

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Kline	:	
	:	
v.	:	C-2017-2621072
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A residential customer filed a complaint seeking to prevent an electric distribution company (EDC) from installing a smart meter a/k/a “Advanced Metering Infrastructure (AMI) meter” or “Radio Frequency (RF) meter” on his residence and from terminating his service. The complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501.

HISTORY OF THE PROCEEDING

On August 24, 2017, John Kline (Complainant) filed the instant Complaint against PPL Electric Utilities Corporation (PPL, PPL Electric, Company or Respondent) with the Pennsylvania Public Utility Commission (Commission) averring he has the right to opt out of a smart meter installation and to maintain his current meter and electric service at his residence, 5611 Stradford Drive, Harrisburg, Pennsylvania for health, fire safety, privacy, and discrimination reasons. Complainant contends that Act 129 was not meant to be a mandate, but rather an option for customers agreeing to smart meter installation. The Complaint was served upon PPL on August

24, 2017.¹ On September 13, 2017, Respondent filed a timely Answer with New Matter. The Answer admitted that the Respondent provides electric service to the Complainant at the address shown on the Complaint. The Answer contends that the Respondent is required to install AMI, or smart meters, for all AMR customers and that it has the right to terminate service for failure of the customer to permit access to the meter.

On October 3, 2017, a Hearing Notice was issued scheduling a hearing for January 31, 2018 and assigning the case to me as presiding officer. A Prehearing Order was issued on October 4, 2017. On December 18, 2017, PPL filed a Motion to admit Curtis S. Renner, Esquire *pro hac vice* and represent PPL as additional counsel. On December 21, 2017, PPL requested a continuance of the evidentiary hearing. A Second Prehearing Order was issued on December 22, 2017, rescheduling the hearing to March 29, 2018, per PPL's request. On January 3, 2018, a Hearing Cancellation/Reschedule Notice was issued also rescheduling the Initial Hearing to March 29, 2018. On January 8, 2018, an Interim Order was issued admitting Mr. Renner *pro hac vice*. On February 20, 2018, PPL filed a letter requesting any expert testimony and exhibits be presented in written form in advance of the hearing and exchanged by the parties on or before March 15, 2018. On March 15, 2018, the parties exchanged exhibits, reports and statements. On March 26 - 27 2018, Complainant sent additional exhibits CCC through HHH via e-mail. Complainant's MB at 4, PPL MB at 3. On March 28, 2018, PPL filed a Motion in Limine seeking to exclude Complainant's pre-marked exhibits from being admitted into evidence. Oral argument regarding the Motion in Limine was heard at the hearing on March 29, 2018, and rulings regarding the admissibility of Complainant's exhibits were made on the record.

At the hearing, Complainant appeared *pro se*. Respondent appeared represented by Devin Ryan, Esquire and Curtis Renner, Esquire with four witnesses: William Hennegan, Scott Larson, Christopher Davis, Ph.D., and Mark Israel, M.D. Complainant's Exhibits Nos. 1, C-1, 2A,

¹ PPL signed a waiver of the Section 702 requirement for registered or certified mail service of formal complaints, 66 Pa. C.S. § 702, and agreed to electronic service under the Commission's waiver of 702 program. *See In Re: Electronic Service of Formal Complaints*, Secretarial Letter Dated December 22, 2014, at Docket Nos. M-2013-2398153 *et al.* Service is listed in the electronic Audit History of the case as entered by the Secretary's Bureau as having been affected on August 24, 2017. Thus, PPL's Answer filed on September 13, 2017 is deemed timely filed.

2B, 2C, 2D, 2E, 2F, 2I, 2J, 2K, 2L, 2M, 2N, 2O, 2P, 2Q, 2S, 2T, 2U, 2V, 2W, 2X, 2Y, 2Z, 2R-2, 2R-1, 2R-3, 2R-4, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, A, B, C-2, D, E, F, G, H, I, J, K, L, M, N-1, N-2, O, P, Q, R, S, U, Y, and Z were admitted at the hearing. Also, PPL Electric Exhibits Nos. 2-7, 9-11 were admitted. On April 2, 2018, a Briefing Order was issued giving the parties leave to file main briefs by May 16, 2018 and reply briefs by June 1, 2018. A transcript consisting of 163 pages was filed on April 20, 2018. On May 16, 2018, PPL filed its Main Brief. On May 17, 2018, Complainant filed his Main Brief. On May 25, 2018, Complainant petitioned for an extension to the deadline for Reply Briefs, which was granted. PPL filed a Reply Brief on July 9, 2018. Complainant filed a Reply Brief on July 10, 2018 and the record closed. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is John Kline, who resides at the service property 5611 Stradford Drive, Harrisburg, Pennsylvania 17112. Tr. 13, Complainant's Exhibit 1.²

2. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 13-14.

3. On June 30, 2014, PPL filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 and the Commission's Smart Meter Implementation Order. PPL Electric Exhibit No. 3.

4. PPL selected Radio Frequency ("RF") Mesh meters and metering system because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the Smart Meter Implementation Order. PPL Electric Exhibit No. 3 at 5-6, Tr. 84-86.

² Complainant's Exhibit No. 1 will hereinafter be referred to as "C Exhibit 1," Complainant's Opening Statement. For clarification, this is separate from Exhibit C-1, PPL's Smart Meter Rider – Phase 1.

5. The RF Mesh system allows the Company to receive data from the customer's meter wirelessly, unlike PPL's previous powerline carrier (PLC) system that used the customer's actual wires. Tr. 84-86.

6. The individual RF Mesh meters are used as relay points to transmit data back to PPL. Tr. 84-86.

7. Under the Smart Meter Plan, the RF Mesh meters are to be deployed between 2017 and 2019 for all of PPL's 1.4 million customers. PPL Electric Exhibit No. 3 at 3, 32, Tr. 85.

8. PPL had deployed 720,000 AMI meters as of the March 29, 2018 hearing. Tr. 89-90, PPL Electric Exhibit No. 3.

9. On May 1, 2017, PPL sent Complainant a letter notifying him that it intended to install the new AMI meter on his property within approximately the next three weeks. PPL Electric Exhibit No. 2, Tr. 52.

10. The RF Mesh meter to be installed for the Complainant's residential account is the Landis + Gyr Focus E350 AX-SD meter. Tr. 85.

11. Complainant works from his home where he uses his Wi-Fi network during working hours and shuts off his Wi-Fi network when it is not in use. Tr. 46.

12. Complainant is neither a registered nurse nor an attorney. Tr. 42.

13. Complainant has no work experience or education in fire protection, physics, biophysics, chemistry, electrical engineering, electromagnetics or bioelectromagnetics. Tr. 42.

14. Complainant did not author the scientific studies and letters in his exhibits. C Exhibit 1. Tr. 42-43.

15. Complainant has a DirecTV satellite and receiver on his property, but he only watches a half hour of television per day. Tr. 44.

16. Complainant does not have a microwave oven or other smart appliances. Tr. 47.

17. The Landis + Gyr Focus E350 AX-SD is certified by the Underwriters Laboratories. Tr. 88.

18. PPL Witness Davis has a Ph.D. in Physics and is a fulltime Professor with an endowed Chair at the University of Maryland, where for over 30 years he has taught Physics, Electrical Engineering, Electromagnetics, and RF Electromagnetics to undergraduate and graduate students. PPL Electric Statement No. 1 at 1-2.

19. In addition to his teaching, Dr. Davis is an active scientific researcher in the fields of Physics, Biophysics, Electrical Engineering, Bioelectromagnetics and RF Bioelectromagnetics, conducting many scientific studies in these fields and publishing over 250 studies in peer-reviewed scientific journals. PPL Electric Statement No. 1 at 2.

20. Dr. Davis conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by the Company. PPL Electric Statement No. 1 at 3.

21. RF fields are part of the lower energy, non-ionizing portion of the electromagnetic spectrum which consists of lower frequency signals that do not have enough energy to break chemical bonds in cells or DNA. PPL Electric Statement No. 1 at 5-6.

22. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and Wi-Fi networks. PPL Electric Statement No. 1 at 5-6, 12.

23. The Federal Communications Commission (FCC) has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. PPL Electric Statement No. 1 at 8.

24. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). PPL Electric Statement No. 1 at 8-9.

25. The levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 10, PPL Electric Exhibit CD2.

26. RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. PPL Electric Statement No. 1 at 7.

27. There are seven television broadcast towers within a 50 mile radius of Complainant's location in Harrisburg, Pennsylvania. PPL Electric Statement No. 1 at 13.

28. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence is 20 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 12, PPL Electric Exhibit CD-5.

29. The RF exposure from a cell phone used at a person's head is 260,000 times higher than the average RF levels 1 meter away from the Company's new smart meter. PPL Electric Statement No. 1 at 11, PPL Electric Exhibit CD-4.

30. Complainant has been using a company-supplied Apple/iPhone 7 cell phone since July 12, 2017. PPL Electric Exhibit No. 10.

31. Complainant's cell phone usage was approximately 8580 minutes during a 5-month period. PPL Electric Exhibit No. 10, Tr. 43-45.

32. The amount of RF exposure Mr. Kline received from using his cell phone over a 5-month period is more than 4,000 times higher than the RF exposure would be from the Landis + Gyr Focus AXR-SD smart meter over a 5-month period. PPL Electric Statement No. 1 at 12, PPL Exhibit No. 10, Tr. 43-45.

33. The RF field exposure from this amount of cell phone usage is equivalent to 1,692 years of continuous RF exposure at a distance of approximately 1 meter from the AMI meter. PPL Electric Statement No. 1, p. 13, lines 4-7.

34. PPL Witness Israel received his undergraduate degree from Hamilton College and his medical degree from the Albert Einstein College of Medicine, and he completed his medical training at Harvard Medical School. PPL Electric Statement No. 2 at 1.

35. Dr. Israel is a Professor of Medicine, Pediatrics, and Molecular and Systems Biology at the Dartmouth Medical School and the Executive Director of the Israel Cancer Research Fund in New York, an international charitable fund for medical and scientific research programs. PPL Electric Statement No. 2 at 1.

36. Dr. Israel is board certified and licensed to practice medicine. PPL Electric Statement No. 2 at 3.

37. Dr. Israel has conducted medical research for 40 years in a wide variety of areas, including systems biology, biochemistry, cell biology, cancer, molecular biology, and molecular genetics and has published over 245 medical research studies in leading peer-reviewed scientific journals. PPL Electric Statement No. 2 at 3-4.

38. Dr. Israel also has taught medicine and science for more than 30 years to medical students, graduate students, interns, residents, and practicing physicians in a number of fields, including endocrinology, immunology, hematology, neurology, cardiology, biochemistry, cell biology, genetics, molecular genetics, medical oncology, and radiation oncology. PPL Electric Statement No. 2 at 3.

39. Claimed symptoms related to EHS are more accurately described as “Idiopathic Environmental Intolerance” (“IEI”), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. PPL Electric Statement No. 2 at 8.

40. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2 at 16.

41. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 9-11.

42. The World Health Organization and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone use, which are far higher than the RF from PPL’s smart meters, has not shown that RF fields cause adverse health effects. PPL Electric Statement No. 2 at 10-14.

43. Several U.S. state public health authorities also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. PPL Electric Statement No. 2 at 10-11.

44. None of Complainant’s exhibits are actual scientific studies and most appear to be taken from activist websites. PPL Electric Statement No. 2 at 14-15, Tr. 135-146.

45. Complainant’s exhibits lack scientific objectivity, do not offer a balanced assessment of the scientific research on RF fields, and do not provide scientifically reliable or

useful data for reaching conclusions about RF fields and the causation of any symptom or health effect. PPL Electric Statement No. 2 at 16.

46. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2 at 16.

47. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. PPL Electric Statement No. 2 at 16.

48. PPL's new AMI meters are equipped with software and mechanisms that better alert the Company if there is an issue with overheating. Specifically, there is a heat alarm set within the meter software program, so when the temperature of the meter hits an established level, the Company is alerted of the issue. Tr. 88-92.

49. PPL takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and identify any current issues or problematic trends. Tr. 88.

50. If the Company detects an issue with the meter's temperature, PPL will dispatch a technician to investigate. Tr. 90-91.

51. PPL has conducted substantial research and taken many steps to prevent fire incidents similar to the ones alleged by the Complainant. From the Company's research, "the root cause of the vast majority" of any fires involving new meters is the customer-owned meter bases wearing out and producing loose connections between the "blade" of the meter and the "jaw" of the meter base. Tr. 87-89.

52. PPL has taken several steps to mitigate the risk of these worn out meter bases, including analyzing the materials utilized for meter bases, enhancing its inspection criteria

so that its service technicians are better able to “identify loose jaws in the field,” and ensuring the new AMI meters meet the American National Standards Institute (“ANSI”) and Institute of Electrical and Electronics Engineers (“IEEE”) requirements Tr. 88-89.

53. The Landis + Gyr Focus E350 AX-SD AMI meter to be installed by the Company is neither a fire nor safety hazard. Tr. 87-92.

54. As a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data. Tr. 57, 87, PPL Electric Exhibit No. 5.

55. Multiple levels of passwords and encryption is used such that unauthorized persons cannot obtain through the optical port of the AMI meter. Tr. 95-97.

56. PPL is collecting data on the amount of electricity used and significant event information, such as outages, voltage, heat alarms, and meter tampering alerts. Tr. 56-57, PPL Electric Exhibit No. 5, Section 1.2.

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by

presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). 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. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).³

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.” *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”). Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Id.* at *211. Specifically, in AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the

³ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015); *see also Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted). Section 1501 of the Public Utility Code states, in pertinent part, that:

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. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . .

66 Pa. C.S. § 1501.

When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13). *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018) (*Frompovich*).

A 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. 66 Pa.C.S. § 316, *Kossmann v. Pa. Pub. Util. Comm’n*, 694 A.2d 1147 (Pa.Cmwlth. 1997) (*Kossmann*); and *Stiteler v. Bell Telephone Co. of Pennsylvania*, A.2d 339 (Pa.Cmwlth. 1977) (*Stiteler*).

Health and Safety Concerns

In support of his claims that AMI meters cause adverse health effects and fires. Complainant submitted several written exhibits. C Exhibits 1, D, L – N2, P – R, Z, 2A, 2B, 2F, 2I, 2J, 2T-2W, 2Z, 3C, 3E, 3G and 3H, Tr. 13-48, Tr. 13-48. Complainant does not aver that he or anyone in his household suffers from a medical ailment that would be negatively affected by an AMI meter. However, he generally claims RF Fields from AMI meters can cause negative biological effects such as cancer. Complainant and his wife have DirecTV, a Wi-Fi network and cell phones; however, they limit their exposure by turning the Wi-Fi off when it is not in use and limiting television viewing to one-half hour per day.

Conversely, PPL contends RF fields come from many sources including the seven television broadcasting towers within a 50 mile radius of Complainant’s service property, Wi-Fi, television receivers and his cell phone. PPL Electric Statement No. 1 at 8, Tr. 110-111. The RF signals from the Landis + Gyr Focus meter are for a short duration of 84 seconds over a 24-hour period. PPL Electric Statement No. 1 at 7. PPL contends the constant background level of RF

fields at Complainant's residence are 20 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 12, PPL Electric Exhibit CD-5. The levels of RF fields from the AMI meter would be 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 13.

Disposition

Under Pennsylvania's "*Walker Rule*," it is well-established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (citations omitted). Even if hearsay evidence is "admitted without objection," the ALJ must give the evidence "its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record;" as "a finding of fact based solely on hearsay will not stand." *Id.* at 370 (citations omitted).

PPL objected to Complainant's Exhibits C Exhibits 1, D, L – N2, P – R, Z, 2A, 2B, 2F, 2I, 2J, 2T-2W, 2Z, 3C, 3E, 3G and 3H in its Motion in Limine and at the hearing because they are hearsay and not subject to a hearsay exception. (See PPL Electric Motion in Limine ¶¶ 16-25, Tr. 16-23, 28-29. PPL now contends that although most of these exhibits were admitted into the record, the exhibits should not be used to support any findings of fact.

Other than Complainant's Exhibit 1, which was drafted by Complainant as his Statement, I am giving little or no weight to the other exhibits because the authors of those studies, letters or other documents were not present to be cross-examined, and PPL was denied an opportunity to test the veracity of their medical opinions or their qualifications to render such opinions. 66 Pa. C.S. § 332(c). *Answerphone, Inc. & Elite Answering Serv. v. The Belle Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 70, at *29-30 (Order entered April 1, 1993).

I am persuaded by the credible testimony of Dr. Israel, who testified he would not rely upon Complainants Exhibit L, International Appeal to the United Nations as it is not a scientific study of a peer reviewed Scientific Journal. Tr. 135. Dr. Israel also testified he would

not find persuasive Exhibit N-2, The American Academy of Pediatrics Recommendations About Cell Phones, Cell Towers and Wireless as it was not prepared by the American Academy of Pediatrics but rather the Environmental Health Trust, an advocacy group. Tr. 136-137.

Dr. Israel testified that the C Exhibit Q is a collection of abstracts but is not a scientific study and abstracts do not give sufficient information to understand the scientific study. Tr. 139-140.

In forming his medical opinion, Dr. Israel relied upon studies from the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission's Scientific Committee on Emerging and Newly Identified Health Risks (2015). These entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. The World Health Organization has found that "There is little scientific evidence to support the idea of electromagnetic hypersensitivity." These findings from public health entities and expert panels show that the theory of IEI caused by exposure to RF fields has not been generally accepted in the medical community. PPL Electric Statement No. 2.

Dr. Israel also evaluated scientific research on RF fields and adverse health effects generally. He examined controlled animal laboratory studies, which "provide a reliable basis for determining whether RF fields have the capability to cause or contribute to adverse health effects in animals," such as cancer or adverse effects on growth, development, or reproduction. PPL Electric Statement No. 2 at 12-13. These studies found no such adverse health effects. PPL Electric Statement No. 2 at 12-13. Dr. Israel further reported that the World Health Organization and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone use, which are far higher than the RF from PPL's smart meters, has not shown that RF fields cause adverse health effects. PPL Electric Statement No. 2 at 10-11. Several U.S. state public health authorities also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. PPL Electric Statement No. 2 at 11.

Dr. Israel reviewed all of the exhibits offered by Complainant. Dr. Israel found that none of Complainant's exhibits are actual scientific studies and most appeared to be taken from activist websites. He testified that these exhibits lack scientific objectivity, do not offer a balanced assessment of the scientific research on RF fields, and do not provide scientifically reliable or useful data for reaching conclusions about RF fields and the causation of any symptom or health effect. As a medical doctor and scientific researcher, Dr. Israel would not rely on any of the documents provided by Complainant. PPL Electric Statement No. 2, Tr. 132-150.

Overall, as an expert in medicine and medical research, particularly as related to RF fields and health, Dr. Israel found, based on his medical education, training and experience, and his evaluation of the scientific research, and to a reasonable degree of medical certainty, that there is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2 at 17-22. I find in favor of Respondent on this issue.

Fire Concerns

Complainant contends AMI meters have design defects making them fire hazards in comparison to analog meters. C Exhibits 1, 2X, 2Y. He argues that smart meters place a new increased burden on existing wiring because of the short, high intensity wireless emissions (radio frequency bursts) that the meters produce to signal the utility of energy usage. C MB at 6. Complainant contends these meters can smoke, smolder, catch fire, explode and create over-current conditions on the electrical circuits. C M.B. at 7.

Conversely, PPL argues that the new AMI meters are not a fire hazard because they are equipped with software and mechanisms that better alert the Company if there is an issue with overheating. Tr. 88, 91-92. Additionally, the Company claims it has conducted substantial research and has taken many steps to prevent fires involving loose "jaws" at the customer's meter base, which could cause the micro-arcing of electricity between the jaw and blade of the AMI meter. Tr. 87. PPL also contends the Landis + Gyr Meter meets the American

National Standards Institute (ANSI) and Institute of Electrical and Electronics Engineers (IEEE) requirements and is certified by Underwriters Laboratories. Tr. 88-92.

Disposition

In the *Frompovich* case, the Commission recognized PECO Energy Company did have an issue with the initial deployment of Sensus smart meters. The Commission held:

Specifically, as to the Complainant's fire hazard claim, PECO satisfied its burden of production, or the burden of going forward with the evidence, to show that the brand of AMI to be installed at the Complainant's home – the Landis + Gyr meter – does not present a fire hazard. PECO presented evidence in this case that previously there was a fire hazard problem with a particular brand of meter PECO had initially used in the AMI deployment. However, in approximately 2012, those meters were all removed and replaced with the Landis + Gyr Focus meters. PECO showed that since the installation of over 1.2 million of Landis + Gyr Focus meters, there have been no reports of fire incidents related to the meters. Tr. at 143. PECO showed that a Landis + Gyr meter would be installed at Ms. Frompovich's home.

Additionally, we take judicial notice here that the fire hazard issue involving the prior brand of AMI meter was raised to our attention during PECO's Smart Meter Phase II Plan proceeding at Docket No. M-2009-2123944, discussed *supra*, fn 3. In the Recommended Decision for that case, it was noted that PECO had experienced several meter events involving overheating during the Phase I deployment. PECO initiated corrective action including replacement of the installed smart meters with meters manufactured by a different contractor, Landis + Gyr. PECO had completed replacing the meters on or before January 18, 2013, the date PECO filed its Smart Meter Phase II Plan. *See* Phase II R.D. at 9.

Moreover, the Complainant did not present any competent evidence in this record to show that the Landis + Gyr brand of meters causes fires or otherwise presents a fire hazard. Therefore, we agree with the ALJ's conclusion that the Complainant did not satisfy her burden of proving that the type of AMI meter to be installed at her home would constitute an unsafe fire hazard in violation of 66 Pa. C.S. § 1501.

Frompovich at 56-57.

PECO had an overheating issue with its initial deployment of Sensus AMI meters; however, these Sensus AMI meters were eventually removed by PECO and replaced with Landis + Gyr Focus AXR-SD meters, a similar meter to the E350 Landis + Gyr Focus AX-SD model. *Id.* at 56, Tr. 89-90. It is unknown how the communications systems between PECO and PPL compare; however, the Commission has already deemed a similar make/model to be reasonable and not a fire hazard within the meaning of 66 Pa. C.S. § 1501 and has allowed another electric distribution company to install the Landis + Gyr Focus AXR-SD meter on residential dwellings within its service territory. The Commission has held that since the installation of over 1.2 million Landis + Gyr Focus meters, there have been no reports of fire incidents related to the meters. *Id.* At 56-57. Similarly, there is no evidence to show PPL has had any fire incidents related to a similar make and model of meter after deploying approximately 720,000 such meters.

In the instant case, PPL showed that there is a heat alarm set within the meter software program, so when the temperature of the meter hits an established level, the Company is alerted of the issue. Tr. 88-92. Further, PPL takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and identify any current issues or problematic trends. Tr. 88-92. If the Company detects an issue with the meter's temperature, PPL will dispatch a technician to investigate. Tr. 88-92.

Since there is evidence of some fires in the past due to micro-arcing from loose jaws per the testimony of Mr. Larson (Tr. 87-88), I encourage PPL and/or its Agents (i.e. Grid One Solutions) to perform a statistically relevant sample audit on its past meter installations and going forward to perform certain customer meter base checks (if it is not already doing so) prior to setting any meters as an added precaution against fires caused by micro-arcing. I recommend PPL and its Agents consult with other peer EDCs to determine and adopt the best practices regarding customer meter base inspections. In summary, PPL should perform what tests serve to minimize any potential fires due to micro-arcing.

I am persuaded by the credible testimonies of Dr. Davis and Mr. Larson to find that the new meter is not a fire risk. Although Mr. Larson testified the meter was certified by

Underwriters Laboratories, I recommend PPL and its Agents verify that the Underwriter's Inspection Certificate is present on every AMI meter prior to its installation as an additional precaution. Tr. 86-92.

Privacy Concerns

The Complainant also has raised privacy and cybersecurity issues with the new AMI meter, specifically whether the Company took appropriate steps to encrypt a customer's data and protect against hacking, whether the new AMI meter can be physically compromised through its optical port, and whether the meter can tell if certain appliances are being used by a person. Complainant's Exhibit 1, Part 6; Tr. 95-100. Complainant contends that when the mesh network is completely in place, it could be programmed to collect multiple data points vulnerable to hacking whether or not it is encrypted. C M.B. at 7.

Conversely, PPL argues Complainant's claim is without merit as the AMI meter to be deployed will not be programmed to collect such data and there are layers of security.

Disposition

I am persuaded by the testimony of PPL Witness Larson who testified that PPL Electric "provide[s] the most advanced security that [it] can to ensure data privacy as well as the ability to avoid any type of hacking or penetration." Tr. 98. The Company uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. Tr. 57, 87. The customer's data also is "highly encrypted" to make the "data look illegible to someone who doesn't know what the correct encryption keys are." Tr. 57, 87. Rules also are established as to who can have access to those applications. Tr. 87. Specifically, the Company "use[s] authentication and access controls, which refer to how [PPL Electric] restrict[s] access to the AMI systems to the people that require the use of that" information "for business purposes through user IDs and passwords which are changed on a regular basis." Tr. 57. "Multiple levels of passwords . . . are required" for the applications used by the Company, and there are "active directory passwords within the organization." Tr. 86, 98. Further, cybersecurity and data

privacy were addressed at length in PPL Electric's Smart Meter Plan, PPL Electric Exhibit No. 3, and the Company has been following the processes established therein for cybersecurity and data privacy. Tr. 87.

PPL Electric explained in detail that an unauthorized person cannot obtain information through the optical port of the new AMI meter. Tr. 95-97. Mr. Larson testified that to obtain information through the optical port, a person would have to possess the correct tools, applications, and passwords. Tr. 96. The person first would have to insert an optical probe and have "the proper application to be able to go onto the meter software." Tr. 96. Next, the person would have to have the proper credentials, which includes "active directory passwords" and the active "security token that is received daily." Tr. 96-97. Even if those credentials are obtained, there are "five levels of passwords that are required" to communicate with the meter's software, "with any type of usage data being at the highest level of those five passwords." Tr. 97. Moreover, "[t]hose five passwords are designed out to 20 digit[s]." Tr. 97. Even if all of those protections were bypassed, "any type of access, whether it be a false attempt or manipulation to the meter itself, the system would be made aware of that." Tr. 97. The system could then "move to shut down or not support" the access attempt "if there was a sense of break involved." Tr. 97.

The new AMI meter cannot tell if a customer is using a particular appliance, as alleged by Complainant. Tr. 98. PPL Electric witness Larson explained, "The meter cannot make the determination of what device is being used at what time." Tr. 99. PPL Electric "only make[s] a record of how much electricity the entire home is consuming at any given time." Tr. 99. Moreover, as a part of its Smart Meter Plan proceeding, PPL Electric filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL Electric will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL Electric will use the data. Tr. 56, PPL Electric Exhibit No. 5. Consistent with that policy, the Company will collect data on the total amount of electricity used at the premises as well as significant event information, such as outages, voltage, heat alarms, and meter tampering alerts. Tr. 56-57, PPL Electric Exhibit No. 5, Section 1.2. I find in favor of PPL on this issue.

Opt-In versus Opt-Out Program

Complainant argues Act 129 created an opt-in program as opposed to an opt-out program whereby the General Assembly intended AMI meter deployment to be on a voluntary basis. C Exhibit 1, C MB at 18-21.

Conversely, PPL contends its installation of an AMI Meter is required by Pennsylvania law and that it would not constitute unreasonable or unsafe service to install an AMI Meter at Complainant's property. PPL argues Complainant has failed to demonstrate any AMI Meter causes, contributes to or exacerbates any adverse health effect. PPL denies the AMI Meter causes fires or is a privacy risk.

Disposition

The Commission has ruled that there is no provision in the Code, the Commission's Regulations or Orders that allows a PECO customer to "opt-out" of smart meter installation. 66 Pa.C.S. § 2807(f); See *Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 at 10 (Order adopted January 24, 2013); *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (ALJ Heep Initial Decision dated January 26, 2018). Moreover, the Commonwealth Court has held that federal law does not preempt the Commission's interpretation. See *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017). The Commonwealth Court did not expressly address whether Mr. Romeo could opt-out of a smart meter installation. The Court held that Mr. Romeo's claim that smart meters cause safety and fire hazards and have a negative health impact is not legally insufficient pursuant to 66 Pa. C.S. § 1501, which requires utilities to maintain adequate, efficient, safe and reasonable service and facilities for their customers. *Id.*

I infer from the *Romeo* decision, that it is legally sufficient to plead the injunctive relief requested in the instant case and claim that smart meters are generally unsafe, unhealthy, and the installation of them is unreasonable service in violation of 66 Pa. C.S. § 1501. However, the Commonwealth Court did not expressly address the opt-in versus opt-out argument.

Although Complainants similarly situated to Mr. Romeo are entitled to an evidentiary hearing, there is still horizontal *stare decisis* precedent at the Commission level to hold there is no opt-out provision in the current law in Pennsylvania. The fact that other States have opt-in provisions in their laws is noted but is non-binding.

On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 into law, which directed electric distribution companies with at least 100,000 customers to file, with the Commission, a smart meter deployment and installation plan. Thus, there is a statute requiring smart meter deployment by large electric distribution companies operating within the Commonwealth. 66 Pa. C.S. § 2807(f).

The implementation of the Respondent's Smart Meter Deployment Plan and the approval of the costs associated with its implementation have been found by the Commission to be in accordance with Act 129 of 2008, 66 Pa. C.S. § 2807(f). The Respondent is required by statute and Commission Order to implement a Smart Meter Program, install smart meters throughout its service territory, and to charge a Smart Meter Technology Surcharge to all of its metered customers.

As the Commission stated in its April 21, 2016 Opinion and Order in the case of *Frompovich*:

In past cases involving Smart Meter installation, we have evaluated on an individual case-by-case basis the specific allegations presented in each complaint and reached a conclusion based on those particular circumstances. While PECO is correct that as adopted Act 129 does not provide a general opt out provision, where a complainant's objection to installation of a Smart Meter was not based upon a general objection to Smart Meters *per se*, but rather upon facts specific to the individual complainant, we have denied preliminary relief and allowed the complaint to proceed to hearing. *See Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Material Question entered September 3, 2015; Order on Reconsideration entered January 28, 2016) (*Kreider*); *Paul v. PECO Energy Company*, Docket No. C-2015-2475355 (Order entered March 17, 2016). As we stated previously, "the law does not prohibit us from considering or holding a hearing on issues related to the safety of Smart Meters, consistent with our statutory authority in Section 1501 of

the Code, when a legally sufficient claim is presented.” *Kreider*, Order on Material Question at 17.

As in *Kreider* and *Paul*, Ms. Frompovich has alleged factual averments specific to her that, *if proven*, could implicate, under her particular circumstances, a violation of Section 1501 of the Code, a statute the Commission has jurisdiction to administer. (emphasis added)

Frompovich at 11-12 (Opinion and Order entered April 21, 2016).

To the extent that Mr. Kline desires the ability to opt out of the smart meter installation, he should advocate for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills including: PA House Bill Nos. 1564 and 1565; and Senate Bill No. 443. These bills are not yet law. The Commission has held that it does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. *See Maria Povacz v. PECO Energy Company*, Docket No. C-2012-231716 (Opinion and Order entered January 24, 2013). The Commission held that similarly situated Respondents would be in violation of law if they did not install a smart meter at similarly situated Complainants’ residences. *Id.*, *Frompovich* at 10. Thus, I find in favor of PPL on this issue.

Termination of Service

Complainant claims PPL has no right to terminate his electric service if he denies PPL access to replace his existing meter. C Exhibit No. 1. Complainant also claims PPL violated the law by issuing multiple termination notices to him after he filed a formal complaint on August 24, 2017. Tr. 70-79.

PPL through its vendor, Grid One Solutions, issued at least 11 notices of termination of service. C Exhibits 2C and 2D, PPL Exhibit 2, Tr. 51-58, 62-73. Although I find these termination notices after the date a formal complaint was filed to be in error, PPL corrected its internal policy and now places a termination hold on an account after a formal “smart meter” complaint is served upon PPL. PPL also improved its communication practices and quickly notifies the vendor who is issuing termination notices on behalf of PPL. Tr. 71-74. Thus, PPL

has addressed this policy to prevent similar multiple termination notices during formal litigation from occurring. Tr. 77-78. There was a gap in time from when the Company received service of a formal complaint and communication to the contractor was relayed directing same to cease attempts to install a meter. Tr. 78. However, that has been addressed internally. Tr. 78-79. PPL did cease issuing notices of termination to Mr. Kline. Thus, I find no violation of any Commission regulation.

PPL argues that if the Commission denies and dismisses this Complaint, PPL will have a legal right to initiate termination procedures if it is denied reasonable access to the Company's meter per its tariff, the Commission's Regulations, and Chapter 14 of the Public Utility Code. *See* 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3). PPL Electric Exhibits Nos. 6, and 7.

A 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. 66 Pa.C.S. § 316, *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa.Cmwlt. 1997) (*Kossman*); and *Stiteler v. Bell Telephone Co. of Pennsylvania*, A.2d 339 (Pa.Cmwlt. 1977) (*Stiteler*).

Rule 10(B)(2)(g) of PPL Electric's tariff states that the Company is authorized to terminate service when: (1) its "representatives cannot gain admittance or are refused admittance to the premises for the purpose of reading meters, making repairs, making inspections, or removing Company property"; (2) "the customer interferes with Company representatives in the performance of their duties; or (3) "the meters or other equipment of the Company are not accessible during reasonable hours." PPL Electric Exhibit No. 7 at 2. Similarly, Rule 2F of PPL's Tariff, Supplement No. 42, Electric Pa. PUC No. 201 provides that PPL "shall have access at all reasonable hours to customer's premises, without charge for the purpose of inspecting, installations, installing meters, reading, testing, removing, replacing, or otherwise maintaining or disposing of any of Company's property." PPL Electric Exhibit No. 6.

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. 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.

52 Pa. Code § 56.81(3). Additionally, the Commission held in *Frompovich*,

Based on our adjudication of Ms. Frompovich's claims herein, we find that PECO's proposed termination of electric service to the Complainant's service address for the Complainant's refusal to permit PECO access to its meter, so that PECO's employees can replace the existing AMR meter with an AMI meter, to be consistent with and authorized under Section 1501 of the Code, the Commission's Regulations at 52 Pa. Code § 56.81(3), and the Company's Tariff. We remind PECO, however, that prior to taking any steps related to such termination of service, it must adhere to the applicable provisions of the Commission's Regulations relating to Notice Procedures Prior to Termination at 52 Pa. Code §§ 56.91-100. In the applicable written notice(s) required under the Commission's Regulations, PECO is requested to inform or instruct Ms. Frompovich as to how she may avoid termination related to the meter.

Frompovich at 59. Accordingly, given this *stare decisis* precedent, I find in favor of PPL on this issue.

CONCLUSION

For all of these aforementioned reasons, the complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501. Although the Complainant is genuine in his concerns, the Commission's decisions cited above are controlling.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa. C.S. § 331.

2. PPL Electric Utilities Corporation’s smart meter procurement and installation plan, which was approved by Commission Order in the case of *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) does not contain a provision for customers to opt out of smart meter installation.

3. Nothing in Act 129 permits a customer to “opt-out” of a smart meter installation. See, e.g., *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016).

4. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

5. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

6. A person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive”; rather, the person

must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision).

7. In AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015).

8. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701.

9. Complainant has failed to sustain his burden of proof that Respondent violated Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

10. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. See *Elkin v. Bell Telephone Co. of Pa.*, 420 A.2d 371, 374 (Pa. 1980).

11. When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the

circumstances in this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13).

12. Under Pennsylvania’s “*Walker Rule*,” it is well-established that “[h]earsay evidence, properly objected to, is not competent evidence to support a finding.” *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976).

13. Even if hearsay evidence is “admitted without objection,” the ALJ must give the evidence “its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record;” as “a finding of fact based solely on hearsay will not stand.” *Id.* at 370.

14. Complainant has failed to sustain his burden of proof that installing the new AMI meter would violate the Public Utility Code or any Commission regulation or order. See 66 Pa. C.S. §§ 332(a), 701.

15. PPL is legally required to install the RF Mesh meter on the Complainant’s property by Act 129 and Commission orders. See 66 Pa. C.S. § 2807(f); Smart Meter Procurement and Installation, Docket No. M-2009-2092655, pp. 9, 14 (Order entered June 24, 2009).

16. The Commission previously determined that the Company’s existing PLC meters are not compliant with Act 129 and the Commission’s Smart Meter Implementation Order. See *Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 24 (Order entered June 24, 2010).

17. Under the Company’s Commission-approved Smart Meter Plan, PPL must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission’s Smart Meter Implementation Order. See *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology*

Procurement and Installation Plan, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015).

18. If the Company does not install the new RF Mesh meter on the Complainant's residence in accordance with the Commission-approved deployment schedule, PPL may violate the Commission's 2010 Smart Meter Order, 2015 Smart Meter Order, and Smart Meter Implementation Order.

19. The Complainant has failed to demonstrate that the new AMI meter causes, contributes to, or exacerbates any adverse health effect.

20. The Complainant has failed to sustain his burden of proof that installing the new AMI meter would constitute unsafe or unreasonable service in violation of 66 Pa. C.S. § 1501.

21. The Public Utility Code, the Commission's regulations, and PPL Electric's tariff expressly permit the Company to terminate service if a customer fails to provide the Company with access to the property in order to replace the meter. See 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); PPL Electric Exhibit No. 7.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by John Kline against PPL Electric Utilities Corporation at Docket No. C-2017-2621072 is denied and dismissed.

2. That the docket in this proceeding be marked closed.

Date: August 16, 2018

_____/s/_____

Elizabeth H. Barnes
Administrative Law Judge