

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sharon Landis	:	
	:	
v.	:	C-2018-3002142
	:	
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” at her residence for health and safety reasons, and during the hearing Complainant requested to “opt-out” of smart meter installation. The complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

HISTORY OF THE PROCEEDING

On May 23, 2018, Sharon Landis (Complainant) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) averring she wished to opt out of a smart meter installation at her residence, 1809 Letchworth Drive, Camp Hill, Cumberland County, Pennsylvania (account number ending in

005) for health reasons and requesting a directive that PPL be precluded from terminating her electric service or, alternatively, a two-month period at minimum to explore other options.

The Complaint was served upon PPL on May 23, 2018. On June 12, 2018, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainants at the address listed 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 June 15, 2018, a Hearing Notice was issued scheduling a hearing for July 17, 2018 before Administrative Law Judge Benjamin Myers. On June 20, 2018, a Change Notice was issued rescheduling the hearing to November 1, 2018 and reassigning the case to me as presiding officer. On June 22, 2018, a Prehearing Order was issued. On October 16, 2018, PPL requested a continuance of the hearing due to the unavailability of one of its witnesses. On October 22, 2018, the hearing was rescheduled to April 16, 2019. On or about April 8, 2019, Complainant verbally requested continuance of the hearing. The request was unopposed by PPL, so the April 16, 2019 hearing was continued to October 9, 2019. On August 2, 2019, a Third Prehearing Order was issued. On September 18, 2019, PPL requested a third continuance due to the unavailability of one of its witnesses. On September 20, 2019, a Call-In Telephonic Hearing Change Notice was issued, and the hearing was rescheduled to October 17, 2019. On October 15, 2019, Complainant requested a fourth continuance. PPL objected to the fourth continuance. On October 16, 2019, an Order Denying Continuance was issued. On October 17, 2019, the hearing was held as scheduled.

At the hearing, Complainants appeared *pro se* with five exhibits pre-marked A-E. 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. All statements and exhibits were admitted into the record.

A transcript consisting of 65 pages was filed on November 14, 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 Sharon Landis (Complainant), who resides at 1809 Letchworth Drive, Camp Hill, Cumberland County, Pennsylvania (service property). N.T. 5.

2. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). N.T. 8-9.

3. 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.

4. 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.

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

6. 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.

7. PPL had deployed over one million RF Mesh meters as of the September 19, 2019 hearing and none of them has caused a fire. PPL Electric Statement No. 4 at 10.

8. The RF Mesh meter to be installed at the service property is the Landis + Gyr Focus AXR-SD meter. PPL Electric Statement No. 4 at 5-6.

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

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

11. 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.

12. 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.

13. 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.

14. 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.

15. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and Wi-Fi networks. PPL Electric Statement No. 1 at 5-7, 14.

16. 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.

17. 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.

18. 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.

19. 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.

20. There are six television broadcast towers within a 50 mile radius of Complainants' residence in Camp Hill, Pennsylvania. PPL Electric Statement No. 1 at 15.

21. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainants' residence are 111 times higher than the RF signals from the AMI meter at 3 meters distance. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

22. 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.

23. 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.

24. 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.

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

26. 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.

27. Dr. Israel 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.

28. 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.

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

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

31. 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.

32. 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.

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

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 his or her 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, 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.

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 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) (*Frompovich*).

Health and Safety Concerns

Ms. Landis has resided at 1809 Letchworth Drive, Camp Hill, Pennsylvania and has received electric service from PPL since 1970. N.T. 8. Complainant filed a complaint because she believed PPL would terminate her electric service, which would affect her ability to use an air conditioner. Complainant has asthma and allergies, and she relies upon her air

conditioner to help her breathe. N.T. 9-10. She claims to be electromagnetic sensitive and has experienced heart palpitations when exposed to AMI meters. N.T. 19-21.

Disposition

Complainant has no engineering or medical degrees. N.T. 19. I find her testimony that she is experiencing negative health symptoms from her meter to be incredible. She could not pinpoint an exact time her symptoms such as agitation, heart palpitations and insomnia began. N.T. 20-21. Complainant is exposed to radio frequency fields from her Trac-phone and background levels from UHF Broadcast Towers within 50 miles of her residence in Camp Hill, which are 111 times higher than any radio frequency fields she would be exposed to at 3 meters distance from an AMI meter. N.T. 20-21, PPL Electric Statement No. 1 at 15.

Complainant has failed to show any health concerns such as anxiety, agitation, heart palpitations, insomnia, or asthma are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at her service property. Although Complainant offered testimony and articles in support of her argument including: Complainant Exhibit A: *Cell Phone Radio Frequency Radiation*; Complainant Exhibit C – a portion of a medical report showing on 5/23/18, she had a problem listed as Asthma; and Complainant Exhibit E – *Voices out of Nowhere*; this is insufficient evidence to meet the *prima facie* burden of proof to show PPL's service is unsafe or unreasonable.

There is insufficient evidence to show that any of these health conditions are caused by AMI meters installed close to her premises or would be exacerbated by the installation of an AMI meter at the service property. PPL Electric Statement No. 2 at 7. Complainant's lay opinion as to the probable health effects of radio frequency fields or electromagnetic fields emitting from an RF meter to be installed at her service property is non-persuasive. Further, the articles upon which she relies upon to prove her health claims in Exhibits A and E were authored by persons unavailable for cross-examination at the hearing. Exhibit A appears to be an unauthored news release or summary related to the Notational Toxicology Program (NTP) study involving radio frequency fields effects upon animals. N.T. 57, Complainant Exhibit A.

Conversely, Dr. Davis' testimony that the levels of radio frequency fields in the NTP study were many thousands of times higher than the exposures from a Landis + Gyr AMI meter is credible and persuasive. N.T. 58. Dr. Davis testified that the radio frequency fields emitted by an AMI meter are far below the current federal safety standards regarding exposure levels and that these standards protect the public. N.T. 59-60, PPL Electric Statement No. 1 at 7-16, Exhibits CD1-CD5.

I find the *Voices Out of Nowhere* article by Vincent H. Gaddis to be unpersuasive. First, Mr. Gaddis was unavailable to cross-examine. Second, the article was written in April 1948, and does not appear to be a scientific study. The article pertains to radio frequency technology as it was at that time. The article focused on appliances picking up radio broadcasts or telephone conversations. Thus, Complainant Exhibit E is unreliable hearsay evidence. The opinion of Complainant based upon the hearsay evidence in Exhibits A and E are non-persuasive.

Self-reported symptoms of electromagnetic hypersensitivity claimed to be caused by RF fields include: buzzing in ears, sleep disturbance, palpitations, nervousness, fatigue and lethargy. PPL Electric Statement No. 2 at 12-15. A "nocebo effect"² may present symptoms similar to those Complainant complains of in IEI-EMF and control participants; however, there is no reliable medical basis to conclude that RF fields from the AMI meters being installed by PPL would cause, contribute to, or exacerbate any of the symptoms of anxiety, heart palpitations, insomnia, or asthma claimed by Complainant, or any other adverse health effects. PPL Electric Statement No. 2 at 14-17.

There have been a number of studies that have examined whether RF fields at the frequencies used by cell phones affect heart rates (Tahvanainen 2004; Nam 2006; Choi 2014). In the Tahvanainen (2004) study, 32 human volunteers were exposed to RF at cell phone frequencies and their heart rates were compared to their rates when they were not given RF exposures. The study found no significant changes in heart rates when the subjects received RF

² A nocebo effect is said to occur when negative expectations of the patient regarding a treatment cause the treatment to have a more negative effect than it otherwise would have.

or sham exposures. In Choi (2014), the heart rates of the volunteer subjects were compared after exposure to RF fields at cell phone frequency and after sham exposures, the researchers found no significant effects on heart rates from RF exposure. PPL Electric Statement No. 2 at 15-16.

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.” PPL Electric Statement No. 2. 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 8-9. Dr. Israel described a number of the studies in these areas which he considered good examples of well-designed and well-conducted studies. These studies found no adverse effects on genetics, fertility, reproduction, growth or development in the animals exposed to RF fields. PPL Electric Statement No. 2 at 9. Dr. Israel also provided examples of well-conducted animal studies on RF fields and cancer. He testified that these studies, which involved animals with lifetime exposures to RF fields, did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. PPL Electric Statement No. 2 at 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 9-11. 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 10-11; PPL Electric Exhibit MI-1. In addition, several U.S. state public health authorities and Public Utility Commissions have investigated claims about health effects from smart meters. These include the Maine Center for Disease Control (2010), the Vermont Department of Health (2012), Arizona Department of Health, Office of Environmental Health (2014), and North Carolina Department of Health and Human Services, Division of Public Health, Occupational

and Environmental Epidemiology Branch (2015). These evaluations by State public health authorities and Public Utility Commissions conclude that RF fields from smart meters do not pose any public health risk. PPL Electric Statement No. 2; PPL Electric Exhibit MI-2.

There is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric 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 Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainants, 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, 14.

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 9-12.

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.

There are six television broadcast towers within a 50-mile radius of Complainants' residence in Camp Hill, 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 Complainants' residence are 111 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5. 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.

Opt-In versus Opt-Out Program

During the hearing, Complainant requested either an opt out pursuant to Act 129, or a minimum 2-month delay until House Bill No. 313 is made into effective law. N.T. 62, Complainant Exhibit B.

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 Complainants' property. N.T. 60.

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.*

I infer from the *Romeo* decision, that it is legally sufficient to plead the 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 EDCs 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 EDCs 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 Complainant in the instant case desires the ability to opt-out of the smart meter installation, she 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. 313, 1564 and 1565; and Senate Bill No. 443. Complainant Exhibit B. 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 Complainants' residence. *Id., Frompovich* at 10. Thus, 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 her concerns, the Commission’s decisions cited above are controlling.

CONCLUSIONS OF LAW

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

2. PPL Electric Utilities Corporation’s smart meter procurement and installation plan, which was approved by Commission Order in the case of *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) 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. 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).

9. 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).

10. 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.

11. PPL is legally required to install the RF Mesh meter on the Complainants' 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).

12. 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).

13. 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).

14. 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).

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

16. Complainant has failed to sustain her burden of proof that installing the new AMI meter would constitute unsafe or unreasonable service in violation of 66 Pa. C.S. §1501.

