

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher Tellefsen and	:	C-2018-3005250
Jo-Anna Tellefsen	:	
	:	
v.	:	
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Residential customers filed a Formal Complaint seeking to prevent a public utility from replacing their existing electric meter with a smart meter at their residence. The Complaint will be dismissed for failure to prove by a preponderance of evidence that the smart meter installation violates a Commission order, rule or regulation or constitutes unsafe or unreasonable service under 66 Pa.C.S. § 1501.

HISTORY OF THE PROCEEDING

Christopher Tellefsen and Jo-Anna Tellefsen (Complainants) filed a Formal Complaint (Complaint) dated October 8, 2018, with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company). Complainants aver that they refuse to have a smart meter (also referred to as AMI or AMI meter) installed at their residence and that no federal document or Act 129 state that smart meters are mandatory. Complainants further aver that it is unjust and a violation of their civil liberties to force them to have a smart meter installed at their residence. As relief, Complainants request an option to opt-out of smart meter installation and usage.

On October 30, 2018, Respondent filed an Answer and New Matter to the Complaint, essentially denying the material allegations set forth in the Complaint. In its New Matter, Respondent averred that neither the Company's Smart Meter Deployment Plan (SMP) nor Act 129 enable the Commission to grant the relief requested by Complainants. On October 30, 2018, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Complainants have failed to allege that Respondent violated any Commission statute, regulation, order or tariff provision with regard to the installation of the smart meter. Respondent further averred it is required by Act 129 to install a smart meter at the service location and that, as a matter of law, the Company is required to install a smart meter at the service location. Finally, Respondent averred that the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief, that a hearing is not in the public interest, and that the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections. Respondent's Answer and New Matter contained a request for a Prehearing Conference.

On November 19, 2018, Complainants filed an Answer to the Preliminary Objections of Metropolitan Edison Company. In their Answer, Complainants requested that the Commission allow an exemption to the installation of a smart meter, follow the original intent of the federal mandate and provide opt-out options.

On November 19, 2018, Complainants also filed a reply to the Answer and New Matter.

On December 6, 2018, the undersigned presiding officer was notified that a motion judge assignment was issued in this proceeding on December 3, 2018, assigning this proceeding to the undersigned presiding officer to rule on issues arising during the preliminary phase of this proceeding.

On January 7, 2019, an Interim Order was entered denying the Preliminary Objections filed by Metropolitan Edison Company in the above-captioned proceeding.

Also on January 7, 2019, an Interim Order was entered, establishing an initial litigation schedule and ordering the Parties to, *inter alia*, provide the names and addresses of each fact and expert witness, as well as written summaries of the expected testimony for each witness (witness information) to the other Party by March 1, 2019.

On January 11, 2019, an Interim Order was entered requiring that the Parties participate by telephone at a prehearing conference on Monday, February 4, 2019, at 11:00 a.m.

On January 11, 2019, a Call-In Telephone Prehearing Conference Notice was issued, scheduling the prehearing conference for February 4, 2019, at 11:00 a.m. The prehearing conference was convened as scheduled. Complainants and counsel for Respondent appeared and participated.

On February 21, 2019, the Parties filed a Stipulation, agreeing that Complainants would advance a single issue of whether or not smart meter installation is mandated by Act 129.¹ Complainants further stipulated that they were not asserting any claims regarding health, safety or privacy concerns. The Parties also stipulated that there were no material issues of fact to be addressed at an evidentiary hearing and agreed to the submission of briefs on the sole outstanding issue in this proceeding. The Parties further proposed a deadline for the filing of main briefs on or before March 15, 2019, and with reply briefs to be filed if permitted by subsequent order.

The Parties subsequently agreed to extend the deadline to file briefs until April 1, 2019. Accordingly, an Interim Order was entered on March 1, 2019, approving the Stipulation between Christopher and Jo-Anna Tellefsen and Metropolitan Edison Company dated February 8, 2019 (Stipulation) and filed with the Commission's Secretary on February 21, 2019, as modified by the order. The Interim Order confirmed that the sole issue to be determined by the undersigned presiding officer was whether or not Respondent is mandated by Pennsylvania Act 129 to install a smart meter upon Complainants' property, as identified in the Formal Complaint filed by Complainants on October 10, 2018; that the Stipulation, or any part thereof

¹ Act 129 of 2008, 66 Pa. C.S. § 2807 *et seq.* (Act 129).

may be relied upon by the undersigned presiding officer as a basis for the issuance of an Initial Decision in this proceeding; that the Parties would file briefs in this matter on or before April 1, 2019. The Interim Order further provided that any Party may request to withdraw from the Stipulation or object to the terms of this Interim Order, in writing, filed with the Commission's Secretary, on or before March 22, 2019, otherwise the terms set forth in this Interim Order would be binding upon all Parties as if the terms of the order was specifically set forth in the Stipulation of the Parties.

Complainants filed a brief dated March 27, 2019, which was received by the undersigned presiding officer on April 1, 2019. Respondent filed a brief on April 1, 2019.

After a review of the main briefs in this matter and as no Party requested permission to file reply briefs, a determination was made that reply briefs would not be required in this proceeding. On July 29, 2019, an Interim Order was entered closing the record in this proceeding.

FINDINGS OF FACT

1. Complainants are Christopher Tellefsen and Jo-Anna Tellefsen.
2. Respondent is Metropolitan Edison Company, an electric distribution company (EDC).
3. Christopher Tellefsen and Jo-Anna Tellefsen filed a Formal Complaint against Metropolitan Edison Company regarding the proposed installation of a smart meter at 3324 River Road, Mount Bethel, Pennsylvania (Service address or Service Location).
Stipulation, p. 1.
4. On February 8, 2019, Christopher Tellefsen and Jo-Anna Tellefsen entered into a Stipulation with Metropolitan Edison Company with regard to the Formal Complaint filed by Complainants on October 10, 2018.

5. Complainants do not want a smart meter installed at the Service Location. Stipulation, p. 1.

6. The Parties agreed that there are no material issues of fact to be addressed at an evidentiary hearing. Stipulation, p. 1.

7. The Parties further agreed that a hearing was not necessary and to have the case decided upon the terms of the Stipulation of the Parties and the submission of legal briefs on the sole issue of whether or not smart meter installation is mandated in Pennsylvania by Act 129. Stipulation, p. 1.

8. The Stipulation between Christopher and Jo-Anna Tellefsen and Metropolitan Edison Company dated February 8, 2019, and filed with the Commission's Secretary on February 21, 2019, was approved, as modified by the Interim Order entered on March 1, 2019.

9. The Parties agreed that the sole issue to be determined by the undersigned presiding officer is whether or not Respondent is mandated by Pennsylvania Act 129 to install a smart meter upon Complainants' property, as identified in the Formal Complaint filed by Complainants on October 10, 2018. Interim Order entered on March 1, 2019.

10. The Parties agreed that the Stipulation, or any part thereof may be relied upon by the undersigned presiding officer as a basis for the issuance of an Initial Decision in this proceeding. Interim Order entered on March 1, 2019.

11. Complainants are not asserting any claims regarding health, safety or privacy concerns. Stipulation, p. 2.

12. The Interim Order entered on March 1, 2019, provided that any Party may request to withdraw from the Stipulation or object to the terms of the Interim Order, in writing, filed with the Commission's Secretary, on or before March 22, 2019, otherwise the terms set

forth in the Interim Order would be binding upon all Parties as if the terms of the order were specifically set forth in the Stipulation of the Parties. Interim Order entered on March 1, 2019.

13. No Party requested to withdraw from the Stipulation or objected to the terms of the Interim Order entered on March 1, 2019.

14. Act 129 of 2008 requires electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.

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).²

In smart 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”).

When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in [each] 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 [the] case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC LEXIS 160, at *12-13), *see also Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, (Opinion and Order entered May 3, 2018 at 10).

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.”

² 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 (Code) or a Commission regulation or order.

Section 1501 of the 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.

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).

In its brief, Respondent argued that Act 129 clearly requires it to install smart meters at all of its customers service locations. Respondent further argued that neither Act 129 nor subsequent Commission Orders permit customers to “opt-out” from smart meter installation. Complainant argued, *inter alia*, that the installation of smart meters are not mandated by law and that Act 129 does not state that the installation of smart meters is mandatory.

Under Act 129, Respondent has an obligation to install smart meters at within its service territory. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment provide that customers may "opt-out" from smart meter

installation. Respondent's Smart Meter Deployment Plan, approved by the Commission, also does not provide for an opt-out option.³

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).⁴ Act 129 required EDCs with at least 100,000 customers, such as Respondent, to file a smart meter technology procurement and installation plan (SMP Plan) with the Commission for approval:⁵ Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.⁶

Pursuant to Section 2807(f) of the Code, Met-Ed and the other FirstEnergy EDCs in Pennsylvania (Metropolitan Edison Company and Pennsylvania Power Company)⁷ filed their Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan on August 14, 2009 (2009 SMP Plan). By Order entered on June 9, 2010, the Commission approved the Companies' 2009 SMP Plan with modifications, noting that the Companies expected to file their full deployment plan by April 2012.⁸ On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart

³ *Smart Meter Deployment Plan*, p. 9.

⁴ 66 Pa.C.S. § 101, *et seq.*

⁵ 66 Pa.C.S. § 2807(f).

⁶ 66 Pa.C.S. § 2807(f)(2) (emphasis added).

⁷ West Penn Power Company, which was acquired through a merger between FirstEnergy and Allegheny Energy, did not join in the filing of this plan. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are collectively referred to herein as the "Companies."

⁸ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010), p. 10.

meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.⁹ On March 19, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan. In the original Deployment Plan, the FirstEnergy Companies proposed to deploy 60,000 smart meters in the service territory of Pennsylvania Power Company, an affiliate of Met-Ed.¹⁰

Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015. In its June 25, 2014, Opinion and Order, the Commission recognized the benefits of early deployment of smart meters and approved the Revised Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.¹¹

In this proceeding, Complainants' argument is that a smart meter may be deployed at their service location only upon their express request and consent.

⁹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, Smart Meter Deployment Plan, filed December 31, 2012.

¹⁰ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, Revised Smart Meter Deployment Plan, filed March 19, 2014 (hereinafter, "Revised Deployment Plan").

¹¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014), p. 16.

Complainants point to Section 2807(f)(2)(i) of the Code for the proposition that the deployment of smart meters for individual customers should occur only upon request of the individual customer.¹² By extension, Complainants appear to contend that Act 129 allows an overall "opt-out" for customers to reject installation of a smart meter. However, Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to "opt-out." Neither the Company's Commission approved Smart Meter Deployment Plan nor Act 129 permit such opt-outs to occur.¹³

Complainants' interpretation of Section 2807(f) of the Code is not consistent with Commission precedent and is incorrect. Section 2807(f)(2)(i) provides:

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.¹⁴

A customer does not have the ability to "opt-out" of having a smart meter installed at his or her home under the Company's Revised Deployment Plan. The Company's Smart Meter Deployment Plan, as approved by the Commission, provides for all customers to receive smart meters on or before December 31, 2022. This full deployment is broken into two parts. The great majority of customers (98.5%) will receive smart meters by mid-2019, with the remaining 1.5% of customers to receive installation by December 31, 2022. The FirstEnergy Companies' Commission-approved Smart Meter Deployment Plan provides, in pertinent part:

The Full-Scale Deployment Stage will commence upon resolution of all problems encountered during the Solution Validation Stage and will continue until all meters are installed on or before December 31, 2022. During this

¹² 66 Pa.C.S. § 2807(f)(2)(i).

¹³ *Smart Meter Deployment Plan*, pp. 9 and 48; see, e.g., *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

¹⁴ 66 Pa.C.S. § 2807(f)(2)(i).

stage, the remainder of the smart meter infrastructure will be concurrently built in each of the Companies' respective service territories, starting with the most populated areas first. All remaining smart meters will be installed during this Stage at an anticipated meter installation rate of 1,900 meters per day, five days per week, and potentially ramping up to 3,000 meters per day if circumstances and conditions warrant. At this pace, the Companies expect to install approximately 98.5% of all meters by mid-2019, with the remaining 1.5% of the meters being installed thereafter through December 31, 2022. The 1.5% of the installations represent those installations that may require alternative communication solutions or difficult to reach locations such as remote hunting cabins. Any similar situations discovered in Penn Power's service territory are included in the 1.5% estimate and will be addressed in the time frame discussed above.^[15]

There is no provision for less than 100% smart meter deployment.

In *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered January 24, 2013), the Commission considered an inquiry concerning the safety of the Complainant's exposure to the level of radio frequency fields, or electromagnetic energy, from the advanced metering infrastructure meter, or smart meter, that PECO proposed to install at the Complainant's residence and use regularly to measure the Complainant's electricity consumption.

The Commission stated that Act 129 does not allow an EDC customer to "opt out" of smart meter installation generally. *Povacz I.D.* at 29 (citing *January 2013 Povacz Order*); *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered January 24, 2013), p. 94. The Commission explained, Section 2807(f)(2) of the Code, *supra*, is controlling here, and the use of the word "shall" in the statute indicates the General Assembly's direction that all customers will receive a smart meter. If the General Assembly intended for EDCs to invest in and maintain two separate sets of meter systems based on customer preference – an analog system separate from an AMI system – as part of furnishing "adequate, efficient, safe, and reasonable service and facilities"¹⁶ at "just and reasonable"¹⁷

¹⁵ *Smart Meter Deployment Plan*, p. 10.

¹⁶ *See, supra*, 66 Pa.C.S. § 1501.

¹⁷ *See* 66 Pa.C.S. § 1301, which provides "Every rate made, demand, or received by any public utility...shall be just and reasonable and in conformity with regulations or orders of the [C]ommission."

rates charged customers, it would have plainly stated as much in Act 129, but it did not. *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered January 24, 2013), pp. 94-95.

Accordingly, Complainants argument that the installation of smart meters is not mandated by law must fail in this proceeding.

CONCLUSION

Respondent has an obligation under the Code to install smart meters at its customers' service locations. Neither Act 129 nor subsequent Commission orders, related to smart meter installation and deployment, permit customers to "opt-out" from smart meter installation. Respondent is obligated to install a smart meter at the Service Location in order to remain in compliance with the Code, related Commission orders, and its Revised Deployment Plan.

Under the circumstances, Complainants failed to establish that the installation of a smart meter constitutes unreasonable service. The smart meter components and deployment of smart meters in the Respondent's territory were identified in its Revised Deployment Plan and approved by the Commission. For all of the aforementioned reasons, the Complaint will be dismissed for failure to prove by a preponderance of evidence the claims asserted by Complainant, as set forth herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. § 701.

2. 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).

3. 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).

4. 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).

5. 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.

6. 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).

7. 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 [each] particular case, whether there is sufficient evidence to support a finding that 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 [the particular] case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citation omitted).

8. To satisfy their burden of proof, Complainants must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).

9. Upon the presentation by Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of Complainants shifts to Respondent. If the evidence presented by Respondent is of co-equal weight, Complainants have not satisfied the burden of proof. Complainants now have to provide some additional evidence to rebut the evidence of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

10. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

11. A public utility is required to provide adequate, efficient, safe and reasonable service. 66 Pa.C.S. § 1501.

12. There is no provision in the Code, the Commission's regulations or orders that provides that an electric distribution customer may "opt out" of smart installation. *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered January 24, 2013).

13. Act 129 of 2008, 66 Pa.C.S. § 2806.1 *et seq.*, required electric distribution companies to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f).

14. Complainants failed to carry their burden of proof establishing that Metropolitan Edison Company violated the Public Utility Code or a regulation or order of the

Commission in requiring installation of a smart meter at Complainant's property. 66 Pa.C.S. § 332.

15. Complainants failed to sustain their burden of proof that Metropolitan Edison's proposed installation of a smart meter constitutes unsafe or unreasonable service by the Company, in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. The Formal Complaint of Christopher Tellefsen and Jo-Anna Tellefsen filed against Metropolitan Edison Company at Docket No. C-2018-3005250 is dismissed with prejudice.

2. This matter shall be marked as closed.

Date: November 1, 2019

/s/
Jeffrey A. Watson
Administrative Law Judge