision .....	25
	C. Exceptions .....	29
	1. Jurisdiction Over ADA Claims(Complainants’ Exceptions at 1, 5).....	30
	2. Procedural Errors (Complainants’ Exceptions at 3-4, 12-13; Statement of Errors at ¶¶ 2-3, 8, 16). .....	31
	3. Evidentiary Determination (Complainants’ Exceptions at 2-5, 14-17; Statement of Errors at 4-6, 9-13). .....	32
	4. FCC Rulings (Complainants’ Exceptions at 3-4; Statement of Errors at ¶ 10).....	33
	5. Smart Meter Opt-Out (Complainants’ Exceptions at 15) .....	33
	6. Improper Failure to Recuse (Complainants’ Exceptions at 17-18; Statement of Errors at ¶ 21) .....	34
	7. General Constitutional Violations (Complainants’ Exc. at 12-13) .....	34
	D. Replies to Exceptions .....	34
	E. Disposition.....	39
	1. Lack of ADA jurisdiction.....	40
	2. Procedural Errors.....	41
	3. Evidentiary Determinations .....	42
	4. FCC Rulings.....	46
	5. Smart Meter Opt-Out .....	47
	6. ALJ’s Jurisdiction .....	48
	7. Constitutional Arguments .....	49
IV.	Conclusion.....	51

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Liza Mousios and Roy Cumming (collectively the Complainants) filed on June 26, 2024,<sup>1</sup> in the above-captioned proceeding. The Exceptions were timely filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene D. Heep, which the Commission served on the Parties on June 13, 2024. On July 15, 2024, Metropolitan Edison Company (Met-Ed or the Company) filed Reply Exceptions. For the reasons discussed below, we shall deny the Complainants' Exceptions, adopt the Initial Decision of ALJ Heep, and dismiss the Formal Complaints (Complaints), consistent with this Opinion and Order.

**I. Background**

This case involves two consolidated Complaints 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

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<sup>1</sup> As discussed, *infra*, the Complainants made a series of filings within the twenty day window to file Exceptions that was specified in the Secretarial Letter accompanying the Initial Decision that, while styled separately, can be construed as alleging Exceptions. Because the Complainants are appearing *pro se* we will exercise our discretion pursuant to 52 Pa Code § 1.2(a) to consider them simultaneously in the context of Exceptions.

Company Tariff Electric Pa. P.U.C. No. 1, (FirstEnergy PA Tariff) Rule 8 at Original Page No. 44, effective January 1, 2024 (FirstEnergy PA Tariff Rule 8).<sup>2</sup>

Complainant Roy Cumming (Complainant Cumming or Mr. Cumming) is a Met-Ed electric customer who has been notified of Met-Ed's intent to install a smart meter at his residence (the service address) that provides the function of automatic meter reading (AMR). Complainant Liza Mousios (Complainant Mousios or Ms. Mousios) resides at the service address. The Complainants<sup>3</sup> requested that Met-Ed not install smart meters at the service address and in their neighborhood due to health and safety concerns. Complaint at 3.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and

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<sup>2</sup> 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.

<sup>3</sup> As set forth more fully below, the Complaints of Ms. Mousios and Mr. Cumming were consolidated for the purpose of this proceeding, including but not limited to disposing of the Preliminary Objections, evidentiary hearing, and decision. *See Interim Order Consolidating Complaints* entered on May 14, 2019. Accordingly, our reference to the Complaints, and to later filed pleadings, should be construed to encompass the averments in both Ms. Mousios' and Mr. Cummings' filings, which are substantially similar. In turn, Met-Ed's responsive filings should also be construed as applicable to both Complainants, as, although Met-Ed made separate filings in each Complainant's docket, the substantive responses and averments were substantially similar.

to furnish smart meter technology within their respective service territories 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 February 21, 2019, Ms. Mousios filed a Complaint against Met-Ed, which was docketed at C-2019-3007989. Also on that date, Mr. Cumming filed a virtually identical Complaint on his own behalf, which was docketed at C-2019-3007995.

The Complainants indicated that a reliability, safety or quality problem existed with Met-Ed's service. Complaints at 3. In further explanation, the Complainants each indicated as follows: "Met-Ed is threatening to install smart meters, which have known health and safety and fire hazards. I am submitting a claim [sic] under title 66, Section 1501 and 1502 health and safety violations. I am also requesting an accommodation under the Americans with Disabilities Act." Complaints at 3. For relief, the Complainants' request indicated as follows: "no smart meters at this address and in our neighborhood! The analog meter works fine. We refuse the deleterious smart meters!" *Id.*

On March 13, 2019, Met-Ed responded to each Complaint by filing both an Answer and New Matter and Preliminary Objections (Preliminary Objections or POs).

In its Answer and New Matter, Met-Ed denied, *inter alia*, that reliability, safety, or quality problems with the electric service existed at the service address. Answer and New Matter at ¶ 4. Additionally, Met-Ed denied that the smart meter it was attempting to install at the service address has known health, safety, and fire hazards. Met-Ed also denied that installation of a smart meter at the service address would be a violation of 66 Pa.C.S. §§ 1501 and 1502. *Id.*

In its New Matter, Met-Ed alleged that the Complaints were legally insufficient, warranting dismissal, with prejudice. In support, Met-Ed indicated that on February 5, 2019, Ms. Cumming<sup>4</sup> contacted the Company to refuse installation of a smart meter at the service address. Met-Ed also averred that, in compliance with Act 129 and its Commission-approved Smart Meter Plan, it was in the process of deploying smart meters in its service territory. Accordingly, Met-Ed argued that neither its Smart Meter Plan nor Act 129 would enable the Commission to grant the Complainant's requested relief; thus, the Complainants should be dismissed with prejudice. Answer and New Matter at ¶¶ 14-16, 9.

Additionally, Met-Ed claimed that the Complainants' requested relief, that no smart meters should be provided in the neighborhood, failed to meet the requisite standard that the Complainants must have a direct, immediate, and substantial interest in the subject matter of the proceeding to have standing. Answer and New Matter at ¶¶ 20-24. Met-Ed requested that the Complaint be dismissed, with prejudice, or, alternatively, that the Commission schedule the matter for a prehearing conference. *Id.* at 9.

In its Preliminary Objections, Met-Ed alleged that the Complaints should be dismissed, with prejudice, for two reasons: (1) pursuant to 52 Pa. Code §5.104(a)(4),

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<sup>4</sup> Met-Ed asserted a belief that Ms. Cumming and Complainant Mousios are the same person. Answer and New Matter at 6, n. 9.

the Complainants failed to state a claim upon which the Commission could grant relief; and (2) pursuant to 52 Pa. Code 5.101(a)(7), the Complainants lacked standing to pursue relief on behalf of the Complainants ‘neighbors. POs at 5-10; *Id.* at ¶¶ 27-32.

On March 28, 2019, the Complainants issued a Reply to New Matter.<sup>5</sup> The Complainants *inter alia*, generally denied Met-Ed’s averments that the Complaints were legally insufficient and specifically denied that a lack of standing existed. Reply to New Matter at 1-2. Additionally, the Complainants opposed the prehearing conference and indicated that they wanted media coverage of any hearing. *Id.* at 2.

On April 20, 2019,<sup>6</sup> Complainant Mousios and Complainant Cumming each submitted virtually identical documents titled as “Response and Preliminary Objections to Metropolitan Edison Company” (Answer to POs). In their respective Answers to POs, the Complainants responded, in corresponding paragraphs, to each of the thirty-two (32) averments made in Met-Ed’s POs by way of objecting to almost all paragraphs. The crux of the Complainants’ objections were that: (1) mandatory smart

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<sup>5</sup> We acknowledge that the Complainants’ post-Complaint filings do not strictly comply with our Regulations which requires, *inter alia*, that paper filings made with the Commission must be typewritten with 1-inch margins. 52 Pa. Code § 1.32(a)(1). Nevertheless, particularly because the Petitioners are appearing, *pro se*, we will accept all the Complainants’ handwritten filings 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. However, while best efforts were made to accurately present the Complainants’ averments, legibility issues existed. Additionally, because all the Complainants’ filings were submitted via the U.S. Postal Service, the dates that the Complainants identified on each of their filings preceded the date that the Commission’s Secretary’s Bureau received the document. Consistent with our regulation at 52 Pa. Code § 1.11, *Date of filing*, the filing dates for each document referenced in this Opinion and Order represent the date that each of those documents was received by the Commission’s Secretary’s Bureau. 52 Pa. Code § 1.11(a)(1).

<sup>6</sup> Each Complainant initially submitted an Answer to Met-Ed’s Preliminary Objections prior to April 20, 2019; however, on April 9, 2019, the Commission’s Secretary’s Bureau issued each Complainant a letter directing that identified document defects be addressed within ten (10) days. The Complainants complied.

meter installation is not required because Act 129 is an opt-in statute; (2) Met-Ed is violating, *inter alia*, 66 Pa. C.S. 1501 and the Americans with Disabilities Act (ADA); (3) smart meters subject Pennsylvania residents to health damages, fires, and invasion of privacy; (4) the Complainants have health issues for which exposure to smart meters is contraindicated. Answers to POs at 1-7. The Complainants concluded the Answers to POs by requesting that Met-Ed's Preliminary Objections be stricken and that the Complainants' objections be upheld. *Id.* at 7.

Additionally, in their Answers to POs, the Complainants asserted their own Preliminary Objections pursuant to 52 Pa. § Code 5.101(a)(2), alleging Met-Ed's inclusion of a scandalous or impertinent matter and 52 Pa. § Code 5.101(a)(4), alleging the legal insufficiency of Met-Ed's Preliminary Objections. Answer to POs at ¶ 10 (citing 52 Pa. § Code 5.101(a)(2) and 52 Pa. § Code 5.101(a)(4)). Specifically, the Complainants alleged that the scandalous aspect of Met-Ed's Preliminary Objections were, *inter alia*, "comprised to subjecting Pennsylvania residents to health damages, fires which have resulted in fatalities and have been ascribed to smart meters by fire chiefs and invasion of privacy." *Id.* Additionally, the Complainants also alleged that Met-Ed's Preliminary Objections were legally insufficient because the Complainants claimed that Met-Ed was violating the law, including violating "the original Act 129" and the ADA. *Id.*

On April 23, 2019, ALJ Emily I. DeVoe (ALJ DeVoe) was assigned as a Motion Judge to rule on matters arising in the preliminary phase of the proceedings. On May 14, 2019, ALJ DeVoe issued an Interim Order Consolidating Complaints (*Interim Order Consolidating Complaints*) ordering that the Complaints filed by Ms. Mousios and Mr. Cumming be consolidated for the purposes including, *inter alia*, disposing of the Preliminary Objections, evidentiary hearing, and decision. *Interim Order Consolidating Complaints* at 5.

On May 15, 2019, ALJ DeVoe issued a Corrected Interim Order Granting in Part and Denying in Part Respondent's Preliminary Objections (*Interim Order on Met-Ed's POs*).<sup>7</sup> In the *Interim Order on Met-Ed's POs*, the ALJ granted Met-Ed's preliminary objection asserting that the Complainants lacked standing to raise issues on behalf of anyone other than themselves or in relation to any property other than the service address. *Interim Order on Met-Ed's POs* at 7-10. However, the ALJ denied Met-Ed's preliminary objection that asserted that the Complaints were legally insufficient, thereby affording the Complainants an opportunity to proceed with their Complaints. *Id.* at 8-10.

On May 16, 2019, ALJ DeVoe issued an Interim Order Dismissing Complainants' Preliminary Objections (*Interim Order on Complainants' POs*). In the *Interim Order on Complainants' POs*, the ALJ dismissed the Complainants' Preliminary Objections because (1) the Commission's regulations do not permit parties to file preliminary objections in response to preliminary objections; and (2) the issues that the Complainants raised in their preliminary objections regarding health risks and the legality of smart meter installation, involved issues of fact and/or law that required resolution through discovery and the administrative hearing process. *Interim Order on Complainants' POs* at 4-5.

On May 20, 2019, a Call-In Telephone Pre-Hearing Conference Notice was issued establishing July 23, 2019 at 10 a.m. as the date and time for the telephonic hearing to begin. On May 22, 2019, ALJ DeVoe issued an *Interim Order Scheduling Pre-Hearing Conference (Interim Prehearing Order)* establishing the process and procedures for the telephonic hearing on July 23, 2019. *Interim Prehearing Order* at 2-4. On May 22, 2019, ALJ DeVoe also issued an *Interim Order Establishing Litigation*

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<sup>7</sup> The ALJ initially issued an Interim Order for POs dated May 14, 2019, but to account for a correction of an incorrect date on page 10, the corrected version was issued on May 15, 2019.

*Schedule (Scheduling Order)* establishing deadlines for parties to submit information, identify expert witnesses, and to file a status report. *Scheduling Order* at 1-2.

On July 24, 2019, the ALJ issued an Interim Order (*Deadline Extension Order*), which identified, *inter alia*, extended deadlines established at the prehearing conference for the submission of Complainants' witness information and status report. *Deadline Extension Order*; Tr. at 40-42, 44, and 75.

On October 1, 2019, a Call-In Evidentiary Hearing Notice was issued and it established October 28- October 29, 2019 as the dates for the telephonic evidentiary hearings. On October 4, 2019, ALJ DeVoe issued a *Prehearing Order (Prehearing Order)*. ALJ DeVoe's *Prehearing Order* established the process and procedures for the telephonic evidentiary hearing, including, *inter alia*, presentation of exhibits, presentation of oral testimony, and submission of motions prior to the hearing. *Prehearing Order* at 1-7.

On October 7, 2019, the Complainants filed a Status Report indicating, *inter alia*, a request for an in-person hearing rather than a telephonic hearing. *Complainants' October 7 Status Report*.

On October 21, 2019, the Commission issued a Hearing Reschedule/Judge Change Notice setting January 14 and January 15, 2020 as the dates for in-person evidentiary hearings at the Commission's Philadelphia office and indicating that ALJ Heep would preside.

On November 20, 2019, the Complainants filed a Motion to Delay the Hearing (*Complainants' Hearing Delay Motion*). In the *Complainants' Hearing Delay Motion*, the Complainants averred, *inter alia*, that the in-person evidentiary hearings

should be delayed pending the outcome of smart meter cases on appeal. *Complainants' Hearing Delay Motion* at 1.

On December 13, 2019, ALJ Heep issued an order denying the *Complainants' Hearing Delay Motion (December 2019 Order)*. Additionally, the *December 2019 Order* established January 7, 2020, as the deadline for parties to provide one another with a final witness list and copies of all exhibits and statements to be presented at the hearing. The Parties were also directed to provide five copies of any exhibits to be presented at hearing, with each exhibit being properly marked for identification. *December 2019 Order* at 2-3.

On January 3, 2020, the Complainants filed a Motion to Stay Hearing (*Complainants' Motion to Stay*) alleging, *inter alia*, that in November of 2019, their expert witness, Mr. William Bathgate, was prevented from performing an evaluation of the service address due to poor weather conditions. *Complainants' Motion to Stay* at 5.

On January 7, 2020, Met-Ed's counsel filed a letter and certificate of service (*Met-Ed Exhibit Service Letter*) certifying that it was providing ALJ Heep and the Complainants with three copies of the hearing exhibits that Met-Ed intended to present at the evidentiary hearing. *Met-Ed Exhibit Service Letter* at 1.

On January 8, 2020, Complainant Mousios called the Commission and verbally requested that the hearing be conducted in writing due to illness. *See* ALJ Heep's Order issued on January 9, 2020 (*January 9 Order*). During the call,<sup>8</sup>

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<sup>8</sup> On February 12, 2020, the Complainants also submitted a written request for a "hearing in writing" styled as a "Motion for Judge Heep to abide by her decision to allow Mr. Cumming and Ms. Mousios to do their hearing in writing as opposed to Judge Heep ordering a telephone hearing expofacto [sic]."

Complainant Mousios averred that Complainant Cumming did not object to a hearing in writing. *See January 9 Order* at 2.

In the *January 9 Order*, the ALJ denied the Complainants' Motion for Stay, but modified the procedural schedule and case deadlines to accommodate the Complainants' presentation of written testimony by expert witness Mr. Bathgate. *January 9 Order* at 3-4. The in-person hearings set for January 14 and January 15, 2020 were rescheduled to March 30, 2020 for purposes limited to cross-examination and pending matters at the ALJ's discretion. *Id.* at 4-5.

On January 29, 2020, the Complainants filed a pleading labeled as both a (1) "Motion for Judge Heep to Vacate Her Own Violation of Complainants' Right to Due Process and Right to Preserve Their Issues on Appeal In Her Preventing Their Use of an Expert Witness;" and (2) a "Motion and Request to Deputy Chief Administrative Law Judge Christopher Pell for a Different Judge Such as Administrative Law Judge DeVoe Who We Previous Had" (collectively, the *Complainants' ALJ Motion*). On January 30, 2020, Met-Ed submitted a letter in opposition to the *Complainants' ALJ Motion (Met-Ed's Response to the ALJ Motion)*.

By Order dated January 31, 2020 (*January 31 Order*), the ALJ denied the *Complainants' ALJ Motion*. *January 31 Order* at 12. Applying the Commission's regulation for disqualification of a presiding officer, 52 Pa. Code § 5.482, the ALJ determined that the Complainants' right to due process had not been violated. *January 31 Order* at 9-10 (citing 52 Pa. Code § 5.482). However, the ALJ also determined to reschedule the call-in telephonic cross-examination date to afford the Complainants additional time to submit evidence and testimony from expert witnesses. The deadlines for service of the Complainants' Direct Testimony and exhibits were extended until February 28, 2020. *January 31 Order* at 9-10.

On March 19, 2020, Met-Ed filed a letter (*Met Ed's March 19 Letter*) indicating that the Complainant failed to submit Direct Testimony in accordance with the extended litigation schedule. *Met Ed's March 19 Letter* at 1.

On April 20, 2020, in recognition of the stay-at-home order related to the COVID-19 pandemic, the ALJ issued an order revising the litigation deadlines for the proceeding (*April 2020 Order*). The *April 2020 Order* extended the deadline for, *inter alia*, written testimony and submission of exhibits.<sup>9</sup> *April 2020 Order* at 1-2.

On June 4, 2020,<sup>10</sup> the Complainants filed a single document entitled both “*Motion to Stay*” and “*Motion for Recusal*” (collectively, the *Complainants' June 4 Motions*). The Complainants alleged that they should be entitled to a stay of proceeding during the pendency of eleven appellate proceedings related to smart meters and to accommodate the quarantine of their expert witness, Mr. Bathgate. *Complainants' June 4 Motions* at 1. On June 5, 2020, Met-Ed filed a letter opposing the *Complainants' June 4 Motions*. On June 15, 2020, the ALJ issued an Order denying the *Complainants' June 4 Motions*.

On June 24, 2024, the Complainants made two filings containing substantially similar averments and derogatory statements. See *Complainants' Motion for Disqualification* dated June 24, 2020 and the *Complainants Motion to Dismiss* dated June 24, 2020. Met-Ed opposed both filings and, in an Order dated July 2, 2020 (*July 2020 Order*) the ALJ dismissed the Motions. *July 2020 Order* at 1-2. The ALJ's *July 2020 Order* also directed that the Parties email all testimony and exhibits to be

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<sup>9</sup> The extensions, *inter alia*, provided the Complainants with an extension for filing the testimony and exhibits of Mr. Bathgate until July 9, 2020.

<sup>10</sup> Although the Complainants dated the document for June 4, 2020, they did not file the document with the Commission's Secretary's Bureau. As a result, the document was not filed with the Commission until ALJ Heep received it, identified it as unfiled, and acted to have the Commission file it on July 6, 2020.

considered to a designated email address in accordance with the procedural schedule.  
*Id.* at 2.

On July 10, 2020, the Complainants submitted a Main Brief (Complainants' M.B.).

On July 22, 2020, Met-Ed's counsel filed a letter (*Met Ed's July 22 Letter*) indicating that the Complainants failed to present Direct Testimony in accordance with the litigation schedule despite numerous extensions. As a result, Met-Ed indicated that it would not be serving Rebuttal Testimony. *Met Ed's July 22 Letter* at 1.

On August 10, 2020, the ALJ issued a Briefing Order (*August 2020 Briefing Order*) which, *inter alia*, established the deadlines and basis requirements for parties Main Briefs and Reply Briefs. *August 2020 Briefing Order* at 1-2. Met-Ed submitted a Main Brief (Met-Ed M.B.) on September 9, 2020 and a Reply Brief (Met-Ed R.B.) on September 30. The Complainants, who had submitted a Main Brief on July 10, 2020, did not submit a Rely Brief.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. Notice was provided on November 14, 2023, informing the Complainants of the lifting of

the stay and their procedural rights and obligations under the Commission's regulations. I.D. at 6.

On December 13, 2023, the ALJ issued a Briefing Order and Order Regarding Objections to Discovery (*December 2023 Order*), which identified revised deadlines consistent with the lifting of the stay. *December 2023 Order* at 1-6. While prior deadlines were not modified, the Parties were afforded the opportunity to submit the following: Supplemental or Amended Direct Testimony by February 6, 2024, Supplemental or Amended Rebuttal Testimony by February 20, 2024, Supplemental Main Briefs by March 12, 2024 and Supplemental Reply Briefs by March 19, 2024. *Id.* at 5-6. Finally, by January 16, 2024, any party not submitting Supplemental or Amended Testimony was required to provide the other party and the ALJ with a copy of any previously exchanged testimony that the party would like to be considered or offered into evidence. *Id.*

On January 16, 2024, Met-Ed filed a letter (*Met-Ed Letter of January 16*) indicating that no testimony was served in the proceeding; accordingly, Met-Ed was unable to provide previously exchanged testimony. *Met-Ed Letter of January 16* at 1.

The record in this case closed on March 22, 2024. I.D. at 7.

By Order dated June 5, 2024 (*Order Admitting Exhibits*),<sup>11</sup> the ALJ admitted all submitted exhibits into the record and directed Met-Ed to file the exhibits with the Secretary's Bureau by June 10, 2024. *Order Admitting Exhibits* at 1-3.

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<sup>11</sup> The ALJ initially issued an Order Admitting Exhibits on June 4, 2024; however, the *Order Admitting Exhibits* was issued on June 5, 2024 to correct ministerial errors.

The Complainants' admitted exhibits included the following:

(1) Complainants Exhibit 1—CNX Effects-Enzymes Article; (2) Complainants Exhibit 2---Millimeter Waves Power Active Control Weapon Flyer; (3) Complainants Exhibit 3---Letter from Woodlands Healing Research Center; (4) Complainants Exhibit 4---Resume of William Bathgate; (5) Complainants Exhibit 5—Self-Reporting of Symptom Development From Exposure to Radiofrequency Fields of Wireless Smart Meters in Victoria, Australia: A Case Series Article; (6) Complainants Exhibit 6-Document “Cell Phone Tower Tinnitus;” and (7) Complainants Exhibit 7-Electrohypersensitivity as a Newly Identified and Characterized Neurologic Pathological Disorder: How to Diagnose, Treat, and Prevent It Article. *Order Admitting Exhibits* at 1-2.

Met-Ed's admitted exhibits included the following: (1) JCA-1: 66 Pa.C.S. Section 2807; (2) JCA-2: Smart Meter Procurement and Installation, Docket No. M-2009-2092655; (3) JCA-3: Joint Petition of Metropolitan Edison Company, Pennsylvania Power Company for Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950 (Order dated June 9, 2010); (4) JCA-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, Dockets Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and. M-2013-2341994 (Order entered June 25, 2014); (5) JCA-5: Metropolitan Edison Company's Approved Deployment Plan; (6) JCA-6: Smart Meter Privacy Policy, dated March 18, 2015; (7) JCA-7: Smart Meter Customer Privacy Policy for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Secretarial Letter dated May 1, 2015); and (8) JCA-8: Customer Contacts. *Order Admitting Exhibits* at 2-3.

On June 13, 2024, the Commission issued the Initial Decision of ALJ Heep, wherein the ALJ recommended that the Complaints be denied.

Thereafter, the Complainant filed: (1) a Concise Statement of Errors with Brief (Statement of Errors) on June 18, 2024;<sup>12</sup> Exceptions on June 26, 2024; an Addendum to Exceptions and Motion for Recusal on July 1, 2024; and an Errata to Exceptions on July 8, 2024.<sup>13</sup> Met-Ed filed Reply Exceptions on July 15, 2024.

### **III. Discussion**

#### **A. Legal Standards**

##### **1. General Burden of Proof for Complaint Proceeding**

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

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<sup>12</sup> Because the Complainants’ Statement of Errors and the Errata to Exceptions did not include certificates of service, it appeared that service may not have been executed; therefore, to ensure due process, the Commission’s Secretary served them upon Met-Ed’s counsel on June 18, 2024 and July 8, 2024, respectively.

<sup>13</sup> Because the Complainants are appearing *pro se* and because the Statement of Errors, Exceptions, Motion for Recusal and Errata to Exceptions contain common claims and arguments, we will exercise our discretion pursuant to 52 Pa Code § 1.2(a) to consider them simultaneously in the context of Exceptions.

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

*Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion, to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also, Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder<sup>14</sup> may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*).

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<sup>14</sup> In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

## 2. Burden of Proof Applied to Section 1501<sup>15</sup> Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company (PECO), 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.

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<sup>15</sup> The applicable Commission Regulation governing an EDC’s provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC’s provision of electric utility service and its associated equipment and facilities. See, 52 Pa. Code § 57.28(a)(1). See, *Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Opinion and Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service<sup>16</sup> and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

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

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<sup>16</sup> The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See* 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code.<sup>17</sup> Therein, the Supreme Court stated:

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

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

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

A customer seeking affirmative relief from the [Commission] must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a [Commission] regulation or [o]rder, or a violation of a [Commission]-approved tariff.

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<sup>17</sup> The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof, a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000, citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at \*14 (Pa. P.U.C. January 28, 2016) (*Kreider*).

[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).<sup>18</sup>

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

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<sup>18</sup> With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)<sup>19</sup> from the AMI meter.<sup>20</sup>

### 3. Other Relevant Legal Standards

In addition to establishing that a complaint challenging the installation of a smart meter may arise under Section 1501, the Supreme Court’s decision in *Povacz II* acknowledged the Commonwealth Court’s rejection of a constitutional claim for exemption from smart meter installation predicated on a violation of “bodily integrity.” The Supreme Court noted the Commonwealth Court’s denial of a claim under the Fourteenth Amendment stating:

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

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

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<sup>19</sup> RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

<sup>20</sup> See 2019 *Povacz Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

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

## **B. ALJ’s Initial Decision**

In the Initial Decision, ALJ Heep made four (4) Findings of Fact (FOF) and reached seven (7) Conclusions of Law (COL). I.D. at 7-8, 16-17. 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 identified applicable legal standards<sup>21</sup> for the proceeding, including, *inter alia*: (1) Met-Ed’s obligation to provide adequate, efficient, safe, and reasonable service and facilities pursuant to Section 1501 of the Code; (2) the Complainants’ burden of proof under Section 332 of the Code; (3) Act 129 of 2008; and (4) the Company’s Commission-approved Smart Meter Installation Plan, which, *inter alia*, does not provide an opt-out for customers. I.D. at 8-12 (citing 66 Pa.C.S. § 1501; 66 Pa.C.S. 332(a)). Additionally, the ALJ indicated that the *Povacz II* decision requires Complainants who allege that an AMI meter causes or will cause adverse health effects or harm to human health must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the radio RFs from the AMI meter. I.D. at 11-12 (citing *Povacz II* at 1006).

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<sup>21</sup> The identified standards are set forth more fully in the Legal Standards section; therefore, they are not reiterated here.

After identifying the applicable standards, the ALJ acknowledged that the Complainants are challenging the installation of a smart meter at the service address and at the home of the neighbors. I.D. at 12. The ALJ also recognized that the Complainants' claim that Ms. Mousios has "suffered immediately and severely as soon as and as long as the smart meters were deployed in my neighborhood as evidenced from the prior letters I have written and the letters my physicians have submitted." I.D. at 12 (citing Complainants' M.B. at 2). The Complainants also contended that Act 129 does not require smart meter installation, relying upon the passage below:

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

- (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

I.D. at 12 (citing Complainants' Brief at 1 (citing 66 Pa.C.S. § 2807(f)(2))).

Relying upon the above-cited provision of Act 129, the ALJ summarized the Complainants' contention that Met-Ed has no legal basis to deploy smart meters. I.D. at 12 (citing Complainants' M.B. at 1). Moreover, the ALJ pointed out that the Complainants also contested the Commission's application of Act 129, arguing that the Commission "forces the plain language of § 2807(f)(2)(iii) into a mandatory smart-meter narrative which has thereby aided and abetted most EDCs to force smart meters on all customers, even over their objections." I.D. at 13 (citing Complainants' M.B. at 2). Additionally, the ALJ cited the Complainants' claim that the term "depreciation," as used in Act 129, is an accounting term and not language mandating that customers have a smart meter. I.D. at 13 (citing Complainants' M.B. at 2, 4). Finally, the ALJ noted the Complainants' allegation that the legislative history of Act 129 revealed that smart meters

were not intended to be mandated. I.D. at 13 (citing Complainants' M.B. at 6-7 (citing PA Legislative Journal -Senate, October 8, 2008 at 2626, 2627, and 2629)). The ALJ summarized that, relying upon the cited authorities, the Complainants contend that they should be able to opt out of having a smart meter installed. I.D. at 13.

The ALJ acknowledged that the Complainants submitted articles regarding the effects of RFs, as well as the resume of their witness, Mr. Bathgate, who was referred to as an electrical engineer. I.D. at 14 (citing Complainants' Exhibits 1, 2, 4, 5, 6, and 7). Additionally, the ALJ recognized that the Complainants submitted a letter from William Kracht, DO (Dr. Kracht), of the Woodlands Healing Research Center, Family Environmental and Preventative Medicine, indicating that Ms. Mousios has been living in her car or her tent since the installation of the smart meter at the adjacent neighboring home. The ALJ summarized that Dr. Kracht's letter also: (1) indicated that Ms. Mousios was treated for various medical conditions prior to installation of the meter but that she developed additional ailments once the meter was installed; (2) stated that the symptoms improved once Ms. Mousios moved to her car or a tent away from the smart meter; (3) averred that Ms. Mousios has electromagnetic hypersensitivity; and (4) recommended that the smart meter be removed, and that the neighbor's smart meter be relocated. I.D. at 14 (citing Complainants' Exhibit 3).

The ALJ also considered Met-Ed's position that the Complainants failed to meet their burden of proof, thereby warranting dismissal of the Complaints. Met-Ed had also responded to the Complainants' arguments alleging that Act 129 contains an opt-out provision by, *inter alia*, arguing that the Complainants' analysis of the word "depreciation" in 66 Pa.C.S. § 2807(f)(2) is misplaced because the operative term is "shall." Beyond Met-Ed's Act 129 arguments, the ALJ also cited Met-Ed's claims that the Complainants failed to present evidence to support allegations that their various medical and health concerns are related to RFs and smart meters. Furthermore, the ALJ noted Met-Ed's allegation that the Complainants have failed to demonstrate that

installation of a smart meter at their residence or that of their neighbors constitutes unreasonable or inadequate service. I.D. at 14 (citing Met-Ed M.B. at 17-18).

Based upon the ALJ's analysis of the Parties' arguments, evidence, and applicable legal standards, the ALJ concluded that the Complainants cannot prevail. First, the ALJ reasoned that in accordance with the Installation Plans approved by the Commission, and with the Pennsylvania Supreme Court's ruling, Act 129 mandates that all EDCs furnish smart meters to all electric customers within an EDC's service area and does not provide customers with the ability to opt out of smart meter installation. I.D. at 14-15 (citing *Povacz II* at 999-1000). The ALJ also determined that while the Pennsylvania Supreme Court recognizes that customers with concerns about smart meters may seek an accommodation from the Commission or EDC, to obtain one, the customer must establish by a preponderance of the evidence that installation of a smart meter violates 66 Pa.C.S. § 1501. I.D. at 15. While the ALJ acknowledged that the Complainants "put forth arguments and contentions that the smart meters have caused some ill health effects," the ALJ found that such arguments and contentions did not meet the "substantial evidence" standard required for the Complainants to meet their burden of proof. I.D. at 15 (citing 2 Pa.C.S. § 704).

In determining that the Complainants did not meet their burden of proof, the ALJ explained that the Complainants' letter from Dr. Kracht is not probative because it is not a sworn statement and it is not substantiated by a sworn statement or expert report. On this basis, the ALJ determined that the unsworn letter did not meet the Pennsylvania Supreme Court's articulated standard of being an "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." I.D. at 15 (citing *Povacz II* at 1006). Thus, the ALJ found that no substantial evidence was presented to establish that the smart meters installed by Met-Ed will cause or have

caused adverse health effects or harm to human health, or, particularly, to the Complainants. *Id.* at 15-16.

In summary, the ALJ determined that the Complainants cannot opt out of smart meter installation and that they have not met the *Povacz II* burden of proof set by the Pennsylvania Supreme Court with respect to a claim that Met-Ed has violated Section 1501 of the Code, 66 Pa.C.S. § 1501. Finally, the ALJ also dismissed the Complainants' claim seeking a remedy of accommodation under the federal ADA, 42 U.S.C. § 12101 et seq., because the Commission lacks jurisdiction to hear claims brought under the ADA. *I.D.* at 16 (citing *White v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3003468 at 19 (Opinion and Order entered May 21, 2020)). Based on the foregoing, the ALJ denied the Complaint. *I.D.* at 17.

### **C. Exceptions<sup>22</sup>**

As explained, *supra*, the Complainants' Exceptions consist of multiple filings which were each styled and filed separately: a Statement of Errors, Exceptions, an Addendum to Exceptions and Motion for Recusal, and an Errata to Exceptions. As we are exercising our discretion under 52 Pa Code § 1.2(a) to consider each of these filings simultaneously in the context of Exceptions, the combined Exceptions are summarized by general subject matter for purposes of clarity.

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<sup>22</sup> 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, as 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.

The Complainant's combined Exceptions consist of 361 pages and are set forth as 42 separate Exceptions<sup>23</sup> which raise multiple issues. The Complainants' Exceptions are summarized as challenging the ALJ's Initial Decision based upon the following alleged: (1) lack of jurisdiction; (2) procedural errors; (3) evidentiary issues; (4) failure to consider Federal Communications Commission (FCC) rulings, (5) failure to recognize a smart meter opt-out; (6) improper failure for the ALJ to be recused; and (7) general constitutional violations.

### **1. Jurisdiction Over ADA Claims (Complainants' Exceptions at 1, 5)**

The Complainants except to the ALJ's determination that the Commission does not have jurisdiction over claims arising from the ADA. According to the Complainants, "[e]ven county and state courts accommodate and honor the Americans with Disabilities Act and they do not decree that ADA accommodations are out of their jurisdiction." Exc. at 1. The Complainants argue that the ALJ's conclusion was "felonious"<sup>24</sup> and the ALJ has not refuted the merits of the ADA claim. Instead, the Complainants allege, they have demonstrated the existence of "severe health problems already experienced from a neighbor's smart meter" and that the ALJ's dismissal of the claim for lack of jurisdiction is meritless. *Id.* at 1-2.

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<sup>23</sup> The count of forty-two (42) Exceptions is determined based solely upon the document that the Complainants labeled as "Exceptions." While the Complainants, in the additional filings, assert a total of approximately thirty (30) more paragraphs of allegations, the allegations generally reiterate the claims encompassed within the 42 Exceptions. As indicated, *infra*, we will not consider Exceptions including commentary alleging bias without foundation; therefore, our disposition does not address such allegations.

<sup>24</sup> To the extent the Complainants' Exceptions include commentary alleging bias without foundation, such commentary is deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(e), we shall strike such statements from our consideration of the Complainants' Exceptions.

**2. Procedural Errors (Complainants' Exceptions at 3-4, 12-13; Statement of Errors at ¶¶ 2-3, 8, 16)**

In their Exceptions, the Complainants also allege multiple evidentiary errors by the ALJ pertaining to, *inter alia*, the naming and determination of whether to admit certain exhibits into evidence and the ALJ's conclusions regarding the relative weight of the evidence presented.

Specifically, the Complainants take issue with the ALJ's titling of Exhibits, including the following exhibit labels: (1) "CNX Affects Enzymes Article;" (2) "Millimeter Waves Power Active Control Weapon flyer" (Complainant Exh. 2); and (3) an article titled "Cell phone Tower Tinnitus is far more comprehensive than her title would admit." Statement of Errors at ¶¶ 2-3, 8. Moreover, the Complainants contest the ALJ's reference to materials submitted by the Complainants' witness, electrical engineer Mr. Bathgate, as the Complainants contend that the ALJ falsely characterized those materials as a "resume" instead of a comprehensive scientific analysis. Statement of Errors at ¶ 7; Exc. at 3. The Complainants allege that Mr. Bathgate's report is entitled, "Building Biology Assessment for Roy Cummings, May 6th, 2021, performed by DE Filters, LLC." (Mr. Bathgate's Report).<sup>25</sup> Exc. at 3-4.

Additionally, the Complainants claim that while they were required to share their Briefs and Exhibits with Met-Ed, "Met-Ed did not share its exhibits with complainants because it is above the law." Statement of Errors at ¶ 16.

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<sup>25</sup> Mr. Bathgate's Report was not admitted into the record and there is no indication that the Complainants moved for its admission.

**3. Evidentiary Determination (Complainants' Exceptions at 2-5, 14-17; Statement of Errors at 4-6, 9-13)**

With respect to the ALJ's determinations of whether to admit certain evidence, the Complainants argue that the ALJ erred by not permitting the admission of: (1) a medical report from Dr. Natalie Sadler (Dr. Sadler); (2) a brief addressing Act 129 by Wes Zimmerman; (3) "Holder's Reply Exceptions"; (4) the Digital FCC NOI Comments Brief; (5) a DC Court of Appeals ruling against the FCC of 2021; and (6) various photos of Complainant Mousios living in a tent and of Complainant Mousios' dogs, who were alleged to be in declining health as a result of exposure to smart meters (collectively, the unadmitted evidence). Exc. at 2-5, 14-17; Statement of Errors at ¶¶ 4-6, 9-13.

The Complainants further allege that the ALJ erred in repudiating the "written testimony" from Dr. Kracht, the physician of Ms. Mousios, and who is familiar with Ms. Mousios' health, as necessary to give a detailed diagnosis of Ms. Mousios' electromagnetic sickness from the neighbor's smart meter. According to the Complainants, Dr. Kracht gave a diagnosis that included recognition that Ms. Mousios' thyroid was enlarged upon exposure to a smart meter. Exc. at 2, 14 The Complainants alleged that Dr. Kracht's December 2023 report (Dr. Kracht's December 2023 Report) noted that Complainant Mousios' dogs became ill on or around March 27, 2019 after a smart meter was installed. Exc. at 14-15. Similarly, the Complainants allege that the ALJ erred by refusing to admit the report of Dr. Sadler (Dr. Sadler's Report),<sup>26</sup> which, the Complainants claim, indicates that the neighbor's smart meter is the cause of Ms. Mousios moving from her home into a tent, and leading previously healthy dogs to become ill. *Id.*

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<sup>26</sup> No written testimony from Dr. Kracht was served and there is no indication that the Complainants moved for its admission. Additionally, neither Dr. Kracht's December 2023 Report nor Dr. Sadler's Report were admitted into the record and there is no indication that the Complainants moved for their admission.

Finally, the Complainants allege that evidence had been tampered with, and, as a result, they are resubmitting “many exhibits” as part of this “exceptions brief.” Exc. at 18.<sup>27</sup>

**4. FCC Rulings (Complainants’ Exceptions at 3-4; Statement of Errors at ¶ 10)**

Furthermore, the Complainants allege that the ALJ erred by failing to allow into evidence certain rulings of the DC Court of Appeals “against the FCC.”<sup>28</sup> The Complainants explain that these rulings include the cases of *Children's Health Defense* and the *Environmental Health Trust*, which are rulings “that the FCC must update its outdated levels for allowable levels of radiation and electromagnetic frequencies.” According to the Complainants, *Children's Health Defense* and *Environmental Health Trust* provide undeniable proof of the dangers of radiation and conducted EMFs. Exc. At 3-4; Statement of Errors at ¶ 10.

**5. Smart Meter Opt-Out (Complainants’ Exceptions at 15)**

The Complainants also contend that the ALJ erred by failing to properly consider the writings of Senator Tommy Tomlinson, Senator Lisa Boscola and Senator

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<sup>27</sup> The Complainants attached over 300 pages of what appear to be extra-record exhibits to their Exceptions. To the extent the Complainants relied upon extra-record materials in their Exceptions, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at \*8-14 (Order entered February 10, 1994) (*Apollo Gas*).

<sup>28</sup> Namely, the Complainants reference the following rulings: *Children’s Health Defense v. Federal Comm’n Comm’n*, 25 F.4th 1045 (D.C. Cir. 2022) (*Children’s Health*); and *Environmental Health Trust v. FCC*, 9 F.4th 898 (D.C. Cir. 2021) (*Environmental Health Trust*).

Vince Fumo, which the Complainants characterize as “all concurring that smart meters were not to be mandated.” Exc. at 15.

**6. Improper Failure to Recuse (Complainants’ Exceptions at 17-18; Statement of Errors at ¶ 21)**

Moreover, the Complainants argue that the ALJ was “out of her jurisdiction—thereby lacking immunity and potentially liable for a toxic tort action.” Statement of Errors at ¶ 21. Furthermore, the Complainants allege that the ALJ erred by failing to grant a 16-month extension for the proceedings, which the Complainants requested by Motion filed on December 29, 2023. According to the Complainants, an additional 16 months of time could have allowed the Complainants time to find alternate housing to avoid a smart meter. Exc. at 17-18. The Complainants assert that the ALJ’s failure to grant the requested extension also serves as an underlying basis for the Complainants’ claim that the ALJ should “recuse herself.” *See* Complainants’ Addendum to Exceptions and Motion for Recusal at 2. The Complainants also allege that the ALJ, as well as all administrative law judges, “must recuse themselves in favor of a jury trial for Mr. Cumming and Ms. Mousios.” *Id.* at 1.

**7. General Constitutional Violations (Complainants’ Exc. at 12-13)**

The Complainants also appear to assert that the Initial Decision resulted in general violations of their Constitutional rights. Exc. at 12-13.

**D. Replies to Exceptions**

In its Reply Exceptions, Met-Ed preliminarily argues that the Complainants’ Exceptions have failed to identify any conclusions of law or findings of fact from the Initial Decision to warrant any grant of the Exceptions. In support, Met-Ed

cites to the Commission’s Regulation at 52 Pa. Code § 5.533, and avers that instead of targeting specific passages, findings, or conclusions rendered in the Initial Decision, the Complainants’ Exceptions largely target the ALJ’s June 4, 2024 *Order Admitting Exhibits*.<sup>29</sup> R. Exc. at 2-3, citing 52 Pa. Code § 5.533(a)-(c). Met-Ed contends that the *Order Admitting Exhibits* is not an initial, tentative, or recommended decision to which the Complainants can except to under the Commission’s Regulations. R. Exc. at 3 (citing 52 Pa. Code § 5.533(c[a])). For these reasons, Met-Ed argues that the Complainants’ Exceptions are improper, and the Company avers that they should be denied. R. Exc. at 3.

Next, Met-Ed contends that the Complainants’ Exceptions based upon the ALJ’s evidentiary decisions are meritless and should be denied. Met-Ed asserts that the Complainants exhibited a pattern of continued disregard for the procedural orders issued in this case. As such, Met-Ed claims that because the Complainants failed to file Direct Testimony and to timely submit exhibits, limited evidence was available for the ALJ to consider. Despite this, Met-Ed points out that on June 4, 2024, the ALJ admitted all of the Complainants’ late-filed exhibits into the record. Met-Ed avers that if the Complainants disagree with how their admitted exhibits were titled in the *Order Admitting Exhibits*, that disagreement is not a viable basis for exception. R. Exc. at 3-4. Finally, Met-Ed argues that the Complainants, in their Exceptions, attempt to promote the admissibility of hearsay evidence into the record. *Id.* at 4 (citing Complainants’ Statement of Errors, Nos. 4-5, 6, 9, and 11).

Met-Ed avers that the fact that the Complainants seek to introduce extra-record evidence is clear in that the Complainants reference “adding to the previous brief with the previous exhibits and photos, by adding another document...” R. Exc. at 4 (citing Complainants’ Statement of Errors No. 14). Furthermore, Met-Ed asserts that the

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<sup>29</sup> As noted, *supra*, on June 5, 2024, the ALJ reissued the *Order Admitting Exhibits* to correct ministerial errors.

documents that the Complainants reference constitute hearsay evidence, including unsworn non-testimonial documents of “Dr. Nadine Sadler, MD,” Wes Zimmerman, and Holder. Met-Ed notes that simple hearsay evidence may support an agency’s finding of fact, so long as the hearsay evidence is admitted into the record without objection and is corroborated by competent evidence in the records. R. Exc. at 5 (citing *Walker v. Unemployment Compensation Board of Review*, 367 A. 2d 366, 370 (Pa. Cmwlth. 1976)). Therefore, Met-Ed argues that as there is no evidence to corroborate the Complainants’ documents, and as these documents were not admitted into the record without objection, Met-Ed avers that the Complainants’ Exceptions based upon such documents should be denied. R. Exc. at 5.

Met-Ed also contests the Complainants’ reliance upon the cases of *Children’s Health and Environmental Health Trust*. R. Exc. at 5-7 (citing *Children’s Health; Environmental Health Trust*). In its Replies, Met-Ed counters that there is nothing in *Children’s Health* or *Environmental Health Trust* to support the Complainants’ claims in this Pennsylvania smart meter proceeding, adding that both *Children’s Health* and *Environmental Health Trust* related to the rulemaking process implemented by the FCC, which is not at issue here. R. Exc. at 6-7 (citing *Children’s Health; Environmental Health Trust*).

Further, Met-Ed points out that in *Povacz II*, the Pennsylvania Supreme Court concluded that *Environmental Health Trust* “[did] not support a claim that RF emissions at or below the 1996 FCC limits cause adverse human health effects.” R. Exc. at 7 (citing *Povacz II*, at 1008-09 (Internal citations omitted)). Additionally, Met-Ed submits that the Complainants’ reliance upon *Environmental Health Trust* did not overcome the fact that the Complainants’ failed to produce sufficient evidence to meet the preponderance of the evidence standard. Thus, Met-Ed avers that the Complainants’ reliance upon the cited authorities cannot absolve the Complainants’ of a failure to meet their burden of proof. R. Exc. at 6-7.

Met-Ed also counters the Complainants' claim that Act 129 does not mandate smart meters, and that an opt-out is available. In this regard, the Company asserts that the Complainants have ignored the Pennsylvania Supreme Court's holding in *Povacz II*. Met-Ed avers that, *inter alia*, *Povacz II* established that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the Commission applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Code, 66 Pa.C.S. § 1501; and (3) an EDC cannot be required to provide an accommodation to a customer absent a Section 1501 violation. R. Exc. at 8-9 (citing *Povacz II*, 280 A.3d 975, 1012-1014 (Pa. 2022)). Met-Ed argues that the Complainants' Exceptions did not engage with the Court's holding in *Povacz II*, as they instead rely on an incorrect reading of Act 129 that is partially premised on the various federal laws and other sources, without merit. Citing *Povacz II*, Met-Ed contends that it must install smart meters at the service address of the Complainants. R. Exc. at 9 (citing *Povacz II* at 998).

Met-Ed also disputes the Complainants' claim that Met-Ed did not share its exhibits with the Complainants. R. Exc. at 10 (citing Complainants' Statement of Errors No. 16). Instead, Met-Ed explains that it did not serve *Rebuttal Testimony* in this case because the Complainants had not presented direct testimony to rebut. Met-Ed alleges that the Complainants' failure to adhere to procedural mandates and deadlines, and their failure to produce a direct case led to a lack of a fulsome evidentiary record, but that the failures were not related to Met-Ed's conduct. R. Exc. at 10-11 (emphasis added).

Met-Ed also contests the Complainants' argument that the ALJ was "out of her jurisdiction --- thereby lacking immunity and potentially liable for a toxic tort action" as being meritless and warranting rejection. Met-Ed states that the Commission and, by logical extension, its ALJs, have the exclusive authority to adjudicate "'issues involving the reasonableness, adequacy, and sufficiency' of a public utility's facilities and services." R. Exc. at 11 (citing *Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980); *Hess v. Pa. PUC*,

107 A.3d 246, 259 (Pa. Cmwlth. 2014) (citing, *inter alia*, *County of Chester v. Phila. Electric Co.*, 218 A.2d 331, 333 (Pa. 1966))). Additionally, Met-Ed explains, the Complainants' arguments hinge upon federal court cases involving the Federal Trade Commission and the Securities and Exchange Commission, which are irrelevant to the Commission's jurisdiction. R. Exc. at 11-12 (citing Complainants' Statement of Errors Nos. 20-21; Complainants' Exception No. 2).

In response to the Complainants' argument that installation of a smart meter may violate their constitutional rights, Met-Ed avers that the Company is not a state actor that can violate the Complainants' constitutional rights. R. Exc. at 12 (citing Complainants' Exception Nos. 19-22). Met-Ed explains that "[t]he Commonwealth Court previously found that "[c]onstitutional protections apply against state actors," and "PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers." R. Exc. at 12 (citing *Povacz I*, 241 A.3d 481, 486 n.9 (Pa. Cmwlth. 2020)).<sup>30</sup> Because PECO and Met-Ed are similarly situated EDCs, Met-Ed avers that it too is not a state actor that can violate the Complainants' constitutional rights, rendering the Complainants' allegations of unconstitutional conduct meritless. R. Exc. at 12.

Finally, Met-Ed disputes the Complainants' argument that the Commission has the jurisdiction to hear claims arising under the ADA. R. Exc. at 12-13 (citing Exc. at 1). Met-Ed argues that it is well-settled that determinations regarding the ADA generally are beyond the scope of the Commission's limited jurisdiction. R. Exc. at 12-13 (citing *Frompovich*). On this basis, Met-Ed claims that the Complainants' ADA-based claims are beyond the scope of the Commission's jurisdiction and that they should not be considered in this proceeding.

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<sup>30</sup> Met-Ed avers that nothing in *Povacz II* disturbed the Commonwealth Court's finding. R. Exc. at 12.

## E. Disposition

At the outset, 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 preliminary matter, we note that the Complainants have included and made use of extra-record materials in their Exceptions. We will disregard the extra-record materials – specifically, the unadmitted evidence identified, *supra*. *See* Statement of Errors at ¶¶ 4-6, 9-13; Exc. at 2-4, 14-18.<sup>31</sup> As previously noted, it is well-established that parties cannot introduce new evidence at the exceptions stage. *Apollo Gas*. As further noted earlier, the record closed on March 22, 2024, and the unadmitted evidence was not entered into the record. I.D. at 7; *Order Admitting Exhibits* at 1-3. Therefore, we must reject this extra-record evidence.

As a final preliminary matter, we will clarify the parameters of our disposition, because the Complainants’ arguments alleging health impacts imposed by their *neighbor’s* smart meter underscore several of the Complainants’ Exceptions. *See* Exc. at 2, 4, 14, 16; Statement of Errors at ¶¶ 7, 11. Early in this case, the ALJ determined that the Complainants lacked standing to raise issues on behalf of anyone other than themselves or in relation to any property other than the service address. *Interim Order on POs* at 7-10. Additionally, precedent establishes that parties lack standing to request remedies on behalf of others. *See Camille “Bud” George v.*

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<sup>31</sup> We will also disregard the several hundred pages of materials appended to the Complainants’ Exceptions, as these appear to consist of the identified extra-record materials but also unidentified and voluminous extra-record materials, as well.

*Pa. PUC*, 735 A.2d 1282, 1286-87 (Pa. Cmwlth. 1999). The Complainants' neighbor is not a party to this proceeding. Therefore, to the extent that the Complainants' Exceptions are grounded in claims that their *neighbor's* smart meter must be removed, they are denied. Accordingly, our disposition is limited to the Complainants' opposition to having a smart meter installed at the service address. Complaints at 3.

We turn now to the merits of the Complainants' Exceptions, which span several filings that fail to cite underlying Findings of Fact and Conclusions of Law. The synthesis of those filings demonstrates that the Complainants' except to the following: (1) the Commission's lack of jurisdiction over ADA claims; (2) alleged procedural errors; (3) evidentiary determinations; (4) relevance of FCC-based holdings to this case; (5) Act 129's smart meter mandate; and (6) general Constitutional violations imposed by exposure to smart meters. We will deny each of the Complainants' Exceptions because each of them is without merit.

### **1. Lack of ADA jurisdiction**

First, despite the Complainants' contentions, we disagree that the ALJ erred in determining that the Commission does not have the jurisdiction to hear claims brought under the ADA. Exc. at 1, 5. While the Complainants argue that "even county and state courts accommodate and honor the Americans with Disabilities Act" our analysis is limited to the Commission's jurisdiction. *See Id* at 1. We note that in *White v. PPL Electric Utilities Corp.*, Docket No. C-2018-3003468 (Opinion and Order entered May 21, 2020) (*White*) at 19, the Commission held that it lacked jurisdiction to enforce the ADA regarding a similar complaint. *See also Frompovich* at 43. Accordingly, we shall deny the Complainants' Exception and the attendant assertion of an ADA-based accommodation. *See* Exc. at 1.

## 2. Procedural Errors

We now turn to the Complainants' Exceptions alleging procedural errors in this case. First, the Complainants object to the manner in which the ALJ titled Complainants' Exhibits, including, *inter alia*, (1) "CNX Affects Enzymes Article;" (2) "Millimeter Waves Power Active Control Weapon flyer" (Complainant Exh. 2); and (3) an article titled "Cell phone Tower Tinnitus is far more comprehensive than her title would admit." Statement of Errors at ¶¶ 2-3, 8. Although the Complainants allege that the ALJ's labels are inaccurate and the Complainants express dissatisfaction with the ALJ's titling of exhibits, the Complainants have not demonstrated that the labeling was erroneous nor have they explained why their mere dissatisfaction provides a viable basis for exception. *See Id.* Therefore, we find that the Complainants have failed to state a viable exception.

Next, we disagree with the Complainants' assertion that the ALJ erred by denying the Complainants a 16-month extension of the proceedings requested on December 29, 2023.<sup>32</sup> *See* Exc. at 18. Our review of the protracted procedural history of this case demonstrates that delays have resulted, in significant part, from the Complainants' multiple requests for extensions of time and procedural modifications, many of which the ALJ granted. *See Deadline Extension Order*; Tr. at 40-42, 44, 75; *January 9 Order* at 3-4; *January 31 Order* at 12-13. As an example, the hearing was continued three times at the request of the Complainants. *July 2020 Order* at 1-2. We note that our regulations empower ALJs to grant extensions of time for good cause, subject to prescribed timing and procedures. 52 Pa. Code § 1.15. At the same time, our Regulations also require ALJs to regulate the course of the proceeding and to maintain order. 52 Pa. Code § 5.483(a); 52 Pa. Code § 5.485. Here, the Complainants' reason for the request, seeking time to move, does not constitute good cause for a 16-month

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<sup>32</sup> There is no evidence of the requested extension being filed with the Commission's Secretary's Bureau.

extension. We also find that a 16-month extension of this case, which was initiated on February 21, 2019, would be inconsistent with the ALJ's duties to regulate the course of this proceeding and maintain order.

Finally, we shall deny the Complainants' Exception alleging that Met-Ed did not share its exhibits with the Complainants. *See* Statement of Errors at ¶ 16. Our review of the documents filed in this proceeding reveals that Met-Ed certified service of its hearing exhibits upon the Complainants on January 7, 2020 and we find the Complainants' claims to be unsupported. *See Met-Ed Exhibit Service Letter* at 1. In sum, the Complainants' allegations of procedural errors are unsupported and the Complainants' Exceptions based on those allegations are denied.

### **3. Evidentiary Determinations**

As noted, *supra*, in affirming the Commission's *2019 Povacz Order*, the Pennsylvania Supreme Court held that, in order to prevail in a Section 1501 claim involving the safety of smart meters, and specially, 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 Court held that the lay opinion of the Complainant does not provide a conclusive, causal connection between the harm to human health and the RFs from the AMI meter. *Id.*

The Pennsylvania Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Povacz II* at 1005. The

Court also 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 an 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 an 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.<sup>33</sup> 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 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.<sup>34</sup>

In this case, the ALJ's analysis and disposition turned on the Complainants' failure to present competent or substantial evidence as necessary to support the claim of ill health effects from the smart meters in question. *See I.D.* at 14-15. The ALJ concluded that the Complainants failed to demonstrate that Met-Ed's installation of a smart meter at the service address constitutes unreasonable or inadequate service, and

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<sup>33</sup> Notably, 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. *Id.* at 1005.

<sup>34</sup> The Supreme Court held that if a 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. However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id.* at 1015.

accordingly, the Complainant's claim that Met-Ed provided unsafe or unreasonable service cannot stand and must be denied. I.D. at 16. 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 proving that the installation of a smart meter at the service address will result in unsafe or unreasonable service, in violation of 66 Pa.C.S. § 1501. I.D. at 16, COL Nos. 4-6.

To prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the AMI meter. *See 2019 Povacz Order*. Here, the ALJ properly concluded that the Complainants' evidence, consisting of various articles regarding the effects of RFs, the resume of electrical engineer Mr. Bathgate, and the letter from Dr. Kracht failed to demonstrate the requisite causal connection. I.D. at 13-16, citing Complainant Exh. 1-3, 5-7; COL No. 5. Specifically, the ALJ indicated that the resume of Mr. Bathgate was not accompanied by sworn testimony. I.D. at 15.

Additionally, the ALJ concluded that the articles submitted by the Complainants did not support the Complainants' claimed health effect from the specific meters at issue, and that they were given little weight because they were not corroborated by sworn testimony. I.D. at 15. Similarly, the letter from Dr. Kracht was not probative because it was an unsworn statement and it was not substantiated as necessary to constitute an expert opinion rendered to a reasonable degree of medical certainty. *Id.* We affirm the ALJ's conclusion that the Complainant failed to demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the adverse health effects or harm to human health and the RFs from the Met-Ed AMI.

Importantly, the crux of the Complainants' Exceptions appear to hinge on claims that the ALJ erred by not permitting the admission of the unadmitted evidence. Statement of Errors at ¶¶ 4-6, 9-13; Exc. at 2-4; 14-18. However, there is no indication that the Complainants attempted to admit such evidence. Additionally, the ALJ indicated that *all submitted exhibits* were admitted into the record. *Order Admitting Evidence* at 1 (emphasis added).

Our consideration also recognizes the significant and continued efforts, made by both ALJ DeVoe and ALJ Heep, to inform the Complainants about the Commission's procedural rules over the course of this case. Specifically, the record demonstrates that the ALJs educated the Complainants about procedural requirements, including, *inter alia*, service requirements for documents and written testimony, hearing procedures, the burden of proof, and the applicable rules of practice and procedure. Tr. At 17-26; *December 2019 Order* at 2-3; *Scheduling Order* at 1-6; *Prehearing Order* at 1-7; *December 2023 Order* at 2-3; *January 9 Order* at 1-5; *January 31 Order* at 10-13. Additionally, the Complainants were specifically informed that “[o]nly documents you present at the hearing are eligible to be admitted into evidence” and that “documents you have previously submitted to me [the ALJ], the Commission, Respondent, or any other organization or individual are not in evidence.” Tr. at 18. Complainant Mousios acknowledged the instructions for presenting evidence but characterized the process as “a trap.” *Id.* at 21. Nevertheless, ALJ DeVoe continued to provide the Complainants with a detailed explanation of the procedures for submitting evidence into the record. Tr. At 21-26.

Alongside the extensive procedural guidance provided to the Complainants, we also note the several timing extensions and procedural modifications that were granted to accommodate the Complainants' submission of evidence. Specifically, the Complainants' request for an in-person hearing was granted, followed by a grant of the Complainants' subsequent request for a “hearing in writing.” *See January 9 Order*

at 1-5. Additionally, multiple extensions were granted to allow for the Complainants' service of written testimony. *See January 9 Order* at 1-5; *January 31 Order* at 12-13; *April 2020 Order* at 1-2; *Met-Ed Letter of January 16* at 1. Despite the several accommodations, the Complainants ultimately elected not to offer written testimony in this case, and they now seek to advance extra-record evidence by way of Exceptions.

Upon review of the record, we find that the Complainants' Exceptions disputing evidentiary determinations to be unfounded and contrary to the record; therefore, they are denied.

#### **4. FCC Rulings**

While the Complainants allege that the ALJ erred by failing to consider two certain rulings of the DC Court of Appeals "against the FCC," we find that those cases are irrelevant to this case. Specifically, the Complainants identify *Children's Health Defense* and the *Environmental Health Trust* as ruling "that the FCC must update its outdated levels for allowable levels of radiation and electromagnetic frequencies." The Complainants allege that *Children's Health Defense* and *Environmental Health Trust* provide undeniable proof of the dangers of radiation and conducted EMFs. Exc. at 11; Statement of Errors at ¶ 10. We disagree.

More specifically, despite the Complainants' contentions, we agree with Met-Ed that *Children's Health* is inapplicable, as it evaluated a request for judicial review of an FCC antennae regulation that is not at issue in this case. *See* R. Exc. at 5-6, (citing *Children's Health Defense v. Federal Communications Commission*, 25 F.4<sup>th</sup> 1045, 1048 (D.C. Cir. 2022)). We also agree with Met-Ed that both *Children's Health* and *Environmental Health Trust* relate to the FCC's rulemaking process, which is not at issue in this case. R. Exc. at 7. Finally, we agree with Met-Ed that the Complainants' reliance upon *Environmental Health Trust* is unsupported as,

in *Povacz II*, the Pennsylvania Supreme Court concluded that *Environmental Health Trust* “[did] not support a claim that RF emissions at or below the 1996 FCC limits cause adverse human health effects.” *Id.* (citing *Povacz II*, at 1008-09 (Internal citations omitted)). Accordingly, the Complainants’ allegation that the ALJ erred by failing to consider *Children’s Health* and *Environmental Health Trust* is without merit, as these cases are inapplicable.

## 5. Smart Meter Opt-Out

We find that the Complainants’ argument that smart meters are not mandatory in Pennsylvania to be contradicted by applicable law. *See* Exc. at 15. The Complainants’ claims largely hinge upon the legislative history of Act 129, which the Complainants characterize as “all concurring that smart meters were not to be mandated.” *Id.* The Complainants also aver that Act 129 was intended to include an opt-out measure. *Id.* As support for those claims, the Complainants have significantly relied upon excerpts of the legislative history that appeared in the Pennsylvania Senate Journal on October 8, 2008, pages 2626-31, citing statements from Senators Tomlinson, Boscola and Fumo. *Id.*; I.D. at 13 (citing Complainants’ M.B. at 6-7 (citing PA Legislative Journal - Senate, October 8, 2008 at 2626, 2627 and 2629)).

Furthermore, the legislative history from 2008, which predated Act 129’s enactment, is not applicable for purposes of Met-Ed’s universal smart meter deployment obligations. Instead, both Act 129 and Met-Ed’s Commission-approved smart meter procurement and installation plan, approved in the *2014 Smart Meter Order* are the applicable statutory and regulatory provisions. We also agree with Met-Ed that the Complainants’ arguments do not engage with the Pennsylvania Supreme Court’s holding in the *Povacz II* case. R. Exc. at 9-10. Specifically, the Pennsylvania Supreme Court determined that “it is clear that [66 Pa.C.S. 2807](f)(2) sets forth the protocols for furnishing smart meters to the universe of customers considered in the [EDC’s]

Procurement and Installation Plan.” *Povacz II* at 995. Accordingly, as the Complainants are within Met-Ed’s customer base, Met-Ed is required to install a smart meter at the service address in compliance with its approved Smart Meter Deployment Plan, which the Commission approved in the *2014 Smart Meter Order*.

Finally, as noted, *supra*, the Pennsylvania Supreme Court affirmatively established that there is no “opt-out” provision for the installation of a smart meter, pursuant to Act 129. *Povacz II* at 280 A. 3d at 983-984. The Complainants’ Exceptions fail to acknowledge *Povacz II*’s express determination, but it nevertheless applies. For these reasons, we shall deny the Complainants’ Exceptions claiming that Act 129 provides for customers to opt out of smart meter installation.

## **6. ALJ’s Jurisdiction**

We also find the Complainants’ argument that the ALJ was “out of her jurisdiction” to be without merit. *See* Statement of Errors at ¶ 21. We agree with Met-Ed that the Commission and, by logical extension, its ALJs, have the exclusive authority to adjudicate “issues involving the reasonableness, adequacy, and sufficiency of a public utility’s facilities and services.” R. Exc. at 11 (citing *Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980); *Hess v. Pa. PUC*, 107 A.3d 246, 259 (Pa. Cmwlth. 2014) (*citing, inter alia, County of Chester v. Phila. Electric Co.*, 218 A.2d 331, 333 (Pa. 1966))).

Moreover, as each Complainant alleged safety and health concerns related to Met-Ed’s installation of smart meters, we agree with the ALJ that the Commission has jurisdiction over the Act 129 subject matter of the Complaints. I.D. at 16, COL No. 1. In pertinent part, 66 Pa.C.S. § 701 (Section 701) states that:

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting

forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission...

66 Pa.C.S. § 701.

As set forth above, Section 701 provides for the Commission's jurisdiction over the Complainants' safety and health allegations related to smart meters. The Complainants' allegations that the ALJ is without jurisdiction do not acknowledge Section 701 or any Pennsylvania law or standards for Pennsylvania public utilities. Instead, as Met-Ed points out, the Complainants' allegations are based upon federal court cases involving the FTC and the SEC, which are inapplicable here. R. Exc. at 11 (citing Statement of Errors at 20-21; Exc. at 11<sup>35</sup> Therefore, as this case is well within the Commission's jurisdiction, we will deny the Complainants' Exception alleging otherwise.

## **7. Constitutional Arguments**

As we indicated, *supra*, the Complainants appear to assert in their Exceptions that the Initial Decision resulted in general violations of their Constitutional

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<sup>35</sup> The Complainants cite *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109 (2024) (*Jarkesy*) for the proposition that they are entitled to a jury trial in this matter. In that case the Supreme Court held that the U.S. Constitution's Seventh Amendment guarantees a jury trial in certain SEC enforcement actions and thus renders the use of administrative law judges unconstitutional in those instances. However, we note that holding is inapplicable to the Commission's administrative law judges process because the Seventh Amendment has not been incorporated against the states. *See Tewell v. Unemployment Comp. Bd. of Rev.*, 279 A.3d 644, 655 (Pa. Cmwlth. 2022). In addition, the matter in *Jarkesy* involved an enforcement action that sought civil penalties that went "beyond restoring the status quo." *Jarkesy*, 603 U.S. at 111. Unlike *Jarkesy*, the matter before the Commission involves restoring the status quo and therefore, even if the Seventh Amendment applied, it would not mandate a civil trial.

rights. *See* Exc. at 12. At the outset, we must recognize that the Complainants have not identified the alleged rights violated or any underlying support for such claims.

Therefore, to the extent the Complainants' assert in their Exceptions that the ALJ erred by not finding that the installation of a smart meter constitutes a violation of the Complainants' Constitutional rights, we shall deny the Exceptions. Furthermore, as a general matter, we agree with Met-Ed's argument that the Company is not a state actor, and therefore, the Complainants have failed to assert a constitutional claim. R. Exc. at 12; *Commonwealth v. Corley*, 491 A.2d 829, 832 (Pa. 1985) (additional citations omitted). Significantly, in *Povacz I*, the Pennsylvania Commonwealth Court determined that the EDC at issue, PECO, "is not a state actor in relation to its installation of smart meters and provision of electricity to its customers." *Povacz I*, 241 A.3d at 486 n.9. As previously noted, *supra*, the Commonwealth Court's decision is binding on the issue because the Supreme Court denied allocatur as to any Constitutional claims.<sup>36</sup>

Accordingly, to the extent the Complainant asserts a Constitutional right to refuse smart meter installation, we shall deny the Complainants' Exceptions on this issue.

In sum, we affirm the ALJ's analysis and conclusion that the Complainants failed to sustain their burden of proof. I.D. at 14, 17, COL No. 6. Specifically, we agree that the Complainants have not demonstrated, by a preponderance of the evidence, a "conclusive causal connection" between the adverse health effects or harm to human health and the RFs from the Met-Ed AMI. Accordingly, the Complainants have not supported the finding that Met-Ed's planned installation of a smart meter at the service address violates Section 1501 of the Code. *See* I.D. at 18-19, COL Nos. 4-6. 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.

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<sup>36</sup> *Povacz II* at 985, n.8.

#### **IV. Conclusion**

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

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

1. That the Exceptions filed by Liza Mousios and Roy Cumming on June 26, 2024, at Docket Nos. C-2019-3007989 and C-2019-3007995, are denied, consistent with this Opinion and Order.

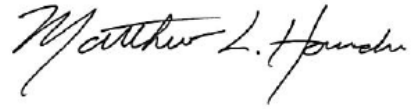
2. That the Initial Decision of Administrative Law Judge Darlene D. Heep, issued on June 13, 2024, at Docket Nos. C-2019-3007989 and C-2019-3007995, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint, filed on February 21, 2019, by Liza Mousios against Metropolitan Edison Company, at Docket No. C-2019-3007989, is denied and dismissed, with prejudice.

4. That the Formal Complaint, filed on February 21, 2019, by Roy Cumming against Metropolitan Edison Company, at Docket No. C-2019-3007995, is denied and dismissed, with prejudice.

5. That the proceedings at Docket Nos. C-2019-3007989 and C-2019-3007995 be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, reading "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