

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

Public Meeting held August 14, 2025

Commissioners Present:

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

Orpheus and Kimberly Hanley

C-2024-3051044

v.

FirstEnergy Pennsylvania Electric Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Orpheus and Kimberly Hanley (collectively, the Complainants or the Hanleys), filed on May 19, 2025, in the above-captioned proceeding. The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Alphonso Arnold III, which the Commission served on the Parties on April 21, 2025.¹ FirstEnergy Pennsylvania Electric Company (FirstEnergy or Company) timely filed Reply Exceptions

¹ As noted, *infra*, the Complainants were granted a request for a ten (10) day extension to file Exceptions to the Initial Decision.

on May 28, 2025. In the Initial Decision, the ALJ recommended that the Commission dismiss the Formal Complaint (Complaint) filed by the Complainants on September 5, 2024.

Also before us for consideration is a document entitled “Petition for Stay Order” (Petition),² filed by the Complainants on June 9, 2025. No Answer to the Petition has been filed.

For the reasons discussed below, we shall: (1) deny the Complainants’ Exceptions; (2) deny the Complainants’ Petition; (3) adopt the Initial Decision of ALJ Arnold; and (4) dismiss the Complaint, with prejudice, consistent with this Opinion and Order.

I. Background

This case involves a Complaint arising out of FirstEnergy’s correspondence to the Hanleys indicating an intent to terminate electric service at the service address for failure to allow the Company access to install an advanced metering infrastructure (AMI), or smart meter, at the Complainants’ property. Complaint at 2-3. FirstEnergy is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns, and maintains the meters in its distribution system. The Complainants are FirstEnergy customers who were notified of FirstEnergy’s intent to install a smart meter at their residence that provides the function of automatic meter reading (AMR). The Complainants requested that FirstEnergy stop threatening to terminate their electric service. Complaint at 3.

² As a matter within our discretion under Section 1.2 of the Commission’s regulations (Regulations), 52 Pa. Code § 1.2, in view of the fact that the Complainants appear *pro se*, we shall construe the Petition as a Petition for Stay, pursuant to 52 Pa. Code § 5.572.

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

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

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

(2) [EDCs] shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See* H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including FirstEnergy, to universally deploy smart

meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Implementation Order*). FirstEnergy 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 Its Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding

On September 5, 2024, the Hanleys filed the instant Complaint.³ In their Complaint, the Complainants indicated, *inter alia*, that: (1) FirstEnergy was threatening to shut off their electric service if they do not accept a smart meter installation; and, (2) they have a pending appeal before the Commonwealth Court of Pennsylvania (Commonwealth Court). Further, the Hanleys argued that the Company should not be attempting to install a smart meter at their residence during the pendency of their appeal. Moreover, the Hanleys asserted that they never contacted the Company to request a smart meter installation, and they never agreed to pay for smart meter installation. As previously noted, as relief, the Complainants requested that the Company stop threatening to terminate their electric service during the pendency of their Commonwealth Court case. Complaint at 2-3; I.D. at 1-2.

³ We note that the Commission's case management system indicates the Complaint was received September 5, 2024, but was not served on the Parties until September 6, 2024. Therefore, pursuant to 52 Pa. Code § 5.61(a), FirstEnergy was provided twenty (20) days to file an Answer to the Complaint.

On September 26, 2024, FirstEnergy filed its Answer and New Matter (Answer), which was properly endorsed with a Notice to Plead.⁴ In its Answer, FirstEnergy admitted, in part, and denied, in part, various material allegations in the Complaint. FirstEnergy asserted, *inter alia*, that: (1) the Company is legally required to install a smart meter at the Hanleys’ residence; (2) the Complainants are not permitted to opt-out of smart meter installation; (3) customers cannot opt-out of smart meter installation; and (4) accommodations are only available to the extent allowed by Act 129 and the Company’s tariff. Answer at 2-4, 7-8 (citing *Povacz v. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*)); I.D. at 2.

On December 30, 2024, the Complainants filed a Motion for Continuance (Motion), wherein the Hanleys sought to postpone the evidentiary hearing scheduled for January 9, 2025.⁵ I.D. at 3. In their Motion, the Complainants explained that they are “currently before the State’s Supreme Court as it relates to the Commonwealth Court of Appeals (case # 865 C.D. 2024).” Motion at 1. The Complainants noted that their appeal concerns the Commission’s Opinion and Order in *Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2023-3041147 (Opinion and Order entered May 9, 2024) (*2024 Hanley Order*). *Id.*

On January 3, 2025, the ALJ issued an Order Denying the Complainants’ Motion for Continuance (*January 2025 Order*), wherein the ALJ found that no good cause existed to grant the Motion. The ALJ noted that the Complainants’ Motion failed to provide a reason explaining why an active appeal should cause a delay for the instant Complaint proceeding, particularly given that the Hanleys did not indicate that they

⁴ The Complainants did not file a Reply to the Answer. I.D. at 2.

⁵ By Evidentiary Hearing Notice issued November 6, 2024: (1) the instant matter was assigned to ALJ Arnold; and (2) a Telephonic Evidentiary Hearing was scheduled for January 9, 2025. On November 20, 2024, the ALJ issued a Prehearing Order for Telephonic Hearing, which explained the procedural rules that would govern the evidentiary hearing. I.D. at 2.

sought and were granted a stay or supersedeas of the *2024 Hanley Order*. Accordingly, the ALJ ordered that the evidentiary hearing be held on January 9, 2025, as scheduled. *January 2025 Order* at 2; I.D. at 3.

On January 9, 2025, the evidentiary hearing was held, as scheduled. The Complainants appeared *pro se* and Mrs. Hanley testified in support of their Complaint. Mrs. Hanley also offered one exhibit (Hanleys Exhibit 1), of which five pages were admitted into the record evidence.⁶ The Company was represented by counsel and presented the testimony of one witness, Mr. John C. Ahr (Mr. Ahr), who sponsored one exhibit (FirstEnergy FE PA-2), which was admitted into evidence. During the hearing, the ALJ took official notice of the public record and the appeal before the Commonwealth Court of *Hanley v. Pennsylvania Public Utility Commission*, Docket No. 865 C.D. 2024 (*Hanley Appeal*).⁷ I.D. at 3, 15 (citing 52 Pa. Code § 5.408(a)); Tr. at 30-33, 60-61.

On January 21, 2025, a 68-page Hearing Transcript was filed with the Commission and the evidentiary record was closed. I.D. at 3.

In the Initial Decision, issued on April 21, 2025, ALJ Arnold denied and dismissed the Complaint, with prejudice, finding that the Hanleys' failed to meet their

⁶ We note that Mrs. Hanley also offered a page six to the Hanleys' Exhibit 1 (Page Six). However, after objection from the Company, Page Six was not admitted into the record evidence. Tr. at 31-32.

⁷ We note that during the hearing, the ALJ asked Mrs. Hanley if she had a docket number for the Complainants' case before Supreme Court of Pennsylvania (Supreme Court). In response, Mrs. Hanley provided the Commonwealth Court docket number (*i.e.*, 865 C.D. 2024). After the ALJ pointed out that 865 C.D. 2024 represents the docket number for the Hanleys' Commonwealth Court case (*i.e.*, the *Hanley Appeal*), the ALJ asked, "[s]o, you currently do not have a docket for the Supreme Court matter?" Mrs. Hanley responded, "[n]ot yet. They haven't issued that yet." Tr. at 65.

burden of proving that the Company violated the Code, the Commission’s Regulations, or a Commission Order. I.D. at 1, 18-19, 21.

As noted, *supra*, the Complainants timely filed Exceptions on May 19, 2025.⁸ FirstEnergy timely filed Replies to Exceptions on May 28, 2025. On June 9, 2025, the Complainants filed the instant Petition. No answer to the Petition has been filed.

III. Discussion

A. Legal Standards

1. General Burden of Proof for a Formal 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*

⁸ On May 7, 2025, the Complainants filed two requests for a fifteen (15) day extension to file Exceptions to the Initial Decision: (1) one requested a 15-day extension to file Exceptions; and, (2) one requested expedited relief for a 15-day extension to file Exceptions. By Secretarial Letter dated May 8, 2025 (*May 2025 Secretarial Letter*), the Commission’s Secretary granted the Complainants a ten (10) day extension to file Exceptions, in accordance with 52 Pa. Code § 1.15. *See May 2025 Secretarial Letter*. Pursuant to Section 5.533(a) of our Regulations, 52 Pa. Code § 5.533(a), Exceptions may be filed within twenty (20) days after the Initial Decision was issued. As noted, *supra*, the Commission issued the Initial Decision on April 21, 2025. Therefore, Exceptions were originally due no later than May 11, 2025. Accordingly, pursuant to the 10-day extension granted in the *May 2025 Secretarial Letter*, Exceptions were ultimately due no later than May 21, 2025. Consequently, pursuant to Section 5.535(a) of our Regulations, 52 Pa. Code § 5.535(a), FirstEnergy was permitted to file Replies to Exceptions no later than May 31, 2025.

v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

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

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion, to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁹ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*)).

⁹ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n.7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

2. Burden of Proof Applied to Section 1501¹⁰ Formal Complaint Challenging Smart Meter Installation

In *Povacz II*, which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court reversed the Commonwealth Court's October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) (*2019 Povacz Order*); *Laura Sunstein Murphy v. PECO Energy Company*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, Docket No. C-2016-2537666 (Opinion and Order entered May 9, 2019). By *Povacz II*, the Supreme Court affirmatively established that there is no "opt-out" provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II*, 280 A.3d at 983-84.

¹⁰ The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. See 52 Pa. Code § 57.28(a)(1). See also *Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Opinion and Order entered April 20, 2017).

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service¹¹ and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

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

66 Pa.C.S. § 1501.

As previously noted, in *Povacz II*, the Supreme Court not only affirmed the Commission’s determination that there is no “opt-out” provision for smart meter installation in either Act 129, the Code, Commission Regulations, or Orders, but also

¹¹ The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See* 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code.¹² Therein, the Supreme Court stated:

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

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

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

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

¹² The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof, a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000 (citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. January 28, 2016) (*Kreider*)).

[See] 66 Pa.C.S. §§ 332(a), 701; *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, . . . 134 Pa. Commw. 218, 578 A.2d 600 ([Pa. Cmwlth.] 1990)[.] . . .

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

. . . .

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

Povacz II, 280 A.3d at 999-1000 (emphasis added; footnote omitted).¹³

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *2019 Povacz Order*, and was subsequently affirmed by the Supreme Court in *Povacz II*, that in order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused or will cause adverse health effects or harm to human health, the Complainant must demonstrate

¹³ With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)¹⁴ from the AMI meter.

3. Other Relevant Legal Standards

In addition to establishing that a complaint challenging the installation of a smart meter may arise under Section 1501, the Supreme Court’s decision in *Povacz II* acknowledged the Commonwealth Court’s rejection of a constitutional claim for exemption from smart meter installation predicated on a violation of “bodily integrity.” The Supreme Court noted the Commonwealth Court’s denial of a claim under the Fourteenth Amendment of the United States Constitution (14th Amendment), stating:

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

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

Further, the Supreme Court noted that a customer must be connected to the distribution system to receive electric service confirming that EDCs operate in a universal basis. *Povacz II* at 993. As such, the Court concluded that by obtaining service from their incumbent EDC, customers contractually accept the EDC’s Commission-approved

¹⁴ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

Tariff, including the installation of smart meter technology. *Id.* at 994. Therefore, the Supreme Court found that “the authority to select and install a certain type of electric meter rests solely with the EDCs, [...] not the customer.” *Id.*

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

B. The ALJ’s Initial Decision

In the Initial Decision, ALJ Arnold made eleven (11) Findings of Fact (FOF) and reached eleven (11) Conclusions of Law (COL). I.D. at 4-5, 19-21. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted, without comment, unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

At the outset, the ALJ noted that in the instant matter, the Complainants sought to prevent the installation of a smart meter at their home and raised two arguments in support of their Complaint: (1) that smart meter installation is not mandatory and that customers may refuse to have a smart meter installed at their home; and, (2) that the Company should not be attempting to install a smart meter at their home during the pendency of their appeal with the Commonwealth Court. I.D. at 8-9.

1. Smart Meter Mandate

The ALJ considered and rejected Mrs. Hanley's legal arguments in support of the Complainants' claim that the Company is not required to install a smart meter at the Hanleys' home and that customers may refuse smart meter installation. Specifically, the ALJ noted Mrs. Hanley's reliance on Section 57.253(b)(1) of the Commission's Regulations, 52 Pa. Code § 57.253(b)(1), to argue that "we have not made any choice to use it, but we've made the choice not to use it." I.D. at 9 (citing Tr. at 7-8; 52 Pa. Code § 57.253(b)(1)). The ALJ found that the provisions of Act 129, which was enacted on November 14, 2008, supersede the provisions of Section 57.253 of the Commission's Regulations, which was enacted on December 26, 1998. Accordingly, the ALJ found that Mrs. Hanley's reliance on 52 Pa. Code § 57.253(b)(1) to support her position is without merit. I.D. at 10.

The ALJ also considered and rejected Mrs. Hanley's reliance on the Energy Policy Act of 2005 (EPA) and the Public Utility Regulatory Policies Act of 1978 (PURPA) in support of her position that smart meter installation is not mandatory and that customers have a choice to have a smart meter installed at their residence. I.D. at 10-12 (citing Tr. at 8-9; Pub. L. No. 109-58, 119 Stat. 594 (2005); 16 U.S.C. § 2621(d)(11), (14)(A)). The ALJ noted that in *Romeo*, the Commonwealth Court held that: (1) "[b]ecause federal standards are a supplement to the state standards, and the state is only required to consider the federal standards, the federal and state standards are not and cannot be in conflict;" and, (2) PURPA and the EPA do not preempt the smart meter provisions of the Code or of Act 129. I.D. at 12 (citing *Romeo* at 428). Accordingly, the ALJ found that the smart meter provisions of Act 129 are controlling in this matter. Additionally, the ALJ noted that PURPA expressly allows state regulatory authorities, such as the Commission, to adopt, pursuant to state law, standards or rules affecting electric utilities that are different from standards set forth in 16 U.S.C §§ 2621-2627. I.D. at 12 (citing 16 U.S.C. § 2627(b)).

The ALJ also considered and rejected Mrs. Hanley’s argument that based upon the language of Act 129, smart meter installation is not a mandate, and customers have a choice in whether to have a smart meter installed at their residence. I.D. at 13 (citing Tr. at 9-12). The ALJ referred to the Supreme Court’s ruling in *Povacz II*, finding that: (1) Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, including FirstEnergy; (2) Section 2807(f)(1) of the Code, 66 Pa.C.S. § 2807(f)(1), when read in conjunction with Section 2807(f)(2) of the Code, 66 Pa.C.S. § 2807(f)(2), provides instructions for furnishing smart meters to all customers; and, (3) the Supreme Court affirmed the Commission’s determination that Act 129 mandates universal smart meter installation and that customers have no right to refuse smart meter installation. I.D. at 13 (citing *Povacz II* at 992, 997). Therefore, the ALJ concluded that the Supreme Court’s holding in *Povacz II* is settled law and is binding on the Commission. Accordingly, the ALJ rejected Mrs. Hanley’s interpretation of Act 129. I.D. at 13.

The ALJ also addressed Mrs. Hanley’s argument that the installation of a smart meter would be, essentially, a violation of her rights under the Fourth Amendment of the U.S. Constitution. I.D. at 13 (citing Tr. at 12). The ALJ explained that the Fourth Amendment: (1) is applicable to the states through the Fourteenth Amendment; (2) protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures;” and (3) the Fourth Amendment’s protection against unlawful searches and seizures applies to “only government action.” I.D. at 13-14 (citing U.S. Const. Amend. IV; *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). Further, the ALJ noted that “the mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment.” I.D. at 14 (citing *Jackson v. Metropolitan Edison Company*, 419 U.S. 345, 350 (1974)). Moreover, the ALJ noted that FirstEnergy is not a state actor and the Company’s compliance with Act 129 by installing smart meters in its territory does not make it an agent of the state government. Furthermore, the ALJ noted that no

evidence was presented in this case that would lead to a finding that the Pennsylvania government controls the operations of FirstEnergy, or that the Company acts as an agent of the government. Accordingly, the ALJ rejected Mrs. Hanley's argument that the installation of a smart meter would violate the Complainants' constitutional rights under the Fourth Amendment. I.D. at 14.

Accordingly, the ALJ rejected the Complainants' argument that smart meter installation is not mandatory and that customers have a choice in whether to have a smart meter installed. The ALJ concluded that the smart meter provisions of Act 129, which mandate smart meter installation, are controlling in this matter. I.D. at 14.

2. The *Hanley Appeal*

The ALJ noted Mrs. Hanley's testimony that the Complainants received shut-off notices from the Company despite being in the middle of a case before the Commonwealth Court. I.D. at 14 (citing Tr. at 7, 15-17). Further, the ALJ noted the following: (1) on June 12, 2024, FirstEnergy sent the Complainants a letter informing the Hanleys that the Company has been unable to install a smart meter at their residence and that the Company is required to install a smart meter under Act 129; and (2) on July 3, 2024, and July 16, 2024, FirstEnergy sent the Complainants shut-off notices for their refusal to grant the Company access to their meter for smart meter installation. I.D. at 14-15 (citing Hanleys Exh. 1 at 2-4). Moreover, the ALJ noted that Mrs. Hanley testified, as follows: "[t]he reason why this case exists is I wanted to make sure that there was a formal documentation within your system that we had been getting monthly – bimonthly shut off threats in the middle of determining our rights. Our legal rights." I.D. at 15 (citing Tr. at 14).

The ALJ noted the *Hanley Appeal* concerns the Complainants' appeal to the Commonwealth Court of the Commission's decision in the *2024 Hanley Order*,

wherein the Commission, *inter alia*: (1) adopted the ALJ’s Initial Decision at Docket No. C-2023-3041147 (Initial Decision issued February 7, 2024) (*2024 Hanley Initial Decision*);¹⁵ and (2) dismissed the Hanleys’ formal complaint which sought to prevent the installation of a smart meter at their home (2024 Complaint). Further, the ALJ highlighted that the *Hanley Appeal* was initiated on June 13, 2024, through the filing of a petition for review with the Commonwealth Court. I.D. at 15.

The ALJ also noted that FirstEnergy’s witness, Mr. Ahr, testified that the Company: (1) attempted to install a smart meter at the Complainants’ residence following the *2024 Hanley Order*; (2) initiated termination proceedings after the Hanleys refused to allow the Company access to their meter; and (3) is not required to wait before commencing meter installation or service termination activities after the Commission has issued an Opinion and Order. I.D. at 15 (citing Tr. at 38-39).

The ALJ found that the Company’s attempts to install a smart meter at the Complainants’ residence and initiate termination activities after the Hanleys refused meter installation were consistent with the law. Further, the ALJ pointed out that Section 56.81(3) the Commission’s Regulations permits FirstEnergy to terminate service to customers who refuse to grant access to the meter for smart meter installation, which is required by EDCs under Act 129. I.D. at 15-16 (citing 52 Pa. Code § 56.81(3)).

The ALJ also addressed the proceeding for the *2024 Hanley Order*. Specifically, the ALJ reiterated that in the *2024 Hanley Order*, the Commission denied the Hanleys’ formal complaint challenging the installation of a smart meter at their

¹⁵ We note that in the *2024 Hanley Initial Decision*, ALJ Arnold dismissed the 2024 Complaint, with prejudice. *See 2024 Hanley Initial Decision* at 15, Ordering Paragraph No. 2.

residence (*i.e.*, the 2024 Complaint).¹⁶ The ALJ noted that such decisions by the Commission, “[s]hall take effect and become operative as designated therein, and shall continue in force either for a period which may be designated therein, or until changed or revoked by the commission.” I.D. at 16-17 (citing 66 Pa.C.S. § 703(e) (emphasis omitted)). Further, the ALJ noted that the Hanleys did not seek a stay, supersedeas, or to otherwise postpone the enforcement of the *2024 Hanley Order*: (1) with the Commission, which took effect and became operative on May 9, 2024;¹⁷ or (2) with the Commonwealth Court, based upon a review of the *Hanley Appeal* docket. I.D. at 17. Moreover, the ALJ cited Rule 1781 of the Pennsylvania Rules of Appellate Procedure (Pa. R.A.P.) to note that the act of appealing the *2024 Hanley Order* alone does not result in an automatic stay or supersedeas of the *2024 Hanley Order*.¹⁸ As such, the ALJ found that the Hanleys were first required to petition the Commission to stay the *2024 Hanley Order*, and then petition the Commonwealth Court if their petition before the Commission was denied. I.D. at 17-18 (citing Pa. R.A.P., Rule 1781(a),(b)).

¹⁶ We note that at the time of initiation of the 2024 Complaint, FirstEnergy consisted of four separate companies: Metropolitan Edison Company, 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. *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).

¹⁷ The ALJ noted that the Commission’s Regulations state that “petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.” I.D. at 17 (citing 52 Pa. Code § 5.572(c)).

¹⁸ The ALJ noted that Rule 1781 of the Pa. R.A.P. governs stays of determinations of governmental units (such as the Commission) before the Commonwealth Court. I.D. at 17.

Accordingly, the ALJ found that the Company was permitted to commence smart meter installation activities following the entry of the *2024 Hanley Order*, given that the Hanleys did not petition the Commission for a stay or supersedeas of the *2024 Hanley Order*. The ALJ also found that FirstEnergy was permitted to initiate termination proceedings, pursuant to the Commission's Regulations, given that the Hanleys did not permit the Company access to the meter for smart meter installation. Therefore, the ALJ rejected the Complainants' argument that FirstEnergy erred in attempting to shut-off the Hanleys' electric service for their refusal of smart meter installation during the pendency of the *Hanley Appeal*. I.D. at 18.

3. The ALJ's Conclusion

Accordingly, the ALJ dismissed the instant Complaint, finding that the Complainants failed to meet their burden of proving that the Company violated the Code, the Commission's Regulations, or a Commission Order. I.D. at 18-19.

C. Exceptions¹⁹

The Complainants' Exceptions consist of: (1) a signed Certificate of Service (COS); (2) a signed Cover Letter (CL); (3) a twenty-three (23) page document, with three pages of footnotes; and (4) a single-page document entitled "Exhibit 2."²⁰

To the extent the Complainants' Exceptions rely upon extra-record materials, such materials will be disregarded. It is well-established that parties cannot introduce new evidence following the close of the record. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994) (*Apollo Gas*). Accordingly, any extra-record information the Complainants use in their Exceptions will not be considered. *Apollo Gas*. Where the Complainants have offered new arguments and exhibits in their Exceptions not previously addressed in the record, we note that these arguments cannot be considered after the record has been closed. 52 Pa. Code § 5.431.

Turning to the substance of the Complainants' Exceptions, the Hanleys argue that the ALJ failed to address the contents of their Complaint. Exc. at 11-12 (citing Complaint at ¶¶ 4-5). The Complainants maintain their position that the purpose of the instant Complaint was to create a record of FirstEnergy's notices of service termination after the Company's continued attempts to install a smart meter at their residence.

¹⁹ The format of the Complainants' Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, as the Complainants are appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

²⁰ We note that upon review of the Commission's case management system, the CL, COS, and "Exhibit 2" are saved as three separate documents. All three documents were filed on the same day as the Complainants' Exceptions (*i.e.*, May 19, 2025).

Exc. at 5-7. Further, the Complainants disagree with the ALJ's conclusion that the Hanleys failed to meet their burden of proof, countering that: (1) the Hanleys met their burden of proof beyond a preponderance of the evidence; and (2) the burden of proof is on the Company. Exc. at 7-10, 13, 18 (citing 66 Pa.C.S. § 332(a)-(c)). Moreover, the Complainants identify several Findings of Fact set forth in the Initial Decision and challenge the ALJ's exclusion of Page Six of the Hanleys Exhibit 1 from the record evidence as a basis for exception on the grounds that are primarily grounded in objections asserting that the ALJ is bias and prejudice.²¹ Exc. at 8, 13-17, 20-21, 23 (citing I.D. at 4-5, FOF Nos. 3-5, 9-11). Furthermore, the Complainants argue that the Company failed to protect customer information by presenting an unredacted exhibit in a public forum. Exc. at 11. Accordingly, the Complainants request that the Commission reexamine the record, consider all relevant evidence and applicable law, and ignore the Initial Decision. I.D. at 4, 8, 21, 23.

The Complainants also disagree with the ALJ's denial of the Hanleys' Motion for Continuance. Exc. at 6 (citing *January 2025 Order*).²² According to the Complainants, their appeal may affect the outcome of the instant proceeding.²³

²¹ As noted, *supra*, at the January 9, 2025, evidentiary hearing, Mrs. Hanley offered one exhibit (*i.e.*, Hanleys Exhibit 1), of which five pages were admitted into the record evidence. Mrs. Hanley also offered a page six to the Hanleys' Exhibit 1 (*i.e.*, Page Six). However, after objection from the Company, Page Six was not admitted into evidence. Tr. at 31-32.

²² As previously discussed, on January 3, 2025, the ALJ issued the *January 2025 Order*, in which the ALJ, *inter alia*: (1) denied the Complainants' Motion for Continuance, finding that no good cause exists to grant the Motion; and, (2) ordered that the evidentiary hearing be held on January 9, 2025, as scheduled. *January 2025 Order* at 2; I.D. at 3.

²³ We note that in their Exceptions, the Complainants make several references to an appeal with the Supreme Court of Pennsylvania, at "#2WM2025." See Exc. at 2-3, 6, 11-12, 17. As discussed, *supra*, the instant Complaint concerns an appeal of the *2024 Hanley Order* to the Commonwealth Court, at docket number 865 C.D. 2024 (*i.e.*, *the Hanley Appeal*). See Complaint at 2-3; see also I.D. at 3 (citing Tr. at 30-31).

Exc. at 1-3, 15. Further, the Complainants argue that “[p]roceeding with this case may cause irreparable harm to both the other case and to the current proceedings.” Exc. at 3. Moreover, the Complainants contend that given their ongoing appeal, “the ALJ could have exercised judicial discretion to issue a *sua sponte* stay to ensure procedural integrity and protect the rights of *pro se* litigants.” *Id.*

Finally, the Complainants maintain that they never requested a smart meter and they never agreed to participate in the smart meter program. According to the Hanleys, customers must request a smart meter or choose to participate in the smart meter program, and customers must agree to pay for the incremental costs associated with smart meter installation.²⁴ Exc. at 2-3, 6, 9, 12, 17-19, 22-23 (citing 66 Pa.C.S. §§ 2807(e)(1), (f)(2)(i), (f)(3); 52 Pa. Code § 57.253(b)(1); PURPA Section 111(d)(11), (14)).

D. Replies to Exceptions

In its Replies, FirstEnergy argues that the ALJ correctly found that PURPA and the EPA do not preempt Act 129 and correctly determined that *Povacz II* controls the present proceeding. R. Exc. at 2 (citing I.D. at 7-14, 19). Further, FirstEnergy argues that the Supreme Court held that the installation of a smart meter, pursuant to Section 2807(f) of the Code, 66 Pa.C.S. Section 2807(f), is mandatory. R. Exc. at 2 (citing *Povacz II* at 1014). Moreover, FirstEnergy argues that the ALJ correctly rejected the Complainants’ arguments based on claims regarding federal law and preemption of Act 129. Specifically, FirstEnergy notes that: (1) federal law does not preempt the mandatory installation of a smart meter under Section 2807(f) of the Code; (2) the Commission lacks jurisdiction to interpret and enforce the federal laws cited by the Complainants; and (3) the Commission is a creature of the statute and only has those

²⁴ We note that the Complainants refer to Act 129 as the “Customer Choice Act.” *See* Exc. at *passim*.

powers vested in it by the General Assembly. R. Exc. at 2-3 (citing *Romeo; Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (*Feingold*)).

FirstEnergy also argues that the ALJ properly found that the Complainants failed to meet their burden of proving that the Company violated the Code, the Commission’s Regulations, or a Commission Order. R. Exc. at 3. FirstEnergy contends that contrary to the Complainants’ arguments otherwise: (1) it is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible;”²⁵ (2) the preponderance of evidence standard: (a) requires proof by a greater weight of the evidence; and (b) is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party;²⁶ (3) to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established;²⁷ (4) unsubstantiated assertions, personal opinions, or perceptions do not constitute evidence;²⁸ and (5) if the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.²⁹ Accordingly, FirstEnergy avers that the ALJ correctly found that the Complainants had the burden of proof and failed to meet their burden with regard to the Act 129 mandate requiring smart meter installation and the allegations that the Company

²⁵ R. Exc. at 3 (citing *Lansberry*).

²⁶ R. Exc. at 3 (citing *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999); *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008)).

²⁷ R. Exc. at 3-4 (citing *Lyft, Inc. v. Pa. PUC*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016); *Norfolk*).

²⁸ R. Exc. at 4 (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 53 A.2d 12 (Pa. 1987)).

²⁹ R. Exc. at 4 (citing *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944)).

should not have issued termination notices after the Hanleys refused smart meter installation. R. Exc. at 4 (citing I.D. at 9-18).

FirstEnergy also avers that the Complainants' due process concerns are meritless, arguing that nothing in the record suggests that the ALJ engaged in any unethical conduct or that the ALJ is biased against the Hanleys. FirstEnergy avers that the ALJ correctly ruled that the Hanleys did not meet their burden of proof, given the lack of credible evidence presented by the Complainants, compared to the substantial, thorough, and credible evidence presented by the Company. R. Exc. at 4. Further, FirstEnergy argues that the ALJ properly afforded the Complainants a full and fair opportunity to present their case. R. Exc. at 5 (citing *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014)). Specifically, FirstEnergy notes, *inter alia*, that: (1) the Hanleys were provided with notice and an opportunity to be heard on their issues, as well as an opportunity to cross-examine the Company's witness, subject to the rules of evidence, at the January 9, 2025 evidentiary hearing; and (2) the ALJ properly excluded an evidentiary document because the document included irrelevant federal authorities and that interpreting and enforcing federal laws are not among the powers granted to the Commission. R. Exc. at 5 (citing Exc. at 13, 17-19; *Feingold*).

FirstEnergy also disagrees with the Complainants' argument that a continuance should have been granted pending the resolution of the *Hanley Appeal*. R. Exc. at 5 (citing Exc. at 1-2). FirstEnergy refers to the *January 2025 Order* to note that the ALJ ruled that the Hanleys failed to show good cause for a continuance request, finding that there was no indication that the Complainants requested a stay of the *2024 Hanley Order*. R. Exc. at 5-6 (citing 52 Pa. Code § 1.15(b)). Further, FirstEnergy avers that contrary to the Complainants' argument otherwise, it is not the role of the ALJ to prosecute a formal complaint for *pro se* complainants. R. Exc. at 6 (citing Exc. at 1). Moreover, FirstEnergy argues that the ALJ correctly found that the Company was authorized to proceed in accordance with the *2024 Hanley Order* denying the 2024

Complaint, and to pursue service termination in the absence of a stay. R. Exc. at 6 (citing I.D. at 14-18; 66 Pa.C.S. § 703(e)). Furthermore, FirstEnergy objects to the Complainants' suggestion that their privacy rights were violated through the submission of the Company's exhibits. R. Exc. at 6 (citing Exc. at 11). Accordingly, FirstEnergy avers that the Complainants' due process rights have not been violated, and that the Hanleys' procedural concerns are meritless and should be denied. R. Exc. at 6.

E. Disposition

At the outset, we shall address the Complainants' argument that the Company failed to protect customer information by presenting an unredacted exhibit. *See* Exc. at 11. By way of contextual background, at the evidentiary hearing, Mrs. Hanley expressed concern that FirstEnergy failed to redact the Hanleys' address and customer account number from the Company's exhibit. The ALJ explained that typically, a customer's address is not redacted because it is public information. The ALJ also stated that he would make sure that the account number is redacted.³⁰ *See* Tr. at 51-52. Upon review, we note that the Complainants made no indication in their Complaint, or in any other filing prior to the commencement of the evidentiary hearing, that they preferred to have their service address and/or account number redacted for privacy reasons. Therefore, to the extent that the Complainants argue that FirstEnergy failed to protect their address and account number in the Company's exhibit, we find that the Complainants' argument on this matter has no merit.

As a general matter, in cases involving a challenge to smart meter installation, the standard burden of proof applicable in complaint proceedings applies. However, case law addressing the specific claims raised in challenges to smart meter installation has also developed. Claims challenging the installation of a smart meter can

³⁰ We note that upon review of FirstEnergy's Exhibit FE PA-2, the "Contract Acct" number is redacted. *See* FirstEnergy Exh. FE PA-2 at 1-34.

generally be categorized as claiming one or more of the following: (1) a right to opt out of the smart meter installation; (2) a Section 1501 violation of the provision of reasonable and safe service based on either alleged adverse health effect or unsafe technology; (3) a constitutional right to refuse the installation; and/or (4) a right to choose which type of technology to install. *See Povacz II*.

In the present case, the Complainants' instant Complaint is grounded in a claim that the Company should not have threatened service termination for the Hanleys' refusal to allow the installation of a smart meter on their property while the Hanleys were appealing the Commission's decision in the *2024 Hanley Order* to the Commonwealth Court.³¹ Complaint at 2-3. At the evidentiary hearing, Mrs. Hanley maintained this claim while arguing that, essentially, Act 129 does not mandate smart meter installation and electric service customers must choose to accept smart meter installation. Tr. at 7-17. In his Initial Decision, the ALJ dismissed the instant Complaint, finding that the Company was permitted to: (1) commence smart meter installation activities following the entry of the *2024 Hanley Order*; and (2) initiate termination proceedings, pursuant to the Commission's Regulations, given that the Hanleys did not allow the

³¹ We note that the instant proceeding concerns the third Formal Complaint filed by the Hanleys against FirstEnergy challenging the installation of a smart meter at their residence. The Hanleys' first complaint was dismissed, with prejudice, by the Commission for the Hanleys' failure to sustain their burden of proving, by a preponderance of the evidence, that the proposed installation of a smart meter on the Hanleys' property constitutes a violation of the Code, a Commission Regulation, or a Commission Order. *See Orpheus and Kimberly Hanley v. Pennsylvania Power Company*, Docket No. C-2016-2557487 (Initial Decision issued November 2, 2018) (*2018 Hanley Initial Decision*) at 1, 27-28, COL Nos. 15, 16, 20, request to reopen proceedings denied (Opinion and Order entered December 19, 2019) (*2019 Hanley Order*), petition for rehearing or reconsideration denied (Opinion and Order entered August 27, 2020) (*2020 Hanley Order*). In the *2024 Hanley Order*, the Commission dismissed the Hanleys' second complaint (*i.e.*, the 2024 Complaint), finding that ALJ Arnold, in his Initial Decision (*i.e.*, the *2024 Hanley Initial Decision*), properly applied the provision of 66 Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel, as a bar to the 2024 Complaint, and to preclude a hearing on the 2024 Complaint. *See 2024 Hanley Order* at 25.

Company access to the meter for smart meter installation. I.D. at 18. The ALJ also found that the Supreme Court’s holding in *Povacz II* is controlling that under Act 129, the Company is required to install smart meters for all of its customers, including the Complainants, and customers have no right to refuse smart meter installation. I.D. at 13-14 (citing *Povacz II*; 66 Pa.C.S. § 2807(f)(1),(2)). Accordingly, the ALJ concluded that the Complainants failed to meet their burden of proving that the Company violated the Code, the Commission’s Regulations, or a Commission Order. I.D. at 18-19. We concur.

We agree with the ALJ that following entry of the *2024 Hanley Order*, FirstEnergy was permitted to begin: (1) smart meter installation activities at the Hanleys’ residence; and, (2) service termination efforts, pursuant to the Commission’s Regulations, after the Hanleys refused to permit the Company access to their meter for smart meter installation. *See* I.D. at 20-21, COL Nos. 9, 10. As noted by the ALJ, the Hanleys did not petition the Commission or the Commonwealth Court for a stay or supersedeas of the *2024 Hanley Order*. *See* I.D. at 17. Moreover, both the Code and the Commission’s Regulations provide that, subject to customer notification, a public utility may terminate service in circumstances where the customer does not permit the company access to the meter for replacement. *See* 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3)). Therefore, to the extent that the Complainants’ Exceptions are grounded in a claim that FirstEnergy erred in initiating service termination activities for the Hanleys’ refusal to allow the Company to install a smart meter at the Complainants’ residence during the pendency of the *Hanley Appeal*, they are denied.

As discussed, *infra*, we also agree with the ALJ’s analysis and conclusion that the Company is required to install smart meters in accordance with Act 129, and the Hanleys are not permitted to refuse or opt-out of smart meter installation. I.D. at 13-14, 19, COL No. 5 (citing *Povacz II*). The Complainants largely rely on erroneous legal arguments to support their position that customers have the option to

refuse smart meter installation. Specifically, the Complainants rely on Section 57.253(b)(1) of the Commission’s Regulations, 52 Pa. Code § 57.253(b)(1), as a basis for their claimed “choice” whether to install a smart meter. Section 57.253(b)(1) provides as follows:

§ 57.253. Approval of advanced meters.

....

(b) Customers or EGSs, or both, shall be responsible for any net incremental costs incurred by the EDC as a result of using a qualified advanced meter or meter-related device.

(1) Customers using a qualified advanced meter or meter-related device may be assessed a bill surcharge by the EDC to cover any net incremental cost associated with **the choice to use** an advanced meter.

52 Pa. Code § 57.253(b)(1) (emphasis added). Upon review, we conclude that the language of 52 Pa. Code § 57.253, *Approval of advanced meters*, is neither applicable to establish a basis to opt-out of smart meter installation, nor does it alter FirstEnergy’s universal smart meter deployment obligations. Indeed, as noted by the ALJ, the provisions of Act 129, enacted in 2008, supersede that of 52 Pa. Code § 57.253, which was adopted in 1998. Instead, both Act 129 and the Company’s approved smart meter procurement and installation plan, approved in the *2014 Smart Meter Order*, are the applicable statutory and regulatory provisions. Accordingly, we find that 52 Pa. Code § 57.253 is inapplicable here, as Act 129 is the prevailing statutory authority governing smart metering technology for FirstEnergy’s customers. *See* 66 Pa.C.S. § 2807(f).

The Complainants also rely on PURPA and the EPA to advance their argument that customers must choose to accept smart meter installation. As noted by the ALJ, in *Romeo*, the Commonwealth Court held that “[b]ecause federal standards are a

supplement to the state standards, and the state is only required to consider the federal standards, the federal and state standards are not and cannot be in conflict.”

Romeo at 428. Therefore, the ALJ found that, consistent with the Commonwealth Court’s holding in *Romeo*, the smart meter provisions of Act 129 are controlling here. I.D. at 12, 20, COL No. 6. We agree. Accordingly, we find that the Complainants’ argument on this matter has no merit.

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

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

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

Although the Complainants expressed that they do not want a smart meter at their property, we agree with the ALJ’s conclusion that, under the provisions of Act 129, FirstEnergy, an EDC, is required to deploy smart meters to all electric

distribution customers. I.D. at 12-13, 19 COL No. 5 (citing *Povacz II*; 66 Pa.C.S. § 2807). Moreover, we agree with the ALJ's conclusion that the Complainants have not provided any proof to demonstrate how FirstEnergy, which is required to comply with Act 129 by installing a smart meter at the Complainants' residence, violated the Code, a Commission Regulation, or a Commission Order. I.D. at 18-19, 21, COL No. 11.

Indeed, the Commission declared that EDCs must "deploy smart meters system-wide" because of the requirement that smart meters be deployed "in accordance with a depreciation schedule not to exceed 15 years." *Smart Meter Implementation Order* at 14. The Commission also "recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment." *Smart Meter Implementation Order* at 9, 14. Moreover, we agree with the ALJ that under Act 129, the Company is required to install smart meters for all of its customers, including the Complainants. I.D. at 13 (citing *Povacz II*). Therefore, we find no error in the ALJ's determination that the installation of the smart meter was mandatory, as set forth in the Initial Decision.

We also agree with the ALJ that FirstEnergy is not a "state actor" that can violate the Complainants' constitutional rights. I.D. at 14. In *Povacz II*, the Supreme Court noted the Commonwealth Court's conclusion that the assertion of a constitutional right to refuse installation of a smart meter was unfounded. *See Povacz II* at 985, n.8. The Commonwealth Court's decision is binding on this question. Accordingly, to the extent the Complainants assert a constitutional right to refuse smart meter installation, we shall deny the Complainants' Exceptions on this issue without further discussion.

To the extent that the Complainants allege that the ALJ demonstrated bias and prejudice towards the Hanleys, we are of the opinion that these arguments are without merit and must be denied. We note that our decisions in each smart meter

installation case are considered on an individual basis established on the facts in the record of each proceeding.

In summary, we find nothing in the Complainants' Exceptions to refute the ALJ's conclusion that the Hanleys failed to meet their burden of proving that FirstEnergy violated the Code, the Commission's Regulations, or a Commission Order. Therefore, for all of the foregoing reasons, we shall: (1) deny the Complainants' Exceptions; (2) adopt the Initial Decision; and (3) dismiss the Hanleys' Complaint, with prejudice.

F. Petition for Stay and Disposition

1. Petition for Stay

In their Petition, the Complainants request that the Commission "allow [their] request for an emergency stay order of C-2024-3051044 to prevent further actions that could cause irreparable harm to the pending higher court case." Petition at 1-2 (citing 52 Pa. Code § 56.151) (emphasis omitted). The Hanleys also state the following: "Complainants are under appeal to the Pennsylvania Supreme Court (2 WM 2025) concerning related PUC case number C-2023-3041147, which case is directly linked to this current case C-2024-3051044." *Id.*

2. Disposition

As a threshold matter, the Petition is not properly before the Commission for disposition because it seeks relief *before* the Commission has entered an order in this matter. The timing of the Complainants' Petition is determinative because, while the Commission's Regulations at 52 Pa. Code § 5.572 do provide for the consideration of petitions for relief, including petitions seeking a stay, such petitions are only appropriately considered *after* the Commission enters a final order in the underlying case.

The requirement for the Commission to have previously entered a final order in a case prior to considering a petition for relief is demonstrated in the following provision contained in the Commission’s regulation regarding Petitions for relief: “Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within *15 days after the Commission order involved is entered or otherwise becomes final.*” 52 Pa. Code § 5.572(c) (emphasis added). Here, the ALJ’s Initial Decision is not a final order entered by the Commission from which a petition for relief may be granted.

Further, although the Complainants seek premature relief prior to the issuance of an order in this matter, the Complainants’ Petition also fails to provide a reason explaining why an active appeal should cause a delay for the instant proceeding. Moreover, the Complainants fail to set forth any basis in fact or law to justify a stay of the proceedings at the Exceptions stage.

Both because the Complainants’ Petition is not properly before the Commission for disposition, and because no good cause exists to grant the Petition, the Petition will be denied.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall: (1) deny the Complainants’ Exceptions; (2) deny the Complainants’ Petition for Stay; (3) adopt the ALJ’s Initial Decision; and (4) deny and dismiss the Hanleys’ instant Complaint, with prejudice, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Orpheus and Kimberly Hanley on May 19, 2025, at Docket No. C-2024-3051044, to the Initial Decision of

Administrative Law Judge Alphonso Arnold III, issued on April 21, 2025, are denied, consistent with this Opinion and Order.

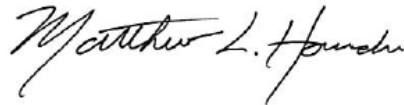
2. That the Initial Decision of Administrative Law Judge Alphonso Arnold III, issued on April 21, 2025, at Docket No. C-2024-3051044, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint, filed on September 5, 2024, by Orpheus and Kimberly Hanley against FirstEnergy Pennsylvania Electric Company, at Docket No. C-2024-3051044, is denied and dismissed, with prejudice.

4. That the Petition for Stay, filed on June 9, 2025, by Orpheus and Kimberly Hanley at Docket No. C-2024-3051044, is dismissed as moot.

5. That this proceeding at Docket No. C-2024-3051044 be marked closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: August 14, 2025

ORDER ENTERED: August 14, 2025