

August 1, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. C-2017-2610125  
Joanne M. Fiorito v. Pennsylvania Electric Company  
Main Brief of Penelec**

Dear Secretary Chiavetta:

Attached for filing is the Main Brief of Pennsylvania Electric Company in the above referenced proceeding.

A copy of the attached Main Brief has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm  
Attachment

cc: The Honorable Jeffrey A. Watson, PA Public Utility Commission [w/enc.]  
Teresa K. Harrold, Esquire, FirstEnergy Service Company [w/enc.]  
Joanne M. Fiorito [w/enc.]

**Re: Docket No. C-2017-2610125  
Joanne M. Fiorito v. Pennsylvania Electric Company  
Main Brief of Penelec**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via First Class Mail**

Joanne M. Fiorito  
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Tunkhannock, PA 19657

Dated: August 1, 2018

  
Margaret A. Morris, Esquire

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOANNE FIORITO :  
 :  
 v. : Docket No. C-2017-2610125  
 :  
 PENNSYLVANIA ELECTRIC COMPANY :

**INITIAL BRIEF OF  
PENNSYLVANIA ELECTRIC COMPANY**

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## I. STATEMENT OF THE CASE

### Introduction

The primary purpose of the evidentiary hearing held in this matter was to provide Joanne Fiorito (Complainant) the opportunity to present evidence to support her opposition to the mandatory installation of an advanced metering infrastructure (AMI) meter (smart meter). The Complainant alleged: (1) the law does not mandate installation; (2) a smart meter presents privacy concerns because personal information can be accessed without authorization; (3) a smart meter presents safety concerns due to the level of emitted radio frequency (RF); and (4) Penelec should be directed to stop threatening termination of her service for her refusal to consent to the installation of a smart meter. As stated by Judge Watson in the *Interim Order Denying Preliminary Objections*:

I note, however, that the standard of proof at a hearing is different than the standard used to dispose of preliminary motions such as the preliminary objections in this case. In order to prevail on some or all of the assertions raised in the Complaint, Complainant must prove, by substantial evidence, that she is entitled to relief because Respondent has violated the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff of the Company concerning the service provided to her. This is a higher legal standard than that which was used to determine preliminary objections. In addition, the parties are cautioned to review the Public Utility Code as well as the statutes, regulations and decisions applicable to this proceeding and to comply with such legal authority.

*Interim Order Denying Preliminary Objections* at 6.

The Complainant offered only opinion testimony to support her beliefs. In stark contrast, Pennsylvania Electric Company (Penelec or Company) presented the testimony of John Ahr, Manager for Regulatory Compliance for Smart Meter, that there is no opt-out provision for smart meter installation and Penelec is in compliance with its Commission-approved Revised Deployment Plan. Scott Palmquist, Senior Product Line Manager for Smart Grid Security and Networking, Itron Inc., (Itron), provided expert testimony regarding advanced metering and network cyber security of the smart meter being deployed by Penelec. Michael Belanger, Senior Product Line Manager for Network Communication for Itron provided expert testimony

regarding the design, operation, communication and technology associated with Itron's advanced metering communication and transmission system being deployed by Penelec.

For the reasons set forth below, the Formal Complaint should be dismissed and the relief requested by the Complainant should be denied. The Complainant has utterly failed to carry her burden of proof establishing that Penelec committed any violation of the Public Utility Code (Code)<sup>1</sup> or any regulation, order or rule that the Commission has authority to administer. The record evidence and Commission precedent is clear: there is no opt-out provision to exempt a customer from the mandatory installation of a smart meter. The Complainant's opinion testimony regarding privacy and safety concerns are without merit and were clearly refuted by the expert testimony of witnesses Palmquist and Belanger. The Code, Commission regulation and precedent, as well as the Company's Commission-approved tariff authorize the termination of the Complainant's service, after due notice, for failure to permit access to install a smart meter.

#### History of Proceeding

On June 8, 2017, Complainant filed the Formal Complaint alleging, *inter alia*, that Respondent threatened to shut off her service and she objects to the installation of a smart meter at her residence (Service Location).<sup>2</sup> Complainant alleged that smart meters are unsafe due to RF exposure and present privacy concerns. As relief, Complainant requests, *inter alia*, that the Commission direct the Respondent to exempt her from the installation of a smart meter at the Service Location and refrain from sending termination notices for refusal to permit access to the current meter for the installation of the smart meter.

On July 10, 2017, Penelec filed an Answer denying material allegations. Penelec averred Act 129 of 2008, codified at 66 Pa.C.S. § 2806.1 *et seq.*, mandates the installation of a smart meter throughout its service territory without exception. The Company admitted that a termination notice was lawfully issued advising the Complainant that her service was subject to termination for her refusal to permit the installation a smart meter at the Service Location.

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<sup>1</sup> 66 Pa.C.S. § 101 *et seq.*

<sup>2</sup> Penelec provides service to 173 Brookside Road, Tunkhannock, Pennsylvania under Account No. 100009227362.

On July 10, 2017, Penelec simultaneously filed its Preliminary Objections to the Formal Complaint. Respondent averred that the Complainant had not alleged any specific safety or health issue with the smart meter to be installed at the Service Location. Respondent averred that a prayer for relief to “opt-out” of the installation of a smart meter is not legally recoverable in the cause of action, was “impertinent matter” in the sense that it is irrelevant to that cause of action and is correctly challenged through a motion to strike the requested relief as impertinent matter. Respondent also averred that holding a hearing in this proceeding was not in the public interest. Respondent further averred that the Commission does not have the power to order the Company not to install a smart meter at the Service Location and Complainant’s request to maintain her analog meter is an impertinent matter that must be stricken within the use and meaning of 52 Pa. Code § 5.101(a)(2). Finally, Respondent averred that the Complainant failed to allege that Respondent violated the Code, Commission regulations or orders that can be the basis of any finding against the Company, and therefore should be dismissed as being legally insufficient under 52 Pa. Code § 5.101(a)(4).

On July 19, 2017, Complainant filed a Response to the Preliminary Objections reiterating various averments set forth in her Formal Complaint.

On August 16, 2017, the Commission issued a Motion Judge Assignment Notice assigning this matter to the Honorable Jeffrey A. Watson (Judge Watson).

On August 29, 2017, Judge Watson’s *Interim Order Denying Preliminary Objections*, discussed *supra*, was entered. On March 14, 2018, the Commission issued its Notice scheduling the matter for telephonic evidentiary hearings on May 30 and May 31, 2018 before Judge Watson.

The hearing commenced, as scheduled, on May 30 and May 31, 2018. The Complainant testified on her own behalf. Margaret A. Morris, Esquire, represented the Respondent; John Ahr, Scott Palmquist and Michael Belanger appeared and testified on behalf of the Company. Witnesses Belanger and Palmquist were qualified as experts in their fields.

On June 6, 2018, a Briefing Order was issued by Judge Watson setting forth the due date of August 1, 2018 for filing of each party's brief and August 13, 2018 for filing of each party's reply brief.

## **II. SUMMARY OF ARGUMENT**

The Complainant offered opinion testimony that Act 129 does not mandate the installation of a smart meter at the Service Location; she specifically testified that she does not give consent and refuses to pay for the smart meter. She also alleged privacy issues related to smart meter technology. The Complainant did not present direct testimony regarding safety issues related to smart meter technology. The Complainant requests she be permitted to "opt-out" from the installation of a smart meter and that Penelec be ordered to stop threatening termination for refusing the installation of a smart meter.

Penelec presented evidence that Act 129 and Commission precedent clearly state that there is no opt-out provision which would exempt the Complainant from a smart meter being installed and the implementation of its Revised Deployment Plan is consistent with the Code, its Commission-approved Tariff, Commission regulations and orders. The expert testimony of witnesses Belanger and Palmquist and Penelec's admitted exhibits refuted the Complainant's unsubstantiated opinion testimony that it is "easy to gain unauthorized access to the smart meter system to steal a customer's personal information."<sup>3</sup>

## **III. LEGAL BURDEN**

Section 701 of the Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.<sup>4</sup>

To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in

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<sup>3</sup>Tr. 42, 46.

<sup>4</sup> 66 Pa.C.S. § 701.

the Complaint.<sup>5</sup> Such a showing must be by a preponderance of the evidence.<sup>6</sup> A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party.<sup>7</sup> Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>8</sup> Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>9</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>10</sup>

Under these principles, the Complainant, as the party seeking relief, has the burden of proof. In this case, the Complainant has the burden of proving, by a preponderance of the evidence, that Penelec is responsible or accountable for the problem described in her complaint, i.e., the installation of a smart meter is not mandated and smart meters present privacy and safety concerns.<sup>11</sup>

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the Company. If the evidence presented by Penelec is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now must provide some additional evidence to rebut the evidence of the Respondent.<sup>12</sup>

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<sup>5</sup> *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

<sup>6</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwth. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 602 A.2d 863 (1992).

<sup>7</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>8</sup> *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwth. 21, 623 A.2d 6 (1993).

<sup>9</sup> *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992).

<sup>10</sup> *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa.Cmwth. 23, 480 A.2d 382 (1984).

<sup>11</sup> See, *Feinstein, supra*.

<sup>12</sup> *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.<sup>13</sup>

Based on the record evidence, Penelec contends that the Complainant has not made a *prima facie* case that Act 129 does not mandate the installation of a smart meter and that smart meter technology creates privacy and safety concerns. Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent, which, if not met, results in an obligatory decision for the proponent.<sup>14</sup> The Complainant's unsubstantiated opinion testimony is insufficient to support a finding of fact that Penelec's installation of a smart meter is not mandated by the Code and that the smart technology utilized by Penelec creates privacy and safety concerns in violation of the Code or its Commission-approved Smart Meter Deployment Plan.

To the extent that the Commission finds a *prima facie* case has been presented, Penelec has introduced substantial evidence through its witnesses and admitted exhibits to rebut the Complainant's purely opinion testimony. Based on the record evidence, the Complainant failed to carry her burden of proof that smart meters are not mandated under Act 129, the smart meter technology utilized by Penelec creates privacy and safety concerns in violation of the Code and Penelec is not authorized to terminate the Complainant's service, after notice, for failure to permit access to the meter for the installation of a smart meter.

#### **IV. RECORD EVIDENCE**

##### Complainant's Evidence

Complainant offered opinion testimony that Act 129 does not mandate smart meters and is unlawful, and smart meters posed privacy concerns. She provided no evidence to support her allegations.

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<sup>13</sup> *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

<sup>14</sup> *In re: Fink's Estate*, 343 Pa. 65, 74, 21 A.2d 883, 888-889 (1941); *Rogers v. United States*, 66 F. Supp. 663, 667, relying, in relevant part, on *Roseberry v. Home Life Insurance Company*, 120 Pa. Superior Ct. 450, 454, 183 A. 121, 95 A.L.R. 749 (1936).

### Complainant Exhibit Number - Description of Exhibit

The Complainant introduced 19 exhibits; the following six were admitted into evidence.

- A. Pennsylvania PUC Smart Meter Q&A
- B. House Bill No. 2200 Session of 2008 (Senate Amended)
- C. House Bill 2200
- D. Commonwealth of Pennsylvania Legislative Journal 10/8/08 No. 64
- E. Commonwealth of Pennsylvania Legislative Journal 10/8/08 No. 65
- G. Penelec Smart Meter Deployment Plan Revised 6/16/14

Judge Watson took judicial notice of Complainant Exhibit H, *Hallowich v. Range Resources Corp., et al.*, CCP Washington County No. 2010-3954. Tr. 184.

### Respondent's Evidence

Three witnesses testified on behalf of Penelec. John Ahr, Manager of Regulatory Compliance for Smart Meter, testified regarding the mandates in Act 129, regulatory requirements for smart meter plans in Pennsylvania, Penelec's Smart Meter Deployment Plan, the general features of Penelec's smart meters, and the Company's attempts to install a smart meter at the Service Location.<sup>15</sup> Michael Belanger and Scott Palmquist also testified on behalf of the Company. Scott Palmquist, Senior Product Line Manager for Smart Grid Security and Networking, was qualified, without objection, to provide expert evidence in the fields of advanced metering and network cyber security.<sup>16</sup> Michael Belanger, Senior Product Line Manager for Network Communications, was qualified, without objection, to provide expert evidence in the design, operation, communication and technology associated with the Itron advanced metering communication and transmission system.<sup>17</sup>

### Respondent Exhibit Number - Description of Exhibit

Penelec introduced the following exhibits; all of which were admitted.<sup>18</sup>

1. 66 Pa.C.S. § 2801 *et seq.* (Act 129).
2. Docket No. M-2009-2092655, *Smart Meter Procurement and Installation Implementation Order* entered June 24, 2009.

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<sup>15</sup> Tr. 266.

<sup>16</sup> Tr. 312.

<sup>17</sup> Tr. 349-350.

<sup>18</sup> The Respondent's Exhibits are not sequential.

3. Docket No. M-2009-2123950, Smart Meter Technology Procurement and Installation Plan for Pennsylvania Electric Company filed August 14, 2009.
4. Docket No. M-2009-2123950, *Petition of Pennsylvania Electric Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Opinion and Order entered June 9, 2010.
5. Docket No. M-2013-2341994, Smart Meter Deployment Plan filed by Pennsylvania Electric Company, revised June 16, 2014.<sup>19</sup>
6. Docket No. M-2013-2341994, *Smart Meter Deployment Plan*, Opinion and Order entered March 6, 2014.
7. Docket No. M-2013-2341994, *Revised Deployment Plan*, Opinion and Order entered June 25, 2014.
8. Docket No. M-2013-2341994, Secretarial Letter, dated June 20, 2014, for the Revised Deployment Plan.
9. Docket No. M-2013-2341994, Smart Meter Privacy Policy of Pennsylvania Electric Company filed March 18, 2015.
10. Docket No. M-2013-2341994, Secretarial Letter, dated May 1, 2015, that Smart Meter Privacy Policy complies with Commission's June 5, 2014 Order.
12. Itron, "RF Safety Compliance of OpenWay Smart Meters and the CG-Mesh IPv6 Network."
13. Electric Power Research Institute, "An Investigation of Radiofrequency Fields Associated with the Itron Smart Meter."
14. Advanced Compliance Solutions, Inc., "Certification Test Report" 900 MHz LAN ACS Certification
15. Advanced Compliance Solutions, Inc., "Certification Test Report" 2.4GHz Zigbee ACS Certification
16. Advanced Compliance Solutions, Inc., "Certification Exhibit" RF Exposure
17. Interrogatories and Request for Production of Documents to Complainant and responses
18. Cisco Connected Grid Field Area Network
20. Itron, OpenWay Security Overview
21. Relevant Tariff Rules
23. *Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176, Opinion and Order entered January 24, 2013.
24. Federal Communications Commission, Rule Part 15.247
25. *Curriculum Vitae* for John C. Ahr
26. *Curriculum Vitae* for Michael Belanger
27. *Curriculum Vitae* for Scott Palmquist
29. Itron, "Securing the Smart Grid"
35. pages 3-8: Selected attachments to the Formal Complaint
35. pages 1-2: Legislative History of Act 129

## V. ARGUMENT

The crux of the Formal Complaint is that the mandatory installation of the Itron Smart Meter violates the Code. The Complainant alleges that: (1) the installation of a smart

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<sup>19</sup> Complainant Exhibit G is identical to Respondent Exhibit 5. Tr. 304.

meter is not mandated by the Code; (2) the smart meter technology raises privacy concerns in violation of Section 1501 of the Code; and (3) her service should not be subject to termination for failure to permit installation of the smart meter.

Pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Section 1501 of the Code provides, in pertinent part:

**§ 1501. Character of service and facilities**

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 the commission.<sup>20</sup>

1. *Smart meter mandate*

The Complainant testified that Act 129 is not lawful and the installation of a smart meter is not mandated based on the following arguments:

- Smart meters are not mandated<sup>21</sup> pursuant to *Senatus Consultum*<sup>22</sup> since three senators stated in comments before voting that there was no smart meter mandate.<sup>23</sup>
- The Senate and the House of Representatives made decisions beyond their capacity to turn power over to the PUC.<sup>24</sup>
- PUC overrode the senators' votes and acted without authority.<sup>25</sup>
- Citizens are improperly classified as customers in Act 129.<sup>26</sup>

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<sup>20</sup> 66 Pa.C.S. § 1501.

<sup>21</sup> Tr. 37-38; 54; 61; 65-66; 126-128.

<sup>22</sup>The Complainant testified that “*Senatus Consultum*” is defined by Black Law’s Dictionary as “having the full force of the law without concurrence of the people.” Tr. 128.

<sup>23</sup> Tr. 102-105; 127; Complainant Exhibits D and E.

<sup>24</sup> Tr. 38.

<sup>25</sup> Tr. 226-227.

<sup>26</sup> Tr. 74.

- Section 2807(f)(2)(i) and (ii) states smart meter can only be installed at the customer's request and if the customer agrees to pay or new construction.<sup>27</sup>

Penelec presented testimony that it has an absolute obligation to install smart meters at all of its customers' service locations under Act 129.<sup>28</sup> Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.<sup>29</sup>

On October 15, 2008, Act 129 was signed into law and codified at Chapter 28 of the Code.<sup>30</sup> Act 129 required EDCs with at least 100,000 customers, such as Penelec, to file a smart meter technology procurement and installation plan (SMP Plan) with the Commission for approval.<sup>31</sup> Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: (1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (2) in new building construction; and (3) in accordance with a depreciation schedule not to exceed fifteen years.<sup>32</sup>

Pursuant to Section 2807(f) of the Code, Penelec and the other FirstEnergy EDCs<sup>33</sup> in Pennsylvania (collectively, the Companies) filed their Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan on August 14, 2009 (2009 SMP Plan).<sup>34</sup> By Order, entered June 9, 2010, the Commission approved the Companies' 2009 SMP Plan with modifications.<sup>35</sup> On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan (Deployment Plan),<sup>36</sup> in which they requested

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<sup>27</sup> Tr. 95; 97; Complainant Exhibit B.

<sup>28</sup> Tr. 283-284; Respondent Exhibit 1.

<sup>29</sup> Complainant Exhibit A; Respondent Exhibits 2 and 23.

<sup>30</sup> Respondent Exhibit 1.

<sup>31</sup> Tr. 273; Respondent Exhibit 1.

<sup>32</sup> Tr. 268; Respondent Exhibit 1.

<sup>33</sup> The other companies are Metropolitan Edison Company, Pennsylvania Power Company and West Penn Power Company.

<sup>34</sup> Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123950, filed August 14, 2009; Tr. 274-275. Respondent Exhibit 3.

<sup>35</sup> Tr. 276. Respondent Exhibit 4.

<sup>36</sup> 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 Nos. M-2013-

that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's *Implementation Order*;<sup>37</sup> (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.<sup>38</sup> On March 19, 2014, the Companies submitted their Revised Deployment Plan,<sup>39</sup> which *inter alia* accelerated the smart meter deployment schedule originally laid out in their Deployment Plan.<sup>40</sup> As Mr. Ahr testified, under the Revised Deployment Plan, Pennsylvania Power Company proposed to deploy smart meters by early 2016.<sup>41</sup> In its *Opinion and Order*,<sup>42</sup> entered June 25, 2014, the Commission recognized the benefits of early deployment of smart meters and approved the Revised Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.<sup>43</sup>

The Complainant also argues that Act 129 specifically allows a customer to "opt-out" of smart meter deployment. The Complainant points to Section 2807(f)(2)(i) of the Code for the proposition that the deployment of smart meters for individual customers occurs only upon

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2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, Smart Meter Deployment Plan, filed December 31, 2012.

<sup>37</sup> Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009).

<sup>38</sup> Tr. 286-287.

<sup>39</sup> 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 Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, Smart Meter Deployment Plan, filed June 16, 2014.

<sup>40</sup> Tr. 281; Respondent Exhibit 5.

<sup>41</sup> Tr. 289.

<sup>42</sup> 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 Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014)

<sup>43</sup> Respondent Exhibit 7 at p. 16.

request of the individual customer. Therefore, she argues that smart meters are at the request of the customer and not mandated.<sup>44</sup>

Ms. Fiorito's interpretation of Section 2807(f) of the Code<sup>45</sup> is incorrect. Section 2807(f)(2) provides:

- (2) Electric distribution companies shall furnish Smart Meter technology<sup>46</sup> 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.

Company witness Ahr rebutted Ms. Fiorito's interpretation by testifying that a customer does not have the ability to "opt-out" of having a smart meter installed at his or her home under the Company's Revised Deployment Plan.<sup>47</sup> Specifically, Mr. Ahr testified that the Company's Revised Deployment Plan, as approved by the Commission, provides for all customers to receive smart meters on or before December 31, 2022.<sup>48</sup> This full deployment has two distinct implementation timelines. The great majority of customers (98.5%) will receive smart meters by mid-2019, with the remaining 1.5% of customers to receive installation by December 31, 2022.<sup>49</sup> Mr. Ahr's testimony is consistent with Penelec's Commission-approved Revised Deployment Plan, which provides in pertinent part:

**The Full-Scale Deployment Stage** will commence upon resolution of all problems encountered during the Solution Validation Stage and will continue until all meters are installed on or before December 31, 2022. During this stage, the remainder of the smart meter infrastructure will be concurrently built in each of the Companies' respective service territories, starting with the most populated areas first. All remaining smart meters will be installed during this Stage at an anticipated meter installation rate of 1,900 meters per day, five days per week, and potentially ramping up to 3,000 meters per day if circumstances and

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<sup>44</sup> Tr. 70-71; 95-99.

<sup>45</sup> 66 Pa.C.S. § 2807(f)(2)(i).

<sup>46</sup> Smart Meter Technology is defined in the Code at 66 Pa.C.S. § 2807(g).

<sup>47</sup> Tr. 284.

<sup>48</sup> Tr. 286.

<sup>49</sup> Tr. 286-287; Respondent Exhibit 7.

conditions warrant. At this pace, the Companies expect to install approximately 98.5% of all meters by mid-2019, with the remaining 1.5% of the meters being installed thereafter through December 31, 2022. The 1.5 % of the installations represent those installations that may require alternative communication solutions or difficult to reach locations such as remote hunting cabins. Any similar situations discovered in Penelec’s service territory are included in the 1.5% estimate and will be addressed in the time frame discussed above.<sup>50</sup>

As Ahr explained, there is no provision for less than 100% smart meter deployment. Specifically, Ahr testified that “clearly this plan requires Penelec to install smart meters at *all* customer service locations.”<sup>51</sup>

Ahr further testified that Section 2807(f)(2)(i) of the Code does not provide an “opt-out” to smart meter installations as Ms. Fiorito suggests.<sup>52</sup> Rather, Section 2807(f)(2)(i) allows EDCs to provide smart meters to those customers requesting a smart meter in advance of the EDC’s official roll-out.<sup>53</sup> In that situation, the customer would be required to pay the cost of the smart meter in full at the time of the request.<sup>54</sup> Penelec may recover all of its reasonable and prudent cost of providing smart meter technology.<sup>55</sup> Section 2807(f)(2)(iii) of the Code requires the deployment of smart meters throughout the remainder of an EDC’s service territory in those instances where the EDC did not already provide a smart meter at the customer’s request (before the EDC’s official roll-out) or the EDC did not already provide a smart meter as part of new construction.<sup>56</sup>

There is no record evidence to support the Complainant’s position that there is an opt-out provision contained in Code. The language of the Code is clear and unambiguous.<sup>57</sup>

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<sup>50</sup> Respondent Exhibit 5, pp. 47-48.

<sup>51</sup> Tr. 287.

<sup>52</sup> Tr. 283-284.

<sup>53</sup> Tr. 269.

<sup>54</sup> Tr. 269.

<sup>55</sup> Tr. 274; Respondent Exhibit 2.

<sup>56</sup> Tr. 269; Respondent Exhibit 1.

<sup>57</sup> Tr. 218, 283-87; Complainant Exhibit A; Respondent Exhibit 1.

Commission precedent is well-settled: the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to “opt-out.”<sup>58</sup>

Furthermore, the Commission has ruled that neither the Companies’ Commission-approved Revised Deployment Plan nor Act 129 permit such opt-outs to occur and dismissed formal complaints on that basis.<sup>59</sup>

The Complainant’s unsubstantiated claim that there is an “opt-out” provision should be rejected. The Complainant’s opinion testimony should be given no weight. The Complainant’s assertions, personal opinions or perceptions do not constitute evidence. Personal opinion, no matter how strongly held, does not constitute evidence.<sup>60</sup> Even a *pro se* complainant must provide relevant and necessary information.<sup>61</sup> Other than her opinion testimony, she presented no evidence. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>62</sup>

The Complainant’s allegation that the installation of a smart meter is not mandated by the Code is without merit and her requested relief should be dismissed. Penelec must install a smart meter at the Service Location to remain in compliance with Chapter 28 of the Code, related Commission orders and its Commission-approved Revised Smart Meter Deployment Plan.

## 2. *Cyber security and privacy issues*

The Complainant offered vague opinion testimony regarding alleged cyber security and privacy issues. Specifically, she testified that:

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<sup>58</sup> *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011).

<sup>59</sup> Tr. 284-285. Respondent Exhibit 23.

<sup>60</sup> *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

<sup>61</sup> *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985).

<sup>62</sup> *Norfolk and Western Ry. v. PA Public Utility Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

Well, I'm just saying this this meter has a flaw in it that allows people to not only assume an identify of an account and get access to people's account number through the mail or however they get it, so they can assume that you are – the Company, they can put an application in saying that we want electricity at so and so, use this account number, and give them a bogus address. And the Company, if you are lucky, will look it up. They can-which means they can clone the account basically is what-assume the identity of another. And you'll end up getting a debt after they move on from that account to another one. So that, to me, is presenting a big problem.<sup>63</sup>

On May 1, 2015, the Commission approved Penelec's Customer Privacy Policy Regarding Protection of Smart Meter Information (Privacy Policy),<sup>64</sup> which outlines all of the privacy protections adhered to by Penelec in its deployment of smart meters.<sup>65</sup> These protections ensure that no sensitive customer information, such as the customer's name, address, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number or bank account number are accessible through Penelec's smart meter network.<sup>66</sup> In fact, the only customer information collected by the Company's smart meters is the service location usage data.<sup>67</sup> In the same respect as an analog meter, the smart meter is unable to determine what the individual sources of the electric usage are, only the total amount of electricity consumed and recorded by the installed meter at the property for a period of time.<sup>68</sup> The Privacy Policy also specifies how it protects against unauthorized access to usage information within its smart meter network through cyber security tools, including encryption, firewalls, password protection and continuous security monitoring.<sup>69</sup> It is also important to note that Penelec's smart meter network adheres to the cyber security standards developed and published by the North American Energy Standards Board and the National Institute of Standards and Technology.<sup>70</sup>

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<sup>63</sup> Tr. 46.

<sup>64</sup> *Smart Meter Customer Privacy Policy for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated May 1, 2015).

<sup>65</sup> Respondent Exhibit 10.

<sup>66</sup> Tr. 293-295; Respondent Exhibit 9.

<sup>67</sup> Tr. 313-314.

<sup>68</sup> Tr. 313-314.

<sup>69</sup> Respondent Exhibit 9.

<sup>70</sup> Tr. 325.

The Complainant offered no evidence that the Privacy Policy and related smart meter privacy protections were unreasonable in any respect. Other than raising meritless allegations related to unauthorized access to the smart meter network, the Complainant failed to provide any testimony or other evidence establishing that the installation of a smart meter would constitute unreasonable service. The opinion testimony offered by the Complainant was based on what she has read on the internet related to smart meters.<sup>71</sup> Because a smart meter has yet to be installed at the Service Location, the Complainant has no personal knowledge or experience of relevance. As such, all lay opinion testimony from the Complainant related to more specialized topics, including privacy and cyber security, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence. Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters “without personal knowledge or specialized training.”<sup>72</sup> Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.<sup>73</sup>

Company witness Ahr testified which requirements for smart meter technology are required under the Code. In its *Implementation Order*, the Commission clearly listed the functionality requirements for smart meters, which include the provision of bidirectional data communications capabilities, a minimum of hourly reads delivered at least once per day, remote programming capability and support of time-of-use and real-time pricing programs.<sup>74</sup>

Penelec’s Revised Deployment Plan, as approved by the Commission, identifies how Penelec’s smart meter technology was chosen, the features and characteristics of a smart meter technology, the communication process between the smart meters and Penelec, and the costs and savings associated with the deployment of smart meters. Penelec chose its smart meter technology by conducting multiple rounds of requests for information, requests for proposals

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<sup>71</sup> Tr. 169-170.

<sup>72</sup> *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

<sup>73</sup> Pa.R.E. 701.

<sup>74</sup> Tr. 274; Respondent Exhibit 2.

from vendors of smart meter systems and equipment.<sup>75</sup> The smart meter and communication network and supporting systems, referred to as AMI, allows for bidirectional communication between the meters and Penelec, the interval consumption of electricity, and allows for the transmission of meter readings over a communication network to a central collection point and supporting systems.<sup>76</sup> The specific type of AMI used by Penelec is the Itron Open-Way Centron Meter. Itron is the manufacturer of Penelec's smart meters, as well as the vendor in charge of the smart meter communication system.<sup>77</sup>

Witnesses Ahr and Palmquist both specifically testified that there is no personal information in the smart meter system.<sup>78</sup> The smart meter can communicate a customer's total electric usage to Penelec but not what is causing the usage.<sup>79</sup> Witness Palmquist presented expert testimony regarding the cyber security goals and protections of the Itron AMI: confidentiality, integrity and availability.<sup>80</sup> He provided details of the multiple layers of cyber security protections.<sup>81</sup> He offered his expert opinion that the cyber security protections provided by the Cisco field area network provides adequate cyber security protections since the meter data is encrypted and all meter devices must be authenticated to even join the mesh network.<sup>82</sup> Witness Ahr testified that a smart meter does not record and transmit personal information; the transmission is strictly limited to the usage information.<sup>83</sup>

The Complainant's allegation of privacy concerns is not supported by the record evidence and should be dismissed. The expert testimony of Penelec's witnesses should be given more weight than the Complainant's opinion testimony.

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<sup>75</sup> Tr. 278; Respondent Exhibits 9 and 10.

<sup>76</sup> Tr. 278-279.

<sup>77</sup> Tr. 279.

<sup>78</sup> Tr. 294; 329.

<sup>79</sup> Tr. 292.

<sup>80</sup> Tr. 315.

<sup>81</sup> Tr. 315-320; Respondent Exhibit 29.

<sup>82</sup> Tr. 323; Respondent Exhibit 18.

<sup>83</sup> Tr. 314.

3. *Safety issue*

The Complainant did not offer any testimony on this issue during her direct testimony.

4. *Threat of termination*

The Complainant requests that the Company be ordered not to send termination notices to her.<sup>84</sup> She offered no support for her position.

The Code authorizes Penelec to terminate the Complainant's service, after due notice, for failure to permit access to meters, for the purpose of replacement, maintenance, repair or meter reading.<sup>85</sup> The Commission's Regulations, at 52 Pa. Code § 56.81(3), provide, in pertinent part, the following:

A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91-56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

It is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided.<sup>86</sup> Additionally, Penelec's Tariff, Rule 9,<sup>87</sup> states that the customer shall grant the Company's employees or agents access to their premises at all reasonable times for any and all purposes . . . or exchanging any and all equipment belonging to the Company.<sup>88</sup> Penelec's Tariff, Rule 20,<sup>89</sup> permits the Company to begin the termination process for failure to permit access to remove or exchange the meter.<sup>90</sup> A

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<sup>84</sup> Tr. 227-228.

<sup>85</sup> 66 Pa. C.S. § 1406(a)(4).

<sup>86</sup> *Art Larson v. PECO Energy Company*, Docket No. C-2014-2451754, Opinion and Order entered June 11, 2015. *See also, Catherine J. Frompovich v. PECO Energy Company*, Docket No. C-2015-2474602, Opinion and Order entered May 3, 2018.

<sup>87</sup> Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

<sup>88</sup> Tr. 291; Respondent Exhibit 21.

<sup>89</sup> Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

<sup>90</sup> Tr. 291-292; Respondent Exhibit 21.

public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer.<sup>91</sup>

The Complainant has failed to carry her burden of proof that Penelec's actions in sending a termination notice violated the Code, Commission regulation or order. The Complainant's requested relief should be dismissed.

## **VI. PROPOSED FINDING OF FACT**

### *Background*

1. Complainant, Joanne Fiorito, resides at 173 Brookside Road, Tunkhannock, Pennsylvania (Service Location). Tr. 36.
2. Pennsylvania Electric Company is an electric distribution company providing electric service to Pennsylvania customers. Respondent Exhibit 3.
3. Complainant believes that smart meter installation is optional. Tr. 65.
4. On June 2, 2017, the Company forwarded a 10-day notice advising the Complainant that her service was subject to termination on or after June 12, 2017 for refusing access for the installation of a smart meter. Termination was stayed on receipt of the formal complaint. Tr. 206-207; Respondent Exhibit 35, pp. 3-8.
5. To date, Penelec has not installed an AMI meter at the Service Location. Tr. 288.
6. As of the hearing date, Penelec continued to provide electric service to the Complainant. Tr. 288.
7. Ms. Fiorito did not indicate that she would be offering expert testimony prior to the hearing. Tr. 157-159; Respondent Exhibit 17.
8. Based on her education and experience, Complainant was not qualified to provide expert testimony. Tr. 171.
9. Scott Palmquist is employed by Itron, Inc., as a Senior Product Line Manager for Smart Grid Security and Networking. Tr. 309; Respondent Exhibit 27.
10. Mr. Palmquist was qualified, without objection, as an expert regarding advanced metering and network cyber security. Tr. 312.

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<sup>91</sup> 66 Pa. C.S. § 316, *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa. Cmwlth. 1977). Tr. 290.

11. Michael Belanger is employed by Itron, Inc. as a Senior Product Line Manager for Network Communications. Tr. 345; Respondent Exhibit 26.

12. Mr. Belanger was qualified, without objection, as an expert witness regarding the design, operation, communication and technology associated with Itron's advanced metering communication and transmission system. Tr. 349-350.

*Commission-approved Smart Meter Plan*

13. John Ahr is employed by FirstEnergy as the Manager for Regulatory Compliance for Smart Meters. Tr. 261; Respondent Exhibit 25.

14. Governor Edward Rendell signed Act 129 into law on October 15, 2008. Tr. 272; Respondent Exhibit 1; Respondent Exhibit 35.

15. Act 129 of 2008 requires all electric distribution companies with at least 100,000 customers to install smart meters throughout their service territories, within 15 years of PUC Order. Tr. 266-267; Respondent Exhibits 1 and 2.

16. A smart meter is technology, including metering technology and network communications technology capable of bidirectional communication, which records electricity usage on at least an hourly basis, including related electronic distribution system upgrades to enable this technology. Tr. 271; Respondent Exhibit 1.

17. Chapter 28 of Title 66 reflects changes made by Act 129. Tr. 272; Respondent Exhibit 1; Respondent Exhibit 35 pages 1-2.

18. The *Smart Meter Implementation Order* was entered June 24, 2009. Tr. 273. Respondent Exhibits 1 and 2.

19. The *Smart Meter Implementation Order* requires AMI meters to include bidirectional communications, minimum hourly reads delivered at least once per day, remote programming capability, and the support of real time of use and real time pricing programs. The Commission ordered electric utilities with more than 100,000 customers to introduce smart meter technology and file a plan with the Commission by August 12, 2009. The utilities may recover all reasonable and prudent costs of providing this technology. Tr. 274; Respondent Exhibit 2.

20. AMI stands for Advanced Meter Infrastructure to read meters. Tr. 278.

21. Penelec's Smart Meter Technology Procurement and Installation Plan, filed with the Commission August 14, 2009, indicated the Company's plan to assess smart meter needs,

review smart meter technology options, secure a smart meter vendor, train personnel and install and test the support equipment. Tr. 275; Respondent Exhibit 3.

22. Penelec's Smart Meter Technology Procurement and Installation Plan was adopted on April 15, 2010 and entered on June 9, 2010. Tr. 276; Respondent Exhibit 4.

23. Pursuant to the Commission's Opinion and Order entered March 6, 2014, the Companies filed the Revised Deployment Plan on March 19, 2014, Tr. 277-279; Complainant Exhibit 5 and Exhibit 6.

24. The Commission approved Penelec's Revised Deployment Plan. Tr. 277; Respondent Exhibit 5.

25. By Opinion and Order, entered June 5, 2014, the Commission approved Penelec's Revised Deployment Plan reflecting an expedited deployment schedule. Tr. 280-281; Respondent Exhibit 7.

26. The Commission's Secretarial Letter states that Penelec's Revised Deployment Plan and communication plan complied with the Commission's Order approving the plan. Tr. 282; Respondent Exhibit 8.

27. In its Revised Deployment Plan, Penelec proposed to deploy smart meters in its territory beginning 2016. Tr. 280; Respondent Exhibit 6.

28. The AMI system allows for bidirectional communication between the meter and the Company. Tr. 278-279; Respondent Exhibit 5.

29. Penelec deploys the Itron OpenWay Centron smart meter. Tr. 279; Respondent Exhibit 5.

30. Act 129 does not provide an opt-out for smart meter installation. Tr. 283-285. Respondent Exhibits 1 and 23; Complainant Exhibit A.

31. The Commission's "PUC Smart Meter Q & A" provides that smart meters are required in Pennsylvania and that there is not an opt-out provision. Tr. 212-213; Complainant Exhibit A.

32. In accordance with Act 129, Penelec's Smart Meter Deployment Plan was approved by the Commission including the assumption that no customer may opt-out of installation. Tr. 284; Respondent Exhibit 5.

33. A customer cannot opt-out by being willing to provide the Company monthly meter reads. Tr. 287; Complainant Exhibit A.

34. All smart meters were deployed in Complainant's service area in July 2017, so there are no meter reading routes left in her area. Tr. 288.

35. As of August 2018, the Company will no longer employ meter readers to serve the Complainant's area. Tr. 288.

36. Only early adopters of smart meters, who requested smart meter installation before the utility's official deployment, were required to pay the cost of the smart meter. Tr. 289-290; Respondent Exhibit 1; Complainant Exhibit A.

37. The Company has begun deployment so there is no cost to Ms. Fiorito for smart meter installation. Tr. 289-290; Respondent Exhibit 5.

38. Under Penelec's Tariff, Rules 7<sup>92</sup> and 8,<sup>93</sup> the Company owns, maintains, furnishes and installs the meters. It is within the Company's sole and exclusive discretion to install the meters and related equipment it deems reasonable and appropriate to provide service to customers under the tariff. Tr. 290-291; Respondent Exhibit 22.

39. Under its Tariff, Rule 9,<sup>94</sup> the Company has the absolute right to access a customer's premise to remove or exchange any or all Company equipment including a meter. Tr. 291; Respondent Exhibit 22.

40. Tariff Rule 20,<sup>95</sup> 52 Pa. Code § 56.81 and 66 Pa. C.S. § 1406 allow the Company to terminate service for denying access to the meter. Tr. 291-292; Respondent Exhibit 21; Respondent Exhibit 22.

### *Privacy*

41. Penelec's smart meter network complies with the advanced metering infrastructure guidelines published by the North American Energy Standards Board and the National Institute of Standards and Technology. Tr. 294-295; Respondent Exhibit 9.

42. Penelec is required to comply with all aspects of the approved Privacy Policy consistent with the Commission's Secretarial Letter, dated May 1, 2015. Tr. 295; Respondent Exhibit 10.

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<sup>92</sup> Electric Pa. P.U.C. No. 81 (Supp. 35), Second Revised Page 42, Superseding First Revised page 42, Original Page 61, issued January 25, 2017; effective January 27, 2017.

<sup>93</sup> Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

<sup>94</sup> Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

<sup>95</sup> Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

43. The smart meter network includes a number of security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring. Tr. 294; Respondent Exhibit 9.

44. Penelec does not sell customer usage data or personal information. Tr. 295; Respondent Exhibit 9.

#### *Cyber Security Protections*

45. Mr. Palmquist presented expert testimony that the cyber security protections in place on Penelec's smart meter system adequately protect against unauthorized access to customers' usage information. Tr. 327-328.

46. Itron utilizes multiple layers of cyber security protections, specifically including two-way encryption to ensure there is no unauthorized disclosure of information and digital signatures to ensure the meter can only operate on an authorized message from the utility data center. Tr. 316; Respondent Exhibit 29.

47. Penelec can observe when a customer's electricity use increases and decreases over the course of a day. Tr. 313-314; Respondent Exhibit 6.

48. No forms of personal identifiable information are transmitted through the smart meter network. Tr. 293-294, 314, 329; Respondent Exhibit 9.

49. The Itron smart meter network is composed of the Home Area Network, Regional Area Network, Local Area Network, Wide Area Network and Field Area Network. Tr. 316-319; Respondent Exhibit 29.

50. A customer may request a Home Area Network, which allows qualified home devices to display energy usage information. Tr. 317; Respondent Exhibit 29.

51. Qualified Home Area Network devices must have a digital certificate, which is used to establish a secure encrypted connection between the home device and the smart meter. Tr. 317; Respondent Exhibit 29.

52. All smart meters are equipped with the Local Area Network zone, which is the mesh network of smart meters under a field-deployed router. The meters send their data to the field router, which in turn sends the data to the utility data center. Tr. 317-318; Respondent Exhibit 5.

53. The Regional Area Network is a collection of many Local Area Networks. Tr. 318; Respondent Exhibit 29.

54. The Local Area Network zone and Regional Area Network zone utilize the same cyber security protections. Smart meters only respond to authorized commands from the utility data center and all smart meter data is encrypted. The mesh network is also encrypted. Tr. 318-319; Respondent Exhibit 29.

55. The Wide Area Network is the connection back to the utility data center for the smart meters in the Local Area and Regional Area Network. Tr. 319; Respondent Exhibit 29.

56. The Wide Area Network is the connection back to the utility data center from the field area routers or the smart meter; these connections carry the encrypted meter traffic and add an additional layer of encryption between the field router and the utility data center. Tr. 319-320; Respondent Exhibit 29.

57. The smart meter traffic remains encrypted until it is processed by the utility head and data collection system. Tr. 320; Respondent Exhibit 29.

58. Cisco's bidirectional communication field area network solutions are used throughout the Itron communication network. Tr. 321; Respondent Exhibit 18.

59. The Cisco Field Area network solutions provide security controls that include hiding network addresses, authenticating devices and an interface that are allowed to use the network, monitors traffic flows and provides class of services for different priorities of traffic. Tr. 321; Respondent Exhibit 18.

60. The Cisco solution reduces system vulnerability to physical or cyber-attack; it provides operating resiliency against security disruptions; and it provides highly secure access and data privacy for smart grid information. Tr. 322; Respondent Exhibit 18.

61. The National Institute of Standards and Technology (NIST) is a nationally recognized organization that recommends guidelines for cyber security protections for smart meter networks. Tr. 324; Respondent Exhibit 20.

62. The NIST IR 7628 includes Guidelines for Smart Grid security. Tr. 324-325; Respondent Exhibit 20.

63. NIST FIPS Publication 197 includes the encryption standard (Advanced Encryption Standard – AES) used by Itron smart meters. Tr. 325; Respondent Exhibit 20.

64. NIST FIPS Publication 186 defines the digital signature standard used by Itron smart meters. Tr. 325; Respondent Exhibit 20.

65. Itron follows the smart meter guidance set forth in the publication NIST IR 7628. Tr. 325; Respondent Exhibit 20.

66. The North American Electric Reliability Corporation (NERC) is a federal organization created by the Federal Energy Regulatory Commission to develop and maintain critical infrastructure protection requirements for the electric grid. Tr. 326; Respondent Exhibit 20.

67. NERC has developed standards, known as critical infrastructure protection (CIP), which discuss various requirements for reliable generation and transmission of electricity. Tr. 326; Respondent Exhibit 20.

68. NERC standards are not binding on distribution facilities, such as Penelec's smart meter network. Tr. 326-327.

69. Itron's smart meters adhere to NERC standards. Tr. 327.

#### *Radiofrequency Safety*

70. Mr. Belanger presented expert testimony that RF emissions from smart meters are safe, as they produce an RF field that is less than 1% of the FCC safe exposure level. Tr. 373; Respondent Exhibit 13.

71. Itron smart meters exceed all applicable RF safety standards. Tr. 355; Respondent Exhibit 12.

72. The 900 MHz LAN radio is the main smart meter network communication component for establishing two-way communications. Tr. 353; Respondent Exhibit 14.

73. The 2.4 GHz Zigbee radio is the component used to communicate with any in-home device for a home area network. Tr. 353; Respondent Exhibit 15.

74. The Zigbee radio is not a mandatory component of smart meter installation. Tr. 353-354; Respondent Exhibit 15.

75. An RF transmission is emitted from the smart meter through the mesh network, then to a cellular network and back to the Company. Tr. 354; Respondent Exhibit 12.

76. On average, AMI meter transmissions last approximately 150 milliseconds or less than 0.15 seconds. Tr. 354-355; Respondent Exhibit 12.

77. In a 24-hour period, the total transmission time for the average smart meter is under 3 minutes. Tr. 355; Respondent Exhibit 12.

78. Radio frequency waves are inevitable because nearly all commonly-used electronic devices emit radio frequency waves while operating. Tr. 356; Respondent Exhibit 12.

79. Ms. Fiorito admitted that she has a computer, cordless phone, microwave and cell phone in her home. Tr. 203; 218-219; Respondent Exhibit 17.

80. A cordless phone emits 0.12 milliwatts per square centimeter. Complainant Exhibit A.

81. A microwave oven emits 0.0047 milliwatts per square centimeter. Complainant Exhibit A.

82. A cell phone emits 0.19 milliwatts per square centimeter. Complainant Exhibit A.

83. A computer will emit unintentional radiofrequency transmissions. Tr. 356.

84. RF exposure increases when a microwave is in use or near a wireless router. Tr. 371-372; Respondent Exhibit 13.

85. RF field exposure in the kitchen, while the microwave was operating, increased to up to 22% of the maximum permissible exposure limit. Tr. 371; Respondent Exhibit 13.

86. Wireless routers in the home were found to create RF fields in the range of 0.02 to 0.03% of the maximum permissible exposure limit. Tr. 372; Respondent Exhibit 13.

87. Part 15.247 of the Federal Communications Commission (FCC) regulations has indicated that maximum permissible exposure to radiofrequency fields emitted by an Itron meter is 0.61 milliwatts per square centimeter for the 900 MHz LAN radio and 1.00 milliwatts per square centimeter for the Zigbee radio. Tr. 358-359; Respondent Exhibit 24.

88. Penelec's Itron smart meter's 900 MHz LAN radios comply with the FCC's regulations for unintentional radiofrequency emissions. Tr. 365; Respondent Exhibit 14.

89. Penelec's Itron smart meter's 2.4 GHz Zigbee radios comply with the FCC's regulations for unintentional or spurious radio frequency radiation. Tr. 366; Respondent Exhibit 15.

90. The maximum power density level of the two radios in the smart meter equals 0.258 when summed, which is below the limits for each radio. Tr. 368; Respondent Exhibit 16.

91. According to the 2010 report titled, "An Investigation of Radio Frequency Fields Associated with the Itron Smart Meter" Itron's smart meter RF field is well below the maximum exposure limit established by the FCC. Tr. 370; Respondent Exhibit 13.

92. From one foot away from an end point smart meter, the RF field is not expected to exceed 0.8% of the maximum permissible exposure limit. Tr. 370-371; Respondent Exhibit 13.

93. From ten feet away from a smart meter, the RF field is significantly smaller at about 0.008% for the meter. Tr. 371; Respondent Exhibit 13.

## **VII. PROPOSED ORDERING PARAGRAPHS**

1. That the Complaint filed by Joanne Fiorito against Pennsylvania Electric Company at Docket No. C-2017-2610125 is dismissed.

2. That Penelec may install an AMI smart meter at the residence of Ms. Fiorito.

3. That if Ms. Fiorito denies access for the purpose of installing an AMI meter, Penelec may, after appropriate notice, terminate electric service to her residence.

4. That if Ms. Fiorito subsequently removes or modifies the AMI meter, Penelec may, after appropriate notice, terminate electric service to her residence.

5. That the docket at Docket No. C-2017-2610125 is marked closed.

## **VIII. PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 102, 107, 1501.

2. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

3. To satisfy her burden of proof, the complainant must demonstrate that the utility violated the Public Utility Code or a regulations or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, alloc.den., 602 A.2d 863 (1992).

5. Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the

burden of persuasion, to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

6. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

7. Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

8. A public utility is required to provide adequate, efficient, safe and reasonable service. 66 Pa.C.S. §§ 102 and 1501.

9. There is no provision in the Code, the Commission's regulations or orders that allows a Penelec customer to "opt-out" of smart installation. *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176, Opinion and Order entered January 24, 2013.

10. Act 129 of 2008 required electric distribution companies to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f).

11. A utility may issue written notice of termination to a customer if a customer does not permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading, including the installation of an AMI meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

12. The Complainant has failed to carry her burden of proof establishing that Penelec violated the Public Utility Code or a regulation or order of the Commission in requiring installation of a smart meter at the Complainant's property. 66 Pa.C.S. § 701, 332.

13. Penelec did not provide unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

## **IX. CONCLUSION**

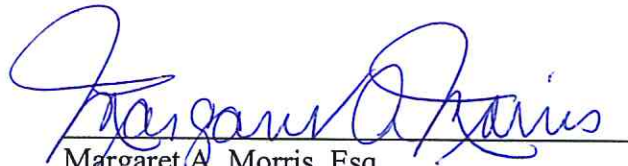
The Complainant has wholly failed to establish by a preponderance of the evidence that Penelec violated the Code, Commission regulation or order. Specifically, the Complainant has not met her burden of proof that the installation of a smart meter constitutes unreasonable service by the Company or that Penelec is not authorized to terminate her service for failure to permit access to install the smart meter.

The record evidence supports that Penelec has an absolute obligation under the Code to install smart meters at all of its customers' service locations. Neither Act 129 nor subsequent Commission orders, related to smart meter installation and deployment, permit customers to "opt-out" from smart meter installation. Penelec must install a smart meter at the Service Location in order to remain in compliance with the Code, related Commission orders and its Revised Deployment Plan. The Complainant failed to establish that the installation of a smart meter constitutes unreasonable service. The smart meter components and deployment of smart meters in the Penelec territory were identified in Penelec's Revised Deployment Plan and approved by the Commission. The Complainant's baseless statements related to the privacy issue associated with smart meters should be rejected as unsupported allegations. Penelec's witnesses provided detailed testimony related to the privacy safeguards applicable to Penelec's smart meters, which comprehensively and completely rebutted all allegations made by the Complainant. Accordingly, the Formal Complaint must be dismissed by the Commission with prejudice.

**WHEREFORE**, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of Joanne Fiorito in its entirety.

Respectfully submitted,

Date: August 1, 2018



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