

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

Public Meeting held July 24, 2025

Commissioners Present:

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

Heidi Fiedler

C-2018-3003642

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions, filed by Heidi Fiedler (Complainant or Ms. Fiedler) on May 16, 2025, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Emily I. DeVoe, which was issued on April 29, 2025, in the above-captioned proceeding. FirstEnergy Pennsylvania

Electric Company (Met-Ed or the Company)¹ filed Replies to Exceptions on May 29, 2025. In the Initial Decision, ALJ DeVoe recommended that the Commission dismiss the Second Amended Formal Complaint (Second Amended Complaint or Complaint) filed by the Complainant on February 28, 2019, due to the Complainant's failure to appear at evidentiary hearings on April 24, 2024 and March 5, 2025, and the Complainant's failure to prosecute the Complaint. For the reasons discussed below, we shall deny the Complainant's Exceptions, adopt the Initial Decision of ALJ DeVoe, and dismiss the Complaint, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Met-Ed proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant refuses to have a smart meter installed for health, safety, and cyber security reasons. The Second Amended Complaint in this case also includes alleged property damage when the Company replaced a pole on the Complainant's property. The Complainant requested, *inter alia*, that the Commission order Met-Ed to: (1) comply with 66 Pa.C.S. § 1501 and 52 Pa. Code § 57.194; (2) retain an independent engineering firm to inspect Met-Ed's entire electrical delivery system and

¹ At the time of initiation of the instant proceeding, FirstEnergy Pennsylvania Electric Company consisted of four separate companies: Met-Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company (FirstEnergy PA). *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.

equipment; (3) pay the Complainant \$7469.78 to cover the costs of repairs to the Complainant's property; (4) cease in its efforts to install a smart meter at the service address or waive the requirement to do so; and (5) complete a comprehensive review of the cyber security of the Company's entire infrastructure. Second Amended Complaint at 4-5.

Met-Ed is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns and maintains the meters in its distribution system. See FirstEnergy PA 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).

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

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

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

(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.

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 Installation Order*). Met-Ed sought and obtained the Commission’s approval to complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan*, Docket No. M-2013-2341990 (Opinion and Order entered March 6, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding²

On July 23, 2018, the Complainant filed a Formal Complaint³ with the Commission against Met-Ed, averring that the Company was threatening termination of electrical service. The Complainant objected to the installation of a smart meter at the service address, alleging that the Company was in violation of Act 129 and Section 1501 and that the smart meter could cause negative health effects, posed unsafe cyber security risks, and was an invasion of privacy. *July 2018 Complaint* at ¶ 4. As relief, the Complainant requested, *inter alia*, that the Commission order Met-Ed to: (1) comply with Section 1501; (2) allow the Complainant to keep her analog meter; and (3) stay any attempt to terminate Complainant's electric service. *July 2018 Complaint* at ¶ 5.

On August 13, 2018, the Company filed an Answer and New Matter to the *July 2018 Complaint*. Met-Ed admitted that it provides residential retail electric service to the Complainant's residential address. Met-Ed averred that the Complainant refused to allow access to install a smart meter, which constitutes legal grounds to terminate electric service. Met-Ed denied the remaining material allegations set forth in the *July 2018 Complaint*. Met-Ed further averred that it is required by Act 129 to install a smart meter. Answer to *July 2018 Complaint* at 1-6. The Complainant did not file a reply to Met-Ed's New Matter.

² The History of the Proceeding is summarized here. A more extensive History of the Proceeding can be found in the Initial Decision at 1-28.

³ On July 23, 2018, the Complainant filed a Formal Complaint (*July 2018 Complaint*). The Complainant filed an Amended Formal Complaint on November 5, 2018 and the Second Amended Complaint on February 28, 2019. The Complainant filed a Third Amended Complaint on February 2, 2020, which was rejected by ALJ F. Joseph Brady by Interim Order on February 4, 2020. The Complainant refiled the Third Amended Complaint on February 13, 2020, which was then treated as a Petition for Interlocutory Review (Petition) by the Commission. The Commission declined to consider the Petition.

On August 13, 2018, the Company filed Preliminary Objections in response to the *July 2018 Complaint*. The Company argued that the *July 2018 Complaint* is legally insufficient because the Commission lacks the authority to grant the requested relief and the *July 2018 Complaint* should be dismissed. The Company stated that it is required to install a smart at the service address by Act 129 and there was no opt-out available to the Complainant. Preliminary Objections at 5-6.

On September 21, 2018, ALJ Jeffrey A. Watson issued an Interim Order, denying the Preliminary Objections. I.D. at 3.

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. I.D. at 3.

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. I.D. at 3.

On November 5, 2018, the Complainant filed an Amended Formal Complaint and objections to the discovery requests. I.D. at 4.

On November 13, 2018, the Company filed a Motion to Compel. I.D. at 4.

On November 27, 2018, the Company filed an Answer and New Matter to the Amended Complaint. Also on November 27, 2018, the Complainant filed a response to the Motion to Compel. I.D. at 4.

On December 28, 2018, Met-Ed served its witness information upon the Complainant. I.D. at 4.

On January 7, 2019, ALJ Watson issued an Interim Order, granting the Company's Motion to Compel, denying the Complainant's objections, and requiring the Complainant to file full and complete responses to all the discovery requests upon the Company by February 1, 2019. I.D. at 4.

On February 1, 2019, the Complainant filed a Request for Extension of Time for Discovery. I.D. at 4.

On February 13, 2019, Met-Ed filed a Motion to Dismiss the Complaint. Met-Ed averred that the 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 that the Complainant failed to provide any witness information as required by ALJ Watson's Order. I.D. at 5.

On February 14, 2019, ALJ Watson issued an Interim Order denying the Complainant's Request for an Extension of Time for Discovery. 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. I.D. at 5.

On February 25, 2019, Ms. Fiedler filed a response to the Motion to Dismiss. The Complainant 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 her proposed exhibits would be provided to the Company as soon as possible. I.D. at 5-6.

On February 28, 2019, the Complainant filed a Second Amended Complaint. In addition to statements related to the proposed installation of a smart meter, the Complainant averred that Met-Ed allowed its electrical equipment on the Complainant’s property to severely deteriorate, and that Met-Ed’s contractors caused damage to the Complainant’s property while removing a pole from the property. The Complainant contended that Met-Ed did not contact her regarding the alleged damage; Met-Ed made no effort to repair the damage; and Met-Ed allowed its equipment to deteriorate and create an unsafe condition on her property in violation of Section 1501 of the Code and Section 57.194 of the Commission Regulations. The Complainant argued that FirstEnergy, Met-Ed’s parent company, should be added as an additional respondent in this matter. I.D. at 6.

On March 27, 2019, the Company filed an Answer, New Matter, and Preliminary Objections to the Second Amended Complaint. Met-Ed averred that in the Complainant’s Second Amended Complaint, the Complainant requested, in part, financial compensation from Met-Ed for damage allegedly caused at the service location. Met-Ed asserted that the Commission does not have the power or legal authority to award monetary damages. I.D. at 7.

After rescheduling, a Prehearing Conference was held on May 2, 2019. The Complainant appeared and participated. Tori Giesler, Esq., appeared and participated on behalf of Met-Ed. The parties were provided an opportunity to address the outstanding issues in this proceeding. At the conference, ALJ Watson orally denied the Complainant’s request to join FirstEnergy as an additional party, and the Complainant made a request to reopen discovery. The Complainant failed to identify any of her fact and expert witnesses, and Met-Ed indicated that it was unable to access the additional

discovery responses the Complainant purportedly provided on May 1, 2019, on a USB drive. I.D. at 9.

On October 10, 2019, ALJ Watson issued three Interim Orders. In one Interim Order, he considered the 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 the 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 the Complainant's Motion. I.D. at 9.

In a second Interim Order issued October 10, 2019, ALJ Watson revised the litigation schedule. ALJ Watson granted, in part, and denied, in part, the Complainant's request to re-open discovery. ALJ Watson granted the Complainant's request to permit additional discovery related only to the Second Amended Complaint, beginning at paragraph No. 15 regarding Met-Ed's electrical equipment and property damage. ALJ Watson directed the Parties to exchange fact and expert witness information by November 1, 2019, and held that in the event that the Complainant identified any fact or expert witnesses by the deadline, Met-Ed 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. I.D. at 9-10.

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 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.**

I.D. at 10-11 (emphasis in original).

ALJ Watson ordered the Complainant to serve full and complete responses to all of the interrogatories and requests for production of documents forwarded by Met-Ed to the 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. I.D. at 11.

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. I.D. at 11.

On November 12, 2019, the Company filed a certificate of service evidencing its service of objections to the Complainant's discovery requests. I.D. at 11.

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. I.D. at 11.

On November 22, 2019, the Commission issued a Judge Change Notice, changing the presiding officer to Administrative Law Judge F. Joseph Brady (ALJ Brady). I.D. at 12.

On November 25, 2019, the Company filed a certificate of service evidencing its service of additional discovery requests upon the Complainant. I.D. at 12.

On November 26, 2019, the Company filed a status report advising that while the Complainant had not yet filed full and complete discovery responses, it was no longer pursuing additional responses from the Complainant. It further advised that it expected to serve additional discovery requests on the Complainant by the November 29, 2019, deadline, and provide responses to discovery requests served by the Complainant by December 6, 2019. I.D. at 12.

On November 25, 2019, the Complainant filed a status report as well as a Motion to Dismiss Objections of Metropolitan Edison Company to her discovery requests. The Complainant's Motion did not include copies of her requests, or the Company's objections thereto. I.D. at 12.

On December 3, 2019, the Company filed a response to the Complainant's Motion to Dismiss Objections to her discovery requests. I.D. at 12.

On December 4, 2019, the Company filed an amended response to the Complainant's Motion to Dismiss Objections to her discovery requests, including the original discovery requests the Complainant propounded upon the Company. I.D. at 12.

On December 5, 2019, the Commission issued a Hearing Notice, scheduling an in-person evidentiary hearing for February 5, 2020. I.D. at 12.

On January 27, 2020, the Commission issued a Notice and ALJ Brady issued an Interim Order changing the previously scheduled February 5, 2020, proceeding to a telephone prehearing conference. I.D. at 13.

On February 3, 2020, ALJ Brady was served with the 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. I.D. at 13.

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. I.D. at 13.

The conference convened as scheduled on February 5, 2020. The 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. I.D. at 14.

When the Complainant asked about the 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. I.D. at 14.

On February 7, 2020, the Company filed a letter stating it would not be filing a response to the Third Amended Complaint. I.D. at 14.

On February 12, 2020, Deputy-Chief ALJ Joel Cheskis issued a Prehearing Order, scheduling an in-person evidentiary hearing for April 28, 2020, to be held in Harrisburg. I.D. at 14.

On February 13, 2020, the 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. The 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. I.D. at 14.

On February 26, 2020, the Company filed a brief in opposition to the Complainant's Petition for Interlocutory Review. I.D. at 14.

On May 12, 2020, the Commission issued a Notice, rescheduling the evidentiary hearing for July 30, 2020, as a telephone hearing. I.D. at 15.

On June 30, 2020, the Complainant 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. The Complainant 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, the Complainant stated that two of her witnesses would not be available on July 30, 2020, and requested that the July 30, 2020 hearing be rescheduled as a result. I.D. at 15.

On July 14, 2020, Met-Ed filed an answer to the Complainant's motion to hold her case in abeyance. Met-Ed did not oppose Ms. Fiedler's request to reschedule the hearing due to 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 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. I.D. at 15.

On July 16, 2020, ALJ Cheskis denied the 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, ALJ Cheskis directed the parties to confer and propose, within ten days of the date of the order, multiple dates for the rescheduled hearing to occur. I.D. at 15-16.

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

On October 22, 2020, ALJ Cheskis issued an Interim Order granting the Company's Motion for a Stay. I.D. at 17.

On October 23, 2020, the Commission issued a Cancellation Notice, cancelling the evidentiary hearing for October 30, 2020. I.D. at 17.

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.

On November 21, 2020, the Commission issued a Judge Change Notice, reassigning this matter to ALJ DeVoe. I.D. at 17.

By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and the Complainant's procedural rights and obligations under the Commission's Regulations.

On January 5, 2024, ALJ DeVoe issued an Interim Order detailing the Pennsylvania Supreme Court's holding in *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), and noted that in the instant case, discovery had closed, and the Parties had exchanged witness information. ALJ DeVoe 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. ALJ DeVoe instructed the Parties that, **"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.”
I.D. at 19-20 (emphasis in original).

On January 24, 2024, Met-Ed filed a Motion for Summary Judgment, arguing, *inter alia*, that the 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. I.D. at 20.

On February 12, 2024, the 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, the Complainant argued that the copy of the Motion served on her was date stamped on January 25, 2024, one day past the deadline set in the ALJ’s January 5, 2024 Interim Order. As such, the Complainant argued that the Motion should be dismissed as being untimely filed. The Complainant did not respond substantively to the Motion to Dismiss. The Complainant did not address her availability for an evidentiary hearing. I.D. at 20.

On March 19, 2024, ALJ DeVoe issued an Interim Order denying the Complainant’s request to reject the Company’s Motion for Summary Judgment. I.D. at 20.

ALJ DeVoe explained to the Parties that upon review of the Motion for Summary Judgment, she noted that on November 1, 2019, the Complainant filed a status report, attaching her witness information. The Complainant identified one fact witness, one expert witness, and herself as providing both fact and expert testimony. The Complainant noted that the expert witness she identified, Mr. Frederick Fiedler, would provide testimony regarding electrical safety issues. The Complainant did not explain

what expert testimony she would be providing or what her qualifications were to support her testifying as an expert. I.D. at 21.

The ALJ explained in the March 19, 2024 Interim Order, that she was scheduling a hearing for April 24, 2024 as follows:

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 the ALJ 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.

I.D. at 21-22 (emphasis in original).

The ALJ held the Company's Motion for Summary Judgment in abeyance pending the hearing on April 24, 2024. I.D. at 22.

In the March 19, 2024, Interim Order, the ALJ ordered the Parties to serve upon the ALJ and the other party a curriculum vitae and either (1) a summary of expected testimony, or (1) 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). The ALJ also ordered the Parties to appear at the April 24, 2024, hearing, and explained, the "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." I.D. at 22.

On March 24, 2024, the Commission issued a hearing notice, scheduling an evidentiary hearing for April 24, 2024. The Notice was served upon the Complainant by First-Class Mail and upon the Company by eService. I.D. at 22.

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. The 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. The ALJ informed the Company that the Motion for Summary Judgment was no longer being held in abeyance and that the ALJ would issue an appropriate order. I.D. at 23.

At no point did Ms. Fiedler contact the ALJ or the Office of Administrative Law Judge (OALJ) to explain why she did not attend the April 24, 2024 hearing or why her lack of attendance was unavoidable. I.D. at 23.

The transcript of the April 24, 2024, hearing was filed, and on May 7, 2024, the ALJ issued an Interim Order closing the record. I.D. at 23.

Subsequently, the ALJ determined that it was necessary to reopen the record, rule upon the Motion for Summary Judgment, and schedule an evidentiary hearing on the Complainant's claims in the Second Amended Complaint that do not pertain to smart meters. On June 5, 2024, the ALJ entered an Interim Order re-opening the record. I.D. at 23.

On June 5, 2024, the ALJ 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. I.D. at 23-24.

On June 5, 2024, the Commission issued a Notice, scheduling a telephonic hearing for July 31, 2024. On June 6, 2024, the ALJ issued a Prehearing Order. I.D. at 24.

On July 22, 2024, the Complainant filed a request to reschedule the July 31, 2024, hearing, explaining she had a scheduling conflict. I.D. at 24.

On July 26, 2024, the Commission issued a Notice, cancelling the hearing and rescheduling it for September 12, 2024. I.D. at 24.

On August 22, 2024, the ALJ 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. I.D. at 24.

On September 9, 2024, Met-Ed filed a request to continue the hearing, explaining that the Parties were actively working towards resolution of this matter and required additional time. Met-Ed proposed the parties file a joint status report by October 21, 2024. I.D. at 24.

On September 9, 2024, the Commission issued a Notice, cancelling the September 12, 2024, hearing. I.D. at 24.

On October 9, 2024, the ALJ issued an Interim Order directing the Parties to file a status report by October 21, 2024. I.D. at 24.

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. Met-Ed proposed filing an updated status report by November 15, 2024. I.D. at 25.

On October 30, 2024, the ALJ issued an Interim Order directing the Parties to file a status report by November 15, 2024. I.D. at 25.

On November 15, 2024, the Company filed a status report, advising that the Parties had made progress towards settlement, but that 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. I.D. at 25.

On November 18, 2024, the Commission issued a Notice, scheduling a telephonic hearing for January 30, 2025. I.D. at 25.

On November 18, 2024, the Complainant filed a status report explaining her concerns regarding the safety of a pole and cable on her property. I.D. at 25.

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

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. The ALJ stated 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.

I.D. at 25-26 (citing Tr. at 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. I.D. at 26.

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

I.D. at 26.

On February 12, 2025, the Complainant emailed the ALJ, copying Mr. Meehan, a document entitled, “Objection to Certificate of Satisfaction.” The ALJ

emailed her, directing her to file her objection with the Commission's Secretary's Bureau. I.D. at 26.

Ms. Fiedler filed her objection to the certificate of satisfaction on February 14, 2025. I.D. at 26.

Since the 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. I.D. at 27.

On February 13, 2025, the ALJ issued an Interim Order advising the Parties of the evidentiary hearing on March 5, 2025, as scheduled, and ordering the Parties to appear. The ALJ 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, the ALJ 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, the ALJ explained that if she were to find the Company violated a law, regulation, or rule, she may find that the Company must take remedial action or pay a civil penalty, which would be payable to the Commission, not the Complainant. I.D. at 27.

On February 13, 2025, an Interim Order was served on the 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, Mr. William Mushock. Ms. Fiedler was not present. The ALJ explained on the record that she had received some proposed exhibits from the Complainant and that her email to the ALJ referenced the date of the hearing as March 5, 2025. I.D. at 27 (citing Tr. 170). The Complainant's email to the ALJ was dated March 3, 2025, and read, "Good evening,

please find attached two additional pictures for the hearing scheduled on March 5.” I.D. at 27. Mr. Meehan made an oral motion on the record to dismiss the Second Amended Complaint, with prejudice. The ALJ took the motion under advisement and adjourned the hearing at 10:07 a.m. *Id.*

The transcript was filed March 17, 2025. The hearing record closed upon the adjournment of the hearing on March 5, 2025. I.D. at 28.

To date, Ms. Fiedler has not contacted the ALJ or OALJ to explain her failure to appear on March 5, 2025, or explain why it was unavoidable. I.D. at 28.

On April 29, 2025, the Commission issued ALJ DeVoe’s Initial Decision in *Heidi Fiedler v. Metropolitan Edison Company*, Docket No. C-2018-3003642.

As noted above, on May 16, 2025, the Complainant filed Exceptions to the Initial Decision. Met-Ed filed Replies to Exceptions on May 29, 2025.

III. Discussion

A. Legal Standards

1. Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984), citing *Township of Middleton v. The Institute District of the County*

of Delaware, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd* 450 Pa. 282, 299 A.2d 599 (Pa. Cmwlth. 1973). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied*, 539 Pa. 696, 653 A.2d 1234 (1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010) (*Geary*).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002) (*Mumma*); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993) (*Sentner*).

A party to a proceeding has the right to request a continuance of the hearing, which may be considered and granted by the presiding officer "only for good cause shown." *See* 52 Pa. Code § 1.15(b). The party making the request must file a motion at least five days prior to the hearing date stating the facts on which the request is made, except that during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing room. 52 Pa. Code § 1.15(b).

If a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in a hearing in the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). This result is not applied to the party, however, if the presiding officer determines that the party's failure to appear was "unavoidable" and the interests of the other party (or parties) and the public will not be "prejudiced" by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). Also, this result may not be applied if the presiding officer or Commission determines that the complainant demonstrated a good faith attempt to attend the hearing. *See e.g., Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Final Order entered June 13, 2013) (*Yomari Then*); *see also Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011) (*Wiggins*).

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995) (*Jefferson*), *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995) (*Nichols III*).

2. General Burden of Proof for Complaint Proceeding

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

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990) (*Patterson*). 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*, 529 Pa. 654, 602 A.2d 863 (1992)(*Lansberry*). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950)(*Se-Ling Hosiery*).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (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 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional

evidence favorable to the complainant's claim. *See Milkie*, 768 A.2d at 1220; *see also Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁴ 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. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*).

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*,

⁴ 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)).

625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. ALJ's Initial Decision

In the Initial Decision, ALJ DeVoe made forty-eight Findings of Fact (FOF) and reached five Conclusions of Law (COL). I.D. at 28-34, 39. 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.

In her disposition, ALJ DeVoe addressed, *inter alia*, due process and the Complainant's failure to appear at hearings on April 24, 2024, and March 5, 2025. I.D. at 34-38.

The ALJ explained that administrative agencies, including the Commission, are required to provide due process to parties appearing before them. Due process requires that parties are afforded notice and the opportunity to be heard. I.D. at 34 (citing *Schneider*).

Regarding the April 24, 2024 hearing, the ALJ provided that she issued an Interim Order on March 19, 2024 advising the Parties of the purpose of the hearing and explaining the consequences of failing to appear. On March 24, 2024, the Commission issued a hearing notice providing the date and time of the hearing as well as instructions for how to call in to the hearing. Both the March 19, 2024 Interim Order and the March 24, 2024 hearing notice were served on the Complainant by First-Class mail. Neither were returned to the Commission as undeliverable. The ALJ stated that she must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. I.D. at 34-35 (citing *Mayflower*; *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 March 5, 2025 hearing, the ALJ noted that the Complainant received oral notice of the hearing on the record during the January 30, 2025 hearing. I.D. at 35 (citing Tr. at 163). On February 3, 2025, the Commission issued a Notice and Prehearing Order, both of which were sent to the Complainant by First-Class mail at the address listed on her Complaint.

After Ms. Fiedler filed her objection to the certificate of satisfaction, the ALJ issued an Interim Order dated February 13, 2025, informing the parties that a hearing would convene on March 5, 2025, as scheduled. The Complainant was served a copy of the February 13, 2025, Interim Order by First-Class Mail at the address listed on her Complaint. The February 3, 2025 Notice; the February 3, 2025 Prehearing Order; and the February 13, 2025, Interim Order were not returned to the Commission as undeliverable. The ALJ provided that she must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. I.D. at 35 (citing *Mayflower*; *Meierdierck*; *Samara*; *Judge*).

The ALJ further noted that on March 3, 2025, she received proposed exhibits from the Complainant and that the accompanying email from the Complainant referenced the correct date of the hearing as March 5, 2025. I.D. at 35 (citing Tr. at 170). In the ALJ's view, this suggested that the Complainant was aware of the hearing scheduled for March 5, 2025. Additionally, the ALJ noted that the Complainant's 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. I.D. at 36.

The ALJ reasoned that the Complainant was familiar with the process of obtaining a continuance if needed. In this regard, the ALJ pointed out that the Complainant 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. The ALJ further highlighted that the Complainant has requested continuances previously, demonstrating her familiarity with the process. Namely, the ALJ noted: (1) on January 24, 2020, the Complainant requested a continuance of a hearing scheduled for February 5, 2020; (2) 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; (3) on July 30, 2020, she requested a hearing be rescheduled for October 30, 2020; and (4) on July 22, 2024, she requested a continuance of a hearing scheduled on June 6, 2024. I.D. at 36.

The ALJ provided that the Complainant is also familiar with the procedure for calling into a telephonic hearing using a conference bridge, as the Complainant attended proceedings on April 19, 2019; May 2, 2019; February 5, 2020 and January 30, 2025. I.D. at 36.

The ALJ concluded that the Complainant had an opportunity to appear at the hearings on April 24, 2024 and March 5, 2025, but that she voluntarily chose not to do so. Accordingly, the ALJ found that the due process rights of the Complainant have been fully protected. I.D. at 36.

The ALJ explained that 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. I.D. at 36 (citing *Mumma*). The ALJ further explained that both the 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. I.D. at 37 (citing 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)).

The ALJ stated that the party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. I.D. at 37 (citing 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 April 22, 2022) (*Brown*); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered February 7, 2022) (*Little*); *Williams v. PECO Energy Co.*, Docket No. C-2018- 3000734 (Opinion and Order entered March 14, 2019) (*Williams*); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995) (*Jefferson*); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)).

The ALJ provided that the Complainant failed to appear for the hearings on April 24, 2024, and March 5, 2025, despite receiving notice. The ALJ stressed that, to date, there has been no communication to the ALJ or the OALJ, by, or on behalf of, Ms. Fiedler explaining why her failure to appear at the hearing was unavoidable. As such, the ALJ found that the Complainant waived the opportunity to participate in these hearings on the matters raised in the Second Amended Complaint and her absence was not unavoidable. I.D. at 37-38.

The ALJ stated that section 332(a) of the Code provides that the party seeking relief from the Commission has the burden of proof. I.D. at 38 (citing 66 Pa.C.S. § 332(a)). The ALJ continued that, 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. I.D. at 38 (citing *Patterson; Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976)). Such a showing must be by a preponderance of the evidence. I.D. at 38 (citing *Lansberry*). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. I.D. at 38 (citing *Se-Ling Hosiery*).

The ALJ noted that as the proponent of a request for relief, the Complainant bears the burden of proof. The ALJ reasoned that by failing to participate and proffer any evidence to support the Second Amended Complaint, the Complainant has failed to meet this burden. The ALJ found that it is appropriate to dismiss the Second Amended Complaint. I.D. at 38 (citing *Brown; Williams (citing Jefferson)*). The ALJ therefore declined to address the merits of the Second Amended Complaint. I.D. at 38.

Rather, the ALJ dismissed the Second Amended Complaint due to the Complainant's failure to appear and prosecute it. I.D. at 38.

C. Exceptions, Replies, and Disposition

The Complainant's Exceptions consist of a single Exception, wherein she asserts a violation of her due process rights to a hearing, set forth in a four-paragraph letter. The Complainant's Exceptions⁵ generally pertain to the following: (1) the Complainant alleges that she did not receive either a mailed or emailed Prehearing Order

⁵ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and economical determination.

for the telephonic hearing held on March 5, 2025; (2) the Complainant disagrees with the History of the Proceeding section in the Initial Decision which states the Complainant did not request a continuance or explain why her failure to appear was unavoidable; (3) the Complainant contends that she was prevented from participating in the March 5, 2025 hearing by the Commission because she was not provided with the call-in information for the hearing; and, (4) the Complainant alleges she was not provided due process because she was prevented by the Commission from attending the March 5, 2025 hearing.

Exc. at 1.

1. Exception No. 1, Replies and Disposition

a. Exceptions and Replies

In her Exception No. 1, the Complainant insists that she did not receive a Prehearing Order for the telephonic hearing held on March 5, 2025. According to the Complainant, her due process rights were not protected because she did not receive the specific call-in information (*i.e.* the bridge number and PIN Number) for the hearing.

Exc. at 1.

The Complainant argues that she sent an email to the ALJ on March 3, 2025 which stated: “Good evening, please find attached two additional pictures for the hearing scheduled on March 5. Please send the telephone conference phone number – I did not receive it.” The Complainant contends that the ALJ erred on page 36 of the Initial Decision, wherein she stated that the Complainant “voluntarily chose not to” participate in the March 5, 2025 hearing. The Complainant avers that “the Commission prevented me from participating by not providing the bridge number and PIN number for this hearing.” The Complainant also objects to COL Nos. 4 and 5⁶ pertaining to due

⁶ I.D. at 39.

process and the burden of proof. The Complainant contends that her “due process rights were not protected and therefore I could not prove my evidence for seeking relief.”
Exc. at 1.

In its Replies, Met-Ed notes that while the Complainant claims in her Exceptions that she indicated in an email that she did not receive the call-in information for the March 5, 2025 hearing, she does not dispute that she acknowledged the date of the hearing in that email. R. Exc. at 2.

Met-Ed provides that once a timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing. R. Exc. at 2 (citing *Schneider, Mumma*). Met-Ed avers that a hearing notice and Prehearing Order were issued on February 3, 2025, setting the date of the hearing for Wednesday March 5, 2025 beginning at 10:00 a.m. Met-Ed stresses that both notices were sent by First Class Mail, and neither were returned as undeliverable. R. Exc. at 2 (citing I.D. at 26). Met-Ed also notes that the Complainant did not request a continuance, nor did she offer an explanation in her Exceptions for why she did not request a continuance. Met-Ed avers that by not appearing at this hearing, the Complainant waived the opportunity to participate in the hearing under 52 Pa. Code § 5.24(a)(1). R. Exc. at 2.

Met-Ed maintains that the ALJ properly afforded the Complainant due process. According to Met-Ed, the Complainant was provided notice and an opportunity to be heard. R. Exc. at 3.

b. Disposition

Upon review, we disagree with the Complainant’s assertion that she was denied due process. The Complainant has been served with numerous documents over

the course of this proceeding, which has lasted over seven years. The record does not include any returned notices or communications from the Commission. As such, we must presume that she received the notices for the April 24, 2024 and March 5, 2025 hearings. In our view, the Complainant was given notice and the opportunity to be heard.

We disagree with the Complainant's assertion that the Commission "prevented" her from attending the March 5, 2025 hearing. The Complainant was aware of the date of the hearing. The Complainant filed a copy of her March 3 email as an Exhibit to her Exceptions. The email states, in part:

Please find attached two pictures for the hearing scheduled for **March 5**.

Complainant Exh. to Exc. at 1 (emphasis added).

Furthermore, in the Complainant's Objection to Certificate of Satisfaction, dated February 12, 2025, and received by the Commission on February 14, 2025, the Complainant stated:

Complainant requests that the Pennsylvania Public Utility Commission deny the Certificate of Satisfaction and proceed with the **March 5, 2025** hearing.

Objection to Certificate of Satisfaction at 1 (emphasis added).

Clearly, the Complainant was aware of the date of the March 5, 2025 hearing as early as February 12, 2025. The Complainant was also made aware of the date

and time of the March 5, 2025 hearing, at the January 30, 2025, hearing when the ALJ stated:

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. at 163 (emphasis added).

Nothing prevented the Complainant from calling the OALJ prior to the hearing date, or even the morning of the hearing, to obtain the hearing information, which she contends that the lack thereof “prevented” her from participating in the March 5, 2025 hearing.

Furthermore, the Complainant was aware of the procedure to request a continuance, and has done so in the past on January 24, 2020, June 30, 2020, July 30, 2020, and July 22, 2024. I.D. at 36.

The Complainant has failed to attend two hearings in this proceeding, on April 24, 2024, and again on March 5, 2025. The Complainant did not request a continuance for either hearing. Once a hearing is scheduled and the parties notified, it is the responsibility of the parties, including the Complainant in this proceeding, to appear and participate in the hearings. *Mumma*. It is the Complainant’s responsibility to provide communication explaining why her failure to appear was unavoidable. 66 Pa.C.S. § 332(a). The Complainant failed to appear at either hearing and provided no explanation for why her failure to appear was unavoidable. As such, she is not permitted to reopen

the matter now, or to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Based on our review of the record in this proceeding, we concur with the ALJ's finding that the Complainant was given notice and had the opportunity to be heard. The Complainant was afforded due process throughout this proceeding. The Complainant had the opportunity to participate in the April 24, 2024, and March 5, 2025, hearings but chose not to attend either hearing. Accordingly, the Complainant's Exception No. 1 is denied.

IV. Conclusion

In light of the above discussion, we shall: (1) deny the Complainant's Exceptions; (2) adopt the ALJ's Initial Decision; and (3) dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions, filed by Heidi Fiedler on May 16, 2025, to the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on April 29, 2025, at Docket No. C-2018-3003642, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on April 29, 2025, at Docket No. C-2018-3003642, is adopted, consistent with this Opinion and Order.

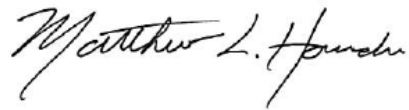
3. That, pursuant to 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245, the Complainant, Heidi Fiedler, is deemed to have waived her opportunity to participate in

hearings regarding her Formal Complaint filed on July 23, 2018, and amended on November 5, 2018, and February 28, 2019, due to her failure to appear at the April 24, 2024 and March 5, 2025 hearings held in this proceeding.

4. That the Formal Complaint, filed by Heidi Fiedler on July 23, 2018, and amended on November 5, 2018, and February 28, 2019, at Docket No. C-2018-3003642, is dismissed.

5. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink that reads "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: July 24, 2025

ORDER ENTERED: July 24, 2025