

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Pamela Scott,	:	
Petitioner	:	
	:	No. 679 C.D. 2025
v.	:	
	:	Submitted: July 24, 2026
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
JUDGE DUMAS**

FILED: September 3, 2026

Pamela Scott (Petitioner), proceeding *pro se*, has filed a petition for review of an order entered by the Pennsylvania Public Utility Commission (PUC) on April 10, 2025, which adopted an initial decision of an administrative law judge (ALJ) from October 29, 2024. In so doing, PUC required Petitioner to accept installation of a smart meter at her residence. Upon review, we affirm.

I. BACKGROUND¹

In 2008, the General Assembly enacted Act 129, which directed electric distribution companies (EDCs) in Pennsylvania to furnish smart meters “[i]n

¹ Except as stated otherwise, we adopt this background from PUC’s Opinion and Order and the ALJ’s Initial Decision, which was adopted by PUC, and which is supported by substantial evidence of record. *See* PUC’s Op. & Order, 4/10/25; ALJ’s Initial Decision, 10/29/24.

accordance with a depreciation schedule not to exceed 15 years.”² In accordance with Act 129, PUC directed all EDCs, including Duquesne Light Company (Duquesne), to universally deploy smart meters. Duquesne implemented a plan to complete installation to most, if not all, of their customers by late 2018. The PUC also approved Duquesne’s Tariff Rule 9B,³ which stated customers must have smart meters installed in accordance with Act 129.⁴

Petitioner is a Duquesne customer and owns property in Pittsburgh. On June 6, 2017, Petitioner requested a medical exemption from installation of a smart meter. Petitioner has alleged that she suffers adverse health effects from “microwave radio frequency,” including heart arrhythmias and palpitations, vertigo, and joint pain. Tr. of Test. (T.T.), 3/12/20, at 104-05. Duquesne tried to install a

² 66 Pa.C.S. § 2807(f)(1) and (2) provides:

(f) Smart meter technology and time of use rates.--

(1) Within nine months after the effective date of this paragraph, electric distribution companies [(EDCs)] shall file a smart meter technology procurement and installation plan with [PUC] 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)(1), (2).

³ A tariff is “the document that governs how an energy provider . . . charges a customer for their energy usage.” *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975, 994 n.18 (Pa. 2022).

⁴ Duquesne’s Tariff Rule 9B states: “[C]ustomers may not decline smart meter installation for any reason.” Initial Decision, Finding of Fact (F.F.) No. 33. Instead, as their sole remedy, customers may designate an alternative location on the premises for the smart meter. *See id.*, F.F. No. 34.

smart meter on June 18, 2018, after a series of letters notifying Petitioner of their intent to exchange meters but discovered the old meter had been locked.

During a long discovery period, Duquesne filed a motion *in limine* to preclude testimony from Petitioner's proffered expert, Joshua Hart. The ALJ granted the motion in part because Mr. Hart was not qualified to offer expert testimony.⁵ Nevertheless, Mr. Hart testified that he has previously presented evidence of the adverse health effects of smart meter installation.⁶ In response to testimony from Petitioner and Mr. Hart, Duquesne presented six expert witnesses testifying to the safety of smart meters and their safe installation.⁷ *See* T.T. at 183-351.

Following the Pennsylvania Supreme Court's decision in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), the ALJ reopened the Hearing Record and directed the parties to submit supplemental briefs in accordance with the Supreme Court's ruling on smart meter installation. After both parties filed supplemental briefs, the ALJ dismissed Petitioner's complaint with prejudice. The PUC affirmed the ALJ's dismissal and dismissed

⁵ Petitioner has not challenged this decision on appeal. *See generally* Pet'r's Br.; *see also* Ancillary Pet. for Rev., 5/30/25. Mr. Hart has no healthcare, electrical engineering, or electrician experience. T.T. at 55. Mr. Hart has a master's degree in transportation planning and a bachelor's degree in psychology. *Id.* Mr. Hart is the founder and director of StopSmartMeters.org, a group advocating against mandatory smart meter deployment. *Id.* at 57. Not only is Mr. Hart patently unqualified as a medical professional, he never reviewed Petitioner's medical record, nor has he seen any medical record that has diagnosed Petitioner with electromagnetic hypersensitivity syndrome. *Id.* at 61.

⁶ Mr. Hart's testimony concerned an email he sent to the California Council of Science and Technology regarding a 2011 report titled, "Health Impacts of Radio Frequency Exposure from Smart Meters." T.T. at 41. Mr. Hart testified that this report did not consider the "extensive testimony regarding health impacts" of smart meters. *Id.*

⁷ Duquesne presented expert witnesses with a variety of backgrounds, including medical degrees, electrical engineering PhDs, and other qualifications. *See* T.T. at 183-351.

Petitioner's Exceptions to the ALJ's decision, and Petitioner timely appealed to this Court.

II. ISSUES

Petitioner has challenged PUC's decision to deny her a medical exemption from the mandatory installation of a smart meter on her property. Petitioner asserts that she established by a preponderance of the evidence that the installation of smart meter technology on her property would constitute unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code (Code).⁸ *See* Pet'r's Br. at 5. In her view, because she has proven that installation would be harmful to her, PUC has permitted Duquesne, by enacting Tariff Rule 9B, to overrule the Supreme Court's standard for medical exemptions and, effectively, "practice medicine without a license." *Id.*⁹

⁸ 66 Pa.C.S. §§ 101-3316. Section 1501 of the Code provides:

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 also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of [PUC].

66 Pa.C.S. § 1501.

⁹ Petitioner has presented her arguments as three distinct issues. Pet'r's Br. at 5. We have restated and arranged her arguments for ease of analysis.

III. DISCUSSION¹⁰

The Pennsylvania Supreme Court’s decision in *Povacz II* observed that Act 129 provides no “right to opt-out of the installation of a smart meter at [an electric customer’s] residence.” *Povacz II*, 280 A.3d at 999. Nevertheless, the Court determined that customers “may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.” *Id.* Section 1501 provides, in relevant part, that public utilities must furnish and maintain “adequate, efficient, safe, and reasonable service and facilities.” 66 Pa.C.S. § 1501.¹¹ To establish that a utility company has violated Section 1501, a customer carries the burden of proof. *Povacz II*, 280 A.3d at 1000. This burden includes presenting (1) “expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit [radio frequencies] and that [radio frequency] emissions cause adverse health effects,” and (2) “expert opinion rendered to a reasonable degree of medical certainty that [radio frequency] emissions from the smart meters, either alone or cumulative to other

¹⁰ Our review of PUC orders is limited to determining whether substantial evidence supports PUC’s findings of fact, or whether PUC committed an error of law, violated a party’s constitutional rights, or violated its own procedures. *See Popowosky v. Pa. Pub. Util. Comm’n*, 910 A.2d 38, 48 (Pa. 2006). Substantial evidence is “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.” *Povacz II*, 280 A.3d at 1007 (citation omitted). We defer to PUC’s authority as the fact finder. *See Retail Energy Supply Ass’n v. Pa. Pub. Util. Comm’n*, 185 A.3d 1206, 1220 (Pa. Cmwlth. 2018) (“We defer to PUC’s interpretation of the . . . Code and its own regulations unless PUC’s interpretations are clearly erroneous We may not substitute our judgment for that of PUC ‘when substantial evidence supports the PUC’s decision on a matter within the commission’s expertise.’”).

¹¹ In order to prevail on a claim that an EDC violated Section 1501, “a consumer may establish a violation by proving that a service or facility is *either* unreasonable *or* unsafe, and may, but need not, establish both.” *Branagh v. Pa. Pub. Util. Comm’n* (Pa. Cmwlth., No. 1857 C.D. 2019, filed July 6, 2023), 2023 WL 4363414, at *6, 2023 Pa. Commw. Unpub. LEXIS 352, at *17 (emphasis in original). We may rely on unreported decisions of this Court for their persuasive value. *See* Pa.R.A.P. 126(b) (unreported memorandum opinions of the Commonwealth Court may be cited for their persuasive value).

sources of [radio frequency] emissions, caused them harm.” *Id.* at 1006 (citations omitted).

If a customer fulfills this burden, the burden then shifts to the utility company to “defend by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the [radio frequency] emissions from smart meters did not cause the alleged harm.” *Id.* Finally, if a utility company meets this burden, it is the job of the fact finder to weigh the evidence and decide “whether it is more likely than not that the smart meter causes harm to the customer.” *Id.*

Petitioner contends that she established, by a preponderance of the evidence, that installation of a smart meter would “cause her to suffer grievous adverse health effects.” Pet’r’s Br. at 7. In her view, the testimony she provided firmly met *Povacz II*’s evidentiary burden, and the PUC Decision mistakenly labelled such evidence as “personal opinions and beliefs.” *Id.* at 11. Petitioner further claims that these adverse health effects are causally connected to the radio frequency emitted by smart meters. *Id.* at 6, 8.

Petitioner supported these contentions by testifying as a fact witness on her own behalf. *See* T.T. at 99-182. Petitioner did not introduce any medical records into evidence, nor did she introduce any records or expert testimony establishing a link between radio frequency emissions and her alleged health problems. *See generally* T.T. Upon review, the ALJ found that Petitioner had presented “no credible evidence” to support her health and safety concerns regarding installation of a smart meter in her home, further observing that her concerns “solely consisted of [Petitioner’s] lay opinions and beliefs.” ALJ’s Initial Decision at 24.

Here, Petitioner introduced neither medical documentation nor expert testimony into the record. *Povacz II* requires a customer to establish “smart meters

emit [radio frequencies] and that [radio frequency] emissions cause adverse health effects,” and an expert medical opinion that those radio frequency emissions cause them harm to prevail on a Section 1501 claim. 280 A.3d at 1006. As Petitioner has not (1) established she has experienced adverse health effects through any medical records, or (2) connected adverse health effects to any radio frequency emitted by a smart meter by introducing expert opinions, Petitioner did not meet her burden of proof to prevail on a Section 1501 claim.¹² *Id.*

Next, Petitioner claims Duquesne’s Tariff Rule 9B conflicts with the Pennsylvania Supreme Court’s decision in *Povacz II*. See Pet’r’s Br. at 18. Petitioner contends this tariff cannot coexist with *Povacz II*’s analog meter accommodation for Section 1501 violations. *Id.* Because PUC allowed Duquesne to implement Tariff Rule 9B, Petitioner contends that PUC is “practicing medicine” without a license by ruling on her medical status. Pet’r’s Br. at 7. In her view, Duquesne’s Tariff Rule 9B effectively allows Duquesne and PUC to “make medical decisions about [Petitioner’s] health requirements.” *Id.* at 19.

An EDC’s tariff, approved by PUC, is “legally binding on both the utility and its customers.” *Kossman v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997). *Povacz II* states a customer may qualify for an accommodation, *i.e.*, an exception to the tariff, once they establish “by a preponderance of the evidence based on the totality of the circumstances that smart meter service violates Section 1501.” 280 A.3d at 1014. Additionally, such accommodations for a

¹² Once a complainant fulfills their burden of proof by introducing expert testimony to establish a Section 1501 violation, the burden shifts to a utility company to establish the radio frequency emissions from their smart meters did not cause the alleged harm. See *Povacz II*, 280 A.3d at 1006. A fact finder then decides “whether it is more likely than not that the smart meter causes harm to the customer” by weighing both sides’ evidence. *Id.* Here, Duquesne introduced expert witnesses testifying to the safety of their smart meters. See T.T. at 183-351. However, because Petitioner failed to meet her initial burden, we need not evaluate Duquesne’s evidence.

customer concerned about the impact of smart meters on their health are limited “to the extent allowed by Act 129 and a utility’s tariff.” *Id.* at 983-84. Thus, absent a Section 1501 violation, an EDC’s tariff controls installation of smart meters. *Id.* at 1014 (“If the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff. Thus, by operation of the statute, an EDC cannot be required to provide accommodation without the finding of a Section 1501 violation.”).

Here, as discussed above, Petitioner failed to establish a violation of Section 1501. Because she has not established a Section 1501 violation, she is not entitled to an accommodation. *Paul v. Pa. Pub. Util. Comm’n*, 299 A.3d 1069, 1075 (Pa. Cmwlth. 2023) (“[A] customer can request a reasonable accommodation only after proving a violation of Section 1501 . . .”). Petitioner misconstrues PUC’s role when she contends PUC effectively “practiced medicine without a license” by approving and applying Duquesne’s Tariff Rule 9B. In its role as fact finder, PUC evaluates a complainant’s evidence for substance and credibility. Petitioner’s inability to introduce expert medical and scientific evidence was fatal to establishing a Section 1501 violation. PUC did not practice medicine without a license; rather, it simply applied the standard set forth in *Povacz II*, evaluated the evidence in its role as fact finder, and properly concluded that Petitioner had failed to establish a Section 1501 claim. Further, as stated above, absent a Section 1501 violation, Duquesne has the sole discretion to furnish accommodations from smart meter installations to its customers. *See Povacz II*, 280 A.3d at 983-84. Thus, PUC did not “practice medicine,” nor is Duquesne’s Tariff Rule 9B barred by *Povacz II*.

Duquesne's Tariff Rule 9B is legally binding on Petitioner. *Kossman*, 694 A.2d at 1151.

IV. CONCLUSION

For the reasons set forth above, we affirm PUC's decision to deny Petitioner's complaint.

LORI A. DUMAS, Judge

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ORDER

AND NOW, this 3rd day of September, 2026, the Order of the Pennsylvania Public Utility Commission, dated April 10, 2025, is hereby AFFIRMED.

LORI A. DUMAS, Judge