

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heidi Fiedler	:	
	:	
v.	:	C-2018-3003642
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Second Amended Formal Complaint due to Complainant’s failure to appear at evidentiary hearings on April 24, 2024, and March 5, 2025, and prosecute the Complaint.

HISTORY OF THE PROCEEDINGS

Initial Filings by the Parties

On July 23, 2018, Heidi Fiedler (Complainant or Ms. Fiedler) filed a Formal Complaint against Metropolitan Edison Company (Company, Respondent, Met-Ed)¹ with the Pennsylvania Public Utility Commission (Commission). She checked the

¹ On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power

box indicating the utility was threatening to shut off her service or had already done so, writing, “please see attached.” In her typewritten explanation for the reason for her Complaint, she explained that she refused to pay for a smart meter and refused to have one installed on her property. She argued that Act 129 of 2008, 66 Pa.C.S. § 2806.1 *et seq.* (Act 129), only permitted installation of smart meters upon request of a customer, and smart meters emanate electromagnetic radiation and electromagnetic fields (EMFs) that are linked to “serious negative health complaints.” Complaint ¶ 4. She argued she is sensitive to electromagnetic radiation and EMF and is concerned that installation of a smart meter would negatively impact her health and ability to work. *Id.* She further averred that she was “aware of serious security and hacking issues with smart meters” and explained she considers “smart meter technology a possible conduit for invasion of personal privacy.” *Id.* She argues that installation of a smart meter at her home would constitute a violation of Act 129 and a violation of 66 Pa.C.S. § 1501. *Id.*

In her typewritten request for relief, Ms. Fiedler requested the Commission: (1) compel Met-Ed to comply with 66 Pa.C.S. § 1501; (2) compel Met-Ed to cease attempts to install a smart meter on her property; (3) compel Met-Ed to provide an accommodation to her; (4) compel Met-Ed to allow her to continue to use an analog meter at her property; and (5) order a permanent stay of any current or future Met-Ed service termination against her. Complaint ¶ 5.

On August 13, 2018, Met-Ed filed an Answer, New Matter, and Preliminary Objections in response to the Complaint. Met-Ed admitted that it provides

Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Metropolitan Edison Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company's tariff.

residential retail electric service to Ms. Fiedler and that she refused the installation of a smart meter at her home. Met-Ed denied the remaining material allegations set forth in the Complaint. In its New Matter, which was accompanied by a Notice to Plead, Met-Ed averred that it is required by Act 129 to install a smart meter at Ms. Fiedler's residence.

In the Preliminary Objections, the Company argued the Complaint is legally insufficient because the Commission lacks authority to grant the requested relief and the Complaint should be dismissed. Met-Ed argued it is required to install a smart meter at Ms. Fiedler's residence by Act 129 and its Smart Meter Deployment Plan (SMP), which was approved by the Commission at Docket No. M-2013-2341990 by Order entered June 5, 2014. Met-Ed argued there was no "opt-out" available to customers.

On September 11, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this matter to Administrative Law Judge Jeffrey A. Watson (ALJ Watson).

On September 21, 2018, ALJ Watson issued an Interim Order, denying the Preliminary Objections.

On September 21, 2018, ALJ Watson issued a second Interim Order, establishing a litigation schedule. The parties were directed to exchange fact and expert witness information by December 28, 2018; conclude discovery by February 28, 2019; file any dispositive motions by April 4, 2019; and file any response to any dispositive motions within 20 days of service of the motion.

On October 25, 2018, Met-Ed filed a certificate of service evidencing the service of Interrogatories and Requests for Production of Documents (discovery requests) upon Ms. Fiedler.

On November 5, 2018, Ms. Fiedler filed an Amended Formal Complaint and objections to the discovery requests. Complainant indicated she was submitting a “blanket objection to the completion of the entire Met-Ed Interrogatories and Request for production of documents dated October 25, 2018.” Complainant objected that “[i]t is not possible to provide detailed information and comprehensive answers to the questions, and to provide documents be used in this case, without knowing the precise manufacturer and model of the smart meter system ... that Met-Ed and FirstEnergy seek to install at my home.”

On November 13, 2018, the Company filed a Motion to Compel.

On November 27, 2018, the Company filed an Answer and New Matter to the Amended Complaint.

On November 27, 2018, Ms. Fiedler filed a response to the Motion to Compel.

On December 28, 2018, Met-Ed served its witness information upon Complainant.

On January 7, 2019, ALJ Watson issued an Interim Order, granting the Company’s Motion to Compel, denying Complainant’s objections, and requiring Complainant to file full and complete responses to all the discovery requests upon the Company by February 1, 2019.

On February 1, 2019, Complainant filed a Request for Extension of Time for Discovery. Complainant wrote, “On November 5, 2018, I filed an amended Complaint before the Pennsylvania Public Utilities Commission. As of February 1, 2019, I have not received a ruling from the Pennsylvania Public Utilities Commission on my

amended complaint. I respectfully request a six-month extension of time for the discovery process.” The document was accompanied by a cover letter from Complainant dated February 1, 2019, and a certificate of service dated February 1, 2019.

On February 13, 2019, Met-Ed filed a Motion to Dismiss the Complaint. It averred Complainant provided incomplete responses to the discovery requests on February 1, 2019, and untimely objected to other discovery requests, despite ALJ Watson already denying her objections. Met-Ed also averred Complainant failed to provide any witness information as required by ALJ Watson’s Order.

On February 14, 2019, ALJ Watson issued an Interim Order denying Complainant’s Request for an Extension of Time for Discovery. ALJ Watson noted the request for an extension of time for discovery does not indicate what “ruling” Complainant anticipated receiving regarding the filing of her “amended complaint.” He explained that no “ruling” is required from the presiding officer regarding the filing of the “amended complaint” in this proceeding. In addition, he explained that the request from Complainant does not indicate if Complainant has initiated any discovery since the establishment of a litigation schedule by order entered on September 21, 2018, nor why discovery should be extended in this proceeding other than Complainant’s reference to the lack of a “ruling” on her “amended complaint.” ALJ Watson directed the parties to comply with the litigation schedule set by the September 21, 2018, Interim Order. Therefore, discovery closed in this matter on February 1, 2019.

On February 25, 2019, Ms. Fiedler filed a response to the Motion to Dismiss. Notably, Ms. Feidler indicated that she “had not retained any expert witnesses and therefore was not able to furnish a list of expert witnesses that did not exist.” She further argued an evidentiary hearing was necessary so she could “present evidence and testimony regarding the negative consequences and safety issues, including Electro Magnetic Field (EMF) radiation, that would result from the installation smart meter on

her property.” She explained that all of her proposed exhibits would be provided to the Company as soon as possible.

On February 28, 2019, Complainant filed a Second Amended Complaint. In addition to averments related to the proposed installation of a smart meter, beginning at paragraph 15 of the Second Amended Complaint, Complainant avers that Respondent allowed its electrical equipment on Complainant’s property to severely deteriorate and that Respondent’s contractors caused damage to Complainant’s property upon removing a pole from the property. Complainant averred that Respondent did not contact Complainant regarding the alleged damage; Respondent made no effort to repair the damage; and Respondent allowed its equipment to deteriorate and create an unsafe condition on Complainant’s property in violation of Section 1501 of the Public Utility Code and Section 57.194 of the Commission regulations. Complainant argued First Energy should be added as an additional respondent in this matter.

As relief, Complainant requested that Respondent abide by Section 1501 of the Public Utility Code and Section 57.194 of the Commission’s regulations; that the Company retain a certified independent engineering firm to perform a company-wide inspection of the Company’s entire electrical delivery system and equipment to ensure compliance with all safety codes and Commission regulations and promptly issue a report to the Commission; that Respondent pay \$7,469.78 to Complainant to cover the cost of repairs to her property allegedly caused by the Company’s contractor; that an amended litigation schedule be issued to provide for 60 days of additional discovery; that the Company cease and desist from any attempts to install a wireless smart meter at Complainant’s premises or that the Commission order a waiver of any rule, regulation or Commission Order that the Commission believes requires the Company to deploy a wireless EMF-emitting meter at Complainant’s premises; and that the Commission order a comprehensive independent investigation into the cyber security of the Company’s entire infrastructure, including computer networks and system communication systems.

On March 1, 2019, ALJ Watson issued an Interim Order scheduling a Prehearing Conference for April 19, 2019. ALJ Watson explained that the purpose of the conference was to provide the parties with an opportunity to address any outstanding discovery issues, the Motion to Dismiss, and any other outstanding issues in this proceeding.

On March 5, 2019, the Commission issued a Notice for the Prehearing Conference.

On March 13, 2019, the Prehearing Conference was rescheduled to March 26, 2019, by an Interim Order and a Reschedule Notice.

On March 18, 2019, Complainant filed a Status Report and a Request to Cancel the Prehearing Conference and Amend the Litigation Schedule. Complainant noted that she had recently filed a Seconded Amended Complaint, and she requested an additional sixty days for discovery regarding new claims she raised for the first time in her Second Amended Complaint.

On March 25, 2019, ALJ Watson issued an Interim Order denying Complainant's Request to Cancel the Prehearing Conference and directing the parties to appear and participate in the Prehearing Conference on April 19, 2019.

On March 27, 2019, the Company filed an Answer, New Matter, and Preliminary Objections to the Second Amended Complaint. Respondent averred that in her Second Amended Complaint, Complainant requested, in part, that Respondent financially compensate her for damage allegedly caused at the Service Location. Respondent asserted the Commission does not have the power or legal authority to award monetary damages.

On April 1, 2019, the Commission issued a Notice, rescheduling the March 26, 2019 Prehearing Conference to April 19, 2019.

On April 9, 2019, Complainant filed a Motion to Dismiss the Company's Preliminary Objections to the Second Amended Complaint. Complainant averred, *inter alia*, that the Preliminary Objections were not timely filed and therefore should be dismissed.

On April 19, 2019, the Prehearing Conference convened as scheduled. Ms. Fiedler appeared self-represented and objected to the conference being convened on that day, which was Good Friday. Lauren Lepkowski, Esq., and Tori Giesler, Esq., were present on behalf of the Company. After discussion with and agreement by the parties, ALJ Watson rescheduled the conference for May 2, 2019.

On April 22, 2019, Ms. Fiedler filed a Motion to Dismiss the Company's Answer and New Matter filed in response to the Second Amended Complaint, averring they were untimely filed.

On April 24, 2019, the Commission issued a Notice, scheduling the Prehearing Conference for May 2, 2019.

On April 24, 2019, the ALJ Watson issued an Interim Order rescheduling the conference and advising the parties that no further continuances would be granted.

On May 1, 2019, Complainant filed a certificate of service evidencing her service of additional discovery responses to the Company.

The May 2, 2019 Prehearing Conference convened as scheduled. Complainant appeared and participated. Ms. Giesler, Esq., appeared and participated on behalf of Respondent. The parties were provided an opportunity to address all of the outstanding issues in this proceeding. At the conference, ALJ Watson orally denied Complainant's request to join First Energy as an additional party, and Complainant made a request to reopen discovery. Additionally, Complainant failed to identify any of her fact and expert witnesses, and Respondent indicated that it was unable to access the additional discovery responses Complainant purportedly provided on May 1, 2019, on a USB drive.

On May 9, 2019, Ms. Fiedler filed a status report, confirming her status as a *pro se* complainant and noting she served additional discovery responses on the Company.

On October 10, 2019, ALJ Watson issued three Interim Orders. In one Interim Order, he considered Complainant's Motion to Dismiss the Company's Preliminary Objection to the Second Amended Complaint, finding the Preliminary Objection was, in fact, timely filed. He further granted the Company's Preliminary Objection to the Second Amended Complaint, striking Complainant's request for monetary damages from the Second Amended Complaint. Regarding Complainant's Motion to Dismiss the Company's Answer and New Matter to Second Amended Complaint, ALJ Watson held the pleadings were timely filed and denied Complainant's Motion.

In a second Interim Order issued October 10, 2019, ALJ Watson revised the litigation schedule. ALJ Watson granted in part and denied in part Complainant's request to re-open discovery. He wrote,

Complainant's request to permit additional discovery in this proceeding is granted in part, solely to permit Complainant to serve proper Discovery Requests upon Respondent solely related to the averments set forth in the Second Amended Complaint beginning at paragraph 15 of the Second Amended Complaint, and specifically that Respondent allowed its electrical equipment on Complainant's property to severely deteriorate and that Respondent's contractors caused damage to Complainant's property upon removing a pole from the property; that Respondent did not contact Complainant regarding the alleged damage; Respondent made no effort to repair the damage; and that Respondent allowed its equipment to deteriorate and create an unsafe condition on Complainant's property in violation of § 1501 of the Public Utility Code and § 57.194 of the Commission regulations. Discovery regarding these issues shall be concluded on or before October 28, 2019.

ALJ Watson denied Complainant's request in all other respects. He directed the Parties to exchange fact and expert witness information by November 1, 2019, and held that in the event that Complainant identified any fact or expert witnesses by the deadline, Respondent would be permitted to engage in discovery related to those named witnesses and their proposed or expected testimony, to be concluded on or before November 29, 2019. He also directed the parties to file a status report by November 1, 2019.²

In the third Interim Order issued October 10, 2019, ALJ Watson considered outstanding discovery disputes and held the Company's Motion to Dismiss the Complaint in abeyance. ALJ Watson, wrote,

Under the circumstances and in order to provide Complainant with a final opportunity to comply with the order granting Respondent's Motion to Compel Responses to Discovery Requests entered on June 28, 2019, the

² ALJ Watson also directed a status report be filed by November 25, 2019, but this appears to have been a typographical error.

Motion to Dismiss will be held in abeyance, subject to the terms set forth in the ordering paragraphs below. **Complainant's failure to provide timely as well as full and complete responses to the discovery responses may result in sanctions, up to and including dismissal of the Complaint.**

(emphasis is original).

ALJ Watson ordered Complainant to serve full and complete responses to all of the interrogatories and requests for production of documents forwarded by Respondent to Complainant on November 1, 2019, and file and serve a certificate of service regarding said service, on or before November 1, 2019. He also directed the parties to file a status report addressing their compliance with the Order by November 8, 2019. He explained the Motion to Dismiss would be held in abeyance.

On November 1, 2019, Ms. Fiedler filed a status report indicating that she provided paper copies of her discovery responses on May 6, 2019, served her own discovery requests upon the Company on October 28, 2019, and attached her witness information to the status report. She listed one fact witness, one expert witness to testify about electrical safety issues, and identified herself as providing both fact and expert testimony.

On November 12, 2019, the Company filed a certificate of service evidencing its service of objections to Complainant's discovery requests.

On November 19, 2019, the Company filed a status report. It advised that it was still reviewing whether it would be issuing any additional discovery in accordance with the October 10, 2019, Interim Order, and requested the hearing be scheduled as an in-person hearing.

On November 22, 2019, the Commission issued a Judge Change Notice, changing the presiding officer to Administrative Law Judge Francis J. Brady (ALJ Brady).

On November 25, 2019, the Company filed a certificate of service evidencing its service of additional discovery requests upon Ms. Fiedler.

On November 26, 2019, the Company filed a status report advising that while Complainant had not yet filed full and complete discovery responses, it was no longer pursuing additional responses from Complainant. It further advised that it expected to serve additional discovery requests on Complainant by the November 29, 2019, deadline, and provide responses to discovery requests served by Complainant by December 6, 2019.

On November 25, 2019, Complainant filed a status report as well as a Motion to Dismiss Objections of Metropolitan Edison Company to her discovery requests. Complainant's Motion did not include copies of her requests, or the Company's objections thereto.

On December 3, 2019, the Company filed a response to Complainant's Motion to Dismiss Objections to her discovery requests.

On December 4, 2019, the Company filed an amended response to Complainant's Motion to Dismiss Objections to her discovery requests, including the original discovery requests Complainant propounded upon the Company.

On December 5, 2019, the Commission issued a Hearing Notice, scheduling an in-person evidentiary hearing for February 5, 2020.

On December 6, 2019, the Company filed a certificate of service evidencing its service of discovery responses on Ms. Fiedler.

On December 11, 2019, ALJ Brady issued an Interim Order denying Complainant's Motion to Compel.

On December 19, 2019, ALJ Brady issued a Prehearing Order, scheduling an in-person evidentiary hearing for February 5, 2020, to be held in the Office of Administrative Law Judge's (OALJ's) office in Philadelphia.

On January 24, 2020, Ms. Fiedler filed a written request to continue the hearing because her witnesses were not available on February 5, 2020, and change the location of the hearing to Harrisburg.

On January 27, 2020, the Commission issued a Notice and ALJ Brady issued an Interim Order changing the February 5, 2020, proceeding to a telephone prehearing conference.

On February 3, 2020, ALJ Brady was served with Complainant's Third Amended Complaint, as well as her motion to extend discovery and revise the litigation schedule. Both documents were filed in the Commission's online docket on February 5, 2020.

On February 4, 2020, ALJ Brady issued an Interim Order Rejecting Complainant's Third Amended Complaint and Dismissing Her Motion for Discovery and Revised Litigation Schedule. ALJ Brady reminded the parties that the telephone conference would proceed as scheduled on February 5, 2020.

The conference convened as scheduled on February 5, 2020. Complainant appeared and represented herself. Tori Giesler, Esq., and Lauren Lepkoski, Esq., appeared on behalf of the Company. ALJ Brady explained to the parties that the purpose of the conference was to set a date and location for the evidentiary hearing. After discussion, the parties agreed to have an in-person hearing in Harrisburg, and ALJ Brady set the evidentiary hearing for April 28, 2020, at 10:00 a.m.

When the Complainant asked about his rejection of the Third Amended Complaint, ALJ Brady explained to her that the case would be transferred to a judge in Harrisburg, so she could refile her Third Amended Complaint after a new judge was assigned.

On February 7, 2020, the Company filed a letter stating it would not be filing a response to the Third Amended Complaint.

On February 12, 2020, then Deputy-Chief ALJ Joel Cheskis issued a Prehearing Order, scheduling an in-person evidentiary hearing for April 28, 2020, to be held in the OALJ office in Harrisburg.

On February 13, 2020, Complainant refiled her Third Amended Complaint, seeking reconsideration of ALJ Brady's rejection of it and again requesting an extension of discovery and a revised litigation schedule. Complainant served her filing on all the sitting Commissioners, and ALJs Brady and Cheskis. Although this was not styled as a Petition for Interlocutory Review, it was treated as such by the Company and the Commission.

On February 26, 2020, the Company filed a brief in opposition to Complainant's Petition for Interlocutory Review.

On May 12, 2020, the Commission issued a Notice, rescheduling the evidentiary hearing for July 30, 2020, as a telephone hearing.

On June 30, 2020, Ms. Fiedler filed a letter requesting that the hearing scheduled for July 30, 2020, be held in abeyance pending the resolution of an appeal of the Commission's decision in another smart meter complaint that was appealed to the Commonwealth Court. She noted that the Commonwealth Court held oral argument on the appeal on June 10, 2020. Ms. Fiedler attached a copy of an order from the court holding other similar appeals pending before it in abeyance. Ms. Fiedler also argued that the hearing scheduled for July 30, 2020, should be held in abeyance because the Commission had not acted on a petition for interlocutory review she filed on February 13, 2020. Finally, Ms. Fiedler stated that two of her witnesses are not available on July 30, 2020, and requested that the July 30, 2020, hearing be rescheduled as a result.

On July 14, 2020, Met-Ed filed an answer to Ms. Fiedler's motion to hold her case in abeyance. Met-Ed did not oppose Ms. Fiedler's request to reschedule the hearing due of her witnesses' lack of availability but did oppose Ms. Fiedler's request to hold her Complaint in abeyance pending resolution of the appeal at the Commonwealth Court. Met-Ed argued, among other things, that this Complaint has been pending for nearly two years and there is no reason to stay the proceeding until after the Commonwealth Court issues its decision. Met-Ed noted that Ms. Fiedler's petition for interlocutory review is deemed denied if the Commission does not act on it within 30 days, which it did not. Met-Ed also requested that a litigation schedule establishing a schedule for submission of pre-served written testimony be established.

On July 16, 2020, ALJ Cheskis denied Complainant's request to hold her Complaint in abeyance but did grant her request to reschedule the hearing. ALJ Cheskis also denied the Company's request to establish a litigation schedule for purposes of the submission of pre-served, written testimony. Finally, he directed the parties to confer and

propose, within ten days of the date of the order, multiple dates for the rescheduled hearing to occur.

On July 24, 2020, the Company filed a status report providing possible dates for the rescheduled hearing. The Company reported it had attempted to get dates for Ms. Fiedler but she did not have access to her witnesses' availability.

On July 27, 2020, the Commission scheduled a telephonic evidentiary hearing for October 30, 2020.

On July 30, 2020, Complainant filed a request for a new hearing date and that the hearing be held in-person. She argued that, as a *pro se* litigant, she would be at a disadvantage at a telephone hearing. She also requested the hearing be rescheduled to October 30, 2020.³

On October 16, 2020, the Company filed a Motion to Stay the proceedings.

On October 21, 2020, Mr. Edward Myers, Esq., filed a Motion for Admission *Pro Hac Vice* on behalf of Complainant. Attorney Myers represented he was a member of the bar in good standing in multiple jurisdictions, including Maryland and the District of Columbia, and noted he was a retired member of the Pennsylvania bar, with an original admission date of November 23, 1977.

On October 21, 2020, Attorney Myers filed a response to the Company's Motion for Stay, arguing it should be denied.

³ This part of Complainant's filing is confusing, since this is the date for which the hearing had already been scheduled.

On October 22, 2020, ALJ Cheskis issued an Interim Order granting the Company's Motion for a Stay.

On October 23, 2020, the Commission issued a Cancellation Notice, cancelling the evidentiary hearing for October 30, 2020.

On November 21, 2020, the Commission issued a Judge Change Notice, reassigning this matter to me.

Povacz I, Povacz II, and The Commission's Stay Order

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129, codified at 66 Pa.C.S. § 2807(f). In the *Povacz I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission's March 28, 2019, and May 9, 2019, Orders. *Povacz I* at 495. Specifically, the Commonwealth Court, in *Povacz I*, held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers' accommodations based on their health concerns. *Id.* at 490. However, the Commonwealth Court affirmed: (1) the Commission's application of the preponderance of evidence standard; (2) the Commission's finding that the customers in the underlying cases failed to sustain their burden of proof; and (3) that the Commission's findings of fact were supported by substantial evidence. *Id.* at 490-491, 493-495. The Commonwealth Court also declined to find that the deployment of smart meters violated the customers' Fourteenth Amendment liberty interests in bodily integrity. *Id.* at 487-488.

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

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

Previously, the Commonwealth Court stayed the proceedings in several other unconsolidated appeals that raised the same, or similar, smart meter issues pending its disposition of *Povacz I*. Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court’s disposition of *Povacz II*.

On August 16, 2022, the Supreme Court issued an Opinion and Order in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). In its Opinion in *Povacz II*, the Supreme Court affirmed the Commission’s determinations in all respects. The Supreme Court reversed the Commonwealth Court’s determination that Act 129 does not mandate smart meter installation and that Court’s remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501.

The Supreme Court did, however, affirm the Commonwealth Court’s conclusion that the, “[c]ustomers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects.” *Id.* at 1014. The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. *Id.* at 992. The Supreme Court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides instructions for furnishing smart meters to all customers. In short, the Supreme Court found that under Act 129, customers have no right to refuse smart meter installation. *Id.* at 997. Accordingly, the Supreme Court reversed the Commonwealth Court and affirmed the Commission’s interpretation in the underlying cases that Act 129 mandates universal smart meter installation. *Id.*

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

Proceeding Post-*Povacz II* in the Instant Case

After the Commission lifted the Stay, I carefully reviewed the extensive procedural history of this case. On January 5, 2024, I issued an Interim Order detailing the Supreme Court’s holding in *Povacz II*, and noted that in the instant case, discovery had closed, and the parties had exchanged witness information. I set a deadline for the filing of any appropriate motion, responses to motions, and directed the parties to submit a status report providing mutually agreeable dates for an evidentiary hearing. Motions were due by January 24, 2024, responses to motions were due by February 7, 2024, and

the status report was also due by February 7, 2024. I instructed the parties, **“If a party fails to timely provide dates, I will deem it a waiver by that party to provide any input on the hearing date, and I will not consider any requests by that party to reschedule the hearing due to a scheduling conflict or unavailability of witnesses.”** (emphasis in original).

On January 24, 2024, Respondent filed a Motion for Summary Judgment, arguing, *inter alia*, that Complainant had failed to appropriately identify expert witnesses or demonstrate that she would be able to make a *prima facie* case to carry her burden of proof in an evidentiary hearing.

On February 7, 2024, Respondent filed a status report advising, *inter alia*, that a Motion for Admission *Pro Hac Vice* filed by Attorney Myers was still pending and the dates that the Company was available for an evidentiary hearing, which included April 24, 2024.

On February 12, 2024, Complainant filed a response to the Company’s Motion for Summary Judgment, arguing that the certificate of service erroneously indicated she was served electronically, when she was in fact served by First-Class mail. Furthermore, Complainant argued the copy of the Motion served on her was date stamped on January 25, 2024, one day past the deadline set in my January 5, 2024, Interim Order. As such, Complainant argued the Motion should be dismissed as being untimely filed. Complainant did not respond substantively to the Motion to Dismiss. Complainant did not address her availability for an evidentiary hearing.

On March 19, 2024, I issued an Interim Order. As a preliminary matter, I granted the Motion for *Pro Hac Vice* filed by Edward B. Myers, Esq., noting that the Company did not file an objection to it. I also denied Complainant’s request to reject the Company’s Motion for Summary Judgment.

I explained to the parties that upon my substantive review of the Motion for Summary Judgment, I noted that on November 1, 2019, Complainant filed a status report, attaching her witness information. She identified one fact witness, one expert witness, and herself as providing both fact and expert testimony. She noted that the expert witness she identified, Frederick Fiedler, would provide testimony regarding electrical safety issues. She did not explain what expert testimony she would be providing or what her qualifications are to support her testifying as an expert.

Therefore, I explained in my March 19, 2024, Interim Order, that I was scheduling a hearing for April 24, 2024. I explained,

The sole purpose of the proceeding on April 24, 2024, is to allow for the *voire dire* of Complainant and Complainant's proposed expert witnesses. Complainant, the Company, and myself will have an opportunity to question Complainant and Complainant's proposed expert witnesses about their education, experience, and training. Complainant must clearly identify the area(s) of expertise in which Complainant and each of her proposed expert witnesses is being offered as an expert. Then, I will allow the parties an opportunity to provide oral argument as to whether each proposed expert witness should be permitted to testify as an expert in the area of expertise identified by Complainant. **We will not take any substantive expert opinion testimony on the claims made in the Second Amended Complaint at the hearing on April 24, 2024."**

After Complainant and all of her proposed expert witnesses have completed *voire dire* and the parties have presented oral argument, I will adjourn the proceeding. I will then render a written decision on the Company's Motion for Summary Judgment, as well as any motion in limine that any party makes or files. If appropriate, I will schedule an evidentiary hearing for Complainant to present, and the

Company to rebut, evidence on the substantive claims made in her Second Amended Complaint.

(emphasis in original).

I held the Company's Motion for Summary Judgment in abeyance pending the hearing on April 24, 2024.

In my ordering paragraphs of the March 19, 2024, Interim Order, I ordered parties to serve upon me and the other party a curriculum vitae and either (a) a summary of expected testimony, or (b) a written expert report for all of the party's proposed expert witnesses, they expect to testify as an expert at an evidentiary hearing (expert witness information). I also ordered parties to appear at the April 24, 2024, hearing, and explained, "Complainant's: (1) failure to appear at the April 24, 2024, hearing; or (2) her failure to produce her anticipated expert witnesses at the April 24, 2024, hearing; or (3) her failure to serve [the expert witness information] shall result in dismissal of the Second Amended Complaint."

On March 24, 2024, the Commission issued a hearing notice, scheduling an evidentiary hearing for April 24, 2024. The Notice was served upon Complainant by First-Class Mail and upon the Company by eService.

On March 22, 2024, Mr. Myers contacted me by email. Mr. Myers advised he was now 73 years old and had retired from the practice of law since filing the Motion for Admission *Pro Ha Vice*. He explained he was no longer a member of any bar association. He further explained he notified Ms. Fiedler of his decision to retire shortly after he filed the Motion for Admission *Pro Hac Vice*, and she did not object. He argued Ms. Fielder has had ample time to obtain replacement counsel since that time.

I issued an Interim Order on April 2, 2024, rescinding my decision to grant Mr. Myers' Motion for Admission *Pro Hac Vice*. I ruled that since Mr. Myers is no longer a licensed attorney, he was not eligible to represent Ms. Fiedler in this matter. I explained that the other terms of the March 19, 2024, Interim Order remained in effect in all other respects.

The hearing on April 24, 2024, convened as scheduled. James Meehan, Esq, Daniel Garcia, Esq., and Tori Giesler Esq., were present on behalf of the Company. Complainant was not present. Mr. Meehan requested that the Second Amended Complaint be dismissed and that the Motion for Summary Judgment no longer be held in abeyance. I informed the Company the Motion for Summary Judgment was no longer being held in abeyance and I would issue an appropriate order.

At no point did Ms. Fiedler contact me or the OALJ to explain why she did not attend the April 24, 2024, hearing or why her lack of attendance was unavoidable.

The transcript of the April 24, 2024, hearing was filed, and on May 7, 2024, I issued an Interim Order closing the record.

Subsequently, upon closer review of this matter, I determined that it was necessary to reopen the record, rule upon the Motion for Summary Judgment, and schedule an evidentiary hearing on Complainant's claims in the Second Amended Complaint that do not pertain to smart meters. On June 5, 2024, I entered an Interim Order re-opening the record.

On June 5, 2024, I issued an Interim Order granting in part and denying in part the Company's Motion for Summary Judgment. The Motion for Summary Judgment was granted such that all claims regarding smart meters and smart meter installation were dismissed from the Second Amended Complaint. The Motion for Summary Judgment

was denied in that all other claims made in the Second Amended Complaint were to proceed to an evidentiary hearing.

On June 5, 2024, the Commission issued a Notice, scheduling a telephonic hearing for July 31, 2024. On June 6, 2024, I issued a Prehearing Order.

On July 22, 2024, Complainant filed a request to reschedule the July 31, 2024, hearing, explaining she had a scheduling conflict.

On July 26, 2024, the Commission issued a Notice, cancelling the hearing and rescheduling it for September 12, 2024.

On August 22, 2024, I issued an Interim Order directing the parties to appear for the hearing on September 12, 2024, and advising that no additional continuances would be granted on behalf of Complainant absent good cause and proof provided by a third party.

On September 9, 2024, Respondent filed a request to continue the hearing, explaining that the parties were actively working towards resolution of this matter and required additional time. It proposed the parties file a joint status report by October 21, 2024.

On September 9, 2024, the Commission issued a Notice, cancelling the September 12, 2024, hearing.

On October 9, 2024, I issued an Interim Order directing the parties to file a status report by October 21, 2024.

On October 21, 2024, the Company filed a status report, advising that the parties had made progress towards settlement and requesting additional time to continue their settlement negotiations. It proposed filing an updated status report by November 15, 2024.

On October 30, 2024, I issued an Interim Order directing the parties to file a status report by November 15, 2024.

On November 15, 2024, the Company filed a status report, advising that the parties had made progress towards settlement, but during a recent conversation, Ms. Fiedler indicated she still wished to move forward with the Complaint. The Company requested that an evidentiary hearing be scheduled.

On November 18, 2024, the Commission issued a Notice, scheduling a telephonic hearing for January 30, 2025.

On November 18, 2024, Complainant filed a status report explaining her concerns regarding the safety of a pole and cable on her property.

On November 19, 2024, I issued a Prehearing Order, detailing the procedures for the hearing, including directions for how to request a continuance.

The hearing was convened as scheduled on January 30, 2025. Mr. Meehan, Esq., was present on behalf of the Company. Ms. Fiedler was present and represented herself. The parties engaged in off-the-record settlement discussions in an attempt to resolve this matter. The parties came to a tentative agreement, but agreed to schedule an evidentiary hearing for March 5, 2025, in the event one was needed. I stated clearly on the record, with both counsel for the Company and Complainant present,

I have directed the parties that, in the event that the parties do not agree to the filing the certificate of satisfaction prior to March 5th, 2025, we will convene for an evidentiary hearing on that date at 10:00 a.m. wherein Ms. Fiedler will have the burden of proof to present substantial evidence that the company has violated a code provision, statute or tariff provision based on the claims made in her second amended complaint. We will convene on March 5th at 10:00 a.m. unless a certificate of satisfaction is filed prior to that date.

Tr. 163.

I asked both parties whether there was anything else they wanted to put on the record, and both replied no. Tr. 163.

On February 3, 2025, the Commission issued a Notice and Prehearing Order, scheduling an evidentiary hearing for March 5, 2025. Both the Notice and Prehearing Order were served on Complainant by First-Class Mail. Neither was returned as undeliverable.

On February 3, 2025, the Company filed a certificate of satisfaction.

On February 12, 2025, Complainant emailed me, copying Mr. Meehan, a document entitled, "Objection to Certificate of Satisfaction." I emailed her, directing her to file her objection with the Commission's Secretary's Bureau.

Ms. Fiedler filed her objection to the certificate of satisfaction on February 14, 2025.

Since Complainant objected to the certificate of satisfaction, it was necessary to move forward with the evidentiary hearing on March 5, 2025, which had been scheduled on the record during the January 30, 2025, proceeding.

On February 13, 2025, I issued an Interim Order advising the parties that we would convene for an evidentiary hearing on March 5, 2025, as scheduled, and ordering the parties to appear. I further explained that Ms. Fiedler would bear the burden of proof to present substantial evidence that the Company has violated a law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701. Further, I reminded the parties that Ms. Fiedler was limited to the claims set forth in her Second Amended Complaint, with the exception of the claims dismissed in the Interim Order issued June 5, 2024. Finally, I explained that if I were to find the Company violated law, regulation, or rule, I may find that the Company must take remedial action or pay a civil penalty, which would be payable to the Commission, not Complainant.

The February 13, 2025, Interim Order was served on Complainant by First-Class Mail.

The hearing convened as scheduled on March 5, 2025. Mr. Meehan was present on behalf of the Company, as was the Company's witness, William Mushock. Ms. Fiedler was not present. I explained on the record that I had received some proposed exhibits from Complainant and her email to me referenced the date of the hearing as March 5, 2025. Tr. 170. Her email to me was dated March 3, 2025, and read, "Good evening, please find attached two additional pictures for the hearing scheduled on March 5." *Id.* Mr. Meehan made an oral motion on the record to dismiss the Second Amended Complaint with prejudice. I took the motion under advisement and adjourned the hearing at 10:07 a.m.

The transcript was filed March 17, 2025. The hearing record closed upon the adjournment of the hearing on March 5, 2025.

To date, Ms. Fiedler has not contacted me or OALJ to explain her failure to appear on March 5, 2025, or explain why it was unavoidable.

This matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Heidi Fiedler.
2. Respondent, Metropolitan Edison Company, is a Commission jurisdictional public utility.
3. On February 28, 2019, Complainant filed a Second Formal Complaint against Respondent, challenging the installation of a smart meter at her residence, and raising safety concerns regarding a pole and wires on her property, and requesting, among other things, monetary compensation to cover the cost of repairs for damages allegedly caused by the Company's contractor.
4. On March 27, 2019, Respondent filed an Answer, New Matter, and Preliminary Objections to the Second Amended Complaint, denying the material averments of the Second Amended Complaint, and arguing, among other things, the Commission lacked authority to award monetary damages.
5. On October 10, 2019, ALJ Watson issued an Interim Order granting the Company's Preliminary Objection, striking Complainant's request for monetary damages.

6. On November 1, 2019, Complainant filed a status report listing one fact witness, one expert witness, and identifying herself as providing both fact and expert testimony.

7. On January 24, 2024, Respondent filed a Motion for Summary Judgment, arguing, *inter alia*, that Complainant had failed to appropriately identify expert witnesses or demonstrate that she would be able to make a *prima facie* case to carry her burden of proof in an evidentiary hearing.

8. On February 12, 2024, Complainant filed a response to the Company's Motion for Summary Judgment, arguing, *inter alia*, that the Motion should be dismissed as untimely filed.

9. In her response to the Motion to Dismiss, Complainant did not respond substantively to the Company's arguments.

10. On March 19, 2024, I issued an Interim Order holding the Company's Motion to Dismiss in abeyance and advising that I was scheduling an evidentiary hearing on April 24, 2024, so Complainant could present herself and her expert witnesses to be questioned as to their education, experience, and training so I could make a determination as to whether they would be qualified to provide expert testimony at an evidentiary hearing.

11. The March 19, 2024, Interim Order, directed the parties to appear for the April 24, 2024, hearing and warned Complainant, "Complainant's: (1) failure to appear at the April 24, 2024, hearing; or (2) her failure to produce her anticipated expert witnesses at the April 24, 2024, hearing; or (3) her failure to serve [the expert witness information] shall result in dismissal of the Second Amended Complaint."

12. The March 19, 2024, Interim Order was served on Complainant by First-Class Mail.

13. On March 24, 2024, the Commission issued a hearing notice, scheduling an evidentiary hearing for April 24, 2024, and served a copy of the Notice upon Complainant by First-Class Mail.

14. Neither the March 19, 2024, Interim Order nor the March 24, 2024, Notice were returned as undeliverable.

15. Ms. Fiedler did not appear at the April 24, 2024, hearing.

16. Ms. Fiedler did not request a continuance of the April 24, 2024, hearing, nor did she contact the Commission to explain why her failure to appear was unavoidable.

17. On June 5, 2024, I issued an Interim Order granting in part and denying in part the Company's Motion for Summary Judgment.

18. The Motion for Summary Judgment was granted such that all claims regarding smart meters and smart meter installation were dismissed from the Second Amended Complaint; the Motion for Summary Judgment was denied in that all other claims made in the Second Amended Complaint were to proceed to an evidentiary hearing.

19. On June 5, 2024, the Commission issued a Notice, scheduling a telephonic hearing for July 31, 2024.

20. On June 6, 2024, I issued a Prehearing Order, setting forth the procedures for the conduct of hearings, including the consequences of failing to appear as well as instructions for requesting a continuance.

21. On July 22, 2024, Complainant filed a request to reschedule the July 31, 2024, hearing, explaining she had a scheduling conflict.

22. On July 26, 2024, the Commission issued a Notice, cancelling the hearing and rescheduling it for September 12, 2024.

23. On August 22, 2024, I issued an Interim Order directing the parties to appear for the hearing on September 12, 2024.

24. On September 9, 2024, Respondent filed a request to continue the hearing, explaining that the parties were actively working towards resolution of this matter and required additional time and proposing that the parties file a status report.

25. On September 9, 2024, the Commission issued a Notice, cancelling the September 12, 2024, hearing.

26. On November 15, 2024, the Company filed a status report, advising that the parties had made progress towards settlement, but explained that during a recent conversation, Ms. Fiedler indicated she still wished to move forward with the Complaint.

27. On November 18, 2024, the Commission issued a Notice, scheduling a telephonic hearing for January 30, 2025.

28. On November 19, 2024, I issued a Prehearing Order, detailing the procedures for the hearing, including directions for how to request a continuance.

29. The hearing convened as scheduled on January 30, 2025.

30. During the hearing on January 30, 2025, Complainant did not address her failure to appear on April 24, 2024, nor my Interim Order dated June 5, 2024, which denied in part and granted in part the Company's Motion for Summary Judgment.

31. During the hearing on January 30, 2025, the parties engaged in off-the-record settlement discussions in an attempt to resolve this matter. The parties came to a tentative agreement, but agreed to schedule an evidentiary hearing for March 5, 2025, in the event one was needed.

32. During the hearing on January 30, 2025, I stated clearly on the record, with both counsel for the Company and Complainant present,

I have directed the parties that in the event that the parties do not agree to the filing the certificate of satisfaction prior to March 5th, 2025, we will convene for an evidentiary hearing on that date at 10:00 a.m. wherein Ms. Fiedler will have the burden of proof to present substantial evidence that the company has violated a code provision, statute or tariff provision based on the claims made in her second amended complaint. We will convene on March 5th at 10:00 a.m. unless a certificate of satisfaction is filed prior to that date.

Tr. 163.

33. On February 3, 2025, the Commission issued a Notice and Prehearing Order, scheduling an evidentiary hearing for March 5, 2025.

34. Both the February 3, 2025, Notice and Prehearing Order were served on Complainant by First-Class Mail.

35. Neither the February 3, 2025, Notice nor February 3, 2025, Prehearing Order were returned as undeliverable.
36. On February 3, 2025, the Company filed a certificate of satisfaction.
37. On February 14, 2025, Ms. Fiedler filed an objection to the certificate of satisfaction.
38. On February 13, 2025, I issued an Interim Order advising the parties that we would convene for an evidentiary hearing on March 5, 2025, as scheduled, and ordering the parties to appear.
39. The February 13, 2025, Interim Order was served on Complainant by First-Class Mail.
40. The February 13, 2025, Interim Order served on Complainant was not returned as undeliverable.
41. On March 3, 2025, I received proposed exhibits from Complainant and her email to me referenced the date of the hearing as March 5, 2025. Tr. 170.
42. Complainant's March 3, 2025, email read, "Good evening, please find attached two additional pictures for the hearing scheduled on March 5." Tr. 170.
43. The hearing convened as scheduled on March 5, 2025.
44. Ms. Fiedler did not appear at the March 5, 2025, hearing.

45. Ms. Fiedler did not request a continuance of the March 5, 2025, hearing, nor did she contact the Commission to explain why her failure to appear was unavoidable.

46. Ms. Fiedler did not withdraw or settle this matter.

47. Complainant attended telephone proceedings in this matter on April 9, 2019; May 2, 2019; February 5, 2020; and January 30, 2025.

48. Complainant requested continuances of hearings scheduled to be held in this matter: on January 24, 2020, she requested a continuance of a hearing scheduled for February 5, 2020; on June 30, 2020, she requested a hearing scheduled for July 30, 2020, be held in abeyance pending resolution of another smart meter case then before the Commonwealth Court, or in the alternative, continued due to unavailability of her witnesses; on July 30, 2020, she requested a hearing be rescheduled for October 30, 2020; and on July 22, 2024, she requested a continuance of a hearing scheduled on June 6, 2024.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlt. 1984). This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Id.*

Regarding the April 24, 2024, hearing, I issued an Interim Order on March 19, 2024, advising the parties of the purpose of the hearing, and clearly explaining the consequences of failing to appear. Further, the Commission issued a hearing notice on March 24, 2024, providing the date and time of the hearing, as well as instructions for

how to call in to the hearing. The March 19, 2024, Interim Order and March 24, 2024, hearing notice were both served on Ms. Fiedler by First-Class Mail, at the address listed on her Complaint. Nothing was returned to the Commission as undeliverable. I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Judge*).

Regarding the hearing on March 5, 2025, Complainant received oral notice of this hearing on the record during the January 30, 2025, hearing. Tr. 163. Further, on February 3, 2025, the Commission issued a Notice and Prehearing Order, both of which were sent to Complainant by First-Class Mail at the address listed on her Complaint. After Ms. Fiedler filed her objection to the certificate of satisfaction, I issued an Interim Order dated February 13, 2025, informing the parties we would convene for the hearing on March 3, 2025, as scheduled. Ms. Fiedler was served a copy of the February 13, 2025, Interim Order by First-Class Mail at the address listed on her Complaint. Neither the February 3, 2025, Notice; the February 3, 2025, Prehearing Order; nor the February 13, 2025, Interim Order were returned as undeliverable. Again, I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. *Berkowitz; Meierdierck; Samara*); *Judge*.

On March 3, 2025, I received proposed exhibits from Complainant and her email to me referenced the date of the hearing as March 5, 2025. Tr. 170. Complainant's March 3, 2025, email read, "Good evening, please find attached two additional pictures for the hearing scheduled on March 5." Tr. 170. This suggests that Complainant was well aware of the hearing scheduled for March 5, 2025.

Further, her attendance at proceedings on April 19, 2019; May 2, 2019; February 5, 2020; and January 30, 2025, suggest she received all the notices and orders the Commission mailed to her address.

Additionally, Ms. Fiedler has been served with *multiple* documents over the course of this proceeding over the last seven years that provided instructions on how to request a continuance. She has requested continuances previously, evidencing her familiarity of the process of how to do so. On January 24, 2020, she requested a continuance of a hearing scheduled for February 5, 2020; on June 30, 2020, she requested a hearing scheduled for July 30, 2020, be held in abeyance pending resolution of another smart meter case then before the Commonwealth Court, or in the alternative, continued due to unavailability of her witnesses; on July 30, 2020, she requested a hearing be rescheduled for October 30, 2020; and on July 22, 2024, she requested a continuance of a hearing scheduled on June 6, 2024.

Further, Complainant is well aware of the procedure for calling into the conference bridge, having previously attended proceedings on April 19, 2019; May 2, 2019; February 5, 2020; and January 30, 2025.

Ms. Fiedler had an opportunity to appear at the hearings on April 24, 2024, and March 5, 2025, and voluntarily chose not to do so. Under the circumstances, the due process rights of Complainant have been fully protected.

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002). Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be

permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). However, these provisions in the Code and in the Commission's regulations do not apply if the presiding officer determines that the party's failure to appear at the hearing was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b).

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022) (*Brown*); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022) (*Little*); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019) (*Williams*); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995) (*Jefferson*); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Complainant failed to appear for the hearings on April 24, 2024, and March 5, 2025, despite receiving notice. To date, there has been no communication to the OALJ or to me by, or on behalf of, Ms. Fiedler explaining why her failure to appear at the hearing was unavoidable. Notably, Ms. Fiedler attended the hearing on January 30, 2025, but did not address her failure to appear on March 5, 2025, nor did she address my Interim Order dated June 5, 2024, granting in part and denying in part the Company's Motion to Dismiss her smart meter claims.

Consequently, I find that Ms. Fiedler waived the opportunity to participate in these hearings on the matters raised in the Second Amended Complaint and her absence was not unavoidable.

Finally, section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

As the proponent of a request for relief, Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the Second Amended Complaint, Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the Second Amended Complaint. *Brown; Williams* (citing *Jefferson*). Accordingly, the merits of the Second Amended Complaint will not be addressed.

As such, the Second Amended Complaint is dismissed due to Complainant's failure to appear and prosecute it. While Commission precedent would support dismissing the Complaint with prejudice, I am exercising my discretion to dismiss without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. Mail sent in the ordinary course of business that has not been returned is presumed received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

4. The due process rights of Ms. Fiedler have been fully protected in this proceeding and her failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

5. By failing to appear for the hearings and proffer any evidence to support the Second Amended Complaint, Ms. Fiedler has failed to meet her burden of proving she is eligible for the relief she seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.245(a).

