

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Erika Brunner	:	
	:	
v.	:	C-2018-3006175
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On November 20, 2018, Erika Brunner (Complainant) filed the instant Complaint averring that she wishes to opt out of a smart meter installation at her residence, 896 Kressler Road, Allentown, Pennsylvania for health reasons, privacy and cyber security issues, and because she contends smart meters are fire hazards and unsafe. Complainant avers that many states have already provided their residents with choices regarding smart meters. She contends that the General Assembly intended Section 2807(f)(2)(i) of the Public Utility Code, 66 Pa. C.S. § 2807(f)(2)(i), to

give homeowners the option of choosing whether or not they wanted a smart meter to be installed. The complainant also stated that it is an error to mandate the installation of these devices.

The Complaint was served upon PPL Electric Utilities Corporation (PPL, PPL Electric, Company or Respondent) on November 27, 2018.<sup>1</sup> On December 17, 2018, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainant at the address shown on the Complaint. The Answer contends that the Respondent is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers and that it has the right to terminate service for failure of the customer to permit access to the meter.

On December 20, 2018, a Hearing Notice was issued scheduling a hearing for July 24, 2019 and assigning the case to me as presiding officer. A Prehearing Order was issued on January 4, 2019. On July 12, 2019, PPL filed a Motion to Compel Discovery Responses. The hearing was held as scheduled on July 24, 2019.

At the hearing, Complainant appeared *pro se* with no exhibits. Respondent appeared represented by Devin Ryan, Esquire and Curtis Renner, Esquire with 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.

A transcript consisting of 33 pages was filed on August 12, 2019 and the record closed on that date. This case is ripe for a decision.

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<sup>1</sup> PPL signed a waiver of the Section 702 requirement for registered or certified mail service of formal complaints, 66 Pa. C.S. § 702, and agreed to electronic service under the Commission's waiver of 702 program. *See In Re: Electronic Service of Formal Complaints*, Secretarial Letter Dated December 22, 2014, at Docket Nos. M-2013-2398153 *et al.* Service is listed in the electronic Audit History of the case as entered by the Secretary's Bureau as having been affected on November 27, 2018. Thus, PPL's Answer filed on December 17, 2018 is deemed timely filed.

## FINDINGS OF FACT

1. The Complainant in this proceeding is Erika Brunner, who resides at 896 Kressler Rd., Allentown, Pennsylvania (service address). Tr. 7.

2. Complainant requests a smart meter not be installed where she resides at 896 Kressler Rd., Allentown, Pennsylvania. Tr. 7.

3. Complainant has a bachelor's degree in psychology and she works in retail. Tr. 8.

4. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 6.

5. 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 DV-1.

6. 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 Statement No. 4 at 4-6.

7. Under the Smart Meter Plan, the RF Mesh meters are to be deployed between 2017 and 2019 for all of PPL's 1.4 million customers. PPL Electric Statement No. 4 at 4, 6.

8. PPL has deployed over one million RF Mesh meters as of the July 24, 2019 hearing. PPL Electric Statement No. 4 at 10.

9. On December 20, 2017, PPL sent Complainant a letter notifying her that it intended to install the new AMI meter on her residential property within approximately the next six weeks. PPL Electric Exhibit No. KD-1, PPL Electric Statement No. 3 at 6.

10. On January 9, 2018, PPL sent Complainant a letter notifying her that it intended to install the new AMI meter in three weeks. PPL Electric Exhibit No. KD-1, PPL Electric Statement No. 3 at 6.

11. On October 30, 2018, PPL sent Complainant a termination notice, informing her that electric service would be shut off on November 12, 2018, for failure to provide reasonable access to her meter. PPL Electric Statement No. 3 at 8-9.

12. PPL did not terminate Complainant's electric service. PPL Electric Statement No. 3 at 9.

13. The RF Mesh meter to be installed for the Complainant's residential account is the Landis + Gyr Focus AXR-SD meter. PPL Electric Statement No. 4 at 5-6.

14. The Landis + Gyr Focus AXR-SD meter is certified by the Underwriters Laboratories at UL 2735. PPL Electric Statement No. 4 at 6.

15. The Landis + Gyr Focus AXR-SD meter is compliant with American National Standards Institute (ANSI). PPL Electric Statement No. 4 at 6.

16. PPL Witness Davis has a Ph.D. in Physics and is a fulltime Professor with an endowed Chair at the University of Maryland, where for over 30 years he has taught Physics, Electrical Engineering, Electromagnetics, and RF Electromagnetics to undergraduate and graduate students. PPL Electric Statement No. 1 at 1-5.

17. In addition to his teaching, Dr. Davis is an active scientific researcher in the fields of Physics, Biophysics, Electrical Engineering, Bioelectromagnetics and RF

Bioelectromagnetics, conducting many scientific studies in these fields and publishing over 250 studies in peer-reviewed scientific journals. PPL Electric Statement No. 1 at 1-5.

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

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

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

21. The Federal Communications Commission (FCC) has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. PPL Electric Statement No. 1 at 9-10.

22. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). PPL Electric Statement No. 1 at 9-10.

23. The levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 13, PPL Electric Exhibit CD2.

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

25. Complainant has a cell phone that she uses a few minutes each day, and although she has a Wi-Fi network, her computers are hard-wired. Tr. 12.

26. There are 17 television broadcast towers within a 50 mile radius of Complainant's location in Allentown, Pennsylvania. Tr. 22, PPL Electric Statement No. 1 at 15.

27. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 800 times higher than the RF signals from the AMI meter. Tr. 22, PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

28. The RF exposure from a cell phone used at a person's head is 260,000 times higher than the average RF levels 1 meter away from the Company's new smart meter. Tr. 22, PPL Statement No. 1 at 14-15, PPL Electric Exhibit CD-6.

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

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

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

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

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

34. Claimed symptoms related to Electromagnetic Hypersensitivity (EHS) are more accurately described as “Idiopathic Environmental Intolerance” (“IEI”), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. PPL Electric Statement No. 2 at 13.

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

36. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 13.

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

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

39. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2 at 17.

40. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL would cause, contribute to, or exacerbate any of the symptoms of tinnitus claimed by the Complainant, or any other adverse health effects. PPL Electric Statement No. 2 at 16-17.

41. Tinnitus is a medical condition characterized by ringing or buzzing in the ears, but it is not increased by exposure to RF fields from cell phones, broadcast towers, cordless telephones or wireless networks. PPL Electric Statement No. 2 at 16.

## DISCUSSION

### Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9,

1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).<sup>2</sup>

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.” *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at \*210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”). Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Id.* at \*211. Specifically, in AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015); *see also Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

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

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

66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

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

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . .

66 Pa. C.S. § 1501.

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

A public utility’s Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316, *Kossmann v. Pa.*

*Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Telephone Co. of Pennsylvania*, A.2d 339 (Pa. Cmwlth. 1977).

### Health and Safety Concerns

Complainant claims she has suffered from tinnitus, which is exacerbated by electromagnetic radiation. Complaint at Par. 3; PPL Electric Statement No. 2 at 7, 16. She contends her physical ailments will become aggravated by the installation of an AMI meter at her residence. Thus, it is unreasonable service to allow PPL to install the AMI meters at those locations.

Conversely, PPL contends Complainant may have Idiopathic Environmental Intolerance (IEI) and has failed in her burden of proving she has been medically diagnosed with tinnitus or that it will increase by the AMI meter.

### Disposition

Dr. Israel describes electromagnetic hypersensitivity syndrome (EHS) as an idiopathic environmental intolerance (IEI), which has an unknown cause. PPL Electric Statement No. 2 at 13. Dr. Israel opined that Complainant's tinnitus was not caused by radio frequency waves emitting from her neighbors' smart meters. PPL Electric Statement No. 2 at 16. There is insufficient evidence to show that tinnitus is caused by or would be increased by Complainant's exposure 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.

I am persuaded by the credible testimony of Dr. Israel, who testified that claimed symptoms related to EHS are more accurately described as IEI in which “idiopathic” means “cause unknown.” PPL Electric Statement No. 2 at 7.

In addition, the research on IEI has been evaluated by credible public health entities and expert groups, including the United Kingdom Health Protection Agency (2012), the Royal Society of Canada (2013), the New Zealand Ministry of Health (2015), and the European Commission’s Scientific Committee on Emerging and Newly Identified Health Risks (2015). Based on their reviews of the scientific research, these entities concluded there is no reliable scientific evidence that exposure to RF fields causes claimed IEI symptoms. PPL Electric Statement No. 2 at 15; PPL Electric Exhibit MI-3. The World Health Organization has found that “There is little scientific evidence to support the idea of electromagnetic hypersensitivity.” PPL Electric Statement No. 2 at 15. These findings from public health entities and expert panels show that the theory of IEI caused by exposure to RF fields has not been generally accepted in the medical community. PPL Electric Statement No. 2 at 15.

Further, Dr. Israel evaluated whether there is a credible scientific basis for Complainant’s claim that exposure to RF fields causes or contributes to tinnitus. PPL Electric Statement No. 2 at 16. There have been a number of studies on whether exposure to RF fields causes or contributes to tinnitus. PPL Electric Statement No. 2 at 16. Several studies, including the Landgrebe 2009 study found no increase in tinnitus related to exposure to RF fields from cell phones or other sources, such as cell phone broadcast towers, cordless telephones and wireless networks. PPL Electric Statement No. 2 at 16. Therefore, there is no reliable scientific basis to conclude that exposure to RF fields from the AMI meters being used by PPL Electric causes or contributes to tinnitus. PPL Electric Statement No. 2 at 16.

Dr. Israel also evaluated scientific research on RF fields and adverse health effects generally. He testified that he has been systematically examining this research over the past several decades and that many hundreds of studies have been published. PPL Electric Statement No. 2 at 6-8. He testified that three groups of controlled laboratory studies on animals “are particularly informative because they address fundamental biological functions that are very

sensitive to any disruption: genetics, reproduction and growth and development.” PPL Electric Statement No. 2 at 9. Dr. Israel described a number of the studies in these areas which he considered good examples of well-designed and well-conducted studies. These studies found no adverse effects on genetics, fertility, reproduction, growth or development in the animals exposed to RF fields. PPL Electric Statement No. 2 at 9. Dr. Israel also provided examples of well-conducted animal studies on RF fields and cancer. He testified that these studies, which involved animals with lifetime exposures to RF fields, did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. PPL Electric Statement No. 2 at 10.

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the World Health Organization (“WHO”) has concluded that “no adverse health effects have been established as being caused by mobile phone use.” PPL Electric Statement No. 2 at 10. A number of other public health authorities, including agencies in Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. PPL Electric Statement No. 2 at 10; PPL Electric Exhibit MI-1. In addition, several U.S. state public health authorities and Public Utility Commissions have investigated claims about health effects from smart meters. These include the Maine Center for Disease Control (2010), the Vermont Department of Health (2012), Arizona Department of Health, Office of Environmental Health (2014), and North Carolina Department of Health and Human Services, Division of Public Health, Occupational and Environmental Epidemiology Branch (2015). These evaluations by State public health authorities and Public Utility Commissions conclude that RF fields from smart meters do not pose any public health risk. PPL Electric Statement No. 2 at 11; PPL Electric Exhibit MI-2.

Additionally, on this issue, I find credible the expert testimony of PPL witness Dr. Christopher Davis who opined that Complainant is exposed to RF background levels at her service location 800 times larger than any RF field exposure she would have standing three meters from the Landis + Gyr AMI meter. PPL Exhibit No. CD-5; PPL Electric Statement No. 2 at 15.

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 5-6, 12.

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 FDA and the EPA. PPL Electric Statement No. 1 at 9-10.

The levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 13, PPL Electric Exhibit 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 from Complainant's cell phone that she uses for a few minutes each day and her Wi-Fi network is equivalent to years of continuous RF exposure at a distance of approximately one meter from an AMI meter. Tr. 12, 22; PPL Statement No. 1 at 15; PPL Electric Exhibit CD-6. The RF exposure from a cell phone used at a person's head is 260,000 times higher than the average RF levels one meter away from the Company's new smart meter. PPL Electric Statement No. 1 at 14. For all of these reasons, I find in favor of PPL on this issue.

### Fire Hazard

Although Complainant averred in her Complaint that the AMI meter is a fire hazard with plastic parts likely to melt in the hot temperatures, Ms. Brunner offered no evidence other than her testimony that the AMI meter was a fire hazard. The assertions of Complainant that the meter is a fire hazard are uncorroborated and these bald assertions do not constitute substantial 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).

### Data Privacy

Although Complainant averred in her Complaint that the AMI meter is “surveillance equipment that records electric usage by time of day” in violation of her constitutional right to privacy, Complainant did not offer any evidence to support this claim.

### Opt In v. Opt Out

Complainant averred in her Complaint that Act 129 of 2008 was misinterpreted by the Commission as AMI meters were never statutorily mandated. She argues that according to the legislative history to House Bill 2200, adopted October 8, 2008 in the *Legislative Journal*, smart meter installation is not mandated but allows for deployment through a depreciation process through new home construction process and depreciation of 15 years for anyone who wants to purchase a smart meter.

### Disposition

The language of Act 129, amending Chapter 28 of the Public Utility Code (Code), 66 Pa. C.S. §§ 2801-2815, is unambiguous. Act 129 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. The Act used the term “shall” instead of “may” denoting a mandatory

requirement. 66 Pa. C.S. § 2807(f)(2). *Whiteford v Pa. Dept. of Transportation*, 728 A.2d 1127 (Pa. Cmwlth. 2001).

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, she 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.

### 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 or otherwise violate the Public Utility Code or a Commission order or regulation. 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).

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).

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

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

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

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

14. The Commission previously determined that the Company's existing 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 Erika Brunner against PPL Electric Utilities Corporation at Docket No. C-2018-3006175 is denied and dismissed.
2. That PPL Electric Utilities Corporation's Motion to Compel filed on July 12, 2019, is denied as moot.
3. That the docket in this proceeding be marked closed.

Date: August 14, 2019

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/s/  
Elizabeth H. Barnes  
Administrative Law Judge