

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

Public Meeting held September 11, 2025

Commissioners Present:

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

Michael T. Jennings

C-2018-3006031

v.

West Penn Power Company

**OPINION AND ORDER**

## Table of Contents

I.	Background.....	3
II.	History of the Proceeding.....	5
III.	Discussion.....	16
	A.    Legal Standards .....	16
	1.    General Burden of Proof for Complaint Proceeding .....	16
	2.    Burden of Proof Applied to Section 1501 Complaint Challenging Smart Meter Installation.....	18
	3.    Other Relevant Legal Standards.....	22
	B.    ALJ Chiodo’s Initial Decision.....	23
	1.    Complainant’s Position .....	23
	2.    West Penn’s Position.....	25
	3.    ALJ Chiodo’s Disposition .....	27
	a.    Smart Meter Installation.....	27
	b.    ADA Accommodation .....	30
	c.    Constitutional and Discriminatory Claims.....	30
	d.    FCC Claims .....	31
	e.    Administrative Process Claims .....	31
	C.    Motion to Strike West Penn’s Replies to Exceptions .....	32
	1.    Motion to Strike .....	32
	2.    Disposition .....	33
	D.    Exceptions .....	33
	E.    Replies to Exceptions .....	37
	F.    Disposition.....	40
	1.    Act 129 and Opt-out.....	43
	2.    Evidence to Support Health Concerns .....	45
	3.    Due Process .....	48
	4.    Mr. Ahr’s Credibility as an Expert Witness.....	50
	5.    Constitutional Claims .....	50
	6.    Lack of ADA Jurisdiction .....	50
	7.    Other Claims and Summary .....	51
	G.    Second Motion to Stay and Disposition.....	52
	1.    Second Motion to Stay .....	52
	2.    Disposition .....	52
IV.	Conclusion.....	53

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Michael T. Jennings (Complainant or Mr. Jennings), filed on March 18, 2025, in the above-captioned proceeding. The Exceptions were timely filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Gail M. Chiodo, which the Commission served on the Parties on February 28, 2025.<sup>1</sup> Therein, the ALJ denied the Formal Complaint (Complaint) filed by the Complainant on November 15, 2018, in the above-captioned proceeding. On March 28, 2025, West Penn Power Company (West Penn or the Company) filed Replies to Exceptions.

Also, before the Commission for consideration and disposition is the Motion to Strike West Penn’s Replies to Exceptions (Motion to Strike), filed by the Complainant on June 13, 2025.<sup>2</sup> Additionally, before the Commission for consideration and disposition is the Motion to Stay Proceedings (Second Motion to Stay), filed by the Complainant on August 8, 2025.<sup>3</sup> No Answer to the Motion to Strike or the Second Motion to Stay has been filed.

For the reasons discussed below, we shall: (1) deny the Complainant’s Exceptions; (2) deny the Complainant’s Motion to Strike; (3) deny the Complainant’s

---

<sup>1</sup> As discussed, *infra*, the above-captioned proceeding was initially assigned to ALJ Jeffrey A. Watson and, subsequently, was assigned to ALJ Chiodo. For reference purposes, we shall refer to ALJ Chiodo as “the ALJ” unless the context indicates otherwise.

<sup>2</sup> We note that the filing is, essentially, a single-page correspondence requesting that West Penn’s Replies to Exceptions be stricken. Because the Complainant is appearing *pro se*, we will exercise our discretion pursuant to 52 Pa. Code § 1.2(a) and (d) and consider this filing as a Motion to Strike West Penn’s Replies to Exceptions.

<sup>3</sup> On August 11, 2025, the Complainant filed corrections to pages 2 and 3 of the Second Motion to Stay.

Second Motion to Stay; (4) adopt the Initial Decision of ALJ Chiodo; and (5) dismiss the Complaint, with prejudice, 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 West Penn proposes to install at the Complainant's residence for use in the ordinary course of business to measure the Complainant's electricity consumption. West Penn, now a part of FirstEnergy Pennsylvania Electric Company (FirstEnergy PA), is an electric distribution company (EDC) subject to the jurisdiction of the Commission, and furnishes, owns, and maintains the meters in its distribution system.<sup>4</sup> The Complainant is a West Penn customer who has been notified of West Penn's intent to install a smart meter at his residence that provides the function of automatic meter reading (AMR). The Complainant requested that West Penn not install a smart meter at his home due to health and safety concerns. Complaint at 3-4.

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

---

<sup>4</sup> See FirstEnergy Pennsylvania Electric Company Tariff Electric Pa. P.U.C. No. 1, Rule 8 at Original Page No. 44, effective January 1, 2024. We clarify that at the time of initiation of the instant proceeding, FirstEnergy PA consisted of four separate companies: Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company. See *Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid- Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et al.*, Docket Nos. A-2023-3038771, *et al.* (Final Order entered December 7, 2023). Nonetheless, in this Opinion and Order, we shall refer to the Company as West Penn.

to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

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

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

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

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

(ii) In new building construction.

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

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

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including West Penn, 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*). West Penn 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

As noted, *supra*, on November 15, 2018, the Complainant filed the instant Complaint seeking to prevent the installation of a smart meter at his home due to alleged health and safety concerns. Mr. Jennings alleged, *inter alia*, that he, his wife, and his son all suffer from serious health conditions, and radio frequency emissions from a smart meter installed on his home or property could exacerbate their conditions. The Complainant posited that West Penn's attempt to install a smart meter at his home constitutes unsafe and unreasonable service, in violation of Sections 1501 and 1502 of the Code, 66 Pa.C.S. §§ 1501, 1502, and Section 57.194 of the Commission's Regulations, 52 Pa. Code § 57.194. As relief, the Complainant requested, *inter alia*, that the Commission force the Company to cease all attempts to install a smart meter on his property. I.D. at 1-2; Complaint at 2-4.

On December 5, 2018, West Penn timely filed an Answer and New Matter to the Complaint (Answer and New Matter), denying the material allegations in the Complaint. West Penn contended that the Company is required by Act 129 to deploy smart meters, consistent with 66 Pa.C.S. § 2807. Further, West Penn argued that neither the Company's Commission-approved Smart Meter Deployment Plan nor the law permit the Company to refrain from the smart meter installation requirement or allow for an

opt-out from smart meter installation. I.D. at 2; Answer and New Matter at 2-5, 9-10 (citing 66 Pa.C.S. §§ 1406(a)(4), 2806.1, 2807; 52 Pa. Code § 56.81(3)).

Also, on December 5, 2018, West Penn filed a Preliminary Objection in response to the Complaint (Preliminary Objection). On December 15, 2018, the Complainant filed an Answer to West Penn’s Preliminary Objection (Answer to PO).<sup>5</sup> I.D. at 2.

On December 28, 2018, the Complainant filed correspondence in response to West Penn’s Answer and New Matter.<sup>6</sup>

On January 25, 2019, ALJ Watson issued an Interim Order Denying West Penn’s Preliminary Objection.<sup>7</sup> On July 5, 2019, ALJ Watson issued an Interim Order Granting in Part and Denying in Part the Complainant’s Motion to Compel

---

<sup>5</sup> We note that a copy of West Penn’s Preliminary Objection was included with the Complainant’s Answer to PO. We further note that on December 17, 2018, the Complainant filed an unsigned copy of his Answer to PO, which did not include a copy of West Penn’s Preliminary Objection.

<sup>6</sup> Upon review of the Commission’s case management system, this document is labeled as “Answer to New Matter – M Jennings.” As noted, *supra*, West Penn filed its Answer and New Matter on December 5, 2018. Pursuant to Section 5.63 of our Regulations, replies to answers were due within twenty (20) days after date of service of the Answer (*i.e.*, no later than December 26, 2018). *See* 52 Pa. Code § 5.63. We note that December 25, 2018, was a holiday. Therefore, replies to answers were due on December 26, 2018. We further note that the Complainant’s December 28, 2018, filing is dated December 27, 2018. Therefore, we shall treat the Complainant’s filing as correspondence.

<sup>7</sup> On January 3, 2019, a Motion Judge Assignment notice was issued, assigning this matter to ALJ Watson. I.D. at 2.

Discovery Responses (*July 2019 Interim Order*).<sup>8</sup> In the *July 2019 Interim Order*, ALJ Watson sustained West Penn’s objections to, *inter alia*, Interrogatory No. 2 of the Complainant’s Set II Discovery Requests.<sup>9</sup>

On October 24, 2019, ALJ Watson issued a Protective Order.<sup>10</sup> I.D. at 3.

On November 22, 2019, the Complainant filed a Revised Identification of Factual and Expert Witnesses and Expected Testimony.<sup>11</sup> On November 25, 2019, the Complainant filed a Certificate of Service (COS) indicating that he served on West Penn: (1) his own direct testimony (November 2019 Direct Testimony) and exhibits; and, (2) the written testimony and exhibits of his expert and factual witnesses. I.D. at 3.

On December 13, 2019, the Complainant filed a Motion to Stay the Proceedings (Motion to Stay).<sup>12</sup> On January 14, 2020, ALJ Watson issued an Interim

---

<sup>8</sup> On June 12, 2019, the Complainant filed a Motion to Compel Discovery Responses (Motion to Compel). I.D. at 3. On June 17, 2019, West Penn filed a timely Answer to the Complainant’s Motion to Compel (Answer to Motion), pursuant to 52 Pa. Code § 5.61(a). On June 25, 2019, the Complainant filed a Reply to West Penn’s Answer to Motion.

<sup>9</sup> In its Answer to Motion, West Penn objected to No. 2 of the Complainant’s Set II Discovery Requests, arguing that it sought “information related to customers who are not parties to this proceeding.” Answer to Motion at 3-4.

<sup>10</sup> On September 30, 2019, ALJ Watson issued an Interim Order Directing the Parties to Confer Regarding a Proposed Stipulated Protective Agreement or the Filing of a Petition for Protective Order. Consequently, on October 17, 2019, West Penn filed a Petition for Protective Order. On October 18, 2019, the Complainant filed a Petition for Protective Order. I.D. at 3.

<sup>11</sup> On April 1, 2019, the Complainant filed an Identification of Factual and Expert Witnesses and Expected Testimony (Identification of Witnesses).

<sup>12</sup> As discussed, *infra*, on March 16, 2020, a prehearing conference was held as scheduled. During the March 2020 prehearing conference, ALJ Watson addressed the Complainant’s Motion to Stay, explaining that under the circumstances, a stay of the proceedings was not appropriate. March 2020 Tr. at 42.

Order Requiring the Parties to File Updated Status Reports.<sup>13</sup> On January 27, 2020, the Complainant filed an Updated Status Report. On February 3, 2020, West Penn filed an Updated Status Report.

On March 5, 2020, ALJ Watson issued a Second Interim Order Scheduling Prehearing Conference (*March 2020 Interim Order*), which directed the Parties to attend and participate in a prehearing conference on March 16, 2020, to address all of the outstanding requests and issues raised by the Complainant in this proceeding.<sup>14</sup> *March 2020 Interim Order* at 3-4, Ordering Paragraph No. 2.

On March 16, 2020, a prehearing conference was held as scheduled.<sup>15</sup> The Complainant appeared *pro se* and the Company was represented by counsel. During the prehearing conference, the Company argued that the Complainant's written testimony and exhibits were due on September 19, 2019, but were not submitted by Mr. Jennings until November 22, 2019.<sup>16</sup> ALJ Watson permitted the late submission and stated that he would allow the Complainant to offer his submitted testimony, subject to any other evidentiary objections at the time of the hearing. Consequently, ALJ Watson granted

---

<sup>13</sup> On December 30, 2019, the Complainant filed a Status Report. On January 1, 2020, the Complainant filed a response to West Penn's Status Report. West Penn served its Status Report on the Parties on December 31, 2019, but did not file with the Commission until January 6, 2020.

<sup>14</sup> Upon review of the Commission's case management system, the Complainant filed additional correspondence regarding his Complaint on: (1) November 29, 2019; (2) January 1, 2020; (3) February 4, 2020; (4) February 7, 2020; (5) March 9, 2020; (6) March 16, 2020; (7) March 23, 2020; and (8) June 29, 2020.

<sup>15</sup> By Prehearing Conference Notice dated March 5, 2020, a Call-Out Prehearing Conference was scheduled for March 16, 2020.

<sup>16</sup> On August 12, 2019, ALJ Watson issued an Interim Order Providing for Third Revised Initial Litigation Schedule, which directed that the Complainant submit direct testimony and all expert and fact witnesses, including all exhibits, on or before September 20, 2019.

West Penn’s request to extend the discovery and rebuttal deadlines. I.D. at 4 (citing March 2020 Tr. at 7-8, 14, 27-28, 40).

On July 7, 2020, ALJ Watson issued two Interim Orders: (1) one denying the Complainant’s Request for Subpoena;<sup>17</sup> and (2) one converting the in-person hearing scheduled for July 23-24, 2020, to a telephonic hearing and directing the Parties how to participate in the telephonic hearing (*July 2020 Interim Order*).<sup>18</sup> I.D. at 4. The *July 2020 Interim Order* directed, *inter alia*, that “[a]ny communications as well as documents and proposed exhibits provided to [ALJ Watson], must be emailed to [the legal assistant’s email address] with a copy of the email transmission and attachments copied by email to every other party on or before July 20, 2020 by 4:00 p.m.” *July 2020 Interim Order* at 2-3, Ordering Paragraph No. 3.

On or about July 11, 2020, the Complainant filed, via the United States (U.S.) Postal Service, a revised version of his direct testimony dated July 1, 2020 (July 2020 Revised Testimony), and two flash drives.<sup>19</sup> I.D. at 5 (citing July 2020 Tr. at 158-59).

---

<sup>17</sup> On March 18, 2020, the Complainant filed a Request for Subpoena. On March 19, 2020, West Penn filed Objections to the Request for Subpoena. I.D. at 4.

<sup>18</sup> By Hearing Notice dated February 3, 2020, an in-person hearing was scheduled for July 23-24, 2020. Subsequently, by Corrected Hearing Notice dated July 7, 2020, the in-person hearing scheduled for July 23-24, 2020, was converted to a telephonic hearing on the same dates. I.D. at 3-5. We note that on or about March 16, 2020, the Commission’s offices were closed due to the Coronavirus pandemic (COVID-19 pandemic).

<sup>19</sup> Upon review of the Commission’s case management system, on July 15, 2020, the Complainant filed two COSs indicating that he served his July 2020 Revised Testimony and exhibits on the Company and ALJ Watson.

On July 23, 2020, ALJ Watson issued two Interim Orders: (1) one denying the Complainant’s letter requesting that a new ALJ be assigned to preside over the instant proceeding;<sup>20</sup> and (2) one denying the Complainant’s Motion *in Limine*.<sup>21</sup> I.D. at 5.

On July 23 and 24, 2020, ALJ Watson convened the evidentiary hearing, as scheduled. West Penn was represented by counsel and offered the Rebuttal Testimony of one witness, Mr. John Ahr (Exhibit ALJ-5), who was present at the hearing and sponsored his own exhibit (Exhibit JCA-1).<sup>22</sup> Both Mr. Ahr’s rebuttal testimony and his exhibit were admitted into the record as evidence.<sup>23</sup> I.D. at 6; July 2020 Tr. at 364-65. The Complainant appeared *pro se, i.e.*, without legal counsel.<sup>24</sup> The Complainant also offered the direct testimony of Dr. Michael Semelka (Exhibit ALJ-4, confidential), who was present at the hearing. However, Dr. Semelka’s testimony was not admitted upon

---

<sup>20</sup> On January 21, 2020, the Complainant filed a letter requesting, *inter alia*, a new ALJ be assigned to the instant proceeding. I.D. at 3.

<sup>21</sup> On March 9, 2020, the Complainant filed a Motion to Compel Rebuttal Testimony of West Penn’s Expert Witnesses. On May 1, 2020, West Penn filed a COS indicating that the Company served on the Complainant the rebuttal testimony of its expert witnesses. On July 1, 2020, the Complainant filed a Motion *in Limine*, seeking to strike West Penn’s Rebuttal Testimony. On July 22, 2020, West Penn filed a timely Answer to the Complainant’s Motion *in Limine*. I.D. at 4-5.

<sup>22</sup> West Penn pre-marked Mr. Ahr’s rebuttal testimony as “WPP Statement No. 1R.” We note that herein, this rebuttal testimony will be cited as “WPP St. 1R.” *See* I.D. at 12, 19, Finding Of Fact (FOF) No. 32.

<sup>23</sup> We note that in the July 2020 Hearing Transcript, Exhibit JCA-1 is mislabeled as “JC8-1.” I.D. at 9; *see* July 2020 Tr. at 361, 364-65. As discussed, *infra*, Exhibit JCA-1 was not received into the record until February 19, 2025. We further note that although the Hearing Transcript identified Exhibit ALJ-5 as the Direct Testimony of Mr. Jennings, the record shows that Exhibit ALJ-5 is actually the Rebuttal Testimony of Mr. Ahr. I.D. at 9; *See* July 2020 Tr. at 264.

<sup>24</sup> At the hearing, ALJ Watson denied the Complainant’s request that his wife, Susan Jennings (Mrs. Jennings, collectively, the Jennings) serve as co-counsel. However, the ALJ permitted Mrs. Jennings to assist the Complainant during the hearing. *See* July 2020 Tr. at 22-32.

the objection of West Penn.<sup>25</sup> The Complainant's November 2019 Direct Testimony was admitted into evidence (Complainant Exhibit C-1, confidential).<sup>26</sup> However, ALJ Watson struck portions of the testimony upon the objection of West Penn.<sup>27</sup> I.D. at 5-6, 12-13 (citing July 2020 Tr. at 231-32, 234, 237-39, 243, 245-46, 249-53). The Complainant also offered the following exhibits, which were admitted into the record as evidence: (1) Complainant Exhibit A, with the exceptions of: (a) request and response to Set I, Nos. 32, 50, and 51; and (b) all instructions, requests, and responses regarding Set II, except No. 34; and (2) Complainant Exhibit LL.<sup>28</sup> I.D. at 12; July 2020 Tr. at 278, 305, 365. ALJ Watson also admitted the following into the record as evidence: (1) two email chains regarding Dr. Semelka (Exhibits ALJ-1 and ALJ-2); and (2) an email chain between the Complainant and the Office of Administrative Law Judge regarding service of proposed exhibits (Exhibit ALJ-3). ALJ Watson also took judicial notice of several Codes and Laws. I.D. at 6, 11; July 2020 Tr. at 307-08.

---

<sup>25</sup> See July 2020 Tr. at 153-55.

<sup>26</sup> As discussed, *infra*, Exhibit C-1 was not received into the record until February 19, 2025. We note that in the July 2020 Hearing Transcript, Complainant Exhibit C-1 is mislabeled as West Penn Exhibit ALJ-5. See July 2020 Tr. at 272. As discussed, *supra*, Exhibit ALJ-5 is the Rebuttal Testimony of Mr. Ahr. I.D. at 11-12.

<sup>27</sup> During the hearing, the Complainant moved to admit his July 2020 Revised Testimony, in place of his November 2019 Direct Testimony. ALJ Watson excluded the July 2020 Revised Testimony on the basis that: (1) neither West Penn nor the ALJ received the July 2020 Revised Testimony; and (2) it was submitted past the deadline for submitting testimony. I.D. at 12, n.10 (citing July 2020 Tr. at 167, 177).

<sup>28</sup> At the hearing, the Complainant offered several exhibits which were not admitted into evidence or were withdrawn. I.D. at 13; See July 2020 Tr. at 287, 293-94, 301-02, 304, 310, 312-17, 319-20, 322-37, 339-56.

On August 24, 2020, a 291-page Hearing Transcript was filed. On September 3, 2020, pages 262 through 369 of the Hearing Transcript were filed.<sup>29</sup> I.D. at 6.

On October 9, 2020, the Complainant filed a Main Brief.<sup>30</sup> Also, on October 9, 2020, West Penn filed a Main Brief. On October 14, 2020, ALJ Watson issued an Interim Order Permitting the Filing of Reply Briefs.<sup>31</sup> I.D. at 6.

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

---

<sup>29</sup> Although the Initial Decision indicates that a hearing transcript of 369 pages was filed on September 3, 2020, the Commission's case management system indicates that the first 291 pages of the hearing transcript (representing the evidentiary hearing held on July 23, 2020) was filed on August 24, 2020, and pages 262 through 369 of the hearing transcript (representing the continuation of the evidentiary hearing, held on July 24, 2020) was filed on September 3, 2020. *See* I.D. at 6.

<sup>30</sup> The Complainant's Main Brief included several attachments that were either denied from admission into evidence at the evidentiary hearing or otherwise are not part of the record. Subsequently, on October 12, 2020, the Complainant filed a single-page correction to his Main Brief. I.D. at 6.

<sup>31</sup> On October 12, 2020, the Complainant filed a Request to Submit a Reply Brief.

stay and his procedural rights and obligations under the Commission's Regulations. I.D. at 7.

On December 12, 2023, ALJ Chiodo issued an Order directing that a post-evidentiary hearing conference be held to discuss whether the Parties seek an opportunity to re-open the evidentiary record to present additional evidence.<sup>32</sup> I.D. at 7.

Also, on December 12, 2023, the Complainant filed an Amended Formal Complaint (Amended Complaint).<sup>33</sup> On January 2, 2024, West Penn filed a timely Answer to the Complainant's Amended Complaint. Also, on January 2, 2024, West Penn filed a Preliminary Objection to the Amended Complaint. On January 8, 2024, the Complainant filed a Withdrawal of the Amended Complaint (Withdrawal). I.D. at 8.

On March 20, 2024, ALJ Chiodo convened the post-hearing conference, as scheduled.<sup>34</sup> West Penn was represented by counsel. The Complainant appeared *pro se* with Mrs. Jennings. On March 21, 2024, ALJ Chiodo issued an Order Following Post Evidentiary Hearing Conference (*March 2024 Order*). I.D. at 8. In the *March 2024 Order*, ALJ Chiodo, *inter alia*, ruled that the Complainant's proposed post-hearing conference exhibits, which the Complainant emailed to the ALJ and counsel for West Penn in anticipation of the post-hearing conference, would not be admitted into the

---

<sup>32</sup> By Motion Judge Change Notice dated November 27, 2023, the instant matter was reassigned from ALJ Watson to ALJ Chiodo. I.D. at 7.

<sup>33</sup> We note that the Commission's case management system indicates the Amended Complaint was received December 12, 2023, but was not served on the Parties until December 13, 2023.

<sup>34</sup> On January 22, 2024, the Complainant filed a request to delay the post-hearing conference. Consequently, by Cancelled/Rescheduled Post-Hearing Conference Notice dated January 24, 2024, a post-hearing conference previously scheduled for February 12, 2024, was rescheduled for March 20, 2024. I.D. at 8.

record.<sup>35</sup> *March 2024 Order* at 1, Ordering Paragraph No. 4. On April 10, 2024, a 38-page transcript of the post-hearing conference was filed.

On April 12, 2024, the Complainant filed a Status Report (April 2024 Status Report). I.D. at 9.

On May 14, 2024, counsel for West Penn emailed a letter to ALJ Chiodo and the Complainant stating that the record was missing West Penn’s Exhibit JCA-1 (*i.e.*, the sponsored exhibit of Mr. Ahr) and the Complainant’s Exhibit C-1 (*i.e.*, the Direct Testimony of Mr. Jennings).<sup>36</sup> Counsel for West Penn attached both exhibits to the email. Consequently, ALJ Chiodo forwarded the email and the two exhibits to the Commission’s Secretary’s Bureau for filing. On February 19, 2025, West Penn’s Exhibit JCA-1 and the Complainant’s Exhibit C-1 were filed with the Commission.<sup>37</sup> I.D. at 9-10.

On May 20, 2024, the Complainant filed a Motion for Continuance (Motion for Continuance). On October 1, 2024, ALJ Chiodo issued an Order Permitting the Filing of Reply Briefs (*October 2024 Order*).<sup>38</sup> On November 15, 2024, West Penn

---

<sup>35</sup> During the post-hearing conference, ALJ Chiodo explained to the Complainant and Mrs. Jennings that the Complainant’s proposed exhibits would not be admitted into the hearing record because the purpose of the post-hearing conference is not to submit proposed exhibits for the record. *See* March 2024 Tr. at 34-35.

<sup>36</sup> As noted, *supra*, both West Penn’s Exhibit JCA-1 and the Complainant’s Exhibit C-1 (which are mislabeled in the July 2020 Hearing Transcript as “JC8-1” and “ALJ-5,” respectively) were admitted into the record at the evidentiary hearing. *See* I.D. at 6, 9, 11-12; July 2020 Tr. at 264, 272, 364.

<sup>37</sup> Upon review of the Commission’s case management system, Complainant Exhibit C-1 is saved as Confidential. *See* I.D. at 10, n.7.

<sup>38</sup> The *October 2024 Order*, *inter alia*, granted the Complainant’s Motion for Continuance and permitted the filing of reply briefs by no later than 4:30 p.m. on November 15, 2024. *See* *October 2024 Order* at Ordering Paragraph Nos. 1, 2.

timely filed a Reply Brief. Also, on November 15, 2024, the Complainant timely filed a Reply Brief, which included several attachments that were either denied from admission at the hearing or otherwise are not part of the record. I.D. at 10.

On January 9, 2025, the Complainant filed a Petition to Re-open the Proceeding for the Purpose of Taking Additional Evidence (Petition). No response to the Petition was filed. I.D. at 10.

In the Initial Decision, issued on February 28, 2025, ALJ Chiodo: (1) denied the Complainant's Petition; and (2) denied and dismissed the Complaint. The ALJ found that Mr. Jennings' Petition is simply a response to West Penn's Reply Brief and failed to introduce any additional testimony or evidence. Further, the ALJ dismissed the Complaint due to the Complainant's failure to meet his burden of proof evidencing that: (1) West Penn violated the Code or a Commission Regulation or Order; or (2) Mr. Jennings is entitled to the relief he requested. I.D. at 1, 31-32, 46.

As noted, *supra*, the Complainant filed Exceptions on March 18, 2025, and West Penn filed Replies to Exceptions on March 28, 2025.

As also noted, *supra*, on June 13, 2025, the Complainant filed a Motion to Strike West Penn's Replies to Exceptions. West Penn did not file an Answer to the Complainant's Motion to Strike.

As also noted, *supra*, on August 8, 2025, the Complainant filed a Second Motion to Stay.<sup>39</sup> West Penn did not file an Answer to the Complainant's Second Motion to Stay.

---

<sup>39</sup> As noted, *supra*, on August 11, 2025, the Complainant filed corrections to pages 2 and 3 of the Second Motion to Stay.

### III. Discussion

#### A. Legal Standards

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

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

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a 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-finder<sup>40</sup> may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005) (*Suber*)).

## 2. Burden of Proof Applied to Section 1501<sup>41</sup> Complaint Challenging Smart Meter Installation

In *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court's October 8, 2020 decision in *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), and thereby affirmed the Commission's March 28, 2019 and May 9, 2019 Orders in *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) (*2019 Povacz Order*); *Laura Sunstein Murphy v. PECO Energy Company*, Docket No. C-2015-2475726 (Opinion and Order entered May 9, 2019); and *Cynthia Randall and Paul Albrecht v. PECO Energy Company*, Docket No. C-2016-2537666 (Opinion and Order entered

---

<sup>40</sup> In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n.7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

<sup>41</sup> The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. *See* 52 Pa. Code § 57.28(a)(1). *See Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Opinion and Order entered April 20, 2017).

May 9, 2019). By *Povacz II*, the Supreme Court affirmatively established that there is no “opt-out” provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II*, 280 A.3d at 983-84.

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service<sup>42</sup> and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

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

66 Pa.C.S. § 1501.

As previously noted, in *Povacz II*, the Pennsylvania Supreme Court (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

---

<sup>42</sup> The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See* 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Regulations, or Orders, but also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code.<sup>43</sup> Therein, the Supreme Court stated:

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

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

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

A customer seeking affirmative relief from the [Commission] must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a

---

<sup>43</sup> The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof, a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000 (citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at \*14 (Pa. P.U.C. January 28, 2016) (*Kreider*)).

violation of the Code, a [Commission] regulation or [o]rder, or a violation of a [Commission]-approved tariff.

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

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

. . . .

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

*Povacz II*, 280 A.3d at 999-1000 (emphasis added; footnote omitted).<sup>44</sup>

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

---

<sup>44</sup> With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

cause adverse health effects or harm to human health, the Complainant must demonstrate by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)<sup>45</sup> from the AMI meter.<sup>46</sup>

### 3. Other Relevant Legal Standards

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

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

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

---

<sup>45</sup> RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

<sup>46</sup> See 2019 *Povacz Order* slip op., at 28-29 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Final Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*), slip op. at 11).

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

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. ALJ Chiodo’s Initial Decision<sup>47</sup>**

In the Initial Decision, ALJ Chiodo made forty-three (43) Findings of Fact and reached eleven (11) Conclusions of Law (COL). *See I.D.* at 13-21, 44-46. 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.

### **1. Complainant’s Position**

The ALJ began by summarizing the Complainant’s position that: (1) the installation of a smart meter would be unlawful, unsafe, and unhealthy for himself and his

---

<sup>47</sup> As previously noted, we shall refer to ALJ Chiodo as “the ALJ” unless the context indicates otherwise.

family; (2) he is requesting to keep an analog meter at his home via an accommodation under the Americans with Disabilities Act (ADA) and pursuant to the U.S. Constitution, Federal law, and state law; (3) denial of his request constitutes unreasonable service under Section 1501 of the Code; and (4) the Commission administrative process is biased. I.D. at 26.

The ALJ addressed the Complainant's claim that RF emissions from smart meters could increase the likelihood of seizures for his son based on Mr. Jennings' belief that a smart meter was installed at his prior home in March 2017 and resulted in his son experiencing several seizures and requiring hospitalization. Further, the ALJ noted the Complainant's assertion that if he had been permitted to compel West Penn to respond to his discovery question about whether the Company installed a smart meter at his prior residence, then he would have been able to meet his burden of proving a causal relationship between the smart meter installation and the harm to his son. I.D. at 26-27 (citing Complainant M.B. at 27-28; Complainant R.B. at 13).

ALJ Chiodo also noted the Complainant's argument that he was denied due process because ALJ Watson excluded several exhibits and testimony from the evidentiary record, including: (1) several letters from various doctors regarding his disabilities, his wife's disabilities, and his son's disabilities; (2) several research articles in support of his position that RF radiation is harmful to someone with his son's condition; and (3) the proposed testimony of Dr. Semelka, who would have testified that Mr. Jennings' son should not be exposed to RF radiation from a smart meter. The ALJ highlighted the Complainant's position that if Dr. Semelka's testimony had been admitted, then Mr. Jennings would have met his burden of proof. I.D. at 27-28 (citing Complainant R.B. at 2, 13-14; Complainant M.B. at 27).

The ALJ also acknowledged that it is the Complainant's position that: (1) the Company is interfering with the doctor-patient relationship and preventing

patients from following medical doctor recommendations by not accommodating his family with an analog meter; (2) he and his wife witnessed the effects of electromagnetic radiation on their son; and (3) the Company is not qualified to consider their son's medical conditions in relation to smart meters. I.D. at 28-29 (citing Complainant R.B. at 2, 23).

The ALJ also highlighted the Complainant's assertion that his request is reasonable because: (1) he currently receives electric service through an analog meter without issue; (2) he is billed accordingly and timely pays all of his electric bills in-full; and (3) his request for an accommodation will not cause any undue burden on the Company because FirstEnergy Corporation allows customers in Ohio and New Jersey to opt-out of a smart meter. Further, the ALJ noted Mr. Jennings' position that the installation of a smart meter at his residence: (1) is a violation of the U.S. Constitution, the Pennsylvania Constitution, and Federal Communications Commission (FCC) regulations; and (2) is discriminatory against him and his family. Moreover, the ALJ noted the Complainant's contention that the Commission's administrative litigation process is biased against him as a *pro se* and disabled complainant. I.D. at 29 (citing Complainant R.B. at 1-2; Complainant M.B. at 3).

## **2. West Penn's Position**

The ALJ also summarized West Penn's position that the Complainant failed to: (1) meet his burden of proof that the installation of a smart meter at the service location would constitute unreasonable service, in violation of Section 1501 of the Code, or would otherwise violate the Code, Commission Regulations, or a Commission Order; (2) present expert testimony demonstrating that the installation of the smart meter is unsafe or unreasonable service, pursuant to *Povacz II*; and (3) support his allegations pertaining to health and safety concerns. I.D. at 29 (citing West Penn R.B. at 4-5).

The ALJ addressed West Penn's arguments that: (1) the Supreme Court's holding in *Povacz II*, that Act 129 mandates the installation of smart meters, renders the Complaint moot; (2) if the Complainant established that the installation of a smart meter would violate Section 1501 of the Code, then he is only entitled to an accommodation to the extent allowed by Act 129 and the Company's tariff; and (3) the only accommodation set forth in the Company's tariff is for the meter to be relocated at the service location at the customer's expense. I.D. at 30 (citing West Penn R.B. at 4-5, 11).

The ALJ also acknowledged West Penn's alternative argument that if the instant Complaint is not deemed moot, then the substantive issues raised in this proceeding are resolved under *Povacz II*. Further, the ALJ noted West Penn's position that the Complainant failed to: (1) provide any reliable evidence in support of his safety and health concerns related to smart meters; and (2) demonstrate that the installation of a smart meter at the service location would constitute unreasonable or inadequate service under Section 1501 of the Code. Moreover, the ALJ noted the Company's argument that West Penn is not a state actor that can violate the Complainant's constitutional rights. I.D. at 30 (citing West Penn R.B. at 7-11; *Povacz II*; *Povacz I*).

The ALJ also addressed West Penn's averments that: (1) the Complainant's proposed exhibits were properly excluded at the evidentiary hearing; (2) any attempt by Mr. Jennings to include extra-record evidence is inappropriate and should not be considered; (3) the Complainant presented no expert testimony as to any issue raised in the Complaint; (4) the Complainant's testimony should carry no evidentiary weight because he was not qualified to testify or offer exhibits related to any issue outside of his personal knowledge; and (5) the Complainant declined to present expert testimony. I.D. at 30-31 (citing April 2024 Status Report; West Penn R.B. at 5-6).

Finally, the ALJ noted that West Penn took issue with several other matters raised by the Complainant, including: (1) constitutional and discriminatory claims;

(2) that the Company did not comply with certain FCC regulations; and (3) the Commission's administrative process. I.D. at 31 (citing West Penn 21-23).

### **3. ALJ Chiodo's Disposition**

The ALJ found that the Complainant failed to meet his burden of proof evidencing that West Penn violated a Commission statute, Regulation, or Order. Further, the ALJ found that even if Mr. Jennings had met his burden of proof, he is not entitled to the relief he requested, which is to forbid West Penn from installing a smart meter at the service location. Moreover, the ALJ found no evidentiary error or other complaints about the administrative process generally that would warrant granting the Complainant's request for relief. I.D. at 31.

#### **a. Smart Meter Installation**

The ALJ agreed with West Penn that the Supreme Court's decision in *Povacz II* is controlling that under Act 129, the Company is required to install smart meters for all of its customers, including Mr. Jennings, and an opt-out from smart meter installation is not permitted. The ALJ added that subsequent Commission Orders and/or appellate court decisions related to smart meter installation and deployment do not permit an opt-out. I.D. at 32 (citing *Povacz II*).

The ALJ found that the record evidence demonstrates that Mr. Jennings failed to establish a *prima facie* case demonstrating that West Penn's installation of a smart meter constitutes a violation of Section 1501 of the Code. The ALJ noted that the Complainant failed to present any admissible, reliable, or credible evidence supporting any of the issues raised in the Complaint, including expert testimony demonstrating that RF emissions from smart meters cause adverse health effects or caused harm to Mr. Jennings or his family. The ALJ referred to the Supreme Court's explanation in

*Povacz II*, regarding Section 1501 claims involving the safety of smart meters and RF emissions, to conclude that here, the Complainant failed to demonstrate, by a preponderance of the evidence, a conclusive causal connection between the harm to human health and the RFs from a smart meter. I.D. at 32-33 (citing *Povacz II* at 1006).

The ALJ also found that there is no evidence that the Complainant is qualified to offer expert opinion. The ALJ reasoned that absent expert testimony, Mr. Jennings' claims regarding the health conditions of himself, his wife, and his son are reduced to an unsubstantiated opinion, given that there is no expert medical testimony or credible evidence to explain a causal connection between their conditions and the alleged harm from a smart meter. The ALJ highlighted that assertions, personal opinions, or perceptions do not constitute factual evidence, and the Commission has ruled that the same cannot be relied upon as substantial evidence. I.D. at 33 (citing *Norman v. Philadelphia Gas Works*, Docket No. C-2018-2640719 (Opinion and Order entered October 7, 2021) (*Norman*) at 30; *Povacz II*, 280 A.3d at 1005).

ALJ Chiodo pointed out that at the evidentiary hearing, the Complainant attempted to present supporting evidence, including research articles, physician visit summaries, lab work, phone call summaries, letters, and links to websites discussing RF emissions from smart meters. However, upon the objection of West Penn, ALJ Watson excluded the Complainant's proposed exhibits as hearsay and/or irrelevant. I.D. at 33-34 (citing Complainant M.B. at 13; July 2020 Tr. at 274-357). ALJ Chiodo further noted that Mr. Jennings attached many of the same documents which were excluded at the evidentiary hearing to his Main Brief and Reply Brief. I.D. at 34, n.16 (citing Complainant R.B. at 39-42). ALJ Chiodo reasoned that these documents were properly excluded from the record at the evidentiary hearing as hearsay or irrelevant, finding that they were not authored by the Complainant or someone who was available for cross-examination at the hearing. Accordingly, ALJ Chiodo did not consider those same documents, finding that those documents constitute extra-record evidence. I.D. at 34

(citing *Zonca v. Metropolitan Edison Company*, Docket No. C-2019-3007961 (Opinion and Order entered May 9, 2024)).

The ALJ also addressed the Complainant's averment that Dr. Semelka, who was available for cross-examination at the evidentiary hearing, intended to testify that Mr. Jennings' son should not be exposed to RF radiation from a smart meter due to a risk of seizures. I.D. at 34-35 (citing Complainant R.B. at 2, 13-14; Complainant M.B. at 43-44; Complainant Exh. C-1). The ALJ highlighted that West Penn objected to the admission of Dr. Semelka's testimony on the basis of: (1) the discovery of multiple versions of Dr. Semelka's testimony; (2) Dr. Semelka, who appeared at the hearing by telephone, was unable to authenticate the version that Mr. Jennings attempted to submit as evidence; and, (3) confusion and a discrepancy pertaining to the date of Dr. Semelka's electronic signature on each version.<sup>48</sup> I.D. at 35 (citing July 2020 Tr. at 154).

ALJ Chiodo did not find it necessary to determine whether Dr. Semelka's testimony was properly excluded, noting that at the post-hearing conference, the Complainant was provided an opportunity to address whether he wanted to reopen the evidentiary record and to present expert testimony in light of the Supreme Court's ruling in *Povacz II*. I.D. at 37-38 (citing the *March 2024 Order; Povacz II*). The ALJ pointed out that Mr. Jennings, in his April 2024 Status Report, stated that he was not requesting to reopen the evidentiary record to present expert testimony. Therefore, the ALJ found that the Complainant was given an adequate due process opportunity to present expert testimony as part of the evidentiary record. I.D. at 38 (citing April 2024 Status Report).

Further, the ALJ found that in the absence of any expert testimony, the Complainant failed to meet his burden of proving a *prima facie* case of a Section 1501

---

<sup>48</sup> Regarding the multiple versions of Dr. Semelka's testimony and the discrepancies thereto, ALJ Chiodo reviewed pages 50 through 155 of the evidentiary hearing transcript, and Exhibits ALJ-1, ALJ-2, and ALJ-4. See I.D. at 35-37.

violation. The ALJ noted that she did not question the health situation of Mr. and Mrs. Jennings or their son, or the Complainant's position and beliefs regarding the effects of RF emissions. Accordingly, the ALJ concluded that the Complainant failed to carry his burden of proof that the Company has provided unsafe or unreasonable service, in violation of Section 1501 of the Code. I.D. at 38-39 (citing *Povacz II* at 1005).

**b. ADA Accommodation**

The ALJ found that the Commission does not have jurisdiction over an ADA claim. The ALJ determined that even if the Complainant established a Section 1501 violation, the Commission is unable to grant the specific relief requested by Mr. Jennings (*i.e.*, to prevent the Company from replacing the analog meter with a smart meter), as the customer would be "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff." I.D. at 39 (citing *Povacz II* at 1014). Further, the ALJ agreed with West Penn that in accordance with the Company's tariff, the only accommodation is for the meter to be relocated to a different location on the property and for the Complainant to pay for the relocation costs. I.D. at 39 (citing West Penn R.B. at 11). Accordingly, the ALJ concluded that an ADA claim is not a cause of action over which the Commission has jurisdiction. I.D. at 39-40 (citing *Frompovich* at 43).

**c. Constitutional and Discriminatory Claims**

The ALJ addressed the Complainant's contention that the installation of a smart meter at his residence is a violation of the 14<sup>th</sup> Amendment and Article I of the Pennsylvania Constitution. I.D. at 40 (citing Complainant M.B. at 3). The ALJ agreed with West Penn that a utility must be a state actor to implicate the Complainant's constitutional rights. Accordingly, the ALJ concluded that the Complainant's constitutional claims must fail, finding that West Penn is a private entity and not a state actor. I.D. at 40.

The ALJ also acknowledged the Complainant's contention that the mandated smart meter installation is discriminatory and violates Section 1502 of the Code. I.D. at 40-41 (citing Complainant R.B. at 19-21; Complainant M.B. at 19-24; 66 Pa.C.S. § 1502). The ALJ agreed with West Penn that the Company is required to install smart meters for all of its customers and, therefore, mandated smart meter installation is not discriminatory. Further, the ALJ reasoned that allowing Mr. Jennings *alone* to opt-out from the smart meter installation may raise a concern under Section 1502 of the Code. I.D. at 41 (citing West Penn R.B. at 17; 66 Pa.C.S. § 1502). Moreover, the ALJ noted that the Commission does not have jurisdiction over ADA determinations, or a cause of action under the ADA. I.D. at 41 (citing *Frompovich*).

**d. FCC Claims**

The ALJ addressed the Complainant's assertions regarding West Penn's compliance with certain FCC requirements. I.D. at 41 (citing Complainant M.B. at 16, 28). The ALJ agreed with West Penn that these assertions were improperly raised by Mr. Jennings for the first time in the briefing stage, thereby depriving the Company of an opportunity to respond to these allegations and present evidence during the hearing. I.D. at 41-42 (citing West Penn R.B. at 18). Thus, the ALJ found that West Penn was unable to address these claims until the filing of its Reply Brief. I.D. at 42 (citing *Petition of Duquesne Light Company for approval of smart meter procurement and installation plan*, Docket No. M-2009-2123948 (Initial Decision issued January 28, 2010), *adopted as modified* (Opinion and Order entered May 11, 2010)). Accordingly, the ALJ did not consider the Complainant's FCC claim. I.D. at 42.

**e. Administrative Process Claims**

The ALJ found that the Complainant's repeated claims of bias and prejudice towards smart meter complainants in general, and towards Mr. Jennings as a

*pro se* litigant and disabled person, are without merit and unsupported by the record. I.D. at 42-43 (citing Complainant M.B. at 24-25, 28-29). The ALJ explained that the Commission is bound by the Supreme Court’s holding in *Povacz II*, that the burden of proof on Section 1501 claims involving the safety of smart meters and RF emissions falls on the customer, and the Commission, including the ALJ, is not free to shift the burden of proof to the utility or the Commission. I.D. at 43-44 (citing *Povacz II*).

The ALJ also agreed with West Penn that the Complainant’s concerns with the hearing transcript are untimely, finding that they were raised for the first time in Mr. Jennings’ Reply Brief. I.D. at 44 (citing Complainant R.B. at 28-29). The ALJ explained that the Complainant, in contravention to the requirements of Section 5.253(c) of the Code, 52 Pa. Code § 5.253(c), did not make any proposed corrections to the hearing transcript prior to the briefing stage of this proceeding. Moreover, the ALJ determined that none of the Complainant’s arguments and comments regarding the hearing transcript are substantive or, if included, would change the outcome of this matter. I.D. at 44 (citing 52 Pa. Code § 5.253(c)).

Accordingly, the ALJ concluded that the record evidence compels that the Complaint must be dismissed. I.D. at 44.

## **C. Motion to Strike West Penn’s Replies to Exceptions**

### **1. Motion to Strike**

In his Motion, the Complainant requests that the Commission strike and exclude from consideration West Penn’s Reply Exceptions, *infra*. The basis for the Complainant’s request is that prior to its filing of Replies to Exceptions, “West Penn submitted a letter to the Commission stating that it would not be filing Reply Exceptions.” Motion to Strike (emphasis omitted). Motion at 1.

## 2. Disposition

Upon review, the Complainant's Motion to Strike is not factually correct. As previously noted, on March 21, 2025, West Penn filed a letter stating that it would not be filing Exceptions. West Penn, at no time in this proceeding, filed a letter stating that it would not be filing Replies to Exceptions. Mr. Jennings has not provided a credible, factual, or legal basis for striking West Penn's Replies to Exceptions. Therefore, we will deny the Complainant's Motion to Strike.

### D. Exceptions<sup>49</sup>

The Complainant's Exceptions consist of: (1) two signed cover letters; (2) a table of contents; (3) a twenty-eight (28) page, largely single-spaced document; (4) a signed COS; and (5) several extra-record attachments.<sup>50</sup>

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

---

<sup>49</sup> 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 exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, as the Complainant is 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.

<sup>50</sup> We note that the Complainant's Exceptions do not address the ALJ's denial of Mr. Jennings' Petition. As noted by the ALJ, the Complainant's Petition was a response to West Penn's Reply Brief and did not seek to introduce any additional testimony or evidence. *See* I.D. at 31-32; *see also* Petition at 2-6.

not be considered. *Apollo Gas*. Where the Complainant has offered new arguments and exhibits in his Exceptions not previously addressed in the record, we note that these arguments cannot be considered after the record has been closed. 52 Pa. Code § 5.431.

Turning to the substance of Mr. Jennings' Exceptions, the Complainant argues that ALJ Chiodo's Initial Decision includes "misinformation, misleading presentations, and legal irregularities." Mr. Jennings continues that the ALJ "purposely misconstrued, distorted, and misinterpreted" information concerning his case. Exc. at 1 (citing I.D. at 29-32; Petition). Further, the Complainant argues that his Complaint is not moot because: (1) he provided "more than a mere trace of evidence;" (2) he is not relying on his personal assertions; and (3) his Complaint meets the exceptions "[u]nder the established mootness doctrine" and satisfies the standard for "specific factual allegations." Exc. at 2-4. Moreover, the Complainant argues that the Supreme Court's ruling in *Povacz II* provides people with disabilities an accommodation, regardless of proof of harm and in the absence of a Section 1501 violation. Exc. at 1-2, 4-5, 11, 27 (citing *Povacz II*; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

The Complainant renews his argument that the installation of a smart meter on his property is a threat to his son's life and well-being. Mr. Jennings continues to base this argument on his belief that a smart meter installed at his former home in March 2017 caused his son to experience seizures and require hospitalization. Further, the Complainant continues to challenge ALJ Watson's ruling to sustain West Penn's objection to Mr. Jennings' interrogatory request that the Company reveal the date a smart meter was installed at his prior residence.<sup>51</sup> Moreover, the Complainant maintains the position that the burden of proof is on West Penn to demonstrate that smart meters are safe. Exc. at 1-5, 8, 12-14, 21, 25-26. Furthermore, the Complainant argues that contrary

---

<sup>51</sup> As previously noted, in his *July 2019 Interim Order*, ALJ Watson sustained West Penn's objections to, *inter alia*, Interrogatory No. 2 of the Complainant's Set II Discovery Requests. *July 2019 Interim Order* at 1-2.

to ALJ Chiodo's findings, the Commission is permitted to grant his request for an ADA accommodation, pursuant to *Povacz II*. Exc. at 2-5, 15, 26-28 (citing I.D. at 39-40; *Povacz II*). Additionally, the Complainant, essentially, criticizes the Commission based on the outcome of several unspecified formal complaints filed with the Commission. Exc. at 2.

The Complainant also argues that pursuant to Section 2807 of the Code, 66 Pa.C.S. § 2807(f)(2)(i), a customer must agree to pay for the cost of a smart meter before it can be deployed. Exc. at 3 (citing West Penn R.B. at 15-16; 66 Pa.C.S. § 2807(f)(2)(i)). Further, the Complainant argues that contrary to the ALJ's findings: (1) West Penn and the Commission are forcing untested smart meters upon customers without consent; (2) West Penn is functioning as a state actor; and (3) Act 129 is "not a mandate but opt-in legislation." Exc. at 20-24 (citing I.D. at 40; *Yewcic v. Penelec*, Docket No. C-2018-3001276 (Hearing Transcript entered August 18, 2020) at 48-51 (Final Order entered April 5, 2024); *Smart Meter Implementation Order* (emphasis omitted)). Moreover, the Complainant argues that West Penn and the Commission are not in compliance with several provisions of the Code, the Commission's Regulations, the U.S. Constitution, and the ADA. Exc. at 9-17 (citing 52 Pa. Code §§ 56.111, 5.406(a)(2); 2 Pa.C.S. § 505; 66 Pa.C.S. §§ 315(c), 1406(f)).

The Complainant remains of the opinion that he was denied due process because several of his proposed exhibits and the direct testimony of Dr. Semelka were excluded from the record. Exc. at 4, 10, 17, 24-25 (citing I.D. at 34; July 2020 Tr. at 85-155). Further, the Complainant maintains his position that ALJ Chiodo, ALJ Watson, and the Commission are: (1) biased and prejudiced; (2) demonstrated collusion with West Penn; and (3) demonstrated discrimination against disabled persons. Exc. at 10, 12-13, 17, 24-25, 28. Moreover, the Complainant challenges the credibility of West Penn's witness, Mr. Ahr, as an expert witness, and repeatedly asserts that Mr. Ahr,

West Penn, the ALJ, and the Commission “practice[d] medicine without a license.”  
Exc. at 5-9.

The Complainant also raises, or re-raises, the following administrative matters: (1) West Penn filed its “objections” to Mr. Jennings’ Motion to Compel “almost three months late;”<sup>52</sup> (2) West Penn failed to file its Reply Brief after the deadline established in the *October 2024 Order*;<sup>53</sup> (3) ALJ Chiodo erred by forwarding West Penn’s Exhibit JCA-1 to the Secretary’s Bureau for electronic filing;<sup>54</sup> (4) ALJ Chiodo erred by using the words “concerns” and “situations,” and the terms “health concerns” and “health situations,” when the ALJ summarized Mr. Jennings’ averments pertaining to his son’s health in the Initial Decision;<sup>55</sup> and (5) several comments from ALJ Watson were removed from the evidentiary hearing transcript.<sup>56</sup>

Finally, to the extent the Complainant’s Exceptions include derogatory commentary regarding the ALJ, the Company’s representatives, and Commission staff, such commentary is deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(e), we shall strike such statements from our consideration of the Complainant’s Exceptions.

---

<sup>52</sup> Exc. at 1, 13, 26 (emphasis omitted).

<sup>53</sup> Exc. at 18 (citing *October 2024 Order* at Ordering Paragraph No. 6).

<sup>54</sup> Exc. at 18-19 (citing I.D. at 9). As discussed, *supra*, on May 14, 2024, counsel for West Penn notified ALJ Chiodo and the Complainant that Exhibit JCA-1 and the Complainant’s Exhibit C-1 (which are mislabeled in the July 2020 Hearing Transcript as “JC8-1” and “ALJ-5,” respectively, and were admitted into the record at the evidentiary hearing) were both missing from the record. Consequently, ALJ Chiodo forwarded Exhibits JCA-1 and C-1 to the Secretary’s Bureau for filing. *See* I.D. at 6, 9; July 2020 Tr. at 264, 272, 364-65. We note that the Complainant is not challenging the ALJ’s decision to forward Exhibit C-1 to the Secretary’s Bureau for electronic filing.

<sup>55</sup> Exc. at 5 (citing I.D. at 2, 30).

<sup>56</sup> Exc. at 13 (citing July 2020 Tr. at 25, 166-74, 224).

## **E. Replies to Exceptions**

In its Replies, West Penn disagrees with the Complainant's contention that the ALJ ignored Mr. Jennings' arguments regarding mootness that were set forth in the Complainant's Petition. West Penn counters that the ALJ's denial of the Petition does not mean that the ALJ ignored the Complainant's arguments. Further, West Penn avers that the ALJ engaged in an examination and ultimately issued her ruling on the merits of the Complaint. Accordingly, West Penn submits that the Complainant's argument on this matter has no merit. R. Exc. at 2-3 (citing Exc. at 1-5; I.D. at 30, 32-34).

West Penn argues that the ALJ correctly held that the Complainant failed to meet his burden of proving that the installation of a smart meter would violate Section 1501 of the Code. West Penn avers that the Complainant failed to present: (1) expert testimony to corroborate his health, safety, or privacy claims; (2) any evidence that he is qualified to offer expert testimony as an engineer, doctor, or other medical professional; and (3) demonstrate that the installation of a smart meter at his service address would constitute unreasonable or inadequate service under Section 1501 of the Code. R. Exc. at 3-4 (citing I.D. at 32-39; West Penn R.B. at 17). Further, West Penn asserts that the ALJ correctly rejected Mr. Jennings' arguments that the smart meter will cause, or contribute to, adverse health effects. Moreover, West Penn avers that the ALJ properly excluded, as hearsay or irrelevant, the Complainant's offerings of research articles, physician visit summaries, lab work, phone call summary sheets, letters, and links to websites. R. Exc. at 5 (citing I.D. at 33-34). Furthermore, West Penn notes that although the written testimony of Dr. Semelka was excluded due to Dr. Semelka's inability to authenticate the testimony, ALJ Chiodo provided Mr. Jennings an opportunity, at the post-evidentiary hearing conference, to address whether he wanted an opportunity to reopen the evidentiary record to present expert testimony in light of the Supreme Court's ruling in *Povacz II*. West Penn continues that the Complainant, in his April 2024 Status Report, stated that he was not requesting to reopen the record to present

expert testimony. R. Exc. at 5 (citing I.D. at 34-38). Accordingly, West Penn submits that the ALJ properly concluded that the Complainant failed to meet his burden of proof. R. Exc. at 5.

West Penn also disputes the Complainant's allegation that the ALJ practiced medicine when adjudicating health-related claims. R. Exc. at 5 (citing Exc. at 5-7). West Penn counters that the ALJ properly exercised her authority to review the evidence presented by the Parties, apportion the weight she saw fit to that evidence, and render a judgment on the merits. R. Exc. at 5 (citing 66 Pa.C.S. § 331(d)). West Penn adds that the ALJ, in dismissing the Complaint, did not need to rely on the Company's evidence. R. Exc. at 5-6 (citing I.D. at 32-39).

West Penn further asserts that the Complainant improperly attempts to introduce and rely upon extra record materials in support of his claims. R. Exc. at 6 (citing Exc. at 19-20, Attachments EX-1, EX-3). West Penn submits that it is well-established that parties cannot introduce evidence for the first time at the briefing or exceptions stage. R. Exc. at 6 (citing *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS, at \*8-14 (Order entered February 10, 1994) (*Apollo Gas*); *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (*Hess*)). Therefore, West Penn avers that any extra-record evidence that the Complainant introduces or relies on in his Exceptions should be disregarded. R. Exc. at 6.

Accordingly, West Penn submits that nothing in the Complainant's Exceptions warrants disturbing the ALJ's determination that Mr. Jennings failed to meet his burden of proof that the smart meter installation would violate Section 1501 of the Code. R. Exc. at 6.

West Penn also submits that the ALJ properly rejected the Complainant's claims regarding various provisional constitutional and federal law. West Penn further

contends that the ALJ properly determined that the Supreme Court's decision in *Povacz II* is controlling here. R. Exc. at 7 (citing Exc. at 9-17, 26-28; I.D. at 32, 39-41; *Povacz II* at 1014). Further, West Penn argues that no federal law preempts the installation of a smart meter under Section 2807(f) of the Code, 66 Pa.C.S. § 2807(f), and the Commission, as a creature of statute with only those powers vested in it by the General Assembly, lacks jurisdiction to interpret and enforce the various laws cited by Mr. Jennings. R. Exc. at 7-8 (citing I.D. at 39-40; *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977); *Frompovich* at 43). Moreover, West Penn agrees with the ALJ that the Company is not a state actor that can violate the Complainant's constitutional rights. Accordingly, West Penn submits that the Complainant's constitutional claims must fail. R. Exc. at 8 (citing I.D. at 40; *Povacz I*; *Povacz II*).

West Penn also asserts that contrary to the Complainant's arguments otherwise, nothing in the record remotely suggests that the ALJ engaged in any unethical conduct. R. Exc. at 9 (citing Exc. at 1, 11-12, 14, 17-19, 24-26). Further, West Penn submits that the ALJ properly afforded Mr. Jennings due process. R. Exc. at 9 (citing *Hess*). Specifically, West Penn argues that the Complainant was provided with an opportunity to: (1) be heard on his issues; (2) cross-examine the Company's witnesses at the evidentiary hearing; (3) review the Company's written testimony and exhibits, which were served on Mr. Jennings well before the evidentiary hearing, and offer his evidence in rebuttal; and (4) reopen the evidentiary record to present expert testimony in light of the *Povacz II* decision. R. Exc. at 9-10 (citing I.D. at 37-38). Moreover, West Penn refers to the Commission's e-Filing system to note that contrary to the Complainant's argument otherwise, the Company timely filed its Reply Brief on November 15, 2015. R. Exc. at 10 (citing Exc. at 18). Accordingly, West Penn is of the firm opinion that the Commission should reject the Complainant's arguments on these matters as meritless. R. Exc. at 10.

## F. Disposition

At the outset, we shall address the Complainant's arguments regarding several administrative matters in this proceeding. We disagree with Mr. Jennings' contention that West Penn late filed: (1) its "objections" to the Complainant's Motion to Compel; and (2) its Reply Brief. As discussed, *supra*, West Penn timely filed its Answer to the Complainant's Motion to Compel on June 17, 2019, pursuant to 52 Pa. Code § 5.61(a).<sup>57</sup> West Penn also timely filed its Reply Brief on November 15, 2024, consistent with the directive in the *October 2024 Order*.<sup>58</sup> Similarly, we disagree with the Complainant's argument that ALJ Chiodo erred by forwarding West Penn's Exhibit JCA-1 to the Secretary's Bureau for electronic filing. As discussed, *supra*, ALJ Chiodo forwarded Exhibits JCA-1 and C-1 to the Secretary's Bureau for electronic filing after counsel for West Penn emailed the ALJ and the Complainant that both exhibits were missing from the record.<sup>59</sup> *See* I.D. at 9-10; *see also*, July 2020 Tr. at 364-65. ALJ Chiodo stated that she forwarded the exhibits to the Secretary's Bureau in an effort to maintain the accuracy of the evidentiary record. I.D. at 9. We concur. Thus, the Complainant's claim that ALJ Chiodo erred by forwarding the missing exhibits to the Secretary's Bureau is without merit.

Furthermore, to the extent that the Complainant continues to argue that several comments were removed from the evidentiary hearing transcript, we agree with

---

<sup>57</sup> As noted, *supra*, the Complainant filed his Motion to Compel on June 12, 2019. Pursuant to 52 Pa. Code § 5.61(a), an Answer to the Motion to Compel was due within twenty (20) days (*i.e.*, no later than July 2, 2019). 52 Pa. Code § 5.61(a)).

<sup>58</sup> As noted, *supra*, the *October 2024 Order*, *inter alia*, permitted the filing of reply briefs by no later than 4:30 p.m. on November 15, 2024. According to the Commission's case management system, West Penn filed its Reply Brief at 3:53 p.m., on November 15, 2024.

<sup>59</sup> As noted, *supra*, Exhibits JCA-1 and C-1 were both admitted into the record at the evidentiary hearing, but were not electronically received into the Commission's case management system until February 19, 2025.

ALJ Chiodo’s reasoning that Mr. Jennings’ arguments regarding the hearing transcript: (1) were untimely raised during the briefing stage, in contravention to 52 Pa. Code § 5.253(c); (2) are not substantive; and (3) would not change the outcome of this matter. *See I.D.* at 44 (citing 52 Pa. Code § 5.253(c)).

Additionally, we find no merit to the Complainant’s objection to ALJ Chiodo’s use of the words “concerns” and “situations” when the ALJ described and summarized the Complainant’s averments regarding his son’s health. *See Exc.* at 5. Although the Complainant alleges that ALJ Chiodo’s description was inaccurate and the Complainant expresses dissatisfaction with the ALJ’s wording, Mr. Jennings has not demonstrated that the wording was erroneous, nor has he explained why his mere dissatisfaction provides a viable basis for exception. *See Id.* Therefore, we find that the Complainant has failed to state a viable exception.

As a final preliminary matter, we clarify the parameters of our disposition, because the Complainant’s arguments alleging health impacts imposed by a smart meter installed at Mr. Jennings’ *prior* home underscore several of the Complainant’s Exceptions. Specifically, the Complainant continues to argue that ALJ Watson erred when he sustained West Penn’s objections to the Complainant’s request for information regarding a smart meter installation at his *prior* residence.<sup>60</sup> *See Exc.* at 1, 5, 12, 25-26. As noted, *supra*, West Penn objected to Interrogatory No. 2 of the Complainant’s Set II Discovery Requests, arguing that it sought “information related to customers who are not parties to this proceeding.” Answer to Motion at 3-4. Upon review, we find no error in ALJ Watson’s ruling that sustained West Penn’s objection to the Complainant’s interrogatory requesting information regarding the Complainant’s *prior* residence. Indeed, the Complainant “lack[s] standing to raise issues on behalf of anyone other than

---

<sup>60</sup> As noted, *supra*, in the *July 2019 Interim Order*, ALJ Watson sustained Interrogatory No. 2 in Set II of the Complainant’s interrogatory requests. *July 2019 Interim Order* at 1-2.

[himself] or *in relation to any property other than the service address.*” *Mousios v. Metropolitan Edison Company, Cumming v. Metropolitan Edison Company*, Docket Nos. C-2019-3007989 and C-2019-3007995 (Opinion and Order entered April 24, 2025) at 39-40 (emphasis added). Therefore, to the extent that the Complainant’s Exceptions are grounded in claims that a smart meter installed at a property other than the service address is pertinent to the instant proceeding, they are denied. Accordingly, our disposition is limited to the Complainant’s opposition to having a smart meter installed at the *service address* (*i.e.*, Mr. Jennings’ *current* home).

We turn now to the merits of the Complainant’s Exceptions, which fail to cite underlying Findings of Fact and Conclusions of Law.<sup>61</sup> The synthesis of the Complainant’s Exceptions demonstrates, generally, that Mr. Jennings excepts to: (1) Act 129’s smart meter mandate and the right to an opt-out; (2) the conclusion that no evidence supports the Complainant’s claims of adverse health effects from smart meters; (3) the conclusion that the Complainant was afforded due process; (4) the finding of credibility of West Penn’s witness, Mr. Ahr, as an expert witness; (5) the rejection of constitutional violations and claims; (6) the conclusion that the Commission lacks jurisdiction of ADA claims; and (7) the rejection of Complainant’s other claims regarding bias, prejudice, collusion, and “practicing medicine without a license.” Because we conclude that each of the Complainant’s Exceptions is without merit, we will deny the Complainant’s Exceptions.

As a general matter, in cases involving a challenge to smart meter installation, the standard burden of proof applicable in complaint proceedings applies. However, case law addressing the specific claims raised in challenges to smart meter installation has also developed. Claims challenging the installation of a smart meter can generally be categorized as claiming one or more of the following: (1) a right to opt out

---

<sup>61</sup> We note that several passages from the Complainant’s Exceptions mirror passages from the Complainant’s Reply Brief.

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*.

### **1. Act 129 and Opt-out**

The Complainant contends that the Commission is misinterpreting Act 129 and *Povacz II*. Exc. at 3, 20-24 (citing *Povacz II*); Complainant M.B. at 19. The ALJ reasoned that the Supreme Court’s holding in *Povacz II* is controlling that Act 129 does not provide an ability to opt-out of smart meter installation. I.D. at 32 (citing *Povacz II*). We agree with the ALJ’s analysis and conclusion that West Penn is required to install smart meters in accordance with Act 129, and electric customers are not permitted to opt-out of smart meter installation. I.D. at 46, COL No. 9 (citing *Povacz I*; 66 Pa.C.S. §§ 2806.1-2807).

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

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

preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

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

As discussed, *infra*, we agree with the ALJ’s analysis and conclusion that the Complainant did not meet his burden of proof to show that the Company: (1) violated the Code or a Commission Regulation or Order; and (2) provided unsafe or unreasonable service, in violation of Section 1501 of the Code. I.D. at 31, 46, COL No. 11. Although the Complainant expressed that he does not want a smart meter at his property, we agree with the ALJ’s conclusion that, under the provisions of Act 129, West Penn, an EDC, is required to deploy smart meters to all electric distribution customers. I.D. at 46, COL No. 9 (citing *Povacz I*; 66 Pa.C.S. §§ 2806.1-2807). Therefore, we agree with the ALJ’s determination that the Complainant is not entitled to the relief he requested (*i.e.*, to prevent West Penn from installing a smart meter at his home). I.D. at 31. Moreover, we agree with the ALJ’s conclusion that the Complainant has not provided any proof to demonstrate how West Penn, which is required to comply with Act 129 by installing a smart meter at the Complainant’s residence, violated the Code, a Commission Regulation, or a Commission Order. I.D. at 31, 46, 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, West Penn is required to install smart meters for all of its customers, including the Complainant. I.D. at 46, COL No. 9. Therefore, we find no error in the ALJ’s determination that the installation of the smart meter was mandatory, as set forth in the Initial Decision.

## **2. Evidence to Support Health Concerns**

The Complainant has repeatedly argued that RF emissions from a smart meter that the Company intends to install on his home will adversely affect his health and the health of his wife and son. Complainant M.B. at 28; Complainant R.B. at 26; Complaint at 3. In his Exceptions, the Complainant generally attempts to advance this argument, emphasizing that smart meters pose a serious threat to his son’s health and well-being. Exc. at 1-5, 12-13, 25-26. Therefore, each of the Complainant’s claims arise, if at all, as a claim under Section 1501, asserting the unreasonable or unsafe provision of service. 66 Pa.C.S. § 1501.

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

The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof, by a preponderance of the evidence. The

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

The Supreme Court further instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm.<sup>62</sup> The utility may then refute the customer’s evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Povacz II* at 1008. Once the parties have presented their evidence, the onus then falls on the fact-finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.<sup>63</sup>

In the present case, the ALJ’s analysis and disposition turned on the Complainant’s failure to establish a *prima facie* case that West Penn’s installation of a

---

<sup>62</sup> Notably, the Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Id.* at 1005.

<sup>63</sup> The Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, then the customer is entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff. However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id.* at 1015.

smart meter constitutes a violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. *See* I.D. at 38-39. In his Exceptions, Mr. Jennings argues that, essentially, he provided sufficient proof to support his allegations and, regardless of proof of harm, he is entitled to the relief he requested from the Commission. Exc. at 2-4, 11, 27. The ALJ found that the Complainant did not provide any: (1) admissible, reliable or credible evidence supporting any of the issues raised in the Complaint; (2) expert testimony demonstrating that RF emissions from smart meters cause adverse health effects or harmed the Complainant or his family; or (3) evidence that Mr. Jennings is qualified to offer an expert opinion. Moreover, the ALJ found that absent expert testimony and any credible evidence, the Complainant's claims are unsubstantiated opinions. Accordingly, the ALJ found that personal assertions, opinions, or perceptions do not constitute factual evidence and cannot be relied upon as substantial evidence. I.D. at 33, 45, COL. No. 5 (citing *Povacz II*; *Norman*). We concur.

Upon review, we agree with the ALJ's well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainant failed to present any credible evidence or expert testimony to support his allegations that West Penn's smart meter deployment is unsafe or unreasonable, in violation of Section 1501 of the Code. Thus, we agree with the ALJ that the Complainant failed to carry his burden of proving that West Penn violated the Code or a Commission Regulation or Order. I.D. at 31, 38-39, 46, COL No. 11. Indeed, absent expert testimony and credible evidence to substantiate any of the Complainant's allegations, Mr. Jennings' personal testimony does not prove, by a preponderance of the evidence, that West Penn's service is unsafe and that a causal connection exists between the allegedly unsafe service and the alleged harm. *See Povacz II* at 1007. Therefore, we find that the Complainant's argument on this matter has no merit.

To prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused, or will cause, adverse health effects or harm to human health, the

Complainant must demonstrate, by a preponderance of the evidence, a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See 2019 Povacz Order*. Here, as noted by ALJ Chiodo, the Complainant presented no evidence or expert testimony to corroborate his health or safety allegations. I.D. at 32-33. Accordingly, the ALJ properly found that the Complainant failed to present credible evidence to establish that the installation of a smart meter would be unsafe or unreasonable under Section 1501 of the Code. We affirm ALJ Chiodo’s conclusion that the Complainant failed to present credible evidence to establish that such installation would result in unsafe or unreasonable service, in violation of Section 1501 of the Code. Specifically, we affirm the ALJ’s conclusion, in Conclusion of Law No. 11, that the Complainant failed to carry his burden of proof establishing that West Penn violated the Code or a Commission Regulation or Order. I.D. at 31, 38-39, 46, COL No. 11.

### **3. Due Process**

We disagree with the Complainant’s contention that he was denied due process. ALJ Chiodo reasoned that ALJ Watson properly excluded several of the Complainant’s proposed exhibits from the record as hearsay and/or irrelevant. We concur. Indeed, as noted by the ALJ, the Complainant’s proposed exhibits were irrelevant to the instant case and/or not authored by Mr. Jennings or someone who was available at the evidentiary hearing for cross-examination. *See I.D. at 33-34 (citing July 2020 Tr. at 274-357)*. Similarly, we agree with the ALJ that the attachments to the Complainant’s Briefs, which included several attachments that were either denied from admission at the hearing or were otherwise not part of the record, constituted extra-record evidence at the briefing stage.<sup>64</sup> *See I.D. at 10, 34*. Accordingly, we find no reason to

---

<sup>64</sup> As discussed, *supra*, the Complainant attempted to submit several proposed exhibits in anticipation of the post-hearing conference. ALJ Chiodo ruled that the Complainant’s proposed post-hearing conference exhibits would not be admitted into the record. *March 2024 Order* at 1, Ordering Paragraph No. 4.

reconsider ALJ Chiodo’s determination that ALJ Watson properly excluded the Complainant’s proposed exhibits from the record in this proceeding.

Furthermore, we agree with ALJ Chiodo’s conclusion that the Complainant was provided an adequate due process opportunity to present expert testimony as part of the evidentiary record. At the post-hearing conference, ALJ Chiodo asked the Complainant if he wanted an opportunity to present expert testimony in light of the Supreme Court’s decision in *Povacz II*. In response, Mr. Jennings requested that Dr. Semelka’s direct testimony be admitted. The ALJ denied the Complainant’s request, explaining that ALJ Watson ruled to exclude the content of Dr. Semelka’s testimony because it was unable to be authenticated at the evidentiary hearing. ALJ Chiodo further explained that in order for Dr. Semelka’s testimony to be admitted, the Complainant must: (1) request to reopen the record; (2) bring Dr. Semelka back and present him as a witness again; and (3) present Dr. Semelka’s testimony again, which Dr. Semelka must be able to authenticate. March 2024 Tr. at 21-24. ALJ Chiodo then asked the Complainant and Mrs. Jennings if they understood.<sup>65</sup> Mrs. Jennings replied “[y]es, that does make sense. We won’t bring him back.” March 2024 Tr. at 24. Subsequently, in his April 2024 Status Report, the Complainant stated that he “will not be pursuing expert testimony.” April 2024 Status Report at 2.

It is indisputable that ALJ Chiodo provided the Complainant an opportunity to reopen the record for the opportunity to present an expert witness, and to present Dr. Semelka as an expert witness again, in light of the Supreme Court’s ruling in *Povacz II*. March 2024 Tr. at 23-24. The Complainant explicitly declined this opportunity. See April 2024 Status Report at 2. Thus, we find that the Complainant’s claim that he was denied due process has no merit.

---

<sup>65</sup> As noted, *supra*, Mrs. Jennings was also present at the post-hearing conference. See March 2024 Tr. at *passim*.

#### **4. Mr. Ahr's Credibility as an Expert Witness**

We shall deny the Complainant's Exceptions to the extent that the Complainant challenges the credibility of West Penn's witness, Mr. Ahr, as an expert witness. We note that Mr. Ahr testified that he has a degree in electrical engineering and has been working for FirstEnergy PA or its predecessor companies since 1984 in several positions, including, *inter alia*, his current position as Advisor in Regulatory Compliance of Smart Meters. West Penn St. 1R at 1-2; I.D. at 18-19, FOF No. 30-31. Further, Mr. Ahr provided expert testimony that established the Company's smart meters comply with all safety standards and requirements established by various entities, including the FCC, the American National Standards Institute, and Underwriters Laboratories. West Penn St. 1R at 12-13. Thus, we find the Complainant's claim on this matter is meritless.

#### **5. Constitutional Claims**

We agree with ALJ Chiodo that West Penn is not a "state actor" that can violate the Complainant's constitutional rights. I.D. at 15 (citing *Povacz II*). 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 Complainant asserts a constitutional right to refuse smart meter installation, we shall deny the Complainant's Exceptions on this issue without further discussion.

#### **6. Lack of ADA Jurisdiction**

To the extent the Complainant raises the ADA as a bar to smart meter installation, we disagree. As noted by ALJ Chiodo, the Commission does not have the

authority to provide the relief requested by the Complainant, noting that the Commission has previously recognized that it has no jurisdiction to act under the ADA. I.D. at 39-40 (citing *Frompovich*). Further, even if the customer, Mr. Jennings, had proved that the installation of a smart meter at the service location is a violation of Section 1501 of the Code (which he did not), then he would only be entitled to an accommodation to the extent allowed by Act 129 and the Company's tariff, and the only accommodation set forth in the Company's tariff is for relocation of the meter to a different location on the Complainant's property at his expense. I.D. at 39 (citing West Penn R.B. at 11; *Povacz II* at 1014). We concur. Accordingly, we affirm the ALJ's conclusion that the Commission does not have jurisdiction to hear claims brought under the ADA, as our analysis is limited to the Commission's jurisdiction. Therefore, the Complainant's claim on this matter is denied.

## **7. Other Claims and Summary**

To the extent that the Complainant alleges bias, prejudice, and collusion, 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. Further, Mr. Jennings' contention that the ALJ, the Commission, West Penn, and Mr. Ahr were engaged in "practicing medicine without a license" is not meritorious. Petition at 5-9. We note that *Povacz II* is clear that the Commission has authority to evaluate the Complainant's claims, along with medical evidence, and it provides a framework to do so, which the Commission followed.

In summary, we find nothing in the Complainant's Exceptions to refute ALJ Chiodo's conclusion that Mr. Jennings failed to demonstrate that the installation of a smart meter at his home constitutes unsafe or unreasonable service, in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. Therefore, for all of the foregoing reasons,

we shall: (1) deny the Complainant’s Exceptions; (2) adopt the Initial Decision; and (3) dismiss the Complaint, with prejudice.

## **G. Second Motion to Stay and Disposition**

### **1. Second Motion to Stay**

In his Second Motion to Stay, the Complainant requests, *inter alia*, that the Commission “immediately stay enforcement of its Final Order in this matter” due to “similar facts, claims, and legal theories” between the instant case and a recently filed “federal lawsuit [that] was filed in the United States District Court for the Middle District of Pennsylvania: *Lucey v. PUC, FirstEnergy, and Met-Ed.*” Second Motion to Stay at 1-3 (emphasis omitted).

### **2. Disposition**

As a threshold matter, the Complainant’s Second Motion to Stay is not properly before the Commission for disposition because it seeks relief before the Commission has entered its final order in this matter. The Complainant’s request for premature relief is evident in that Mr. Jennings states that “the Commission has not yet issued a Final Order.” Second Motion to Stay at 1. The Commission’s Regulations do provide for the consideration of motions for relief and petitions for relief. *See* 52 Pa. Code §§ 5.103, 5.572(d). However, a motion or petition for a stay of a Commission order is only appropriately considered *after* the Commission enters a final order in the underlying case. Here, the ALJ’s Initial Decision is not a final order entered by the Commission from which a motion for relief may be granted.

Further, although Mr. Jennings seeks premature relief prior to the issuance of an order in this matter, the Complainant's Second Motion to Stay also fails to set forth a basis in fact or law to justify a stay of the proceedings at the Exceptions stage.

Both because the Complainant's Second Motion to Stay is not properly before the Commission for disposition, and because no good cause exists to grant the Second Motion to Stay at this procedural stage, the Second Motion to Stay will be denied.

#### **IV. Conclusion**

Based upon our review of the record and the applicable law, we shall: (1) deny the Complainant's Exceptions; (2) deny the Complainant's Motion to Strike; (3) deny the Complainant's Second Motion to Stay; (4) adopt the Initial Decision of ALJ Chiodo; and (5) dismiss the Complaint, with prejudice, consistent with this Opinion and Order; **THEREFORE,**

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

1. That the Exceptions filed by Michael T. Jennings on March 18, 2025, at Docket No. C-2018-3006031, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Gail M. Chiodo, issued on February 28, 2025, at Docket No. C-2018-3006031, is adopted, as modified by this Opinion and Order.

3. That the Formal Complaint, filed on November 15, 2018, by Michael T. Jennings against West Penn Power Company, at Docket No. C-2018-3006031, is denied and dismissed, with prejudice.

4. That the Motion to Strike Reply Exceptions, filed by Michael T. Jennings on June 12, 2025, is denied.

5. That the Motion to Stay Proceedings, filed by Michael T. Jennings on August 8, 2025, is denied.

6. That this proceeding at Docket No. C-2018-3006031 be marked closed.

**BY THE COMMISSION,**



Matthew L. Homsher  
Secretary

(SEAL)

ORDER ADOPTED: September 11, 2025

ORDER ENTERED: September 11, 2025