

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrea Torres	:	
	:	
v.	:	C-2018-2641883
	:	
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 her residence. The complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501.

**HISTORY OF THE PROCEEDING**

On January 10, 2018, Andrea Torres (Complainant) filed the instant Complaint averring she wishes to opt out of a smart meter installation at her residence, 196 30<sup>th</sup> Street, Northampton, Pennsylvania. Specifically, Complainant avers that on September 19 and December 12, 2017, she received written notice that her analog meter would be replaced with a smart meter. Complainant has contacted PPL to revoke her consent to this replacement. Complainant has a child with a medical condition and she avers the smart meter is a health hazard, which emits “dirty electricity and radiation.”

Complainant requests an exemption to a smart meter. She contends other states have an “opt out” option for these new meters and that it is unlawful and immoral to coerce people in Pennsylvania to pay for something they do not want.

The Complaint was served upon PPL Electric Utilities Corporation (PPL, PPL Electric, Company or Respondent) on January 10, 2018.<sup>1</sup> On January 31, 2018, Respondent filed an Answer. 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, and that it has the right to terminate service for failure of the customer to permit access to the meter.

On March 26, 2018, a Call-In Telephone Hearing Notice was issued scheduling a hearing for August 13, 2018 and assigning the case to me as presiding officer. A Prehearing Order was issued on April 5, 2018. On April 23, 2018, PPL filed a Motion to admit Curtis S. Renner, Esquire, *pro hac vice* to represent PPL as additional counsel. On April 24, 2018, an Interim Order was issued admitting Mr. Renner *pro hac vice*. On July 13, 2018, Respondent mailed copies of pre-marked exhibits to Complainant and the Administrative Law Judge (ALJ).

At the hearing on August 13, 2018, Complainant appeared *pro se* with no exhibits. 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. PPL Electric Statement Nos. 1 and 2 (Direct Testimonies of Christopher C. Davis, Ph.D. and Mark A. Israel, M.D., respectively) were admitted into the record. PPL Electric Exhibits Nos. 2, 3, 4, 5, 6, 7, and 8 were also admitted into the record.

On August 14, 2018, a Briefing Order was issued giving the parties leave to file main briefs by September 17, 2018 and reply briefs by September 28, 2018. A transcript consisting

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<sup>1</sup> 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 January 10, 2018. Thus, PPL’s Answer filed on January 31, 2018 is deemed untimely filed.

of 55 pages was filed on September 4, 2018. On September 17, 2018, Respondent filed its Main Brief. No other briefs were filed. The record closed on September 28, 2018, the deadline for reply briefs. This case is ripe for a decision.

### FINDINGS OF FACT

1. The Complainant in this proceeding is Andrea Torres, who resides with her husband and four children, at the service property, 196 30<sup>th</sup> Street, Northampton, Pennsylvania 18067. Tr. 8.

2. The service property is a duplex residential dwelling, which shares a party wall with another house at 198 30<sup>th</sup> Street. Tr. 11, 13.

3. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 9.

4. 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, Tr. 31-35.

5. 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. 31-35.

6. 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. 33-34.

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. 35.

8. PPL had deployed approximately 922,000 RF Mesh meters as of the August 13, 2018 hearing. Tr. 40, PPL Electric Exhibit No. 3.

9. On December 4, 2017, PPL sent Complainant a letter notifying her that it intended to install the new AMI meter on her property within approximately the next three weeks. PPL Electric Exhibit No. 2, Tr. 20.

10. Complainant has received at least two written notices of smart meter installation but no notice of termination. PPL Electric Exhibit No. 2, Tr. 14, 20.

11. The RF Mesh meter to be installed for the Complainant's residential account is the Landis + Gyr Focus AXR-SD meter. Tr. 33.

12. One of Complainant's children has a medical condition. Tr. 4-14.

13. Complainant's son has had some seizure disorders in the past. Tr. 12.

14. Complainant would be satisfied if PPL were to relocate the smart meter from a wall to a utility pole located at the service property at PPL's cost; however, Respondent is not willing to move the meter off the house at the utility's entire expense per its tariff. Tr. 6, 14.

15. The Landis + Gyr Focus AXR-SD meter is certified by the Underwriters Laboratories at UL 2735. Tr. 37.

16. 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.

17. 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.

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

19. 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.

20. 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, PPL Electric Exhibit CD-1.

21. 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 8-9.

22. 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.

23. 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 13, PPL Electric Exhibit CD-2.

24. 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.

25. There are seven television broadcast towers within a 50-mile radius of Complainant's location in Northampton, Pennsylvania. PPL Electric Statement No. 1 at 15.

26. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields from UHF TV towers at Complainant's residence are 6.36 times higher than the RF signals from the AMI meter 1 meter away. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

27. 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 14, PPL Electric Exhibit CD-4.

28. The very low level RF signals from power supplies in modern electronics are either filtered out and/or are heavily attenuated by resistance if they try to travel on household wiring. PPL Electric Statement No. 1 at 11.

29. 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.

30. 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.

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

32. 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.

33. 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 3-4.

34. Claimed symptoms related to Electromagnetic Hypersensitivity (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 12-13.

35. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2 at 14-16.

36. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 14-16, PPL Electric Exhibit MI-3.

37. 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, PPL Electric Exhibit MI-1.

38. 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, PPL Electric Exhibit MI-2.

39. 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.

40. 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 a seizure disorder claimed by the Complainant, or any other adverse health effects. PPL Electric Statement No. 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 *Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *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).<sup>2</sup>

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 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)(*Kreider*); 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”).

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<sup>2</sup> 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).

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* 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).

### Reasonableness of Accommodations

Complainant averred she would be satisfied if PPL agreed to move the meter from the duplex to a utility pole elsewhere on the property at PPL's cost. PPL was willing to move the meter as long as costs associated with moving the meter board/base would be the responsibility of the customer in accordance with PPL's tariff provisions at Rule 4(I)(1) and (2), Supplement No. 59, Electric Pa. PUC No. 201, PPL Electric Exhibit No. 8, Tr. 5-7, 27. A question arises as to whether this accommodation is reasonable.

### Disposition

In remanding prior smart meter complaints for hearings, the Commission has raised the question of whether an EDC can offer some accommodation or alternative to customers who have concerns about AMI meters. In its January 28, 2016 Order, the Commission elaborated upon the kinds of accommodations or alternatives that might be possible, stating:

It may be possible, for example, for the Respondent to install the smart meter in a different location other than outside of the Complainant's bedroom or to use a different type of smart meter at this Complainant's home.

*Kreider at 23.*

In *Povacz v. PECO*, C-2015-2475023 (Initial Decision issued March 16, 2018), the ALJ gave the residential customer an option to notify the EDC whether she would relocate the meter socket at her service address. If timely done, the ALJ further ordered the customer to pay the costs to move her meter socket and ordered the EDC to bear the costs associated with connecting its service to a new location of a meter socket. *Id.* at 32, Ordering Paragraphs Nos. 1-9. Exceptions were filed and this case is pending a final Commission decision.

In the instant case, PPL Witness Hennegan testified PPL Electric Rule 4(I)(1) refers to the relocation of facilities, which would include the meter. Rule 4(I)(1) and (2) provide:

(1)The relocation of customer’s facilities due to moving or rearranging Company’s facilities at the direction of either the federal, state or local government is the customer’s responsibility and expense.

(2) The relocation of Company facilities, when done at the request of others, is at the applicant’s expense and payment of the company’s estimated cost of the relocation is required in advance of construction. When the request is from an affected property owner and the facilities are on the customer’s property, the charges for relocation of distribution system facilities are limited to estimated contractor costs, estimated direct labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation.

Rule 4(I)(1) and (2), Supplement No. 59, Electric Pa. PUC No. 201, PPL Electric Exhibit No. 8, Tr. 27. Mr. Hennegan’s testimony that a meter is considered part of a Company’s facilities is unrefuted. Tr. 27.

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. Cmwlth. 1997) (*Kossman*); *Stiteler v. Bell Telephone Co. of Pennsylvania*, A.2d 339 (Pa. Cmwlth. 1977) (*Stiteler*). Thus, I find Tariff Rule 4(I)(1) and (2) to be binding upon the parties and Complainant has failed to show the tariff provision to be unreasonable. Under PPL’s Tariff Rule 4(I)(1) and (2), Complainant has the option of relocating her meter to a different location because while PPL chooses the type of meter, the customer chooses the location of the meter board and socket. If Ms. Torres would like a different location for the AMI meter, she can hire an electrician to move the meter board/socket to a new location on the service property. This will, in some situations require work on the PPL system as well to extend its conductors to the new meter board location. PPL will limit charges for relocation of distribution system facilities to estimated contractor costs, estimated direct labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation in accordance with its tariffed provisions. This option remains open to the parties. However, there is no tariff provision requiring PPL to move an AMI meter solely at the EDC’s expense. Thus, I find in favor of Respondent on this issue.

## Health and Safety Concerns

Complainant claims she resides with her husband and four children at the service property, 196 30<sup>th</sup> Street, Northampton, Pennsylvania, a duplex residential dwelling. The service property shares a party wall with a neighbor's service property at 198 30<sup>th</sup> Street. It is unknown if the neighbor has already received a smart meter. Tr. 11-12. Complainant has an analog meter and does not consent to a digital smart meter because she is protecting the health of her family, including a son who has had seizures in the past. Tr. 12. Her kids' health now is fine but she does not want their health to change and is concerned a smart meter would negatively affect their health. Tr. 12. Complainant alleges she was notified twice by mail in December 2017 and once by voicemail in January 2018 that PPL intends to install an AMI meter on her property. She has not received a termination notice. She requests the Commission direct the utility to not switch her meter and not allow PPL to terminate her service. Ms. Torres offered no corroborative evidence to support her claims that an AMI meter causes seizures or other illness or disease. Tr. 8-14. However, she argues there is contradictory medical research supporting both sides of the health issue. Tr. 9-12.

Conversely, PPL contends there is no reliable scientific basis to support Complainant's claim that very low, non-thermal levels of radiofrequency fields cause any biological effects. PPL Electric Statement No. 1. PPL contends Complainant has failed in her burden of proving an AMI meter would likely cause seizures or other illnesses or disease. PPL M.B. at 13-14.

## Disposition

All of Complainant's evidence on this issue is uncorroborated conclusory statements in her testimony that the AMI meter will cause her and members of her household harm. Tr. 8-13. This testimony fails to refute the credible testimony of Dr. Israel and Dr. Davis.

Dr. Israel is a Professor of Medicine, Pediatrics, and Molecular and Systems Biology at the Dartmouth Medical School and Executive Director of the Israel Cancer Research

Fund in New York. PPL Electric Statement No. 2 at 1-2. Dr. Israel is board certified and licensed to practice medicine. PPL Electric Statement No. 2 at 3. 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 Electric will cause or contribute to the development of illness or disease. (PPL Electric Statement No. 2 at 16). Additionally, Dr. Israel opined that there is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric 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).

Dr. Davis is an experienced researcher and Professor of Physics, Electrical Engineering, Electromagnetics and Radio Frequency Electromagnetics. He has a Ph.D. in Physics and is an endowed Chair at the University of Maryland. Dr. Davis testified that 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; PPL Electric Exhibit CD-I. 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, 14; PPL Electric Exhibit CD-1. Dr. Davis testified that the 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 9. 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 9. The FCC continues to consider whether new scientific research shows any adverse effects from RF fields, and a number of federal agencies have never concluded that the FCC's exposure limits are inadequate to protect the public. PPL Electric Statement No. 1 at 10.

Based on the engineering specifications for the Landis & Gyr AMI meter being deployed by the Company, Dr. Davis calculated that the levels of RF fields from the AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 13; PPL Electric Exhibit CD-2. As a result, Dr. Davis found that “the RF field levels from the AMI meters being used by PPL Electric more than comply with the applicable FCC RF exposure limit.” PPL Electric Statement No. 1 at 13.

Moreover, the 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. Dr. Davis also testified that there are many sources of RF signals in the everyday environment and the RF fields from the AMI meter are much lower than from other typical sources. For example, RF fields from using cell phones can be over 260,000 times higher than the RF fields from the AMI meter. PPL Electric Statement No. 1, p. 14, lines 18-21. Even 30 feet away from a person using a cell phone, the RF fields are three times higher than from the AMI meter. PPL Electric Statement No. 1 at 14.

In addition, the existing background levels of RF fields at Complainant’s residence are many times higher than the fields from the AMI meter. Dr. Davis testified that there are seven television broadcast towers with a 50-mile radius of Complainant’s location. PPL Electric Statement No. 1 at 15. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant’s residence are 57 times higher than the RF signals from the AMI meter at 1-meter distance and 6.36 times higher than the RF signals from the AMI meter one meter away. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5. Therefore, the unrefuted expert testimony about RF field levels in this case is that the existing and continuous background level of RF fields at Complainant’s residence is many times higher than the very low and short duration RF signals from the AMI meter.

I find Dr. Davis’ opinion credible that the levels of RF fields from the AMI meters being used by PPL Electric are low, 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 15. Additionally, these extremely low level RF fields are many times lower than the background levels of RF fields at

Complainant's residence and from everyday sources such as cell phones and microwave ovens. PPL Electric Statement No. 1 at 15-16. There is insufficient evidence to show that the very low levels of RF fields from the AMI meters being deployed by PPL can or will likely cause any adverse thermal or non-thermal biological effects in people. PPL Electric Statement No. 1 at 16. Accordingly, I find in favor of Respondent on this issue.

### Opt-In versus Opt-Out Program

Complainant contends the law should be interpreted to allow an opt out for paying ratepayers who do not deny access to their meters. Complainant contends other States and in Ephrata, Lancaster County, PA customers have an opt-out option. She argues it is unlawful to coerce ratepayers who are paying for their services to accept a smart meter installation against their wishes. Tr. 9-14. Conversely, PPL contends its installation of an AMI Meter is required by Pennsylvania law.

### 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 *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 at 10 (Order and Opinion entered January 24, 2013); *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.*

Per the *Romeo* decision, it is legally sufficient to plead the injunctive relief requested in the instant case and claim that smart meters are generally unsafe and 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.

*Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 11-12 (Opinion and Order entered April 21, 2018) (emphasis added).

To the extent that Ms. Torres desires the ability to opt out of the smart meter installation, she could 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 Povacz*. The Commission held that similarly situated Respondents would be in violation of the law if they did not install a smart meter at similarly situated Complainants’ residences. *Id.*, *Frompovich* at 10.

The Commission is formulating binding policy through adjudications which constitute binding precedents regarding this issue. *See George Crawford v. National Fuel Gas Distribution Corporation*, C-20066348 (Opinion and Order entered December 6, 2007) *citing Pacific Gas & Electric Co. v. FPC*, 164 U.S. App. D.C. 371, 506 F.2d 33 (D.C. Cir. 1974). The Commission has consistently held there is no opt-out provision for similarly situated Complainants in the past. The instant case is more similar than distinguishable from prior decisions wherein the Commission has dismissed similar complaints. *Pennsylvania Trout v. Dep’t of Env’tl. Prot.*, 863 A.2d 93 (Pa. Cmwlth. 2004). Thus, I find in favor of PPL on this issue.

## Termination of Service

Complainant claims PPL has no right to terminate her electric service merely because she does not consent to a smart meter. Complainant contends she is paying her bills and has not denied access to her meter. Tr. 4. Conversely, Respondent argues it 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.

Thus far, PPL has not issued a notice of termination in relation to the pending dispute. PPL Electric Exhibit No. 2. I agree with PPL that if the Commission 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.

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, Tr. 25-41. 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 her 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. § 701.

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) (“2015 Smart Meter Order”) does not contain a provision for customers to opt out of smart meter installation.

3. 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).

4. 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) (citation omitted).

5. 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) (“Woodbourne-Heaton”).

6. 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).

7. 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.

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

9. 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).

10. 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).

11. Complainant has failed to sustain her 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.

12. 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) (“Smart Meter Implementation Order”).

13. 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).

14. The Commission previously determined that the Company’s existing 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) (“2010 Smart Meter Order”).

15. 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) (“2015 Smart Meter Order”).

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

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Andrea Torres against PPL Electric Utilities Corporation at Docket No. C-2018-2641883 is denied and dismissed.
2. That Docket No. C-2018-2641883 be marked closed.

Date: October 17, 2018

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/s/  
Elizabeth H. Barnes  
Administrative Law Judge