

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John A. Freda	:	
	:	
v.	:	C-2019-3007408
	:	
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 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 any provision of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

HISTORY OF THE PROCEEDING

On January 24, 2019, John A. Freda (Complainant) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL) averring he wishes to opt out of a smart meter installation at his residence, 846 Blooming Grove Road, Tafton, Pennsylvania (account number ending in 020) for health reasons, privacy and cyber security issues, and because he contends smart meters are fire hazards and unsafe.

Complainant avers that he is “trying to get a stay of execution as it were until our elected body can pass an opt out law.” Complaint ¶ 7.

The Complaint was served upon PPL on January 24, 2019. On February 13, 2019, 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 February 21, 2019, a Hearing Notice was issued scheduling a hearing for September 6, 2019 and assigning the case to me as presiding officer. A Prehearing Order was issued on March 7, 2019. PPL served its direct testimony and exhibits upon the presiding officer and Complainant on August 2, 2019. On August 13, 2019, PPL filed a Motion to Compel Discovery Responses. On August 23, 2019, an Order Granting Motion to Compel was issued. On September 6, 2019, the hearing was held as scheduled.

At the hearing, Complainant appeared *pro se* with three Exhibits. Exhibit A is medical documents. Exhibit B is Photographs and a Report authored by Dan Mattson. Exhibit C is a Three-Day Shutoff Notice and Account Contact History. 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. Complainant’s Exhibits A, B and C were admitted into the record. Respondent’s statements and exhibits were admitted into the record.

A transcript consisting of 83 pages was filed on October 3, 2019, and the record closed the same day. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is John A. Freda, who resides at 846 Blooming Grove Rd., Tafton, Pennsylvania (account number ending in 020). N.T. 7-8.

2. Complainant requests a smart meter not be installed at his rural service address and that he be permitted to receive electric service with his current meter. N.T. 8-9.

3. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). N.T. 7.

4. On June 30, 2014, PPL filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 and the Commission's Smart Meter Implementation Order. PPL Electric Statement No. 4 at 4.

5. PPL selected Radio Frequency ("RF") Mesh meters and metering system because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the Smart Meter Implementation Order. PPL Electric Statement No. 4 at 4.

6. The individual RF Mesh meters are used as relay points to transmit data back to PPL. PPL Electric Statement No. 4 at 5-6.

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 6.

8. PPL had deployed over one million RF Mesh meters as of the September 6, 2019 hearing and none of them have caused a fire. PPL Electric Statement No. 4 at 10.

9. 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 6.

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

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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 25.5 times higher than the RF signals from the AMI meter. N.T. 49-51. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

23. Two cell phones are used at the service property but Mr. Freda turns his cell phone off at night. N.T. 20-22.

24. Mr. Freda uses his cell phone on average thirty minutes per day. N.T. 27.

25. 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.

26. 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.

27. 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.

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

29. 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.

30. 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.

31. 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.

32. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2, p. 16, lines 8-9.

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

34. 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.

35. 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.

36. Complainant resides with his wife, Debra S. Freda. N.T. 10.

37. Ms. Freda had uterine fibroid tumors and ovarian cysts in 2010. N.T. 12, Complainant Exhibit A at 1.

38. There is no mention in the MRI medical record in Complainant's Exhibit A to show any fibroids or cysts were caused by or exacerbated by radio frequency fields. N.T. 66, Complainant's Exhibit A.

39. It is not possible that Ms. Freda would have a recurrence of a removed uterine fibroid if it had been removed through a hysterectomy. N.T. 67.

40. 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 including but not limited to tumors or cysts. N.T. 68, PPL Electric Statement No. 2 at 16.

41. 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 16, N.T. 66-68.

42. PPL's new AMI meters are equipped with software and mechanisms that better alert the Company if there is an issue with overheating. PPL Electric Statement No. 4 at 10.

43. Specifically, there is a heat alarm set within the meter software program, so when the temperature of the meter hits an established level, the Company is alerted to the issue. PPL Electric Statement No. 4 at 10.

44. PPL takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and identify any current issues or problematic trends. PPL Electric Statement No. 4 at 10.

45. If the Company detects an issue with the meter's temperature, PPL will dispatch a technician to investigate. PPL Electric Statement No. 4 at 10.

46. From the Company's research, "the root cause of the vast majority" of any fires involving new meters is the customer-owned meter bases wearing out and producing loose connections between the "blade" of the meter and the "jaw" of the meter base. PPL Electric Statement No. 4 at 9.

47. PPL has taken several steps to mitigate the risk of these worn out meter bases, including analyzing the materials utilized for meter bases, enhancing its inspection criteria so that its service technicians are better able to "identify loose jaws in the field," and ensuring the new AMI meters meet the American National Standards Institute ("ANSI") requirements. PPL Electric Statement No. 4 at 9.

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

49. 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 Statement No. 4 at 6 -12.

50. PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. PPL Electric Statement No. 4 at 7.

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

52. PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. PPL Electric Statement No. 4 at 6-12.

53. Complainant worked as a carpenter in the construction trade for over thirty years. N.T. 20.

54. Complainant is neither a medical professional nor an engineer. N.T. 19.

55. Complainant is a disabled veteran who intends to move from Pennsylvania and forfeit his full retirement pension, which he has with the State, if he is compelled to accept a smart meter for electric service. N.T. 11, 77-78.

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).¹

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,

¹ 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).

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.” 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).

Whether simple hearsay may support a finding of an agency depends on whether the evidence meets the criteria of the *Walker/Chapman* rule. 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).

Health and Safety Concerns

Complainant claims his wife has suffered from uterine fibroids and ovarian cysts and that the installation of a smart meter at his residence would cause the recurrence of tumors, nosebleeds, etc. N.T. 67, 77-78. Complainant offered in support of his claims an article entitled, “The Landis + Gyr Smart Meter: An Inside View” Complainant Exhibit B. Complainant also

offered some medical documents, including medical bills and an MRI report. The MRI report dated February 11, 2010 states that Deborah Freda had an MRI of the pelvis showing multiple simple follicular cysts in the right ovary and multiple uterine fibroids. The report was made by Shital R. Shah, M.D, who was not available for cross examination. Also not available for cross examination was either Debra Freda or Dr. Fried, the ordering doctor. Complainant contends his wife's physical ailments will become aggravated by the installation of an AMI meter at their residence and he will be forced to move out of the state and lose his pension. Thus, it is unreasonable service to allow PPL to install the AMI meters at his residence.

Conversely, PPL contends Complainant has failed to show that his wife's medical condition is caused by or will be exacerbated by the AMI meters installed in her neighborhood or on her service property.

Disposition

I give little weight to Complainant Exhibit A (MRI report) because neither Dr. Fried nor Dr. Shah were available for cross examination and the medical record in Complainant's Exhibit A does not state that the fibroids or cysts were caused by or exacerbated by radio frequency fields. I also give little weight to "The Landis + Gyr Smart Meter: An Inside View". Complainant Exhibit B. The article is authored by Dan Mattson, an EMF² Technician, who purportedly disassembled a Landis + Gyr Smart Meter and tested its switching frequency through field measurement. Mr. Mattson asserts that studies are coming out that show frequencies from common devices can do biological harm especially if there is direct contact between the body and the device.

Mr. Mattson's opinion is given little weight because he was not available for cross-examination and it is unclear what studies he refers to in asserting his opinion. PPL was denied an opportunity to test the veracity of the author's opinions or his qualifications to render such opinion. 66 Pa. C.S. § 332(c). *Answerphone, Inc. & Elite Answering Serv. v. The Bell Tele.*

² "EMF" stands for Electromagnetic field.

Co. of Pa., 1993 Pa. PUC LEXIS 70, at *29-30 (Order entered April 1, 1993). PPL objected to these exhibits on the grounds that they contained hearsay evidence.

Dr. Israel opined that Complainant's uterine fibroids and ovarian cysts were not caused by radio frequency waves emitting from her neighbors' smart meters. Even if record evidence demonstrated that the Complainant's wife suffered from fibroids and cysts, which it does not, there is insufficient evidence to show that they were caused by or exacerbated by Complainant's exposure to electromagnetic fields at intensities well below the maximum levels permitted by the FCC's radiation safety standards. 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 claimed symptoms related to EHS are more accurately described as IEI in which "idiopathic" means "cause unknown." Dr. Israel evaluated the few medical documents produced by the Complainant in this proceeding and testified on cross-examination that he is not aware of any damage that can happen to a person's cells as a negative effect from radiofrequency ranges used by the smart meter. N.T. 72.

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. 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 8. 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 9-10.

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), the Arizona Department of Health, Office of Environmental Health (2014), and the 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; PPL Electric Exhibit MI-2.

There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2 at 16. There is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, including fibroids/cysts, or any other adverse health effects. PPL Electric Statement No. 2 at 16.

Additionally, on this issue, I find credible the expert testimony of PPL witness Dr. Christopher Davis who opined the Landis + Gyr AMI meter would not cause adverse health effects. Dr. Davis co-authored 255 articles published in peer-reviewed scientific journals, two books, twelve book chapters and 324 papers presented at scientific conferences. PPL Electric Statement No. 1 at 2. He 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.

Over a 5-month period, Complainant used his cell phone approximately 4,500 minutes. The RF field exposure from 5,630 minutes of cell phone usage is equivalent to 1,333 years of continuous RF exposure at a distance of approximately one meter from an AMI meter. PPL Statement No. 1 at 15. There are six television broadcast towers within a 50 mile radius of Complainant's location in Tafton, Pennsylvania. PPL Electric Statement No. 1 at 15. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 25.5 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5, as amended by the testimony of Dr. Davis at N.T. 48-52. 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 Concerns

Complainant contends AMI meters have design defects making them fire hazards in comparison to analog meters. N.T. 10. Specifically, Complainant questions whether there is a battery in the meter that will explode at some point. N.T. 10. Complainant offered Exhibit B “The Landis + Gyr Smart Meter: An Inside View” to support his claim.

Conversely, PPL argues that the new AMI meters are not a fire hazard because they are equipped with software and mechanisms that better alert the Company if there is an issue with overheating. PPL Electric Statement No. 4. PPL also contends the Landis + Gyr meter meets the American National Standards Institute (ANSI) requirements and is certified by Underwriters Laboratories and that the meter can withstand a thermal index of 160 degrees Celsius before breaking down. PPL Statement No. 4.

Disposition

Complainant’s fire risk claims are based upon hearsay evidence. Complainant’s Exhibit B was objected to at the hearing and under the *Walker/Chapman* rule, is not being given weight. Also, it is not corroborated by any other evidence in the record. Even if I were to give the article weight, the author describes internal components and the circuit board holding the power supply and surge protection components, but does not conclude that the meter is a fire hazard. There is nothing in the article to suggest that there is a lithium battery in the meter that might explode or that any component creates a fire hazard.

PPL’s witness Donald Vinciguerra testified there are no batteries inside the meter PPL plans to install upon Mr. Freda’s house. N.T. 42. The meters have a super capacitor which temporarily holds electricity so that in the event of a loss of power, PPL receives a “last gasp” message from the meter that the unit has lost AC power. N.T. 44. Further, the average life expectancy of the Landis + Gyr meter is “in excess of 15 years.” Thus, the Company intends to change them out periodically to avoid meter failure. N.T. 47.

Mr. Vinciguerra is familiar with some cases involving fires and he reached out to other utilities to learn from their experiences. PPL Electric Statement No. 4 at 8. PPL chose a base plate material that would withstand temperatures of up to 160 degrees Celsius for a relative thermal index. PPL Electric Statement No. 4 at 8. Mr. Larson testified the meter to be installed at Mr. Freda's residence met the ANSI requirements and Underwriters Laboratories. PPL Electric Statement No. 4 at 8.

Additionally, PPL trains its service technicians and independent contractors installing the AMI meter to inspect the customer's meter base and look for loose wiring or loose meter jaws. PPL Electric Statement No. 4 at 9. Mr. Vinciguerra is not aware of any fires being caused by the E-350 Focus AXR-SD meter within PPL's service territory. PPL Electric Statement No. 4 at 10. PPL has already installed 1,000,000 AMI meters within its service territory. PPL Electric Statement No. 4 at 10.

In the *Frompovich* case, *supra*, the Commission recognized PECO Energy Company (PECO) did have an issue with the initial deployment of Sensus smart meters. The Commission held:

Specifically, as to the Complainant's fire hazard claim, PECO satisfied its burden of production, or the burden of going forward with the evidence, to show that the brand of AMI to be installed at the Complainant's home – the Landis + Gyr meter – does not present a fire hazard. PECO presented evidence in this case that previously there was a fire hazard problem with a particular brand of meter PECO had initially used in the AMI deployment. However, in approximately 2012, those meters were all removed and replaced with the Landis + Gyr Focus meters. PECO showed that since the installation of over 1.2 million of Landis + Gyr Focus meters, there have been no reports of fire incidents related to the meters. Tr. at 143. PECO showed that a Landis + Gyr meter would be installed at Ms. Frompovich's home.

Additionally, we take judicial notice here that the fire hazard issue involving the prior brand of AMI meter was raised to our attention during PECO's Smart Meter Phase II Plan proceeding at Docket No. M-2009-2123944, discussed *supra*, fn 3. In the Recommended Decision for that case, it was noted that PECO had experienced several meter events involving overheating during the Phase I deployment. PECO initiated

corrective action including replacement of the installed smart meters with meters manufactured by a different contractor, Landis + Gyr. PECO had completed replacing the meters on or before January 18, 2013, the date PECO filed its Smart Meter Phase II Plan. *See* Phase II R.D. at 9.

Moreover, the Complainant did not present any competent evidence in this record to show that the Landis + Gyr brand of meters causes fires or otherwise presents a fire hazard. Therefore, we agree with the ALJ's conclusion that the Complainant did not satisfy her burden of proving that the type of AMI meter to be installed at her home would constitute an unsafe fire hazard in violation of 66 Pa. C.S. § 1501.

Frompovich at 56-57.

PECO had an overheating issue with its initial deployment of Sensus AMI meters; however, these Sensus AMI meters were eventually removed by PECO and replaced with Landis + Gyr Focus AXR-SD meters, the same as are being deployed at residences by PPL through its Agent Grid One Solutions. *Id.* at 56. The Commission has already deemed it to be reasonable and not a fire hazard within the meaning of 66 Pa. C.S. § 1501 to allow another electric distribution company to install the Landis + Gyr Focus AXR-SD meter on residential dwellings within its service territory. The Commission found that, since the installation of over 1.2 million Landis + Gyr Focus meters, there have been no reports of fire incidents related to the meters. *Id.* At 56-57. Similarly, there is no evidence to show PPL has had any fire incidents related to the same make and model meter after deploying 1,000,000 such meters. PPL Electric Statement No. 4 at 10.

In the instant case, PPL showed that there is a heat alarm set within the meter software program, so when the temperature of the meter hits an established level, the Company is alerted of the issue. Further, PPL takes 15-minute interval temperature readings from the meter, so it can track the meter's temperature and identify any current issues or problematic trends. If the Company detects an issue with the meter's temperature, PPL will dispatch a technician to investigate. PPL Electric Statement No. 4 at 8-10. I find in favor of PPL on this issue.

Privacy Concerns

The Complainant also has raised privacy issues with the new AMI meter. Specifically, he avers that his Fourth Amendment rights to privacy are being violated by PPL's collection of data through the smart meter. N.T. 9-10.

Conversely, PPL contends the new AMI meter does come equipped with a 2.4 gigahertz ("GHz") ZigBee radio, which, if activated, enables the meter to connect with a customer's specific ZigBee enabled devices through a home area network (HAN). However, the meter can only transmit the total power that is consumed through the meter. It cannot independently calculate or transmit specific information concerning individual devices in the home. Moreover, the ZigBee radio is only turned on upon the customer's request. Therefore, if a customer does not want to enable this functionality, the customer can choose to never have the Company activate the ZigBee radio. PPL Electric Statement No. 4 at 11-12. Additionally, the Company would not know which appliance is using electricity even if the ZigBee radio would be activated because the AMI meter only collects the total electric usage at the service address. It does not distinguish between appliances being used by the customer. Only the customer has access to the HAN information, which could calculate the difference in power consumption as individual appliances are turned on and off. PPL Electric Statement No. 4 at 12. PPL would have no control over a customer's appliance even if the ZigBee radio was activated. PPL Electric Statement No. 4 at 12.

Disposition

I am persuaded to find credible the testimony of PPL witness Mr. Vinciguerra, who testified that the meter cannot detect such specific appliance use by a customer and that he possesses the technical knowledge and qualifications to answer that question with certainty. PPL Electric Statement No. 4.

As 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 KD-3. Consistent with that policy, the Company will collect data on the total amount of electricity used at the premises as well as significant event information, such as outages, voltage, heat alarms, and meter tampering alerts. PPL Electric Exhibit KD-3, Section 1.2.

PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. Customer data is encrypted to make the data only readable to Company personnel who can decode the encryption. PPL's cybersecurity policies and practices as proposed in PPL Electric's Smart Meter Plan (PPL Electric Exhibit DV-1) are consistent with national standards for the industry. PPL Electric Statement No. 4. Additionally, if Complainant is concerned about the AMI meter's connection to smart appliances in his home, he can decline to have the ZigBee radio activated.

Regarding Complainant's argument that a mandatory smart meter would violate his Fourth Amendment rights of freedom from unreasonable searches and seizures, PPL 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.

Recently, the United States Court of Appeals for the Seventh Circuit issued an Opinion and Order in the case of *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521 (7th Cir. 2018) (*Naperville*). 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.

Opt-In versus Opt-Out Program

Complainant wished to opt out from a smart meter installation or at least be given a stay from installation until the General Assembly passes new legislation allowing for an opt out. Complaint at 2-4.

Conversely, PPL contends its installation of an AMI Meter is required by Pennsylvania law and that it would not constitute unreasonable or unsafe service to install an AMI Meter on Complainant’s property. PPL argues Complainant has failed to demonstrate that any AMI meter causes, contributes to or exacerbates any adverse health effect. PPL denies the AMI meter causes fires or is a privacy risk.

Disposition

The Commission has ruled that there is no provision in the Code, the Commission’s Regulations or Orders that allows a PECO customer to “opt-out” of smart meter installation. 66 Pa.C.S. § 2807(f); See *Bervinchak v. PPL Electric Utilities Corporation*, C-2016-2572824 and C-2016-2577527 (Final Order October 2, 2018, Initial Decision dated August 16, 2018); *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 at 10 (Order and Opinion entered January 24, 2013); *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (ALJ Heep Initial Decision dated January 26, 2018). Moreover, the Commonwealth

Court has held that federal law does not preempt the Commission's interpretation. See *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017). The Commonwealth Court did not expressly address whether Mr. Romeo could opt-out of a smart meter installation. The Court held that Mr. Romeo's claim that smart meters cause safety and fire hazards and have a negative health impact, is not legally insufficient pursuant to 66 Pa. C.S. § 1501, which requires utilities to maintain adequate, efficient, safe and reasonable service and facilities for their customers. *Id.*

It is reasonable to infer from the *Romeo* decision, that it is legally sufficient to plead the injunctive relief requested in the instant case and claim that smart meters are generally unsafe and unhealthy, and the installation of them is unreasonable service in violation of 66 Pa. C.S. § 1501. However, the Commonwealth Court did not expressly address the opt-in versus opt-out argument. Although Complainants similarly situated to Mr. Romeo are entitled to an evidentiary hearing, there is Commission precedent that there is no opt-out provision in the current law in Pennsylvania.

The Commission has consistently held there is no opt-out provision for similarly situated Complainants in the past. The instant case is more similar than distinguishable from prior decisions wherein the Commission has dismissed similar complaints. *Pennsylvania Trout v. Dep't of Env'tl. Prot.*, 863 A.2d 93 (Pa. Cmwlth. 2004).

On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 into law, which directed electric distribution companies with at least 100,000 customers to file, with the Commission, a smart meter deployment and installation plan. Thus, there is a statute requiring smart meter deployment by large electric distribution companies operating within the Commonwealth. 66 Pa. C.S. § 2807(f).

The implementation of the Respondent's Smart Meter Deployment Plan and the approval of the costs associated with its implementation have been found by the Commission to be in accordance with Act 129 of 2008, 66 Pa. C.S. § 2807(f). The Respondent is required by statute and Commission Order to implement a Smart Meter Program, to install smart meters throughout its service territory, and to charge a Smart Meter Technology Surcharge to all of its metered customers.

As the Commission stated in its April 21, 2016 Opinion and Order in the case of *Frompovich*:

In past cases involving smart meter installation, we have evaluated on an individual case-by-case basis the specific allegations presented in each complaint and reached a conclusion based on those particular circumstances. While PECO is correct that as adopted Act 129 does not provide a general opt out provision, where a complainant's objection to installation of a smart meter was not based upon a general objection to smart meters *per se*, but rather upon facts specific to the individual complainant, we have denied preliminary relief and allowed the complaint to proceed to hearing. *See Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Material Question entered September 3, 2015; Order on Reconsideration entered January 28, 2016) (*Kreider*); *Paul v. PECO Energy Company*, Docket No. C-2015-2475355 (Order entered March 17, 2016). As we stated previously, "the law does not prohibit us from considering or holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1501 of the Code, when a legally sufficient claim is presented." *Kreider*, Order on Material Question at 17.

As in *Kreider* and *Paul*, Ms. Frompovich has alleged factual averments specific to her that, *if proven*, could implicate, under her particular circumstances, a violation of Section 1501 of the Code, a statute the Commission has jurisdiction to administer.

Frompovich, supra at 11-12 (Opinion and Order entered April 21, 2016) (emphasis added).

To the extent that Mr. Freda desires the ability to opt out of the smart meter installation, he could advocate for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills including: PA House Bill Nos. 1564 and 1565; and Senate Bill No. 443. These bills are not yet law. The Commission has held that it does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. *See Povacz v. PECO Energy Company*, Docket No. C-2012-231716 (Opinion and Order entered January 24, 2013). The Commission held that similarly situated Respondents would be in violation of law if they did not install a smart meter at properties similarly situated to Complainant's residence and her daughter's residence. *Id.*, *Frompovich* at 10. Thus, I find in favor of PPL on this issue.

Termination of Service

Complainant argues PPL erroneously posted a 3-day shut off notice on his property on January 22, 2019, indicating service would be terminated for failure to pay an arrearage of \$120 on his account when he owed no such arrearage. Complainant claims it is illegal for the company to terminate his service during the winter months. N.T. 77-78. Complainant claims PPL has no right to terminate electric service if he denies PPL access to replace his existing meter. N.T. 77-78.

Conversely, Respondent argues it is required to install AMI, or smart meters, for all AMR customers and that it has the right to terminate service for failure of the customer to permit access to the meter. PPL argues 52 Pa.Code § 56.100(b) specifies the conditions under which an electric utility can terminate service to customers during the winter. Section 56.98 provides an exception to a general rule in situations where a tariff provision is violated that would endanger the integrity of the public utility's delivery system. 52 Pa. Code § 56.98. There's been no testimony from Mr. Freda as to his income level and the replacement of the meter is required so the company can improve the reliability and safety of its electric distribution system. N.T. 79-80.

Disposition

Although I agree that the January 22, 2019 three-day shut off notice erroneously stated a shut off was scheduled for failure to pay an outstanding balance of \$120, the Complainant was credited that amount on the same date. Also, Mr. Freda was informed by the customer service representative that the shut off notice was actually for the refusal of an RF meter and a letter was sent to Complainant regarding termination for refusal of an RF meter installation on the same date. PPL Electric Exhibit KD-1. Thus, the error on the shut-off notice was *de minimus*, and no civil penalty will be assessed as the error was remedied the same date it occurred.

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.Cmwlt. 1997); and *Stiteler v. Bell Telephone Co. of Pennsylvania*, 379 A.2d 339 (Pa.Cmwlt. 1977).

Rule 10(B)(2)(g) of PPL Electric's tariff states that the Company is authorized to terminate service when: (1) its "representatives cannot gain admittance or are refused admittance to the premises for the purpose of reading meters, making repairs, making inspections, or removing Company property"; (2) "the customer interferes with Company representatives in the performance of their duties; or (3) "the meters or other equipment of the Company are not accessible during reasonable hours." PPL Electric Exhibit KD-4. Similarly, Rule 2F of PPL's Tariff, Supplement No. 42, Electric Pa. PUC No. 201 provides that PPL "shall have access at all reasonable hours to customer's premises, without charge for the purpose of inspecting, installations, installing meters, reading, testing, removing, replacing, or otherwise maintaining or disposing of any of Company's property." PPL Electric Exhibit KD-4.

It is well-settled that where a customer refuses a utility access to its meter, the utility may terminate service after required notice is provided. The Commission's Regulations, at 52 Pa. Code § 56.81(3), provide, in pertinent part, the following:

A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91-56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

52 Pa. Code § 56.81(3). Additionally, the Commission held in *Frompovich*,

Based on our adjudication of Ms. Frompovich's claims herein, we find that PECO's proposed termination of electric service to the Complainant's service address for the Complainant's refusal to permit PECO access to its meter, so that PECO's employees can replace the existing AMR meter with an AMI meter, to be consistent with and authorized under Section 1501 of the Code, the Commission's Regulations at 52 Pa. Code § 56.81(3), and the Company's Tariff. We remind PECO, however, that prior to taking any steps related to such termination of service, it must adhere to the applicable provisions of the Commission's Regulations

relating to Notice Procedures Prior to Termination at 52 Pa. Code §§ 56.91-100. In the applicable written notice(s) required under the Commission's Regulations, PECO is requested to inform or instruct Ms. Frompovich as to how she may avoid termination related to the meter.

Frompovich at 59.

I agree with PPL that if the Commission denies and dismisses this Complaint, PPL will have a legal right to initiate termination procedures if it is denied reasonable access to the Company's meter per its tariff, the Commission's Regulations, and Chapter 14 of the Public Utility Code. See 66 Pa. C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); PPL Electric Exhibits KD4 and KD5.

Further, there is insufficient evidence to show Complainant is at or below 250% of the federal poverty guidelines. Thus, I find no violation of 52 Pa. Code § 56.100(b). The refusal to permit access to the meter for installation purposes is "endangering the integrity of the public utility's delivery system" in violation of tariff provisions on file with the Commission within the meaning of 52 Pa. Code § 56.98. Therefore, pursuant to 52 Pa. Code § 56.98, PPL is permitted to terminate service for failure to provide reasonable access to the Company's meter. Additionally, given *stare decisis* precedent, I find in favor of PPL on this issue.

CONCLUSION

For all of these aforementioned reasons, the complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates 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 the burden of proof that Respondent violated Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

9. The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. See *Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

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

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

12. Even if hearsay evidence is “admitted without objection,” the ALJ must give the evidence “its natural probative effect and may only support a finding . . . if it is

corroborated by any competent evidence in the record,” as “a finding of fact based solely on hearsay will not stand.” *Id.* at 370.

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

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

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

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

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

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

19. The Complainant has failed to demonstrate that installation of the new AMI meter violates his Fourth Amendment right to privacy.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by John A. Freda against PPL Electric Utilities Corporation at Docket No. C-2019-3007408 is denied and dismissed.
2. That the docket in this proceeding be marked closed.

Date: October 31, 2019

_____/s/
Elizabeth H. Barnes
Administrative Law Judge