

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Pace	:	
	:	
v.	:	F-2016-2538084
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This Decision dismisses a complaint filed by a customer of an electric distribution company who complained that the utility did not provide her with sufficient information regarding the use of smart meter technology and that the technician who came to her home to install the smart meter acted inappropriately. This Decision finds that the utility has effectively rebutted the evidence presented by the complainant. As a result, the complaint must be dismissed because the complainant has failed to demonstrate by a preponderance of the evidence that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved company tariff with regard to the service provided to her.

HISTORY OF THE PROCEEDING

On March 31, 2016, Karen Pace filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO), Docket Number F-2016-2538084. The complaint was a timely appeal of a decision of the Commission's Bureau of Consumer Services, case number 3385626. In her complaint, Ms. Pace averred that since 2013 or 2014, PECO has consistently provided incomplete information about new meters, including

regarding safety and data security. Ms. Pace provided additional detail in her complaint wherein she explained that PECO's contractors endangered the security of her home with unusual activity, such as excessive force, loud banging and exertion of strong forces against her door similar to activity that burglars sometimes do. Ms. Pace also explained that she did not want the new meter due to her religious beliefs. Ms. Pace requested, among other things, that PECO fully disclose the safety and data security, data collection and use of the new meters.

On April 25, 2016, PECO filed an answer to Ms. Pace's complaint. In its answer, PECO admitted or denied the various averments Ms. Pace made in her complaint. In particular, PECO averred that it is required to install smart meters¹ for the company's electric distribution customers consistent with current law and that PECO is terminating service to customers who, after repeated requests, do not give the company access to install the meter. PECO also filed new matter, which was accompanied by a notice to plead. In its new matter, PECO explained the extensive legal history that requires the company to install smart meters. PECO concluded that the smart meters are being deployed in compliance with the Commission-approved smart meter plan and that the law does not provide for Ms. Pace to "opt out" of smart meter installation. PECO added that, as such, there is no legal basis for Ms. Pace's complaint and the complaint should, therefore, be dismissed.

Also on April 25, 2016, PECO filed a preliminary objection in response to the complaint filed by Ms. Pace. In its preliminary objection, which was also accompanied by a notice to plead, PECO argued that the complaint filed by Ms. Pace is legally insufficient and should be dismissed. PECO again provided a detailed explanation of its justification requiring the installation of smart meters and explaining that there is no provision in the law for customers to "opt out" of smart meter installation. PECO concluded that the complaint filed by Ms. Pace should be dismissed because Ms. Pace is not entitled to relief under the law.

Ms. Pace filed neither an answer to PECO's preliminary objection nor to its new matter.

¹ A "smart meter" is an electric meter that records consumption of electric energy in increments of an hour or less and communicates that information at least daily back to the utility for monitoring and billing purposes.

On June 2, 2016, a motion judge assignment notice was issued informing the parties that I was assigned as the Presiding Officer and responsible to resolve any issues which might arise during the preliminary phase of this proceeding. PECO's preliminary objection was granted in part and denied in part via order dated June 6, 2016. In particular, PECO's motion was granted with regard to Ms. Pace's request to opt out of having a smart meter installed at the service address but denied with regard to her other additional averments regarding the conduct of PECO's contractor at the service address. The averments regarding smart meters were stricken from the complaint and all other issues were allowed to proceed to a hearing.

A telephone hearing notice was issued on June 8, 2016 establishing an initial telephonic hearing for this matter for Tuesday, July 5, 2016 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order was issued on June 8, 2016 setting forth various procedural rules that would govern the hearing.

On June 28, 2016, Ms. Pace requested that the hearing be continued until October 26, 2016 because she needed additional time to recover from a current medical problem and because she needs additional time to understand various legal issues since she is appearing *pro se*. Despite PECO's objection to a continuance, Ms. Pace's request was granted via order dated June 30, 2016. Also on June 30, 2016, a hearing cancellation/reschedule notice was issued cancelling the hearing scheduled for July 5, 2016 and rescheduling the hearing for Thursday, October 13, 2016, again at 10:00 a.m.

The hearing convened on October 13, 2016, as scheduled. Ms. Pace appeared *pro se*. Shawnee Lee, Esquire appeared on behalf of PECO. Ms. Pace presented oral testimony. Ms. Lee presented one witness who testified on behalf of PECO and sponsored twelve exhibits that were admitted into the record. A transcript of 93 pages was created. The record in this proceeding closed on November 2, 2016 when the transcript was submitted to the Commission.

Ms. Pace's complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Karen Pace.
2. The Respondent in this case is PECO Energy Company.
3. The service address is 2911 North Bonsall Street, Philadelphia, PA.
4. Ms. Pace does not want a smart meter installed at her home. Tr. 11.
5. Grid One is the contractor PECO hired to perform the meter installations, including calling customers and sending out letters regarding installation. Tr. 22, 32.
6. Ms. Pace was not home at the service address when Grid One attempted to install the smart meter at Ms. Pace's home. Tr. 22-24.
7. Brenda Eison is the manager of customer service at PECO and has been employed with PECO for 21 years. Tr. 28.
8. Ms. Eison has served as the manager of the AMI, or "smart," meter installation project at PECO for the past four years. Tr. 28.
9. PECO is removing all the older AMR meters, which use one-way communication, and replacing them with AMI meters, which provide two-way communication that provide PECO with daily usage for meter reading purposes. Tr. 28.
10. PECO Exhibits 2 and 3 are examples of the letters that are sent 45 days in advance and 21 days in advance respectively that PECO uses to provide notice to customers of their intent to replace the meter and ask customers to indicate to the company if they have any issues with a

meter that is not accessible so that an appointment can be scheduled for the meter to be replaced. Tr. 30-32; PECO Exh. Nos. 2 and 3.

11. Grid One will knock on the door at the service address to make the customer aware the meter is being replaced if the customer is home. Tr. 31; PECO Exh. Nos. 2 and 3.

12. When a customer refuses to allow Grid One to install a smart meter, the customer is referred back to PECO who attempts to resolve any concerns about the installation of the meter the customer may have. Tr. 32-33.

13. PECO Exhibit Number 8 is a copy of the letter that PECO sent to Ms. Pace on October 14, 2015 discussing, among other things, the radio frequency (RF) levels emitted by smart meters, how smart meters improve reliability and information regarding safety and privacy issues involving smart meters. Tr. 34, 58-59; PECO Exh. No. 8.

14. PECO Exhibit Number 1 is a print out of PECO's customer information management system for Ms. Pace's account and shows Ms. Pace's contacts with PECO and Grid One from December 11, 2013 to April 6, 2016. Tr. 35-36; PECO Exh. No. 1.

15. Grid One sent Ms. Pace letters on December 11, 2013 and January 7, 2014, and called her on February 4, 2014 and February 25, 2014, to inform her that they were coming to the service address to install a smart meter. Tr. 36-38; PECO Exh. No. 1.

16. Grid One went to the service address on February 22, 2014 but was unable to gain access to install the smart meter. Tr. 39; PECO Exh. No. 1.

17. PECO Exhibit Number 4 is an example of a letter PECO sent to Ms. Pace on March 10, 2014 regarding installing a smart meter at the service address. Tr. 39-40; PECO Exh. No. 4.

18. The meter at the service address is outside Ms. Pace's home but not accessible because it is blocked by a wall. Tr. 40-41.

19. Ms. Pace never gave Grid One access to the meter. Tr. 41.

20. After Ms. Pace failed to give Grid One access to the meter, PECO sent her a ten-day termination notice. Tr. 41.

21. PECO Exhibit Number 5 is a sample ten-day termination notice that was sent to Ms. Pace on March 17, 2014 that indicates the reason for the notice is because she never gave the company access to her meter. Tr. 41-42; PECO Exh. No. 5.

22. Ms. Pace never responded to the ten-day termination notice sent to her on March 17, 2014. Tr. 42.

23. PECO sent Ms. Pace another letter on June 23, 2014 and July 28, 2014, and called her on July 21, 2014 and July 23, 2014, in an attempt to gain access to her property so that a smart meter could be installed. Tr. 43, 48; PECO Exh. No. 1.

24. PECO sent another ten-day termination notice on August 5, 2014. Tr. 49; PECO Exh. No. 1.

25. On August 14, 2014, Ms. Pace contacted PECO to schedule a time for the smart meter to be installed in November, 2014. Tr. 50; PECO Exh. No. 1.

26. Ms. Pace did not keep the appointment that was scheduled and, as a result, PECO coded her account for termination due to the failure to provide access to the meter. Tr. 51.

27. On August 15, 2015, PECO issued another order to change the meter. Tr. 52.

28. Grid One called Ms. Pace on August 26, 2015 and August 27, 2015 so that access could be provided for the meter to be changed. Tr. 52.

29. PECO Exhibit Number 6 is an example of a letter that was sent to Ms. Pace on September 2, 2015 regarding the various attempts to reach Ms. Pace and asking her to contact the company to schedule a time when the smart meter can be installed. Tr. 53; PECO Exh. No. 6.

30. Ms. Pace did not respond to PECO's additional telephone and written requests. Tr. 53.

31. PECO sent Ms. Pace a ten-day termination notice on September 11, 2015 and a Grid One technician brought a 72-hour termination notice to the service address on September 17, 2015. Tr. 53-54.

32. On September 21, 2015, Ms. Pace called PECO to state that she did not want a smart meter installed at the service address and that she would call the Commission. Tr. 55.

33. Ms. Pace informed PECO that the Grid One technician knocked loudly on her door when they came to the service address and that the loud knocking disturbed her neighbors. Tr. 55.

34. Ms. Pace filed an informal complaint with the Commission on September 21, 2015, BCS case number 3385626. Tr. 56.

35. PECO Exhibit Number 7 is a copy of the Case Details Report for Ms. Pace's informal complaint with BCS indicating that Ms. Pace opposed installation of a smart meter due to her health, religious beliefs and security issues. Tr. 57; PECO Exh. No. 7.

36. PECO delayed any attempts to install the smart meter while Ms. Pace's informal complaint at the Commission was pending. Tr. 57-58.

37. PECO Exhibit Number 12 is a copy of an Initial Decision in the case of Vincent Feldman v. PECO Energy Company, docket number C-2014-2442308, dated April 1, 2015. Tr. 59-60; PECO Exh. No. 12.

38. PECO Exhibit Number 9 is a letter sent by Denise Long, a PECO employee, on October 16, 2015, indicating that PECO has no record of Ms. Pace refusing a smart meter until she contacted PECO on September 21, 2015. Tr. 60-61; PECO Exh. No. 9.

39. PECO Exhibit Number 10 is a copy of the BCS Decision Report dismissing Ms. Pace's informal complaint noting that PECO's tariffs allow the company to install smart meters and terminate service to a customer who refuses access to the meter for that purpose. Tr. 62; PECO Exh. No. 10.

40. In response to the BCS decision, Ms. Pace filed a formal complaint at the Commission. Tr. 62.

41. PECO Exhibit Number 11 is a copy of a letter Teresa Ferrier, a PECO employee, sent to Ms. Pace on June 27, 2016 regarding the formal complaint filed by Ms. Pace asking Ms. Pace to contact PECO as soon as possible. Tr. 63; PECO Exh. No. 11.

42. Ms. Pace never contacted Ms. Ferrier in response to the June 27, 2016 letter. Tr. 63.

43. Service at the service address was terminated for nonpayment and was then restored. Tr. 65.

44. The current meter at the service address was installed March 2, 2002. Tr. 65-66.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Pace would like to keep her current electric meter and not be switched to a smart meter. Ms. Pace would also like PECO to stop threatening her with termination if she does not have a smart meter installed. Ms. Pace also complained that PECO did not send her adequate information about smart meters and also about the actions of PECO’s contractor while at her property. Ms. Pace, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "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. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In this case, Ms. Pace complained that she did not want a smart meter installed at her home. Ms. Pace also complained that she was not given complete information regarding smart meters and that the contractors who attempted to install a smart meter at her home acted inappropriately. Ms. Pace requested, among other things, that PECO provide her complete information about smart meters and stop threatening her with termination due to her opposition to smart meters. In response to Ms. Pace's testimony, PECO presented Brenda Eison, a manager of customer service for PECO. Ms. Eison testified regarding PECO's process for installing smart meters in general and the company's efforts with regard to installing a smart meter at Ms. Pace's home in particular. Ms. Eison sponsored twelve exhibits that were admitted into the record and concluded that PECO provided adequate information to Ms. Pace regarding smart meters and that there was no indication that Grid One did anything inappropriate while at Ms. Pace's home.

As a preliminary matter, as noted in the order dated June 6, 2016, Ms. Pace's opposition to having a smart meter installed at the service address was preliminarily denied because the Public Utility Code requires that all customers receive a smart meter and there is no provision that allows a customer to "opt out" of receiving a smart meter. *See e.g.*, 66 Pa.C.S. § 2807(f)(2). With regard to the issues remaining in Ms. Pace's complaint, those issues will be dismissed because she has failed to carry her burden to demonstrate by a preponderance of the evidence that PECO in any way violated the Public Utility Code, any Commission order or regulation or any Commission-approved tariff of the company.

With regard to Ms. Pace's argument that she did not receive sufficient information regarding smart meters when she requested such information from the company, Ms. Pace testified, for example, that as early as 2012, PECO has "consistently provided incomplete information, no full disclosure about the meter, especially regarding safety and data security of information gathered, electric usage at my – usage at my home." Tr. 10. Ms. Pace added: "I want PECO to fully disclose the specific details and information about the safety and security. That's including any hacking that has happened, data collection, how it's made secure; exactly how this happens, and data use and access capability of the new meters." Tr. 11-12.

In response, counsel for PECO presented PECO Exhibit Number 8, a letter Ms. Eison sent to Ms. Pace on October 14, 2015 attempting to address her concerns about smart meters.

In the letter, Ms. Eison explained the differences between the AMI and AMR meters, the total volume of RF associated with new meters, why there are no concerns about privacy and why customers are not permitted to opt out of having a smart meter installed at their home. PECO Exh. No. 8. Ms. Eison added that devices shown in the letter in an attempt to demonstrate the safety of the RF levels in smart meters were common household devices, such as cellphone, cordless phone and a microwave, that were not intended to be all-inclusive but, rather, to give some comparisons of the RF levels in smart meters to the different RF levels from things commonly found in homes. Tr. 81-82. Ms. Eison also offered in the letter to provide additional information if needed and enclosed a fact sheet about the new metering technology. *Id.*; *see also*, Tr. 19-22, 58-59. Ms. Pace, however, called the letter and the attachments “selective information” that does not provide “full disclosure.” Tr. 20.

As noted in the June 6, 2016 order granting in part and denying in part PECO’s preliminary objection, Ms. Pace’s averments may demonstrate a violation of Section 1501 of the Public Utility Code which provides, among other things, that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.” 66 Pa.C.S. § 1501. Furthermore, the Commission strongly encourages customer education with regard to customer choice. *See*, 66 Pa.C.S. § 2807(d)(3). In this instance, however, Ms. Pace has failed to demonstrate that PECO violated any provision of the Public Utility Code or a Commission order or regulation by failing to provide adequate information regarding smart meters. This is true in part because of the letter Ms. Eison sent to Ms. Pace on October 14, 2015 attempting to address her concerns regarding smart meters. In *Vincent Feldman v. PECO Energy Co.*, Docket No. C-2014-2442308 (Opinion and Order entered November 19, 2015), the Commission agreed with the company and the ALJ that PECO provided a significant amount of information to the Complainant regarding smart meters and that the information provided was reasonable and adequate. *Id.* at 13. Therefore, the information PECO provided to Ms. Pace in the October 14, 2015 is reasonable and a sufficient response to Ms. Pace’s request for additional information regarding smart meters.

As a result, Ms. Pace has failed to carry her burden to demonstrate that PECO violated the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company with regard to the information provided about smart meters. Although PECO provided *samples* of letters sent to Ms. Pace, instead of presenting evidence of the *actual* letters

sent to Ms. Pace, PECO, nonetheless, has effectively rebutted the evidence presented by Ms. Pace regarding her concerns about not receiving adequate information regarding smart meters. Ms. Pace, therefore, did not satisfy her burden to then rebut PECO's evidence. Milkie, *supra*. Ms. Pace may not believe that the information PECO provided was sufficient or correct but the letter and accompanying attachments address the issues of concern Ms. Pace had with regard to smart meters. In addition, the letter provided to Ms. Pace offered her an opportunity to ask additional questions or seek additional information. Ms. Pace's argument that the information provided was not complete or sufficient, as she alleged, will be rejected.

With regard to Ms. Pace's argument that the Grid One technician acted inappropriately while at her property, Ms. Pace averred in her complaint that the PECO employee who appeared at her home "endangered the security of my home with unusual activity, like excessive force, loud banging and exertion of strong forces against my front door, similar to activity that burglars use to monitor for occupants with a ruse and enter a home illegally." In addition, Ms. Pace reiterated these concerns during the hearing and also testified that she was concerned that the loud banging would draw attention to times when she is not at home, noting that she travels frequently for work. Tr. 10-11.

In response, PECO witness Eison generally testified regarding the actions the Grid One technician will take when attempting to install a smart meter. Ms. Eison testified that the Grid One contractor will knock on the door of the service address to make the customer aware that the meter is being replaced if the customer is home. Tr. 31; PECO Exh. Nos. 2 and 3. Ms. Eison testified that a letter will be sent 45 days in advance of installing the new meter and then again 21 days in advance. Tr. 30-32. Ms. Eison discussed samples of those letters that the company uses. PECO Exh. Nos. 2 and 3. Ms. Eison also testified that, in this case, Grid One sent Ms. Pace letters on December 11, 2013 and January 7, 2014 and also called her on February 4, 2014 and February 25, 2015 to inform her that they were coming to the service address to install the meter. Tr. 36-38; PECO Exh. No. 1. Additional letters and phone calls were sent and made to Ms. Pace in an effort to obtain access to the meter. *See*, Tr. 39-40 (letter sent March 10, 2014), 43 (letters sent June 23, 2014 and July 28, 2014 and phone calls made July 21, 2014 and July 23, 2014); PECO Exh. Nos. 1 and 4.

Ms. Eison also testified specifically regarding Ms. Pace's averment that the Grid One technician banged loudly or used excessive force against her door. Ms. Eison explained that, after the Grid One technician delivered the 72-hour notice to the service address on September 21, 2015, Ms. Pace contacted PECO to complain that someone was knocking aggressively on her door which disturbed her neighbors. Tr. 55. Ms. Eison testified that the Grid One technician knocked on the door of the service address to gain access to the meter and to provide her with the termination notice. Tr. 55; *see also*, PECO Exh. No. 1. Ms. Eison concluded that there was nothing in the company's record to indicate that the Grid One technician did anything while at the service address to support such a finding. Tr. 66.

Furthermore, during cross-examination, Ms. Pace testified that she was not home when the Grid One operator came to install the meter but that her neighbors told her about the perceived excessive banging. Tr. 23-24. The evidence of what Ms. Pace's neighbors told her that she presented in support of her position that the Grid One technician banged excessively on the door is hearsay. Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. Pa.R.E. 801(c). It is well established that hearsay evidence, properly objected to, is not competent evidence to support a finding of fact. Phillips v. Unemployment Compensation Board of Review, 152 Pa. Superior Ct. 75, 30 A.2d 718 (1943). However, hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of fact, in an administrative hearing, if it is corroborated by competent evidence in the record, but a finding of fact based solely on hearsay will not stand. Burks v. Department of Public Welfare, 48 Pa. Cmwlth. 6, 408 A.2d 912 (1979); Walker v. Unemployment Compensation Board of Review, 27 Pa. Cmwlth. 522, 367 A.2d 366 (1976). PECO properly objected to the hearsay testimony during the hearing. Tr. 23. Additionally, Ms. Pace did not present any corroborating evidence. Therefore, what Ms. Pace said her neighbors told her about the Grid One technician must be rejected. Ms. Pace could have presented additional evidence in support of her position that the Grid One technician acted inappropriately, such as presenting her neighbors as witnesses during the hearing, but did not do so.

As a result, there is no competent evidence that the Grid One technician who visited the service address banged on the door excessively, as Ms. Pace suggested. To the contrary, record evidence demonstrates that PECO, and its contractor Grid One, acted reasonably in attempting to

install a smart meter at the service address by giving Ms. Pace general notices of their attempts to install the smart meter, both in writing and telephonically, and also to schedule an appointment for the installation to take place. Ms. Pace's argument will be rejected.

Finally, Ms. Pace also averred in her complaint that PECO was threatening to terminate her service or has already terminated her service. However, Ms. Pace did not present any evidence regarding this issue during the hearing. Nonetheless, PECO witness Eison testified regarding the various steps toward termination PECO took with regards to Ms. Pace's account. This includes issuing 10-day termination notices and hand-delivery of a 72-hour termination notice. Tr. 41-42, 49-50-55, 65 (noting that service was terminated for nonpayment on the account and then restored); PECO Exh. No. 5. As Ms. Pace has failed to present any evidence on this issue at hearing, Ms. Pace's arguments on this issue will be denied.

In conclusion, PECO has effectively rebutted all of the arguments made by Ms. Pace in both her complaint and in the hearing. As noted above, if a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. Milkie, *supra*. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant who must rebut the utility's evidence by a preponderance of the evidence. Id. In this case, Ms. Pace has failed to rebut PECO's evidence presented in response to her arguments. Therefore, Ms. Pace's complaint must be dismissed because Ms. Pace has failed to demonstrate by a preponderance of the evidence that PECO's actions in any way violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to her.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlt. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "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. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlt. 23, 480 A.2d 382 (1984).

9. The Public Utility Code requires that all customers receive a smart meter and there is no provision that allows a customer to “opt out” of receiving a smart meter. 66 Pa.C.S. § 2807(f)(2).

10. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities. 66 Pa.C.S. § 1501.

11. The Commission strongly encourages customer education with regard to customer choice. 66 Pa.C.S. § 2807(d)(3).

12. Hearsay is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted. Pa.R.E. 801(c).

13. It is well established that hearsay evidence, properly objected to, is not competent evidence to support a finding of fact. Phillips v. Unemployment Compensation Board of Review, 152 Pa. Superior Ct. 75, 30 A.2d 718 (1943).

14. Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of fact, in an administrative hearing, if it is corroborated by competent evidence in the record, but a finding of fact based solely on hearsay will not stand. Burks v. Department of Public Welfare, 48 Pa. Cmwlth. 6, 408 A.2d 912 (1979); Walker v. Unemployment Compensation Board of Review, 27 Pa. Cmwlth. 522, 367 A.2d 366 (1976).

15. Ms. Pace has failed to satisfy her burden of proof in this proceeding by a preponderance of the evidence to demonstrate that PECO in any way violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Karen Pace against PECO Energy Company on March 31, 2016 at Docket Number F-2016-2538084 is hereby dismissed.
2. That this matter be marked closed.

Date: November 16, 2016

/s/
Joel H. Cheskis
Administrative Law Judge