

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

Public Meeting held November 20, 2025

Commissioners Present:

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

Brian Hoeft

C-2019-3011586

v.

Metropolitan Edison Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions, filed by Brian Hoeft (Mr. Hoeft or Complainant) on September 30, 2025, in response to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Emily A. Farren, which was issued on September 11, 2025, in the above-captioned proceeding. Metropolitan Edison Company (Met-Ed or the Company) filed Replies to Exceptions on October 14, 2025. In the Initial Decision, ALJ Farren recommended that the Commission dismiss the Formal Complaint (Complaint), filed by the Complainant on July 15, 2019, finding that the Complainant failed to meet his burden of proof. For the reasons discussed below, we

shall deny the Complainant’s Exceptions, adopt the Initial Decision of ALJ Farren, and dismiss the Complaint, with prejudice, consistent with this Opinion and Order.

I. Background

This case involves a Complaint concerning the installation of the advanced metering infrastructure (AMI), or smart meter, at the Complainant’s residence by Met-Ed for the Company’s use in the ordinary course of business to measure the Complainant’s electricity consumption. The Complainant refuses to have a smart meter installed. The Complainant requested that the Commission provide more time for resolution of the matter,¹ including postponement of the smart meter installation. Complaint at 3. Also, the Complainant requests that more notice be given regarding the 10-day shut off notice as well as the notification of a 3-day shut off to a customer who “dutifully pays their utility bills for years and simply want's (sic) to remain ‘as-is.’” *Id.*

Met-Ed, now a part of FirstEnergy Pennsylvania Electric Company (FirstEnergy PA),² is an electric distribution company (EDC) subject to the jurisdiction of the Commission, that furnishes, owns and maintains the meters in its distribution

¹ The Complainant further requested that more time be given for the resolution of proposed legislation, particularly “SB791,” as well as extending the deadline for smart meter installation prescribed by Act 129 of 2008 (Act 129 or Act), that he argued is overbearing and/or capricious. Formal Complaint (Complaint) at 3.

² At the time of initiation of the instant proceeding, FirstEnergy PA consisted of four separate companies: Met-Ed, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Companies. However, these companies have since been merged into a single entity, known as FirstEnergy Pennsylvania Electric Company. *See Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, et al.*, Docket Nos. A-2023-3038771, *et al.* (Final Order entered December 7, 2023). Nonetheless, in this Opinion and Order, we shall refer to the Company as Met-Ed.

system. See FirstEnergy PA Tariff Electric Pa. P.U.C. No. 1, (FirstEnergy PA Tariff), Rule 8 at Original Page No. 44, effective January 1, 2024 (FirstEnergy PA Tariff Rule 8).

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

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

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

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

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

(ii) In new building construction.

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

66 Pa.C.S. § 2807(f).

The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally

sustainable electric service at the least cost.” See H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including Met-Ed, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. See *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*). Met-Ed sought and obtained the Commission’s approval to complete the installation of AMI meters for substantially all customers within its service territory by mid-2019. See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan*, Docket No. M-2013-2341990 (Opinion and Order entered March 6, 2014) (*2014 Smart Meter Order*).

II. History of the Proceeding

On July 15, 2019, the Complainant filed his Complaint with the Commission against Met-Ed, averring that the Company was threatening termination of electrical service. The Complainant objected to the installation of a smart meter at the service address. Complaint at 3. As relief, the Complainant requested that the Commission order Met-Ed to postpone the installation of a smart meter at his residence. *Id.*

Further, Mr. Hoeft asserted in the Complaint that his last contact with the Company was on October 2, 2018, in which he declined the post-card offer of smart meter installation and indicated that the Company would list him as voluntarily opting

out of the program. The Complainant reiterated that he did not wish to terminate electric service, but requested the same or similar kind of analog meter currently at his residence to record his electric usage for which he would continue payment. The Complainant further suggested that he wished to discuss other methods of reporting his electric usage to Met-Ed. Complaint at 8.

On August 6, 2019, the Company filed an Answer and New Matter to the Complaint. Met-Ed admitted that it provides residential retail electric service to the Complainant's residential address. Answer at 1. Met-Ed averred that the Complainant, on several occasions, refused to allow access to install a smart meter, which constitutes legal grounds to terminate electric service. *Id.* at 2. The Company also submitted that it attempted to address the Complainant's concerns regarding installation of a smart meter including providing information for Mr. Hoeft to contact the Commission. *Id.* Met-Ed further averred that it is required by Act 129 to install a smart meter and that the Company's actions in this matter complied with all applicable laws, as well as its Commission-approved tariffs, the Code, and Commission regulations and orders. Answer at 4-5.

In its New Matter, Met-Ed stated that the Complaint is legally insufficient because Act 129 and its Commission-approved Smart Meter Deployment Plan (SMP)³ does not allow the Commission to grant the relief requested. Answer at 8. Met-Ed further stated similar arguments, as set forth in its Answer, including the Complainant's refusal to allow the installation of a smart meter at his residence and the Company's actions in accordance with Act 129. Answer at 6-8. The Complainant did not file a reply to Met-Ed's New Matter.

³ The Company's SMP was approved by the Commission in June 2014. Met-Ed's SMP contemplated the deployment of approximately 549,000 smart meters in its service territory beginning in January 2016 through mid-2019. Answer at 8.

Also, on August 6, 2019, Met-Ed filed Preliminary Objections.

Met-Ed submitted that, even if all of the facts contained in the Formal Complaint were true, there existed no violation of law in this case which the Commission has jurisdiction to administer, and no violation of any regulation or order of the Commission such that relief can be granted in accordance with Section 701 of the Code, 66 Pa.C.S. § 701. As a result, the Company requested that the Preliminary Objections be granted and that the Commission: (1) strike the Complainant's request to have an exemption from the installation of a smart meter; (2) dismiss the Complaint in its entirety, with prejudice; and (3) grant such relief deemed just and reasonable in this matter. P.O. at 3. Met-Ed also argued that Act 129 and the Commission's Orders not only authorize but require the Company to develop a procurement and installation plan to deploy smart meters and do not permit a customer to opt out of having a smart meter installed at his residence. *Id.* at 7. The Company insisted that the Commission cannot find Met-Ed to be in violation for having attempted to follow the law. *Id.* at 7-8. In addition, Met-Ed submitted that the Complainant did not provide sufficient grounds for his refusal to have a smart meter installed at his service address, further supporting the Company's request to grant Preliminary Objections. *Id.* at 8-9.

On August 22, 2019, the Complainant filed a Reply to Met-Ed's Answer. In his response, the Complainant asserted that, under the Pennsylvania Constitution, he enjoyed the rights of protection of property and privacy. Reply at 2. In addition, the Complainant cited comments in the October 8, 2008 Senate Legislative Journal (Senate Legislative Journal), during the discussion and passage of Act 129, that he believes clearly indicated that smart meter deployment was not mandatory for all customers. *Id.* In further response, the Complainant submitted that the Commission's Regulations at 52 Pa. Code § 57.251(a) provide that customers do not have to participate in advanced metering programs, negating the Company's arguments that Act 129 requires smart meters at every location. *Id.* at 3. Furthermore, Mr. Hoeft claimed that the Commission's Order approving Met-Ed's SMP (*i.e.*, the *2014 Smart Meter Order*) is in

violation of the State Constitution, as only the General Assembly is authorized to create laws. As such, the Complainant requested that a new analog meter be installed at his service address. Finally, the Complainant requested that he receive an exemption from the installation of a smart meter, and that Met-Ed's Answer and New Matter be denied. Reply at 4.

Also, on August 21, 2019, the Complainant filed an Answer to Met-Ed's Preliminary Objections (Complainant Answer). In his response, the Complainant submitted that Act 129 does not provide for the termination of electric service in the event that a customer refuses to permit a smart meter to be installed, thus resulting in Met-Ed being in violation of Act 129. Complainant Answer at 1. The Complainant reiterated his position that the Commission's Regulations at 52 Pa. Code § 57.251(a) provide that customers do not have to participate in advanced metering programs. Additionally, the Complainant cites to the comments recorded in the Senate Legislative Journal, *supra. Id.* at 2-3. Further, Mr. Hoeft submitted that he has never refused access to his current meter located at his service address, but has refused the installation of a smart meter before he "becomes physically damaged." *Id.* at 3. Further, the Complainant cited Article 1, Section 1 of the Constitution of the Commonwealth of Pennsylvania (State Constitution) as "protecting the inherent rights of mankind." Mr. Hoeft also refers to Article 1, Section 8 and Article 10, Section 2 of the State Constitution as grounds that the Complainant was born with "my exemption." Complainant Answer at 2.

On August 28, 2019, a Motion Judge Assignment Notice was issued, assigning this proceeding to ALJ Dennis J. Buckley.

On August 29, 2019, a Pre-Hearing Conference Notice was issued, scheduling a prehearing conference/oral argument for September 30, 2019, at 10:00 a.m.

On September 30, 2019, ALJ Buckley convened the prehearing conference/oral argument on Respondent's Preliminary Objections, and the parties agreed to submit main briefs on November 15, 2019, and reply briefs on December 20, 2019. Tr. at 6.

On November 15, 2019, both parties filed main briefs.

On December 20, 2019, both parties filed reply briefs.

On August 17, 2020, ALJ Buckley issued a Prehearing Order Addressing the Scope of the Proceeding, ordering that: (1) the scope of the proceeding would be limited to issues related to the safety of a smart meter; and (2) further argument will not be heard on the legality of Act 129, its interpretation, or its constitutionality. In addition, on September 15, 2020, ALJ Buckley issued a Further Telephonic Hearing Notice to inform the parties of a scheduled hearing at 10 a.m. on October 22, 2020. The parties convened on October 22, 2020 at which Met-Ed offered a verbal motion to stay the proceeding in light of the ruling of the Commonwealth Court of Pennsylvania (Commonwealth Court) in *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), as described below. Met-Ed's oral motion to stay this proceeding was addressed by the Commission's November 4, 2020 Order and Notice, at Docket No. M-2009-2092655, as discussed below.

On October 8, 2020, the Commonwealth Court issued an Opinion in *Povacz I*, wherein it held, amongst other things, that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers' accommodations based on their health concerns. *Povacz I* at 490.

Also, 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. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and the Complainant's procedural rights and obligations under the Commission's Regulations.

On March 19, 2024, ALJ Buckley convened a prehearing conference.⁴ The Complainant did not appear.⁵ An eight-page transcript of the prehearing conference was filed with the Commission on April 5, 2024.

On March 21, 2024, ALJ Buckley issued an Order denying Met-Ed's Preliminary Objections as moot. Also, on March 21, 2024, the Commission issued an Evidentiary Hearing Notice, setting a hearing for May 23, 2024. On May 6, 2024, Met-Ed filed a Motion for Continuance of the May 23, 2024 hearing.

On May 16, 2024, ALJ Buckley issued an Order granting a continuance of the May 23, 2024 hearing. On July 11, 2024, the Commission issued an Evidentiary Hearing Notice, setting a hearing for September 9, 2024.

⁴ Initially, on January 10, 2024, ALJ Buckley issued a Prehearing Conference Order in this matter setting February 14, 2024 for a telephonic prehearing, which the ALJ rescheduled to March 19, 2024 by Notice issued February 8, 2024.

⁵ On April 19, 2024, the Complainant filed a document titled Complainant's Motion for Rehearing, which stated that Complainant did not receive notice of the March 19, 2024 prehearing conference. A review of the record does not reflect any response by either the Company or ALJ Buckley.

On August 29, 2024, the Respondent filed a Motion for Continuance of the September 9, 2024 hearing. The Motion was granted, and the hearing was rescheduled for December 19, 2024 by Notice issued by the ALJ on November 8, 2024.

On December 19, 2024, ALJ Buckley convened the hearing. The Complainant presented testimony and offered no exhibits. The Company neither presented witness testimony, nor offered any exhibits. Instead, the Company submitted that Mr. Hoeft did not meet his burden of proof in this proceeding and that the case should be dismissed, with prejudice. Tr. at 43-44. The transcript from the hearing was filed with the Commission on January 6, 2025.

On April 23, 2025, the Commission issued a Judge Change – Assignment Notice, informing the parties that this matter was now assigned to ALJ Farren.

On September 11, 2025, the Commission served ALJ Farren’s Initial Decision.

As noted above, on September 30, 2025, the Complainant filed Exceptions to the Initial Decision. Met-Ed filed Replies to Exceptions on October 14, 2025.

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*, 529 Pa. 654, 602 A.2d 863 (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*, 364 Pa. 45, 70 A.2d 854 (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*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *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, Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also, Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder⁶ 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

⁶ 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)).

Suber v. Pennsylvania Com'n on Crime and Delinquency, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*).

2. Burden of Proof Applied to Section 1501⁷ Complaint Challenging Smart Meter Installation

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

⁷ The applicable Commission Regulation governing an EDC's provision of safe service is codified at 52 Pa. Code § 57.28(a)(1). Pursuant to Section 57.28(a)(1), an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC's provision of electric utility service and its associated equipment and facilities. See 52 Pa. Code § 57.28(a)(1). See also *Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57*, Docket No. L-2015-2500632 (Order entered April 20, 2017) (*Electric Safety Final Rulemaking Order*).

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain “adequate, efficient, safe, and reasonable service and facilities”⁸ and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See* 66 Pa.C.S. § 1501. Section 1501 of the Code, provides, in pertinent part, as follows:

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

66 Pa.C.S. § 1501.

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

⁸ The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See* 66 Pa.C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501⁹ 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; see *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013) (*Povacz 2013 Order*); see also *Frompovich v. PECO Energy Co.*, 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 *Povacz 2019 Order*, stating:

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

⁹ The Commission has also determined that if a customer’s formal complaint raises a claim under Section 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence, such a claim is legally sufficient to proceed to an evidentiary hearing before an ALJ. To satisfy the burden of proof a complainant may be required to present medical documentation and/or expert testimony demonstrating that the installation of a smart meter constitutes unsafe or unreasonable service. *Povacz II* at 1000 (citing *Susan Kreider v. PECO Energy Company*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. January 28, 2016) (*Kreider*)).

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

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

. . . .

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

Povacz II, 280 A. 3d at 999-1000 (emphasis added; footnote omitted).¹⁰

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

¹⁰ With respect to the evidence necessary to support a challenge to smart meter installation under Section 1501, the Commonwealth Court has held that at the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)¹¹ from the AMI meter.¹²

3. Other Relevant Legal Standards

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

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

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

¹¹ RF is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

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

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

B. ALJ's Initial Decision

In the Initial Decision, ALJ Farren made twelve Findings of Fact (FOF) and reached six Conclusions of Law (COL). I.D. at 5-7, 10-11. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her disposition, ALJ Farren addressed, *inter alia*, the Complainant's testimony, Act 129 and an opt-out, and the Complainant's burden of proof, including whether Mr. Hoeft demonstrated a violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. I.D. at 10-12. The ALJ explained that if a customer is able to make a *prima facie* case that installation of a smart meter violates Section 1501, the customer may be entitled to an accommodation. The ALJ referenced the Supreme Court decision in *Povacz II, supra*, which held that if a customer establishes, by a preponderance of the evidence, that a smart meter violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and the utility's tariff. The ALJ stressed that an accommodation does not include an opt-out from smart meter installation, as Act 129 mandates smart meter deployments. I.D. at 9.

The ALJ further explained that the burden of proof rests on the Complainant to produce a *prima facie* case that the utility violated the Code or a Commission Order or Regulation. I.D. at 10. The ALJ indicated that Mr. Hoeft offered his personal belief that Act 129 does not mandate smart meter installation, but stressed that “opinions and conclusions cannot be relied upon as substantial evidence in a decision by this agency.” *Id.* (citing *Deree Norman v. Philadelphia Gas Works*, Docket No. C-2018-2640719 (Opinion and Order entered October 7, 2021) at 30). Similarly, while circumstantial evidence may carry a Complainant’s burden of proof to demonstrate a *prima facie* case, the ALJ found that Mr. Hoeft offered no circumstantial evidence. I.D. at 10. The ALJ also indicated that the Complainant did not allege a Section 1501 violation and did not offer any exhibits. *Id.* at 10. Therefore, the ALJ concluded that the Complainant had failed to meet his burden of proof and that the Complaint in this matter should be dismissed. I.D. at 10, 12.

C. Exceptions, Replies, and Disposition

1. Exceptions and Replies

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

The Complainant's Exceptions consist of a cover letter, four pages of typed Exceptions (Exceptions A and B), and a Certificate of Service. In his Exceptions,¹³ the Complainant generally asserts that: (1) the Commission's Regulations, along with certain legislative statements and the intent of Act 129, demonstrate the voluntary nature of smart meters; (2) the Complainant disagrees with the Commission's finding that medical conditions may permit accommodations to the installation of smart meters and asserts that exemptions should be granted for privacy and free choice; and (3) smart meter technology is deleterious to "both appliances and biology . . . by way of stray voltage transients and other effects in the way the technology is deployed."¹⁴ Exc. at 1-2. Further, the Complainant concludes that the Commission appears limited in authority or jurisdiction to grant his requested relief and requests that the Commission provide clarification on Sections 57.251(a) and 57.255 of the Commission's Regulations, 52 Pa. Code §§ 57.251(a), 57.255. *Id.* at 2.

In its Replies, Met-Ed argues that the Complainant's Exceptions should be denied and that the Initial Decision should be adopted, without modification. R. Exc. at 1. Initially, Met-Ed submits that the Complainant's Exceptions are improper and in violation of the Commission's Regulations because Mr. Hoeft does not object to any specific finding of fact or conclusion of law in the Initial Decision. Rather, Met-Ed

¹³ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and economical determination.

¹⁴ A voltage transient is a sudden, short-term surge or spike in electrical potential that can disrupt the normal flow of power within an electrical system. See <https://electricityforum.com/iep/power-quality/what-is-transient-voltage> (accessed November 7, 2025).

stresses that Mr. Hoeft frames his Exceptions on the issue of the interpretation of Act 129. R. Exc. at 2.

Also, in its Replies, Met-Ed posits that the Complainant's Exceptions suggest that Act 129 is voluntary, and that Mr. Hoeft's analysis of the Commission's regulations and legislative history ignores the Court's ruling in *Povacz II*. R. Exc. at 2. Met-Ed argues that the Company is legally required to install smart meters by the Code, the Commission's Orders, and the Company's Commission-approved SMP, and that there is no provision that permits a customer to opt out of, or rescind, a smart meter installation, contrary to the Complainant's assertions. *Id.* at 3. The Company further submits that the Complainant did not discuss the Supreme Court's decision in *Povacz II*, which established, *inter alia*, that: (1) Act 129 mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in the smart meter complaint cases arising under Section 1501 of the Code, 66 Pa.C.S. § 1501; (3) an EDC cannot be required to provide an accommodation to a customer, absent a Section 1501 violation; and (4) even if a smart meter complainant meets their burden of proof, the complainant is only "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff." *Id.* at 3 (citing *Povacz II*). Therefore, Met-Ed stresses that it is required to install a smart meter at the service address of the Complainant. *Id.* at 3.

Met-Ed further submits, in its Replies, that while the Complainant briefly discussed exemptions, Mr. Hoeft raised neither health or safety concerns, nor a claim that the Company violated Section 1501 regarding the installation of a smart meter at his service address. R. Exc. at 5. Moreover, the Company reinforces that, in accordance with *Povacz II*, even if the Complainant had met his burden of proof in this proceeding, Mr. Hoeft would only be entitled to an accommodation to the extent permitted under the Company's Commission-approved tariff, which requires installing a smart meter at a different location at the customer's expense. *Id.* at 5, n.15 (citing FirstEnergy PA Tariff, Rule 4 at Original Page No. 40, effective January 1, 2024). Accordingly, Met-Ed

requests that the Commission deny the Complainant's Exceptions and adopt the Initial Decision, without modification. R. Exc. at 5-6.

2. Disposition

Upon review of the Complainant's Exceptions, we conclude that the ALJ properly found that Mr. Hoeft failed to satisfy his burden of proof to establish a claim under Section 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 1006. 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 Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Povacz II* at 1005. The Court further opined that while a customer's evidence does not need to prove the customer's 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. 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.

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, we find that the ALJ properly concluded that the Complainant failed to carry his burden of proof that a smart meter would cause harm. I.D. at 10. Namely, the ALJ correctly found that the Complainant did not allege any health or safety concerns and did not offer any exhibits in this proceeding. *Id.*

Also, in the present case, the Complainant did not offer the testimony of any expert witnesses or circumstantial evidence to warrant an accommodation, as provided for in the Company's tariff. As previously noted, in *Povacz II*, the Supreme Court 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. *Povacz II* at 1008. We agree with the ALJ's well-reasoned analysis and conclusion in the Initial Decision that the Complainant failed to sustain his burden of proving that a smart meter would cause harm. Moreover, as the ALJ noted, Act 129 does not provide customers the right to opt-out of the installation of a smart meter. I.D. at 10-11, COL No. 6 (citing *Povacz II* at 975, 994).

We find nothing in the Complainant's Exceptions to refute the ALJ's conclusion that the Complainant failed to meet his burden of proof. Therefore, we shall deny the Complainant's Exceptions challenging the ALJ's dismissal of the Complaint for failure to satisfy the burden of proof, and shall adopt the Initial Decision.

IV. Conclusion

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

IT IS ORDERED:

1. That the Exceptions filed by Brian Hoeft on September 30, 2025, to the Initial Decision of Administrative Law Judge Emily A. Farren, issued on September 11, 2025 at Docket No. C-2019-3011586, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Emily A. Farren, issued on September 11, 2025, at Docket No. C-2019-3011586, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint, filed by Brian Hoeft on July 15, 2019, at Docket No. C-2019-3011586, is dismissed, with prejudice.

4. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: November 20, 2025

ORDER ENTERED: November 20, 2025