

Tori L. Giesler, Esq.
(610) 921-6658
(330) 315-9263 (Fax)

August 30, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Catherine Lamagna v. Pennsylvania Electric Company
Docket No. C-2017-2608014

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of Pennsylvania Electric Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,


Tori L. Giesler

dIm
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE LAMAGNA	:	
	:	
v.	:	DOCKET NO. C-2017-2608014
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**MAIN BRIEF
ON BEHALF OF
PENNSYLVANIA ELECTRIC COMPANY**

Tori L. Giesler, Attorney No. 207742
Lauren M. Lepkoski, Attorney No. 94800
Teresa K. Harrold, Attorney No. 311082
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Counsel for Pennsylvania Electric Company

Dated: August 30, 2018

TABLE OF CONTENTS

I. PROCEDURAL HISTORY..... 1

II. LEGAL STANDARDS..... 3

III. SUMMARY OF ARGUMENT..... 5

IV. ARGUMENT..... 7

A. The Complainant failed to meet her burden of proof that Penelec violated the Public Utility Code, a Commission Order, or a Commission regulation..... 7

 1. The Installation of Smart Meters is Required by Law..... 7

 2. The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service..... 14

 3. All hearsay and lay health and safety testimony was properly objected to and excluded and may not be relied upon in this matter..... 21

V. CONCLUSION..... 23

APPENDIX A - PROPOSED FINDINGS OF FACT

APPENDIX B - PROPOSED CONCLUSIONS OF LAW

APPENDIX C - PROPOSED ORDERING PARAGRAPHS

TABLE OF AUTHORITIES

Cases

<i>Frompovich v. PECO Energy Co.</i> , Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018).....	5
<i>Gibson v. W.C.A.B.</i> , 861 A.2d 938, 947 (Pa. 2004).....	7, 22
<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan</i> , Docket No. M-2009-2123950 (Order entered June 9, 2010).....	8
<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penelec Company For Approval of Their Smart Meter Deployment Plan</i> , Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).....	6, 8, 10, 11
<i>Lutherschmidt v. Metropolitan Edison Company</i> , Docket No. C-2010 2200353 (Final Order entered March 25, 2011).....	11
<i>Negley v. Metropolitan Edison Company</i> , Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).....	11
<i>Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n</i> , 413 A.2d 1037 (Pa. 1980).	4
<i>Pa. Bureau of Corrections v. City of Pittsburgh</i> , 532 A.2d 12 (Pa. 1987).	4
<i>Pa. Pub. Util. Comm'n v. HIKO Energy, LLC</i> , 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015).....	4
<i>Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n</i> , 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).	3, 4
<i>Smart Meter Procurement and Installation</i> , Docket No. M-2009-2092655 (Order entered June 24, 2009).....	5
<i>Susan Kreider v. PECO Energy Co.</i> , Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).	5
<i>Waldron v. Phila. Elec. Co.</i> , 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).	4

Statutes

66 Pa.C.S. § 101, <i>et seq.</i>	8
66 Pa.C.S. § 1501.....	5, 15
66 Pa.C.S. § 2806.1, <i>et seq.</i>	5, 13
66 Pa.C.S. § 2807(f).....	8
66 Pa.C.S. § 2807(f)(2).....	8
66 Pa.C.S. § 2807(f)(2)(i)	11
66 Pa.C.S. § 332(a)	3
66 Pa.C.S. § 701.....	4

Rules

Pa.R.E. 701	7, 22, 23
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I. PROCEDURAL HISTORY

On June 6, 2017, Catherine Lamagna (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) to dispute the installation of a smart meter by Pennsylvania Electric Company (“Penelec” or “Company”) at 616 Main Street, Thompson, Pennsylvania 18465 (“Service Location”).

On June 26, 2017, the Company filed its Answer denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

On July 17, 2017, the Complainant filed a letter requesting additional time to respond to the Company’s Preliminary Objections.

On July 24, 2017, a Call-In Telephonic Hearing Notice was issued that scheduled a telephonic hearing for August 28, 2017 before Administrative Law Judge (ALJ”) Jeffrey Watson. This hearing was subsequently canceled due to the outstanding Preliminary Objections.

On August 31, 2017, the Complainant filed a response to the Company’s Preliminary Objections.

On October 3, 2017, an Interim Order was issued by ALJ Watson, which denied the Company’s Preliminary Objections.

On October 26, 2017, a Call-In Telephonic Hearing Notice was issued scheduling a telephonic hearing for January 8, 2018.

Also on October 26, 2017, the Company propounded discovery (“Discovery Requests”) to the Complainant.

The Complainant failed to timely respond to the Company’s Discovery Requests.

On November 22, 2017, the Company filed a Motion to Compel requesting that the Complainant provide answers to the Discovery Requests.¹

The Complainant did not respond to the Company's Motion to Compel.

The Company subsequently contacted the Complainant who agreed to provide responses to the Discovery Requests by January 30, 2018.

On December 28, 2017, the Company submitted a Motion for Continuance of the telephonic hearings scheduled for January 8, 2018.

On December 29, 2017, ALJ Watson issued an Interim Order granting the Company's Motion to Compel in its entirety and cancelling the January 8, 2018 hearing.

On January 3, 2018, a Prehearing Order was issued requesting that the Parties exchange lists detailing their planned witnesses and summarizing the topics of testimony by February 9, 2018, and their proposed hearing exhibits by April 27, 2018.

On January 10, 2018, a Call-In Telephonic Hearing Notice was issued scheduling telephonic hearings for May 22 and 23, 2018.

On February 9, 2018, the Company circulated its proposed witness list. The Complainant did not provide any witness information to the Company.

On March 28, 2018, the Company filed a Motion to Dismiss based on the Complainant's failure to answer the Discovery Requests and violation of ALJ's January 3, 2018 Order requiring the submission of witness lists by February 9, 2018.

The Complainant did not respond to the Company's Motion to Dismiss.

On April 3, 2018, the ALJ issued an Interim Order granting in part and denying in part the Company's Motion to Dismiss. The Interim Order required the Complainant to serve full and

¹ A corrected Motion to Compel was subsequently filed by the Company on November 27, 2017.

complete responses to the Discovery Requests and provide all other information identified in the January 3, 2018 Order by April 13, 2018.

On April 23, 2018, the Complainant requested an extension on providing hearing exhibits to the Company.

On April 24, 2018, the ALJ granted the Complainant's request and extended the due date for proposed hearing exhibits until May 4, 2018.

On May 17, 2018, the Complainant called the ALJ's office to request a postponement of the May 22 and 23 hearings. The Complainant subsequently submitted this request in writing.

Also on May 17, 2018, the Company submitted a written opposition to the Complainant's requested hearing postponement.

On May 18, 2018, ALJ Watson issued an Interim Order denying the Complainant's request for a hearing extension.

A hearing was held in this matter on May 22, 2018.

On June 23, 2018, the ALJ issued an order establishing a due date for main briefs of August 30, 2018. The Company submits this Main Brief pursuant to this order.

II. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.² The first step in carrying the burden of proof is establishing a *prima facie* case that Penelec violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.³ In order to establish a *prima facie*

² 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

³ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁴ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁵

Although the factual burden may shift during the course of a proceeding, the Complainant always maintains the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."⁶ A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁷

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."⁸ Section 1501 of the Public Utility Code states, in relevant part: "every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities...."⁹ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.¹⁰

⁴ *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

⁵ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁶ *Lansberry*, 578 A.2d at 602.

⁷ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015), *supra*.

⁸ 66 Pa.C.S. § 701.

⁹ 66 Pa.C.S. § 1501.

¹⁰ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

III. SUMMARY OF ARGUMENT

The Complainant wholly failed to meet her burden of proof that the installation of a smart meter at their service location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

Penelec has an absolute obligation to install smart meters at all of its customers' service locations under Act 129 of 2008 ("Act 129").¹¹ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.¹² Further, both Act 129 and the Commission's Implementation Order require that electric distribution companies ("EDCs") install wireless smart meters with specific functionality. Penelec's smart meters adhere to all of the requirements of Act 129 and the Commission. The smart meter components and deployment of smart meters in the Penelec territory were identified in Penelec's Smart Meter Deployment Plan, which was ultimately approved by the Commission on June 20, 2014.¹³ Penelec must install a smart meter at the Complainant's Service Location in order to remain in compliance with Act 129, related Commission orders, and its Smart Meter Deployment Plan.

In addition, the Complainant failed to establish that the installation of a smart meter constitutes unreasonable service. The Complainant's baseless statements related to privacy and radio frequency concerns should be rejected as unsupported allegations. The Complainant offered no evidence to support her allegations. By contrast, Penelec's expert witnesses, Scott Palmquist,

¹¹ 66 Pa.C.S. § 2806.1, *et seq.*

¹² *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order").

¹³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penelec Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014) (hereinafter, "Smart Meter Deployment Plan").

Senior Product Line Manager for Smart Grid Security and Networking for Itron Inc. (“Itron”), and Michael Belanger, Senior Product Line Manager for Network Communication for Itron, provided convincing evidence that Penelec’s smart meter network is safe and secure for customers. Also on behalf of the Company, witness John Ahr provided detailed testimony related to Penelec’s Act 129 compliance and the privacy safeguards applicable to Penelec’s smart meters.

Moreover, the lay testimony and exhibits offered by the Complainant should carry little, if any, weight. 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.”¹⁴ 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.¹⁵ In this case, none of the testimony offered by the Complainant was based on her own experience or personal knowledge related to smart meters. In fact, because a smart meter has yet to be installed at their Service Location, the Complainant has no personal knowledge or experience of relevance here. As such, all lay testimony from the Complainant related to more specialized topics, including privacy and radio frequency, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

In sum, the Complainant utterly failed to establish by a preponderance of the evidence that Penelec violated a Commission statute, regulation, or order. Specifically, the Complainant has not met her burden of proof that the installation of a smart meter constitutes unreasonable service by

¹⁴ *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).

¹⁵ Pa.R.E. 701.

the Company. Accordingly, Penelec urges the Commission to dismiss the Complaint with prejudice.

IV. ARGUMENT

A. The Complainant failed to meet her burden of proof that Penelec violated the Public Utility Code, a Commission Order, or a Commission regulation.

1. The Installation of Smart Meters is Required by Law.

Under Act 129, Penelec has an absolute obligation 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's Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.¹⁶ Allegations by the Complainant to the contrary should be disregarded.

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code ("Code").¹⁷ 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.¹⁸ 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.¹⁹

¹⁶ *Smart Meter Deployment Plan*, p. 9.

¹⁷ 66 Pa.C.S. § 101, *et seq.*

¹⁸ 66 Pa.C.S. § 2807(f); *see* Exhibit No. 1.

¹⁹ 66 Pa.C.S. § 2807(f)(2) (emphasis added).

Pursuant to Section 2807(f) of the Code, Penelec and the other FirstEnergy EDCs in Pennsylvania (Metropolitan Edison Company and Pennsylvania Power Company)²⁰ filed their Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan on August 14, 2009 (“2009 SMP Plan”).²¹ By Order entered on June 9, 2010, the Commission approved the Companies’ 2009 SMP Plan with modifications, noting that the Companies expected to file their full deployment plan by April 2012.²² On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order; (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.²³ On March 19, 2014, the Companies submitted their revised Smart Meter Deployment Plan,²⁴ which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan. As Mr. Ahr testified, in the original Deployment Plan, the FirstEnergy Companies proposed to deploy 60,000 smart meters in the service territory of Pennsylvania Power Company, an affiliate of Penelec. Under the Revised

²⁰ West Penn Power Company, which was acquired through a merger between FirstEnergy and Allegheny Energy, did not join in the filing of this plan. Penelec, Metropolitan Edison Company, Pennsylvania Power Company, and West Penn Power Company are collectively referred to herein as the “Companies.”

²¹ See Exhibit No. 3.

²² *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 (Order entered June 9, 2010), p. 10.; see Penelec Exhibit 4.

²³ *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 December 31, 2012.

²⁴ See Penn Power Exhibit 5.

Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁵ In its June 25, 2014 Opinion and Order, the Commission recognized the benefits of early deployment of smart meters and approved the revised Smart Meter 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.²⁶

In this proceeding, the Complainant's primary argument is that a smart meter may be deployed at her service location only upon her express request and consent.²⁷ The ALJ crystalized the Complainant's issue as follows²⁸:

Q. Okay. I'm just trying to be helpful to everybody and just to make sure everyone is following along and that the record is clean. If I'm wrong or incorrect in any way, please tell me. But is your testimony that it's your understanding of the law that Act 129 of 2008 provides that a residential electric consumer is not required to have a smart meter unless they request the smart meter or unless the building that's the subject of installation of a smart meter is new construction? Is that pretty much what you are saying?

A. Yes, Your Honor.

Q. Okay. Well, let me ask you this. Okay? It's fair to say, then, that you object to the company installing a smart meter at your residence? Fair?

²⁵ Tr. 261.

²⁶ *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), p. 16; *see* Penn Power Exhibit 7.

²⁷ Tr. 27.

²⁸ Tr. 37-38.

A. Yes.

The ALJ later again summarized the Complainant's issue²⁹:

Q. And you believe that the law provides that, unless you consent to the installation, the company cannot force you to have a smart meter at your residence? Is that fair?

A. Yes, Your Honor.

The Complainant points to Section 2807(f)(2)(i) of the Code for the proposition that the deployment of smart meters for individual customers should occur only upon request of the individual customer.³⁰ By extension, the Complainant appears to contend that Act 129 allows an overall "opt-out" for customers to reject installation of a smart meter. At the outset, Penelec points out that Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to "opt-out." Neither the Company's Commission-approved Smart Meter Deployment Plan nor Act 129 permit such opt-outs to occur.³¹

The Complainant's interpretation of Section 2807(f) of the Code is incorrect. Section 2807(f)(2)(i) provides:

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

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.³²

²⁹ Tr. 82.

³⁰ Tr. 37.

³¹ *Smart Meter Deployment Plan*, pp. 9 and 48; see, e.g., *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 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

³² 66 Pa.C.S. § 2807(f)(2)(i).

Company witness Mr. Ahr rebutted Ms. Lamagna'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.³³ Specifically, Mr. Ahr testified that the Company's Smart Meter Deployment Plan, as approved by the Commission, provides for all customers to receive smart meters on or before December 31, 2022.³⁴ This full deployment is broken into two parts. 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, 2022.³⁵ Mr. Ahr's testimony is consistent with the FirstEnergy Companies' Commission-approved Smart Meter 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 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 Penn Power's service territory are included in the 1.5% estimate and will be addressed in the time frame discussed above.³⁶

As Mr. Ahr explained, there is no provision for less than 100 percent smart meter deployment. Specifically, Mr. Ahr testified that "Act 129 calls for 100 percent customer deployment of smart

³³ Tr. 122

³⁴ *Id.* at 123.

³⁵ *Id.* at 123-124.

³⁶ Penelec Exhibit 5, pp. 47-48.

meters with an implementation timeline of up to 15 years from the date of approval of the SMIP plan. There will be no opt-out for customers.”³⁷

To date, Penelec has not installed a smart meter at the Complainant’s service location.³⁸ With respect to the Company’s deployment timeframe, Mr. Ahr explained that the Company cannot continue to manually read the Complainant’s meter because the Company will deploy smart meters for all its customers in the Complainant’s area served by Penelec. In fact, after full deployment of smart meters, the Company will no longer employ meter readers.³⁹ Currently, the Company sends out an employee to the Complainant’s residence for the sole purpose of reading only the Complainant’s meter due to the pendency of this proceeding.⁴⁰

The Complainant raised a broad, though ill-specified opposition to the legal validity of Act 129. She referred to dialogue in the General Assembly’s legislative history of Act 129 for her proposition that smart meter deployment is invalid. In particular, the Complainant pointed to the Pennsylvania Legislative Journal of the Senate of Wednesday, October 8, 2008, in which Senators discussed House Bill 2200, which would eventually become the smart meter statute at 66 Pa.C.S. § 2806.1, *et seq.*⁴¹ The Complainant pointed to statements of Senators Tomlinson, Boscola, Ferlo and Fumo, containing their observations about the smart meter bill, and about the electric industry in general. It must be noted, however, that each of the Senators quoted by the Complainant voted in favor of the passage of Act 129.⁴²

³⁷ Tr. 123.

³⁸ Tr. 133.

³⁹ Tr. 126.

⁴⁰ Tr. 125.

⁴¹ Complainant Exhibit D.

⁴² Complainant Exhibit D, p. 2631. Pennsylvania Legislative Journal of Wednesday October 8, 2008, p. 2631.

In similar fashion, the Complainant presented the Pennsylvania Legislative Journal of the House of Representatives that contains Representatives' discussion of smart meter legislation. The Complainant points to statements of Representatives George, Metcalfe, and Thomas concerning smart meter legislation, and about the electric market in Pennsylvania.⁴³ Representative Metcalfe opposed the passage of smart meter legislation. Nevertheless, the legislation passed the House of Representatives' vote, with Representative George favoring the bill, Representative Metcalfe voting against the bill, and Representative Thomas abstaining.⁴⁴ That certain comments by a handful of legislators could be interpreted as supportive of an opt-out to smart meter installation is simply irrelevant. The final version of Act 129 that was signed into law by the Pennsylvania legislature does not contain an "opt-out" provision. As indicated by the affirmative votes of the House and Senate members in favor of Act 129, any legislative commentary that is inconsistent with the final version of the law should be disregarded.

The Complainant further raised an issue that she termed "Senatus Consultum."⁴⁵ Insofar as Penelec understands the Complainant's argument, she appears to refer to a Roman legal principle that allowed the Roman Senate to determine the legislative will of the population.⁴⁶ She first described the term as meaning that if two or more senators agree on an issue, then the agreement becomes law.⁴⁷ The Complainant later argued that the term *Senatus Consultum* implies that smart meter legislation could not become law unless 100 percent of the public favors the

⁴³ Complainant Exhibit E. Pennsylvania Legislative Journal, House of Representatives, Wednesday October 8, 2008; Session of 2008, 192D of the General Assembly No. 65.

⁴⁴ Complainant Exhibit E, p. 2327.

⁴⁵ Tr. 47.

⁴⁶ "Senatus Consultum. In Roman law. A decision or decree of the Roman senate, having the force of law, made without the concurrence of the people. These enactments began to take the place of laws enacted by popular vote, when the commons had grown so great in number that they could no longer be assembled for legislative purposes." Black's Law Dictionary, Revised Fourth Edition.

⁴⁷ Tr. 47.

legislation.⁴⁸ In any event, the Complainant's assertion that the passage of Act 129 required a unanimous consent of the Pennsylvania population is incorrect. Article II of the Pennsylvania Constitution provides that "[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives."⁴⁹ The enactment of a law in Pennsylvania, including Act 129, does not require a vote of the populace, much less a unanimous vote. Nor does it permit the creation of law by a mere agreement amongst two legislators.

2. The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service.

Although Ms. Lamagna raised a few different health and safety concerns related to smart meters, she failed to provide any reliable evidence in support of her allegations. By contrast, Penelec offered extensive expert testimony to rebut the Complainant's allegations. The Complainant failed to establish even a bare minimum of her burden of proof to show that the deployment of smart meters is unreasonable or constitutes inadequate utility service.

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

⁴⁸ Tr. 57.

⁴⁹ Commonwealth of Pennsylvania Constitution, Article II, Section 1.

reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.⁵⁰

The Complainant failed to demonstrate that the installation of a smart meter at her residence would constitute unreasonable or inadequate service under Section 1501.

Ms. Lamagna testified that a primary concern about the safety of smart meters is related to their emissions:

These smart meters are digital. They work 24/7. And there are --they are working 24/7. They are emitting the electricity, dirty electricity. They have the radiofrequency. They have the electromagnetic pulses. For 24/7, it's pulsating all the time. If it's digital, you can't turn it off. Digital means it's either on or off. These things are constantly going.⁵¹

In response to the Complainant's concerns about smart meter emissions, Penelec presented the testimony of Michael Belanger, Itron's Senior Product Line Manager for Network Communications. Mr. Belanger was qualified as an expert in the area of design, operation, communication and technology associated with the Itron metering system.⁵² Mr. Belanger testified that RF waves are emitted by nearly all commonly-used electronic devices.⁵³ Mr. Belanger testified each radio frequency transmission created by a smart meter signal is very short duration, lasting for approximately 150 milliseconds or 0.15 seconds. In a 24-hour period, the total transmission time for the average smart meter is just under three minutes.⁵⁴ He further testified that the safe levels for radio frequency transmissions in the United States were established by the Federal Communications Commission ("FCC"), referred to as the maximum permissible exposure

⁵⁰ 66 Pa.C.S. § 1501.

⁵¹ Tr. 54.

⁵² *Id.* at 147.

⁵³ *Id.* at 150.

⁵⁴ *Id.* at 149.

limit. The FCC relied on national and international studies to determine the safe levels for radiofrequency communication. In particular, the FCC relied on studies by two organizations, the National Council on Radiation Protection and Measurements and the Institute of Electrical and Electronics Engineers. The organizations developed recommendations based on extensive studies of the scientific literature related to the potential biological effects of radio frequencies. In addition, the FCC coordinated with a number of other federal agencies in determining the maximum exposure limit. The agencies include the Environmental Protection Agency, the Food and Drug Administration, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health.⁵⁵

The FCC's maximum permissible exposure limit for the Itron smart meter is 0.61 milliwatts per square centimeter for the 900 megahertz LAN radio in the Itron smart meter.⁵⁶ Mr. Belanger stated that, based on the average transmission duty cycle for the meters, the meters transmit less than one percent of the maximum permissible limit set by the FCC, or, more precisely, 0.8 percent of that FCC limit.⁵⁷ The study, "An Investigation of Radio Frequency Fields Associated with the Itron Smart Meter," concluded that the components of an Itron smart meter fall within acceptable FCC guidelines.⁵⁸ Advanced Compliance Solutions ("ACS"), an independent laboratory engaged by Itron to evaluate the radio frequency emissions from Itron smart meters, also found that the smart meter's 900 megahertz LAN radio was consistent with FCC requirements.⁵⁹

⁵⁵ *Id.* at 151-153.

⁵⁶ *Id.* at 151-152.

⁵⁷ *Id.*

⁵⁸ Tr. 161.

⁵⁹ Penelec Exhibit Nos. 14, 15 and 16; Tr. 153-159.

Another optional smart meter component, the ZigBee radio, was also found to emit radio frequencies well below the FCC's maximum permissible exposure limit. The ZigBee radio is an optional device, used only upon customer request, which can be enabled to communicate to local home area network devices, such as a programmable thermostat or a display device in the home.⁶⁰ The maximum permissible exposure limit applicable to the Zigbee radio is 1.00 milliwatts per square centimeter.⁶¹ Mr. Belanger explained that the ZigBee radio, which transmits at 2.4 gigahertz, meets FCC regulations and emits far below the maximum permissible exposure limit.⁶² ACS also found that the Zigbee radio component is fully compliant with FCC standards.⁶³

Mr. Belanger summarized his findings regarding smart meter safety with the following example: assuming that a person stands only one foot from the smart meter, and that the smart meter is transmitting 100 percent of the day, the resulting radiofrequency exposure to that person is less than one percent of the FCC's maximum exposure limit.⁶⁴ In actuality, Itron's smart meters only emit radio frequencies for three minutes per day, and customers are typically much farther away from a smart meter than one foot. At the more realistic distance of ten feet from the smart meter, the RF field diminishes to 100 times smaller, or about 0.008 percent of the maximum exposure limit.⁶⁵ Mr. Belanger concluded: "Because the exposure level was well below the maximum permissible exposure limit determined by the FCC, it is my expert opinion that the RF transmission from the Itron smart meters are not harmful to the health of customers."⁶⁶

⁶⁰ Tr. 152.

⁶¹ *Id.* at 151-152.

⁶² *Id.* at 156.

⁶³ Penelec Exhibit Nos. 14, 15 and 16; Tr. 153-159.

⁶⁴ Tr. 161.

⁶⁵ *Id.* at 161.

⁶⁶ *Id.* at 163-164.

The Complainant also alleged that smart meters pose a risk of cybersecurity breach. She stated in her Complaint: “Analog meter I have currently has safety features. Smart meters do not....A smart meter is a computer device which is many times more vulnerable to cyber threats”⁶⁷ To address her allegations, the Company presented the testimony of Scott Palmquist, Senior Product Manager of Itron for Smart Meter Grid Security and Networking, who was qualified as an expert in the area of advanced metering and network cybersecurity.⁶⁸ Mr. Palmquist described the cybersecurity protections involved in each layer of Penelec’s smart meter network, which is composed of the home area network (“HAN”), local area network (“LAN”), regional area network (“RAN”), wide area network (“WAN”), and field area network (“FAN”).⁶⁹ The HAN is an optional network that allows qualified home devices to display home energy usage.⁷⁰ All smart meters are equipped with the LAN zone, which is the mesh network of smart meters under a field-deployed router.⁷¹ The meters send their data to the field router, which in turn sends the data to the utility data center.⁷² The next layer, the RAN, is a collection of many LANs.⁷³ The LAN and RAN zones utilize the same cybersecurity protections. Smart meters only respond to authorized commands from the utility data center and all smart meter data is encrypted.⁷⁴

The WAN is the connection back to the utility data center for the smart meters in the LAN and RAN.⁷⁵ The WAN carries the encrypted meter traffic and adds an additional layer of encryption between the field router and the utility data center.⁷⁶ The smart meter traffic remains

⁶⁷ Complaint Paragraph 4.

⁶⁸ Tr. 180.

⁶⁹ *Id.* at 184-188.

⁷⁰ *Id.* at 152, 182.

⁷¹ *Id.* at 185.

⁷² *Id.* at 185.

⁷³ *Id.* at 185-186.

⁷⁴ *Id.* at 186.

⁷⁵ *Id.* at 186-187.

⁷⁶ *Id.*

encrypted until it is processed by the utility head and data collection system.⁷⁷ Mr. Palmquist testified that Cisco’s bidirectional communication FAN solutions are used throughout the Itron communication network.⁷⁸ The Cisco FAN solutions provide security controls that include hiding network addresses, authenticating devices, and an interface that monitors traffic flows and provides class of services for different priorities of traffic.⁷⁹ 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.⁸⁰

Mr. Palmquist further described the security protocols implemented in Penelec’s smart meter system. He testified that Penelec’s smart meter system meets the standards established by the National Institute of Standards (“NIST”), a nationally recognized authority on the cybersecurity of smart meters. Itron follows the smart meter guidance set forth in the publication NIST IR 7628.⁸¹ NIST FIPS Publication 197 includes the encryption standard (Advanced Encryption Standard – AES) used by Itron smart meters.⁸² He further testified that the North American Electric Reliability Corporation (“NERC”) has developed standards, known as critical infrastructure protection, which discuss various requirements for reliable generation and transmission of electricity.⁸³ Although NERC standards are not binding on Itron’s smart meters, Itron’s smart meters also adhere to NERC standards.⁸⁴

⁷⁷ *Id.* at 187.

⁷⁸ *Id.* at 188.

⁷⁹ *Id.*

⁸⁰ *Id.* at 188-189.

⁸¹ *Id.* at 192.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 192-194.

Ms. Lamagna also raised generic concerns related to privacy.⁸⁵ Company witness Ahr responded to the Complainant's concerns about privacy, testifying that the only information that is accessible to the Company through a smart meter is the customer's electricity use and how it increases or decreases over the course of a day.⁸⁶ He further noted that smart meters do not provide the Company with information about what appliances are being used or what is consuming electricity within the home, but only communicate total electric usage.

The Company also presented its Commission-approved Privacy Policy. The Company's Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information. The policy states that Penelec will not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's consent.⁸⁷ The Privacy Policy explains the security protections in place when a customer's usage data is transmitted across the smart meter network. The smart meter network includes several security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.⁸⁸

Finally, the Complainant made a few vague allegations related to the fire risk of smart meters based on information she purportedly heard on the news.⁸⁹ The Complainant's source for

⁸⁵ *Id.* at 25, 62, 66, 67, 69.

⁸⁶ *Id.* at 128.

⁸⁷ *Id.* at 127.

⁸⁸ *Id.* at 127-129; Penelec Exhibit 9.

⁸⁹ *Id.* at 79.

this allegation was properly objected to and excluded as hearsay evidence.⁹⁰ To address the Complainant's concerns on this issue, Company witness John Ahr responded that there is no evidence that the Company's smart meters pose a risk of fire.⁹¹

Despite failing to support her allegations with any reliable evidence, the Company still rebutted each of the Complainant's allegations related to the Company's smart meters. The Complainant wholly failed to demonstrate that the installation of a smart meter at her residence would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code.

3. All hearsay and lay health and safety testimony was properly objected to and excluded and may not be relied upon in this matter.

Ms. Lamagna introduced a number of exhibits, which were properly objected to and excluded as hearsay. Further, the Complainant attempted to offer testimony related to health and safety issues without any expert credentials on these issues. As a lay witness, Ms. Lamagna was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge. All of the foregoing testimony and exhibits carry no evidentiary weight and, where applicable, were properly objected to and excluded.

According to Pennsylvania Rule of Evidence 701,⁹² a lay witness is limited to giving opinion testimony that is rationally based on the witness's own perceptions. Specifically, Rule 701 provides as follows:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

⁹⁰ *Id.* at 78-80.

⁹¹ *Id.* at 116.

⁹² Pa.R.E. 701.

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.”⁹³ 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.⁹⁴ In this case, the bulk of the Complainant’s testimony and exhibits related to issues outside the scope of her personal knowledge and were based on hearsay.⁹⁵ All such testimony and exhibits were properly excluded upon objection. To the extent such testimony was not objected to, such testimony should carry insignificant weight that cannot support the Complainant’s burden of proof in this proceeding.

Penelec presented extensive expert testimony in support of its position that its smart meter deployment is safe, reasonable and adequate. The Complainant, on the other hand, failed to present any credible or relevant evidence to support her allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. In view of the Complainant’s failure to support her position, much less fulfill her burden of proof, the Complaint should be denied and dismissed with prejudice.

⁹³ *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).

⁹⁴ Pa.R.E. 701.

⁹⁵ In fact, because a smart meter has yet to be installed at their Service Location, the Complainant has no personal knowledge or experience of relevance here.

V. CONCLUSION

WHEREFORE, Pennsylvania Electric Company respectfully requests that Administrative Law Judge Jeffrey Watson recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Catherine Lamagna with prejudice.

Respectfully submitted,

Dated: August 30, 2018



Lauren M. Lepkoski
Attorney No. 94800
Tori L. Giesler
Attorney No. 207742
Teresa Harrold
Attorney No. 311082
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
(610) 921-6658
(610) 921-6783
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com
tharrold@firstenergycorp.com

Counsel for Pennsylvania Electric Company

APPENDIX A

PROPOSED FINDINGS OF FACT

1. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.⁹⁶
2. Act 129 provides a list of required smart meter functionality, which was supplemented by Commission order.⁹⁷
3. Penelec's deployment of a smart meter at the Complainant's service location is authorized by Act 129.⁹⁸
4. Penelec's Smart Meter Technology Procurement and Installation Plan was approved by the Commission on June 9, 2010.⁹⁹
5. The Commission determined that Penelec's Smart Meter Deployment Plan was compliant with Act 129 and ultimately approved the smart meter deployment plan on June 20, 2014.¹⁰⁰
6. The Smart Meter Deployment Plan identifies Itron as Penelec's smart meter vendor and network provider.¹⁰¹
7. The Smart Meter Deployment Plan explicitly states that there is "no opt-out for customers."¹⁰²
8. Penelec's smart meter deployment plan requires Penelec to deploy smart meters at 100% of its customer service locations. 98.5% of smart meters must be installed by mid-2019.

⁹⁶ Tr. 105.

⁹⁷ *Id.* 106 and 112-113.

⁹⁸ *Id.* at 110.

⁹⁹ *Id.* at 115.

¹⁰⁰ *Id.* at 121.

¹⁰¹ *Id.* at 118.

¹⁰² *Id.* at 123.

The remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, must be installed by 2022.¹⁰³

9. To date, Penelec has not installed a smart meter at the Complainant's service location.¹⁰⁴

10. Penelec no longer maintains meter reading routes in the Complainant's area and cannot continue to obtain in-person meter readings from the Complainant.¹⁰⁵

11. Ms. Lamagna offered only lay witness testimony at the hearings in this matter.

12. Penelec provided expert testimony from Scott Palmquist, a Senior Product Line Manager for Smart Grid Security and Networking, and Michael Belanger, a Senior Product Line Manager for Network Communications.

13. Penelec also offered testimony by Company employee, John Ahr.

14. Penelec's smart meter does not collect or communicate confidential customer information, such as name, address, phone number, or social security number.¹⁰⁶

15. Penelec's smart meters have no access to information regarding what devices are using electricity behind the meter. The smart meters communicate the total usage not what is causing the usage.¹⁰⁷

16. Penelec's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to customer's usage data.¹⁰⁸

¹⁰³ *Id.* at 124-125.

¹⁰⁴ *See id.* at 133.

¹⁰⁵ *Id.* at 125.

¹⁰⁶ *Id.* at 127.

¹⁰⁷ *Id.* at 128.

¹⁰⁸ *Id.* at 129.

17. Penelec's Privacy Policy related to the confidentiality and cybersecurity protections applicable to smart meters was approved by the Commission on May 1, 2015.¹⁰⁹

18. The Itron smart meter network is composed of the Home Area Network, Local Area Network, Regional Area Network, Wide Area Network, and Field Area Network.¹¹⁰

19. 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.¹¹¹

20. The Regional Area Network is a collection of many Local Area Networks.¹¹²

21. The Local Area network zone and Regional Area network zone utilize the same cybersecurity 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.¹¹³

22. The Wide Area Network is the connection back to the utility data center for the smart meters in the Local Area Network and Regional Area Network.¹¹⁴

23. The Wide Area Network carries the encrypted meter traffic and adds an additional layer of encryption between the field router and the utility data center.¹¹⁵

24. The smart meter traffic remains encrypted until it is processed by the utility head and data collection system.¹¹⁶

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 184-188.

¹¹¹ *Id.* at 185.

¹¹² *Id.* at 185-186.

¹¹³ *Id.* at 186.

¹¹⁴ *Id.* at 186-187.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 187.

25. Cisco's bidirectional communication Field Area Network solutions are used throughout the Itron communication network.¹¹⁷

26. The Cisco Field Area Network solutions provide security controls that include hiding network addresses, authenticating devices, and an interface that monitors traffic flows and provides class of services for different priorities of traffic.¹¹⁸

27. 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.¹¹⁹

28. The National Institute of Standards and Technology ("NIST") is a nationally recognized organization that recommends guidelines for cybersecurity protections for smart meter networks.¹²⁰

29. The NIST IR 7628 includes Guidelines for Smart Grid security.¹²¹

30. NIST FIPS Publication 197 includes the encryption standard (Advanced Encryption Standard – AES) used by Itron smart meters.¹²²

31. Itron follows the smart meter guidance set forth in the publication NIST IR 7628.¹²³

32. 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.¹²⁴

¹¹⁷ *Id.* at 188.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 188-189.

¹²⁰ *Id.* at 191.

¹²¹ *Id.* at 192.

¹²² *Id.*

¹²³ *Id.* at 192.

¹²⁴ *Id.* at 192-193.

33. NERC has developed standards, known as critical infrastructure protection, which discuss various requirements for reliable generation and transmission of electricity.¹²⁵

34. NERC standards are not binding on distribution facilities, such as Penelec's smart meter network; nevertheless, Itron's smart meters adhere to NERC standards.¹²⁶

35. The Federal Communications Commission ("FCC") established a safe exposure limit for smart meters.¹²⁷

36. The radio frequency ("RF") emissions from smart meters are safe, as they produce an RF field that is less than one percent of the FCC's safe exposure level.¹²⁸

37. In a single 24-hour period, the total transmission time for the average smart meter is under three minutes.¹²⁹

38. The 900 MHz LAN radio is the main smart meter network communication component for establishing two-way communications.¹³⁰

39. The 2.4 GHz Zigbee radio is the component used to communicate with any in-home device for a HAN.¹³¹

40. The Zigbee radio is not a mandatory component of smart meter installation.¹³²

41. An RF transmission is emitted from the smart meter through the mesh network, then to a cellular network and back to the Company.¹³³

¹²⁵ *Id.*

¹²⁶ *Id.* at 193.

¹²⁷ *Id.* at 150.

¹²⁸ *Id.* at 153.

¹²⁹ *Id.* at 149.

¹³⁰ *Id.* at 152.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 149.

42. On average, AMI meter transmissions last approximately 150 milliseconds or less than 0.15 seconds.¹³⁴

43. RF waves are emitted by nearly all commonly-used electronic devices while operating.¹³⁵

44. Part 15.247 of the FCC's regulations has indicated that maximum permissible exposure to RF 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.¹³⁶

45. Penelec's Itron smart meter's 900 MHz LAN radios comply with the FCC's regulations for RF emissions.¹³⁷

46. Penelec's Itron smart meter's 2.4 GHz Zigbee radios comply with the FCC's regulations for RF emissions.¹³⁸

47. According to the 2010 report titled, "An Investigation of Radio Frequency Fields Associated with the Itron Smart Meter," a study of Itron's smart meter RF field is well below the maximum exposure limit established by the FCC.¹³⁹

48. At one foot away from a smart meter, the RF field is not expected to exceed 0.8% of the FCC's maximum permissible exposure limit.¹⁴⁰

49. At ten feet away from a smart meter, the RF field is significantly smaller at about 0.008% of the maximum permissible exposure limit.¹⁴¹

¹³⁴ *Id.*

¹³⁵ *Id.* at 150.

¹³⁶ *Id.* at 151-152.

¹³⁷ *Id.* at 155.

¹³⁸ *Id.* at 157.

¹³⁹ *Id.* at 161.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

50. No evidence exists that the Company's smart meters present a fire risk.¹⁴²

51. The Complainant was first contacted regarding Penelec's upcoming smart meter installation on December 19, 2016.¹⁴³

52. On January 19, 2017, the Complainant contacted Penelec to refuse a smart meter.¹⁴⁴

53. On January 20, 2017, the Company left a message with the Complainant to discuss her smart meter refusal.¹⁴⁵

54. Penelec's smart meter team reached the Complainant on January 25, 2017 and advised of her right to file a complaint at the Commission.¹⁴⁶

55. In May 2017, the Company sent the Complainant additional correspondence stating that the Complainant's service would be disconnected as a result of her smart meter refusal.¹⁴⁷

56. On May 30, 2017, the Complainant called the Company to express her continued opposition to smart meter installation.¹⁴⁸

57. On May 30, 2017, the Complainant was sent a 10-day service termination letter.¹⁴⁹

¹⁴² *Id.* at 130.

¹⁴³ *Id.* at 131.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 132.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 133.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.¹⁵⁰

2. The first step in carrying the burden of proof is establishing a prima facie case that Penelec violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a prima facie case does it become the responsibility of the Company to provide rebuttal evidence.¹⁵¹

3. In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.¹⁵²

4. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.¹⁵³

5. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.¹⁵⁴

6. In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation,

¹⁵⁰ 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

¹⁵¹ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replugle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

¹⁵² *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Assoc. v. Pa. Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. Ct. 2000).

¹⁵³ *Lansberry*, 578 A.2d at 602.

¹⁵⁴ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015); see also *Se-Ling Hosiery, supra*.

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”¹⁵⁵

7. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities...”¹⁵⁶

8. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.¹⁵⁷

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.¹⁵⁸

10. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s service location would violate Act 129 or any related Commission orders.¹⁵⁹

11. A lay witness may only provide testimony related to his or her direct knowledge or experience.¹⁶⁰

¹⁵⁵ 66 Pa.C.S. § 701.

¹⁵⁶ 66 Pa.C.S. § 1501.

¹⁵⁷ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

¹⁵⁸ 66 Pa.C.S. § 2806.1, *et seq.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

¹⁵⁹ *See id.*; *see also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penelec Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

¹⁶⁰ Pa.R.E. 701.

12. The Company owns, maintains, furnishes and installs its electric 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.¹⁶¹

13. The Company has the absolute right to access a customer's premises to remove or exchange any or all Company equipment including a meter.¹⁶²

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.¹⁶³

15. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.¹⁶⁴

16. The hearsay evidence presented in this case was properly objected to and excluded and may not support any findings of fact.¹⁶⁵

17. The Complainant failed to sustain her burden of proof that the installation of a smart meter would constitute unsafe or unreasonable service by the Company.

¹⁶¹ Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

¹⁶² *Id.*

¹⁶³ 66 Pa. C.S. § 1406; 52 Pa. Code § 56.81; Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

¹⁶⁴ See *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

¹⁶⁵ *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa Commw. Ct. 1976).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Catherine Lamagna filed against Pennsylvania Electric Company at the above-referenced docket is dismissed with prejudice.
2. This matter shall be marked as closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CATHERINE LAMAGNA :
 :
 v. : **Docket No. C-2017-2608014**
 :
 PENNSYLVANIA ELECTRIC COMPANY :

CERTIFICATE OF SERVICE

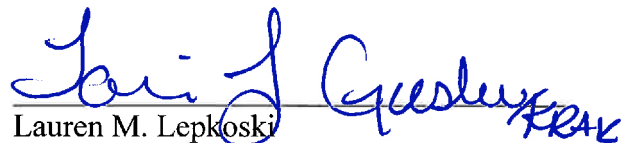
I hereby certify that I have this day served a true copy of the Main Brief of Pennsylvania Electric Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Catherine Lamagna
616 Main Street
Thompson, PA 18465

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated: August 30, 2018



Lauren M. Lepkoski
Tori L. Giesler
Teresa Harrold
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
(610) 921-6658
(610) 921-6783
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com
tharrold@firstenergycorp.com