

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Aguirre	:	
	:	
v.	:	C-2018-3005352
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A residential customer filed a complaint seeking to prevent an electric distribution company (EDC) from installing a smart meter a/k/a “Advanced Metering Infrastructure (AMI) meter” or “Radio Frequency (RF) meter” on his service address. 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 or otherwise violates the Public Utility Code, a Commission order, regulation, or a Commission-approved tariff of the company.

HISTORY OF THE PROCEEDING

On October 10, 2018, Thomas Aguirre (Complainant) filed the instant Complaint requesting that PPL Electric Utilities Corporation (PPL or Respondent) be precluded from installing a radio frequency (RF) meter on his residence at 1561 Sunset Drive, Mifflintown, Pennsylvania, 17059. Complaint at 3.

The Complaint was served upon PPL on October 15, 2018.¹ On November 5, 2018, Respondent filed an Answer. The Answer admits that the Respondent provided electric service to the Complainant at the service address and notified Complainant that it would be installing a new AMI meter. Respondent contends that it is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers.

On November 8, 2018, a Notice was issued scheduling a telephonic hearing on January 3, 2019, and assigning me as presiding officer. On November 13, 2018, a Hearing Cancellation/Reschedule/Judge Change Notice was issued rescheduling the hearing to May 16, 2019. On February 1, 2019, a Prehearing Order was issued. On April 2, 2019, PPL sent the presiding officer and Complainant a letter offering a conference bridge number and passcode for the scheduled hearing. On or about April 16, 2019, I received a letter-request from Mr. Aguirre requesting the telephonic hearing be converted to an in-person hearing, which was granted. However, due to the timing of the request, out-of-state witnesses and counsel were permitted to appear via telephone.

The hearing was held on May 16, 2019 as scheduled. Complainant appeared *pro se* in person with fourteen exhibits (pre-marked A-N). The exhibits (except for Exhibit G) were admitted into the record. Respondent appeared represented by Devin Ryan, Esquire and Curtis Renner, Esquire with four written statements, 15 exhibits and four witnesses: Kevin Durkin, Donald Vinciguerra, Christopher Davis, Ph.D., and Mark Israel, M.D. Respondent's Statements 1-4 and Exhibits CD-1 – CD-5; MI-1-MI-3; KD-1-KD-6 and DV-1 were admitted into the record. Tr. 4.² A transcript consisting of 84 pages was filed and the record closed on June 24, 2019. This case is ripe for a decision.

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 effective on October 15, 2018. Thus, PPL's Answer filed on November 5, 2018 is deemed timely filed.

² All transcript citations reference the hearing transcript dated May 16, 2019.

FINDINGS OF FACT

1. The Complainant in this proceeding is Thomas Aguirre, who has resided at 1561 Sunset Drive, Mifflintown, Pennsylvania 17059 (service address) since March 2015. Tr. 7-8, 37.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 8.
3. Complainant resides in a rural area on eleven acres of land in a 2,200 square foot house. Tr. 8.
4. Complainant currently has a powerline carrier (PLC) meter. Tr. 8.
5. Complainant claims he suffers from electrical hypersensitivity, which escalated in July of 2014. Tr. 8-9, Complainant Exhibit Nos. J - N.
6. Complainant complains of pressure behind his ears with clicking and pain. Tr. 9.
7. Complainant studied architecture in college and did project management in New York. Tr. 9.
8. Complainant left New York City in March 2015 to avoid radio frequency fields and moved to an 11-acre farm in Pennsylvania for his recovery. Tr. 10, 37.
9. Complainant is neither a medical doctor nor an engineer. Tr. 37.
10. Complainant has a cell phone that he no longer uses. Tr. 9

11. A smart meter was installed at Complainant's neighbor's premises, 98 feet from Complainant's bedroom window. Tr. 11.

12. After the smart meter was installed 98 feet from his bedroom window, Complainant experienced sleep disturbances, including insomnia and night sweats. Tr. 11.

13. Complainant hired Matt Fiskin, a self-employed electromagnetic field consultant in State College, Pennsylvania, who used a Gigahertz Solutions HF f35C EMF tester to measure radio frequency fields outside Complainant's bedroom window. Tr. 38-39, Complainant Exhibit I.

14. Complainant claims he suffers from heavy metal toxicity, systemic candida, Lyme disease, and hormone regulation disorder of the adrenal gland. Tr. 14, Complainant Exhibits J, K, L, and M.

15. Complainant has weekly intravenous chelation therapy to remove heavy metals from his body and detoxify his blood. Tr. 21-22, Complainant Exhibit L.

16. Complainant sees David Watto, a chiropractor to treat some of his health symptoms. Tr. 44, Complainant Exhibit M.

17. PLC meters do not emit RF fields and are often referred to by customers as analog meters. PPL Electric Statement No. 4 at 5.

18. A PLC meter uses the power lines as a means of communication with pulses encoded on the 60 Hertz line frequency so that PPL can record the data to the proper account. PPL Electric Statement No. 4 at 5.

19. Complainant has a PLC meter on his service property. PPL Electric Statement No. 3.

20. 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 No. DV-1, *PPL Smart Meter Technology Procurement and Installation Plan*, June 30, 2014.

21. PPL selected 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. DV-1.

22. The RF Mesh system allows the Company to receive data from the customer's meter wirelessly, unlike PPL's previous PLC system that used the customer's actual wires. PPL Statement No. 3 at 6-7.

23. Under the Smart Meter Plan, the RF Mesh meters are to be deployed by the end of 2019. PPL Electric Statement No. 4 at 6.

24. PPL intends to install a Landis + Gyr E350 FOCUS AXR-SD meter at Complainant's service property. PPL Electric Statement No. 4 at 6, PPL Exhibit No. DV-1.

25. The Federal Communications Commission (FCC) identification number for the new AMI meter is R7PEG1R1S2. PPL Electric Statement No. 4 at 6.

26. The Landis + Gyr Focus AXR-SD meter is certified by the Underwriters Laboratories at UL 2735. PPL Statement No. 4 at 8.

27. The Landis + Gyr Focus AXR-SD meter is compliant with the American National Standards Institute (ANSI) C12.10. PPL Statement No. 4 at 8.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. “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.

34. The AMI meter in question does not generate spurious harmonics or signals that are commonly referred to as “dirty electricity.” Tr. 72-72.

35. 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 9-10.

36. 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.

37. The levels of RF fields from the Landis + Gyr Focus AX-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD2.

38. The level of RF fields from the Landis + Gyr Focus AX-SD AMI meter is 0.0000061 mW/cm² at a distance of one meter. PPL Electric Exhibit CD-2.

39. The FCC RF maximum limit standard is 0.6 mW/cm² at one meter distance. PPL Electric Exhibit CD-2.

40. 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, PPL Electric Exhibits CD-2 and CD-3.

41. In making his measurements, Dr. Davis used professional grade measuring equipment. Tr. 57-58, PPL Electric Exhibit CD-2.

42. 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.

43. There are at least six television broadcast towers within a 50-mile radius of Complainant's service address in Mifflintown, Pennsylvania. PPL Electric Statement No. 1 at 15.

44. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 5.44 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

45. The level of RF fields from AMI meters being used by PPL is far too low to cause a thermal or heating effect. PPL Electric Statement No. 1 at 13-14.

46. 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.

47. 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.

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

49. 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.

50. 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.

51. 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.

52. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2 at 15-16.

53. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 15-16.

54. 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 10-16, PPL Electric Exhibit MI-1.

55. Several state public health authorities in the United States 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.

56. Systemic Candidiasis is a type of fungal infection that can occur in the body but 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 Candidiasis. PPL Electric Statement No. 2 at 15-16.

57. Lyme disease is an infection spread through the bites of infected ticks but 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 Lyme disease. PPL Electric Statement No. 2 at 16.

58. Heavy Metal Toxicity typically refers to elevated levels of heavy metals in the body, which can produce a variety of symptoms, which are similar to symptoms described for IEI/EHS including but not limited to: headaches, fatigue, and sleeping problems. PPL Electric Statement No. 2 at 17.

59. 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 Heavy Metal Toxicity. PPL Electric Statement No. 2 at 17.

60. Hypothyroidism is a medical condition that is the result of insufficient production of thyroid hormone, which is regulated by a different hormone produced in the pituitary gland with symptoms including: fatigue, muscle weakness and weight gain. PPL Electric Statement No. 2 at 18.

61. 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 hypothyroidism. PPL Electric Statement No. 2 at 18.

62. 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 19.

63. As a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data. PPL Electric Exhibit No. DV-1.

64. PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. PPL Statement No. 4 at 7-8.

65. Customer data is encrypted to make the data readable to only PPL personnel who can decode the encryption. PPL Statement No. 4 at 7-8.

66. PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. PPL Statement No. 4 at 7-8.

67. There is a Zigbee radio in the meter not enabled unless the customer requests it to be enabled by PPL. Tr. 37, 42-46.

68. PPL's AMI meter network has never been hacked. Tr. 41-42.

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 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”).

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

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).

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.

Section 57.28(a)(1) of the Commission’s Regulations provides:

An electric utility shall use reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility service and its associated equipment and facilities.

52 Pa. Code § 57.28(a)(1).

When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s [Administrative Law Judge’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).

Opt-out v. Opt-in

Complainant wishes to opt-out of a smart meter installation. Conversely, PPL argues there is no opt-out provision in Act 129 of 2008.

Disposition

Act 129 amended Chapter 28 of the Public Utility Code (Code), 66 Pa. C.S. §§ 2801-2815, and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. While Act 129 does not provide customers a general “opt-out” right from smart meter installation at a customer’s residence, a customer’s formal complaint that raises a claim under Section 1501 of the Code, 66 Pa. C.S. § 1501, related to the safety of a utility’s installation and use of a smart meter at the customer’s residence is legally sufficient to proceed to an evidentiary hearing before an ALJ. *See Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013) (*January 2013 Povacz Order*); *see also Kreider*.

To the extent that the Complainant desires the ability to “opt out” of the smart meter installation, he could advocate for such ability before the General Assembly, which is 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 law. The Commission has held that it has no authority, absent directive in the form of legislation, to prohibit an EDC from installing a smart meter where a customer does not want one. *See January 2013 Povacz Order*. PPL would be in violation of the law if it did not install a smart meter at similarly situated residences. *Id.* The Commission has held that there is no provision in Pennsylvania law to allow a customer to opt out from the installation of an AMI meter, and thus, this requested relief is outside of the

Commission's jurisdiction and authority. *Hoffman-Lorah v. PPL Electric Utilities Corporation*, C-2018-2644957 (Opinion and Order entered May 23, 2019) at 43-44. There is no legal requirement that PPL be required to wait until legislation is passed allowing customers to opt out of a smart meter installation. Accordingly, I find in favor of Respondent on this issue.

The Commission has addressed 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.

The Commission did not state that meter deployment could be delayed upon request to the deadline for smart meter deployment in 2020. 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. On March 28, 2019, the Commission rejected the ALJ's directive that PECO must absorb the costs on its side of the meter to the extent any costs are anticipated to be incurred by PECO should the Complainant opt to relocate the meter board on her property. *Povacz*. Opinion and Order entered March 28, 2019.

In the instant case, PPL Witness Durkin 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 KD-6, PPL Electric Statement No. 3 at 10. Mr. Durkin's testimony that a meter is considered part of a Company's facilities is unrefuted. PPL Electric Statement No. 3 at 10.

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); *Stiteler v. Bell Telephone Co. of Pennsylvania*, A.2d 339 (Pa. Cmwlth. 1977). 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 his 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 Mr. Aguirre would like a different location for the AMI meter, he 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. This is consistent with the Commission's decision in *Torres v. PPL*, C-2018-2641883 (Final Order entered November 30, 2018 adopting Initial Decision issued October 17, 2018).

Health and Safety Concerns

Complainant requests PPL be precluded from installing an AMI meter on his service property for health and safety reasons. Regarding this issue, Complainant offered the following exhibits: Exhibit A, letters from PPL dated May 2, 2016, April 20, 2017, May 12, 2017, notifying Complainant of PPL's intent to switch his meter; Exhibit C, an article entitled *FCC Maximum Permissible Exposure Limits for Electromagnetic Radiation, as Applicable to Smart Meters*, by Ronald M. Powell, Ph.D., dated December 10, 2015; Exhibit D, a letter dated July 6, 2002 from Norbert Hankin of the Office of Air and Radiation of the United States Environmental Protection Agency (EPA) to Janet Newton, President of the EMR Network; Exhibit E, an abstract entitled *Reliable Disease Biomarkers Characterizing and Identifying Electrohypersensitivity and multiple chemical sensitivity as two Etiopathogenic Aspects of a Unique Pathological Disorder*, by Belpomme D., Campagnac C., Irigaray P.; Exhibit F, the Conclusion portion (beginning on page 99) of a Draft NTP *Technical Report on the Toxicology and Carcinogenesis Studies in B6C3F1/N Mice Exposed to Whole-Body Radio Frequency Radiation at a Frequency (1,900 MHz) and Modulations (GSM and CDMA) use by Cell Phones*; Exhibit I, photos showing the meters in question; Exhibit J, Complainant's lab reports; Exhibit K, Complainant's Medical Expenditures; Exhibit L, physician Jeffrey Backenstoos, D.P.'s letter dated October 31, 2018; Exhibit M, letter of David M. Watto, DC, Complainant's chiropractor, dated March 15, 2019; Exhibit N, a letter from the Social Security Administration entitling Complainant to monthly disability benefits dated March 28, 2019.

The service address is located in a rural area on eleven acres of land in a 2,200 square foot house. Tr. 8. In March 2015, Complainant moved to this property to escape radio frequency fields in New York City and to recover. Tr. 10, 37. Complainant claims he suffers from electrical hypersensitivity, which escalated in July of 2014. Tr. 8-9, Complainant Exhibit Nos. J - N. Complainant complains of pressure behind his ears with clicking and pain. Tr. 9.

Complainant studied architecture in college and did project management in New York. Tr. 9. Complainant left New York City in March 2015 to avoid radio frequency fields and moved to an 11-acre farm in Pennsylvania for his recovery. Tr. 10, 37. Complainant is neither a

medical doctor nor an engineer. Tr. 37. Complainant has a cell phone that he no longer uses. Tr. 9. Complainant claims a smart meter was installed 98 feet from Complainant's bedroom window. Tr. 11, 16-17, Complainant Exhibit I. After the smart meter was installed 98 feet from his bedroom window, Complainant experienced sleep disturbances, including insomnia and night sweats. Tr. 11, 16-17.

Complainant claims Matt Fiskin, a self-employed electromagnetic field consultant in State College, Pennsylvania, used a Gigahertz Solutions HF 35C EMF tester to measure radio frequency fields outside Complainant's bedroom window. Tr. 17-18, 38-39, Complainant Exhibit I. Complainant did not specify the readings, just that there were RF fields. Tr. 17-18.

Complainant claims he suffers from heavy metal toxicity, systemic candida and hormone regulation disorder of the adrenal gland. Tr. 14, 19. Complainant claims to have elevated levels of lead and mercury. Tr. 19. Complainant Exhibit J. Complainant has weekly intravenous chelation therapy to remove heavy metals from his body and detoxify his blood. Tr. 21-22, Complainant Exhibit L. Claimant sees David Watto, a chiropractor, to treat the symptoms of electromagnetic hypersensitivity. Tr. 44, Complainant Exhibit M. Complainant claims that when he moved his bed 25 feet farther from the AMI meter, he was able to sleep soundly. Tr. 18.

Conversely, Respondent contends that Complainant has failed to meet his burden of proving there is a conclusive causal connection between low-level RF fields from a PPL smart meter and any adverse health effects. Specifically, PPL contends Complainant has failed to refute the credible testimony of Dr. Christopher Davis and Dr. Mark Israel. PPL argues many of the Complainant's Exhibits should not be relied upon to make any findings about the impact that the exposure to RF fields from the AMI meter will make upon a person's health. Tr. 73.

Disposition

The *Walker/Chapman* rule provides that simple hearsay evidence may support an agency's finding of fact so long as the hearsay is admitted into the record without objection and

is corroborated by competent evidence in the record. See *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (*Walker*) (citations omitted); see also *Chapman v. Unemployment Compensation Board of Review*, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. 2011) (*Chapman*).

Under Pennsylvania’s *Walker/Chapman* Rule, it is well-established that “[h]earsay evidence, properly objected to, is not competent evidence to support a finding.” 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.” *Walker*, at 370 (citations omitted).

To be “properly objected to” in an administrative proceeding, the hearsay evidence must not fall within one of the recognized exceptions to the rule against hearsay. Hearsay that falls within one of the recognized exceptions to the hearsay rule is competent evidence that may be relied upon by the agency. See *Chapman, supra*, n. 8 (finding that the Board properly relied upon a party’s admission as competent evidence as a recognized exception to the hearsay rule); see also *Sanchez v. PPL Electric Utilities Corporation*, Docket No. C-2015-2472600 (Order entered July 21, 2016) (*Sanchez*) (finding that testimony related to the issuance of a termination letter fell within the business records exception to the hearsay rule, and, therefore, was not simple hearsay, and was competent evidence to be relied upon in the proceeding to determine whether the complainant satisfied her burden of proof); see also Pa.R.E. 802, 803, 803.1 and 804. Moreover, hearsay cannot corroborate hearsay. See *Sule v. Philadelphia Parking Authority*, 26 A.3d 1240, 1244 (Pa. Cmwlth. 2011), citing *J.K. v. Department of Public Welfare*, 721 A.2d 1127, 1133 (Pa. Cmwlth. 1998) (noting substantial evidence did not exist because there was no non-hearsay evidence to corroborate hearsay testimony).

I gave some weight to Exhibit A, PPL letters; Exhibit I, photos of the service property taken by Complainant, Exhibit N, Social Security Letter of Disability, Exhibit H, Complainant’s Payment History as this evidence was corroborated by the testimony of Mr.

Aguirre and Kevin Durkin. However, I gave no weight to Exhibits C, D, F, and E, documents to support the existence of non-thermal health effects. The authors of these articles were not available for cross-examination. PPL was denied an opportunity to test the veracity of the authors' opinions or their qualifications to render such opinions. 66 Pa. C.S. § 332(c). *Answerphone, Inc. & Elite Answering Serv. v. The Bell Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 70, at *29-30 (Order entered April 1, 1993).

I am giving little or no weight to Exhibit L, Letter of Jeffrey Backenstoos DO PC, Exhibit J – Lab Reports, Exhibit K – medical bills, and Exhibit M, Letter of David Watto DC, because the doctor and chiropractor were not present to be cross-examined, and PPL was denied an opportunity to test the veracity of their opinions or their qualifications to render such opinions. 66 Pa. C.S. § 332(c). *Answerphone, Inc. & Elite Answering Serv. v. Bell Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 70, at *29-30 (Order entered April 1, 1993). Under the *Walker* Rule, I am not relying upon either opinion to support a finding of fact that Complainant is electromagnetically hypersensitive or that the new AMI meters cause, contribute to, or exacerbate Complainant's illnesses.

The installation of an AMI meter 98 feet from Complainant's bedroom window at the service property correlates to a self-reported worsening of Complainant's symptoms of insomnia; however, there is insufficient evidence to prove the installation of the AMI meter caused the worsening of Complainant's symptoms as they are subjective by Complainant's own admissions. Complainant testified that when he moved his bed 25 feet further away, that he slept soundly. This shows the EHS is a subjective self-diagnosis, with a psychological element to it.

Even if I were to give weight to Complainant Exhibits L and M and find Complainant has heavy metal toxicity, systemic candida, Lyme disease, hormone regulation disorder of the adrenal gland, (electromagnetic field sensitivity) or EHS (electromagnetic hypersensitivity), EHS is not a medical diagnosis that is widely accepted among medical practitioners given the credible testimony of Dr. Israel, who describes EHS as an idiopathic environmental intolerance, which has an unknown cause. Dr. Israel opined that Complainant's insomnia was not caused by radio frequency waves emitting from his neighbor's smart meter. I

am persuaded to find Complainant had insomnia. However, I am not convinced EHS has a scientific basis as it appears to be based entirely upon self-reporting of adverse reactions to electromagnetic fields at intensities well below the maximum levels permitted by the FCC's radiation safety standards. The symptoms of EHS seem to vary widely and there is a psychological component to EHS. In giving his opinion, Dr. Israel relied on reports, "It is the IEI-EMF individuals' belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals." PPL Electric Statement No. 2.

Complainant's testimony was also refuted by PPL's expert witness Dr. 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. 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.

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 9-10. 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.

Dr. Davis opined that the levels of RF fields from the Landis + Gyr Focus AX-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 15, 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.

Additionally, there are six television broadcast towers within a 50-mile radius of Complainant's location in Mifflintown, 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 5.44 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 will cause a deleterious health effect to Complainant. This holding is consistent with recent caselaw precedent including: *Hoffman-Lorah supra.*; *Sunstein Murphy v. PECO Energy Company*, C-2015-2475726 (Opinion and Order entered May 9, 2019); *Benhayon v. PPL Electric Utilities Corporation*, C-2018-3003491 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019) and

Lesniewski v. PPL Electric Utilities Corporation, C-2018-3004594 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019).

Although Complainant has training and experience in architecture, he is not an expert witness in the fields of electrical engineering, physics, biophysics or medicine. There is no evidence to show Mr. Fiskin is an expert in these fields either. Complainant offered no evidence to show the readings of Mr. Fiskin were accurate, or even what the readings were. Mr. Fiskin was not made available for cross examination. The meter used by Mr. Fiskin to measure RF fields appears to be a fairly low-cost meter manufactured by Gigahertz Solutions. Dr. Davis' testimony is credible that he would never use such a meter to make reliable measurements of RF fields because smart meters are complex to measure properly and require very expensive RF measurement equipment to see what they are really transmitting. Tr. 58.

Additionally, the Gigahertz Solutions meter could have been measuring spurious signals coming in through a nearby powerline and could have been measuring signals from local television broadcast towers. Tr. 58, PPL Electric Exhibit CD-2. For these reasons, I find Complainant's testimony regarding the RF Fields emitting from a nearby Landis + Gyr Focus E 350 meter to be non-persuasive as Complainant's opinion is based upon conjecture and incomplete information.

Recently, in *Povacz v. PECO*, C-2015-2475023 (Opinion and Order entered March 28, 2019), the Commission held Ms. Povacz failed to prove she suffered from electromagnetic hypersensitivity syndrome as she had self-diagnosed the illness. *Id.* at 59-60. Without independent diagnostic evidence to corroborate a Complainant's self-diagnosis, Complainant failed to prove that she was electromagnetically hypersensitive. *Id.* at 60. Specifically, the Commission held:

Based on the foregoing analysis and discussion, we believe the Complainant's evidence is not sufficient to establish a *prima facie* case under 66 Pa. C.S. § 332(a) in demonstrating that the RF exposure levels from a PECO smart meter will cause adverse health effects for the Complainant.

Id. at 60.

Similarly, in the instant case, I find Complainant has not established a *prima facie* case to show that any RF exposure levels from a Landis + Gyr Focus AXR-SD meter will cause him to experience adverse health effects. The assertions of Complainant that his health will deteriorate because of radiofrequency fields emitted by an AMI meter are bald assertions, which do not constitute evidence. *Bervinchak v. PPL Electric Utilities Corporation*, Docket No. C-2016-2572824 (Final Order entered on October 2, 2018). *See also, Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d. 12 (Pa. 1987).

No corroborative medical evidence was proffered to support Complainant's testimony. There is insufficient evidence to show that an AMI meter will cause him to suffer deleterious health effects, even insomnia.

Complainant has no medical degree. His testimony as to the deleterious health effects of an AMI smart meter was refuted by the credible testimony of PPL's expert 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 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 15.

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.

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 intended for installation by PPL will cause or contribute to the development of illness or disease. PPL Electric Statement No. 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 14-15.

Data Privacy

Complainant contends it is unreasonable that the new AMI meter invades his privacy and that the meters are not cyber secure. Complainant offered Exhibit B, an Opinion and Order from the United States Court of Appeals for the Seventh Circuit, *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521 (7th Cir. 2018) (*Naperville*).

Conversely, PPL contends that unlike the City of Naperville, PPL is not a state actor involved in the installation of smart meters. Tr. 52. PPL contends its meters are cyber-secure and do not constitute an unreasonable search or invasion of Complainant's privacy.

Disposition

As a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data. PPL Electric Exhibit No. DV-1. PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. PPL Statement No. 4 at 7-8. Customer data is encrypted to make the data readable to only PPL personnel who can decode the encryption. PPL Statement No. 4 at 7-8. PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. PPL Statement No. 4 at 7-8. Additionally, if Complainant is concerned about the AMI meter's connection to smart appliances in her home, he can decline to have the ZigBee radio activated. *See Lesniewski, Id.* at 24, wherein the Commission found in favor of PPL regarding the same data privacy issue. Specifically, the Commission held that Ms. Lesniewski had an option to decline activation of the ZigBee radio device located within the AMI meter.

Regarding Complainant's argument that a mandatory smart meter would violate her Fourth Amendment rights of freedom from unreasonable searches and seizures, I agree with PPL that it is not a "state actor" in that it is not a sovereign governmental entity also responsible for law enforcement. Rather, it is a private, regulated utility company not constrained by the Fourth Amendment. *See Jackson v. Metropolitan Edison Company*, 419 U.S. 345 (1974). Further, there is no evidence in the instant case that PPL is making its data easily accessible to law enforcement or other third parties.

In *Naperville*, the Seventh Circuit found the City of Naperville owned and operated a public utility that provides electricity to its residents. Naperville began replacing its residential customers' analog energy meters with digital smart meters. *Naperville*, 900 F.3d at 524. Naperville's Electric Utility collects residents' energy-consumption data at fifteen-minute intervals, storing it for up to three years. The Seventh Circuit concluded that the use of smart meters intruded upon reasonable expectations of privacy, thus constituting a search subject to Fourth Amendment constraints, but that such searches were "reasonable," and thus constitutionally permissible and consistent with the Fourth Amendment. In finding that the

Naperville Electric Utility’s use of the smart meters constituted a search, the court relied heavily on *Kyllo v. United States*, 533 U.S. 27, 31–32 (2001). The Court referenced the administrative search doctrine to find that the presumption had been overcome. *Naperville*, 900 F.3d at 528-29 (citing *Camara v. Municipal Court*, 387 U.S. 523 (1967)). In particular, the City of Naperville had “no prosecutorial intent;” “public utility [e]mployees —not law enforcement officials— collect and review the data.” *Id.* Thus, the Electric Utility’s intrusion was more innocuous than that found to violate the Fourth Amendment in *Camara*. For these reasons, I find in favor of Respondent on this data privacy 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 a smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or a violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Although the Complainant is genuine in his concerns, the Commission’s decisions cited above are controlling.

CONCLUSIONS OF LAW

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

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

12. PPL is legally required to install the RF Mesh meter on the Complainant’s property by Act 129 of 2008 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).

13. Nothing in Act 129 of 2008 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 PLC meters are not compliant with Act 129 of 2008 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).

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 of 2008 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).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Thomas Aguirre against PPL Electric Utilities Corporation at Docket No. C-2018-3005352 is denied and dismissed.
2. That the docket in this proceeding be marked closed.

Date: July 12, 2019

/s/
Elizabeth H. Barnes
Administrative Law Judge