

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Benhayon

v.

PPL Electric Utilities Corporation

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C-2018-3003491

INITIAL DECISION
NON-PROPRIETARY VERSION

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 service property. 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 July 13, 2018, Mary Benhayon (Complainant) filed the instant Complaint requesting that PPL Electric Utilities Corporation (PPL or Respondent) be directed to remove a smart meter from her service property at 22 Peace Pipe Way RRI, Gouldsboro, Pennsylvania (account number ending in 025) for health reasons. Complainant avers that she is **BEGIN**

CONFIDENTIAL [REDACTED]

[REDACTED] **END CONFIDENTIAL**

The Complaint was served upon PPL on July 19, 2018.¹ On August 8, 2018, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainant and notified Complainant that it would be installing a new AMI at Complainant's residence. The Answer contends that the Respondent is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers and denies that the new AMI meter has caused, contributed to, or exacerbated any illnesses.

On August 9, 2018, a Prehearing Conference Order was issued scheduling a Telephonic Conference on August 29, 2018. On August 10, 2018, a Call-In Telephonic Prehearing Conference Notice was issued scheduling a prehearing conference for August 29, 2018. The prehearing conference was held as scheduled and on September 4, 2018, a Telephone Hearing Notice was issued, scheduling a hearing on January 10, 2019. On September 5, 2018, a Prehearing Order and a Protective Order were issued. An electronic transcript of the August 29, 2018 prehearing conference was filed on September 13, 2018. On January 7, 2019, Complainant requested a continuance of the hearing as she had been hospitalized. The hearing was cancelled and rescheduled to February 8, 2019.

At the hearing on February 8, 2019, Complainant appeared *pro se* with 2 confidential exhibits (C Exhibit No. 1 - Complainant's Statement and C Exhibit No. 2 - Medical Documents). Respondent appeared represented by Devin Ryan, Esquire, Michael Shafer, Esquire, and Curtis Renner, Esquire with 4 written statements, 15 exhibits and four witnesses: Kevin Durkin, Scott Larson, Christopher Davis, Ph.D., and Mark Israel, M.D. Complainant's Exhibits Nos. 1 - 2 were admitted into the record. Respondent's Statements 1-4 and Exhibits CD-1 – CD-5; MI-1-MI-3; KD-1-KD-6 and SL-1 were admitted into the record. Tr. 3.²

¹ PPL signed a waiver of the Section 702 requirement for registered or certified mail service of formal complaints, 66 Pa. C.S. § 702, and agreed to electronic service under the Commission's waiver of 702 program. *See In Re: Electronic Service of Formal Complaints*, Secretarial Letter Dated December 22, 2014, at Docket Nos. M-2013-2398153 *et al.* Service is listed in the electronic Audit History of the case as entered by the Secretary's Bureau as having been affected on July 19, 2018. Thus, PPL's Answer filed on August 8, 2018 is deemed timely filed.

² All citations to transcript refer to the transcript filed on March 6, 2019.

A transcript consisting of 54 pages was filed and the record closed on March 6, 2019. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is Mary Benhayon, who resides at 7450 Jackson Road, Mays Landing, New Jersey, 08330. Tr. 10.

2. Complainant requests to opt out from installation of an AMI meter at a pole located in close proximity to her mobile home at 22 Peace Pipe Way RR 1, Goldsboro, Pennsylvania (service address). Tr. 10.

3. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 10.

4. On June 30, 2014, PPL filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 of 2008 and the Commission's Smart Meter Implementation Order. PPL Electric Exhibit Nos. SL-1, "PPL Smart Meter Technology Procurement and Installation Plan," June 30, 2014.

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. SL-1.

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. PPL Electric Statement No. 4 at 2-5.

7. The individual RF Mesh meters are used as relay points to transmit data back to PPL. PPL Electric Statement No. 4 at 5.

8. 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 Statement No. 4 at 6.

9. The meter currently installed at the service property is a PLC meter. Tr. 25.

10. The PLC meter works by communicating through the electric network that was directly connected to the customer's home. PPL Electric Statement No. 4 at 5.

11. The RF Mesh meter to be installed at the Complainant's residential account is the Landis + Gyr RF Mesh meter. PPL Electric Statement No. 4 at 8.

12. **BEGIN CONFIDENTIAL** [REDACTED]

13. [REDACTED]

END CONFIDENTIAL

14. Complainant does not have a microwave oven. C Exhibit 1.

15. The Landis + Gyr RF Mesh meter is certified by the Underwriters Laboratories at UL 2735. PPL Statement No. 4 at 8.

16. The Landis + Gyr RF Mesh meter is compliant with American National Standards Institute (ANSI), specifically ANSI C12.10. PPL Statement No. 4 at 8.

17. PPL has deployed over one million Landis + Gyr RF Mesh meters in its service territory and is unaware of any of them causing fires. PPL Statement No. 4 at 10.

18. The new AMI meter to be installed by the Company is not a fire or safety hazard. PPL Statement No. 4 at 9-10.

19. 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 1-5.

20. 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 1-5.

21. 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.

22. 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.

23. 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 5-7, 12.

24. "Dirty electricity" is a non-scientific term that sometimes is used to refer to electrical characteristics (harmonics and transients) that can be found on household wiring. Tr. 75-76, PPL Electric Statement No. 1 at 8.

25. AMI meters do not generate electricity, do not generate harmonics and transients that are significant compared to the harmonics and transients already present on the 60

Hz power coming into the home and do not interfere with the operation of household wiring. Tr. 8-9.

26. 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 9-10.

27. 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 9-10.

28. The levels of RF fields from the Landis + Gyr RF Mesh 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 CD2.

29. 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.

30. The RF field exposure 30 feet from a person using a cell phone are three times larger than the RF fields from the AMI meter. PPL Electric Statement No. 1 at 14, PPL Electric Exhibit CD4.

31. RF fields from using cell phones near the head can be over 260,000 times higher than the RF fields from the AMI meter. PPL Electric Statement No. 1 at 14, PPL Electric Exhibit CD4.

32. There are nine television broadcast towers within a 50 mile radius of Complainant's location in Gouldsboro, Pennsylvania. PPL Electric Statement No. 1 at 15.

33. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields from UHF TV broadcasting at Complainant's residence are 25.3 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

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

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

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

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

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

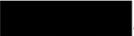
39. Claimed symptoms relating to Electromagnetic Hypersensitivity (EHS) are more accurately described as "Idiopathic Environmental Intolerance" ("IEI"), in which

“idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. PPL Electric Statement No. 2 at 13.

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

41. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 16.

42. The World Health Organization and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone use, which are far higher than the RF from PPL’s smart meters, has not shown that RF fields cause adverse health effects. PPL Electric Statement No. 2 at 10-15, PPL Electric Exhibit MI-1.

43. There is no reliable scientific basis to conclude that exposure to RF fields from an AMI meter being used by PPL Electric causes or contributes to **BEGIN CONFIDENTIAL**   **END CONFIDENTIAL**. PPL Electric Statement No. 2 at 16 - 17.

44. Several U.S. state public health authorities have also 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.

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).³

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.” *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing*

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

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)(Romeo) (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”).

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).

Health and Safety Concerns

Complainant claims she has suffered from deleterious health conditions caused or exacerbated by an AMI meter that was attached to her primary residence in New Jersey until the AMI meter was replaced with an analog meter. Complainant also contends she suffered **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** when she was at her trailer in Goldsboro, Pennsylvania because of an AMI meter attached to a utility pole adjacent to the trailer.

Conversely, although PPL admits to sending Complainant a letter of its intent to replace her current meter with an AMI meter, the company contends the service property does not yet have an AMI meter attached. Rather, a PLC meter is currently at the service property.

Further, PPL contends that while Complainant may have **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** she has failed in her burden of proving she has been medically diagnosed with any health disorder caused or exacerbated by the PLC meter currently installed or AMI meter installed at her house.

Disposition

I gave some weight to C Exhibit Nos. 1 and 2 (Complainant’s Complaint and Medical Records) as some of this evidence was corroborated by the testimonies of Complainant and Dr. Israel. However, even accepting as true Complainant’s averments that these medical symptoms occurred or worsened after an AMI meter was installed at her New Jersey residence, there is insufficient evidence to show the AMI meter to be installed at the service property in

Pennsylvania will cause or exacerbate these symptoms. Complainant believed these symptoms worsened at the service property and believed an AMI meter near the trailer caused her **BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL** when in fact there was no AMI meter at the service property to cause the symptoms complained of. C Exhibit 1, PPL Electric Statement No. 3. Further, Complainant offered no expert testimony or generally accepted scientific evidence to prove causation.

I find credible the testimony of PPL's Witness Mark Israel, 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. Dr. Israel is board certified and licensed to practice medicine. PPL Electric Statement No. 2 at 3. 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. 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.

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 13. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2, p. 16, lines 8-9. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 16.

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 10-15, PPL Electric Exhibit MI-1.

There is insufficient scientific evidence for me to find that exposure to the RF fields from the AMI meter is causing or contributing to Complainant's complained of health symptoms. PPL Electric Statement No. 2 at 16-17.

Several State public health authorities in the United States 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. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. PPL Electric Statement No. 2 at 17, Tr. 44-47 (confidential record).

I find credible PPL Witness Davis, who 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 1-5. 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 1-5.

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. 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. 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 5-7, 12.

“Dirty electricity” is a non-scientific term that sometimes is used to refer to electrical characteristics (harmonics and transients) that can be found on household wiring. Tr. 75-76, PPL Electric Statement No. 1 at 8. AMI meters do not generate electricity, do not generate harmonics and transients that are significant compared to the harmonics and transients already present on the 60 Hz power coming into the home and do not interfere with the operation of household wiring. Tr. 8-9.

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 9-10. 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 9-10.

The levels of RF fields from the Landis + Gyr RF Mesh 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 CD2. 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.

The RF field exposure 30 feet from a person using a cell phone are three times larger than the RF fields from the AMI meter. PPL Electric Statement No. 1 at 14, PPL Electric Exhibit CD4. RF fields from using cell phones near the head can be over 260,000 times higher than the RF fields from the AMI meter. PPL Electric Exhibit CD4.

Additionally, there are nine television broadcast towers within a 50 mile radius of Complainant’s location in Goldsboro, Pennsylvania. 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 25.3 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5. Thus, given the background RF exposure to the service property compared to the minimal RF exposure from the AMI meter, I am not persuaded to conclude the AMI meter in question will likely cause a deleterious health effect to the Complainant.

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

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

13. 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.

14. 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”).

15. 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).

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

17. Under the Company’s Commission-approved Smart Meter Plan, PPL must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission’s Smart Meter Implementation Order. See *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) (“2015 Smart Meter Order”).

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

19. 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.

