

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Betty Hazen	:	
	:	
v.	:	C-2017-2633811
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Complainant filed a Formal Complaint against Respondent alleging Respondent was threatening to terminate her service and objecting to the installation of a smart meter at her residence. This decision dismisses the Formal Complaint for failure of Complainant to meet her burden of proof.

HISTORY OF THE PROCEEDING

On November 15, 2017, Betty Hazen (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent or Company) alleging Respondent was threatening to terminate her electric service for her refusal to permit the installation of a smart meter. Complainant further averred that she wanted to keep her analog meter and that the service not be terminated. Complainant further objected to the installation of a smart meter because of health concerns, the risk of fires posed by smart meters, and privacy issues. As relief, Complainant requested that she be permitted to keep her safe and reliable analog meter.

On December 5, 2017, Respondent filed an Answer and New Matter to the Complaint, denying the material allegations set forth in the Complaint. Respondent averred that Complainant has refused to allow the Company access to install a smart meter at Complainant's home. Respondent further averred it is required by Act 129 of 2008 (Act 129)¹ to install the smart meter.

On December 5, 2017, 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 Complainant 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. Respondent argued that the Formal Complaint is legally insufficient because it failed to state a claim upon which the Commission can grant relief.

On December 26, 2017, Complainant filed an Answer to the Preliminary Objections filed by Respondent.

On December 29, 2017, Complainant filed a reply to the Answer and New Matter filed by Respondent.

On January 12, 2018, a Motion Judge Assignment Notice was provided to the undersigned Presiding Officer in this proceeding.

On December 21, 2018, an Interim Order was entered denying the Preliminary Objections filed by Respondent.

On December 21, 2018, an Interim Order was entered establishing a litigation schedule.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On March 5, 2019, Respondent filed a Motion to Compel seeking an Order requiring the Complainant to respond to Discovery Requests issued by the Company.

On March 7, 2019, an Interim Order Scheduling Prehearing Conference was issued scheduling a prehearing conference for March 21, 2019.

On March 14, 2019, an Interim Order Granting Motion of Pennsylvania Electric Company to Compel Responses to Interrogatories and Document Requests was issued. The Interim Order required the Complainant to provide full and complete responses to all of the Interrogatories and Request for Production of Documents served upon Complainant by Respondent, not later than April 5, 2019.

On March 21, 2019, the counsel for the Company and the Complainant attended the scheduled prehearing conference.

On March 22, 2019, an Interim Order was issued amending the procedural schedule to include a deadline for the Complainant to submit written direct testimony and for the Company to submit written rebuttal testimony. Pursuant to the Interim Order, Complainant was required to submit written direct testimony on or before May 31, 2019, and Respondent was required to submit written rebuttal testimony on or before June 28, 2019. The Interim Order provided that the Parties shall comply in all other respects with the Interim Orders entered on December 21, 2018 and March 14, 2019.

On June 25, 2019, an Interim Order Requiring Further Status Report to Schedule Evidentiary Hearing was issued. The Interim Order required that the Parties shall file a joint Status Report, or each Party may file an individual Status Report in order to agree upon the dates for the evidentiary hearing in this proceeding, on or before July 15, 2019.

On July 23, 2019, an Interim Order Confirming Requirements for Telephonic Evidentiary Hearing was issued scheduling a telephonic evidentiary hearing for August 28, 2019 and requiring the Parties to exchange their proposed exhibits not later than August 16, 2019.

On August 28, 2019, a telephonic evidentiary hearing was held in this matter. Complainant presented her case through her own testimony. Complainant Exhibit 89, a one-page document entitled “The Commonwealth of Pennsylvania Legislative Journal, Session of 2008, No. 64, dated October 8, 2008”, was identified and offered into evidence. Respondent objected to the admission of the document into evidence. The proposed exhibit was not admitted into evidence; however, a discussion was held regarding the document, which was not the complete document. Respondent stated it did not object to the undersigned Presiding Officer taking judicial notice of the complete document, subject to Complainant submitting the complete document and Respondent being given an opportunity to object after reviewing what was proposed by Complainant as the complete document. Complainant was directed to provide the undersigned Presiding Officer and Respondent with a complete copy of the document on or before September 8, 2019.

On September 5, 2019, the undersigned received a copy of the complete document proposed by Complainant. On October 3, 2019, the undersigned Presiding Officer received a letter from Respondent advising that Respondent did not object to the taking of judicial notice of the complete copy of Complainant Exhibit No. 89, as proposed by Complainant on September 5, 2019. Accordingly, judicial notice will be taken of the document submitted by Complainant and marked as Complainant Exhibit No. 89 – Complete Document, which was submitted by Complainant on September 5, 2019.

Respondent presented its case through the testimony of John Ahr, Respondent’s Manager of Regulatory Compliance for Smart Meters; further, Respondent Exhibit 1, Exhibit 1R, and Exhibit 2 were admitted into the record.

On September 23, 2019, an Interim Order Setting Briefing Schedule was issued requiring the Parties to submit any briefs in this matter on or before December 2, 2019.

On September 30, 2019, the undersigned Presiding Officer received a transcript of the evidentiary hearing.

Respondent filed its brief on December 2, 2019.

The record closed upon receipt of Respondent's brief on December 2, 2019.

FINDINGS OF FACT

1. Complainant is Betty Hazen, who resides at 6181 McCracken Road, Cochran, Pennsylvania (service location or service address).
2. Respondent is Pennsylvania Electric Company, an electrical distribution Company that provides residential electrical service to Complainant at the service address.
3. Pennsylvania Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.²
4. Act 129 provides a list of required smart meter functionality.³
5. Respondent's Smart Meter Technology Procurement and Installation Plan was approved by the Commission on June 9, 2010.⁴
6. The Commission determined that Respondent's Smart Meter Deployment Plan was compliant with Act 129 and ultimately approved the smart meter deployment plan on June 5, 2014.⁵

² Respondent Statement No. 1R at 5:2-6.

³ *Id.* at 6:19-7:16.

⁴ *Id.* at 8:6-9.

⁵ *Id.* at 9:4-8.

7. The Smart Meter Deployment Plan identifies Itron as Respondent's smart meter vendor and network provider.⁶

8. The Smart Meter Deployment Plan states that there is "no opt-out for customers."⁷

9. Respondent's smart meter deployment plan requires the Company to deploy smart meters at 100% of its customer service locations. The plan required installment of 98.5% of smart meters by mid-2019. The remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, must be installed by 2022.⁸

10. To date, Respondent has not installed a smart meter at the Complainant's service location.⁹

11. Complainant offered only lay witness testimony at the hearing in this matter.

12. Respondent offered testimony by Company employee, John Ahr.

13. Respondent's smart meter network does not transmit names, addresses, social security numbers, or other similar sensitive account numbers.¹⁰

⁶ See Exhibit JCA-1, p. 21.

⁷ *Id.* at 9.

⁸ *Id.* at 48; see also Respondent Statement No. 1R at 11:3-25.

⁹ Tr. 44: 17-19.

¹⁰ Respondent Statement No. 1R at 13:1-5.

14. Respondent's smart meters have no access to information regarding what devices are using electricity behind the meter. The smart meters communicate the total usage, not what is causing the usage.¹¹

15. Respondent's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to customer's usage data.¹²

16. Respondent's Privacy Policy related to the confidentiality and cybersecurity protections applicable to smart meters was approved by the Commission on May 1, 2015.¹³

17. The smart meters used by Respondent comply with the safety standards and requirements established by agencies such as the Federal Communications Commission; are developed and tested to meet the requirements of the American National Standards Institute; and are certified by Underwriters Laboratory.¹⁴

18. While Respondent issued disconnection notices to the Complainant due to her refusal to accept a smart meter at her service location, the Company did not terminate electric service at the Complainant's service location because of the filing of her Formal Complaint.¹⁵

¹¹ *Id.* at 12:1-5.

¹² *Id.* at 13:8-10.

¹³ Exhibit JCA-2.

¹⁴ Respondent Statement No. 1R at 13:22-14:9.

¹⁵ Tr. 168: 2-16.

DISCUSSION

Legal Standards

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

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia’s Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).¹⁶

¹⁶ 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*

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) (*Romeo*) (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 an AMI or smart 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 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 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13). *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018 at 10) (*Frompovich*).

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.

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

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).

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).

Record Evidence and Evidentiary Rulings

Complainant provided testimony in support of her Complaint and testified, *inter alia*, that Act 129 does not mandate smart meters for all customers. Complainant pointed to portions of the Commonwealth of Pennsylvania Legislative Journal dated October 8, 2008, to support her argument that the Legislature did not intend Act 129 to mandate smart meter installation for all customers.¹⁷ Complainant also raised certain health, safety, and privacy concerns related to smart meters and testified that the information gathered by Respondent through the use of smart meters was a violation of her privacy and that such information was subject to be sold or otherwise obtained by third parties.¹⁸ Complainant further testified that Respondent may sell her information to third parties.¹⁹

¹⁷ See Complainant Ex. 89; *see also* Tr. 56: 25-57:8, 152:10-16.

¹⁸ Tr. 39: 18-41:18, 47:7-15, 74:5-79:19.

¹⁹ Tr. 59: 14-18.

John Ahr, Manager of Regulatory Compliance for Smart Meters, testified for Respondent regarding the mandates in Act 129, regulatory requirements for smart meter plans in Pennsylvania, Respondent's Smart Meter Deployment Plan, the general features of Respondent's smart meters, and the Company's attempts to install a smart meter at the Service Location.

Complainant attempted to offer testimony related to alleged health, safety and privacy issues without any expert credentials on these issues. As a lay witness, Complainant was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge. The Complainant's testimony on these issues was objected to and not admitted into the record.

According to Pennsylvania Rule of Evidence 701,²⁰ a lay witness is limited to giving opinion testimony that is rationally based on the witness's own perceptions. Specifically, Rule 701 provides as follows:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters "without personal knowledge or specialized training."²¹ Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.²² In this case, the majority of

²⁰ Pa.R.E. 701.

²¹ *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

²² Pa.R.E. 701.

Complainant's testimony related to issues outside the scope of her personal knowledge and were based on hearsay.²³ All such testimony was properly excluded upon objection.

Respondent presented extensive expert testimony in support of its position that its smart meter deployment is safe, reasonable and adequate. Complainant, on the other hand, failed to present any credible or relevant evidence to support her allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code.

Smart Meter Mandate

In her Formal Complaint, Complainant averred, *inter alia*, that Respondent was threatening to terminate her electric service for her refusal to permit the installation of a smart meter. Complainant further averred that she wanted to keep her analog meter and that the service not be terminated. Complainant further objected to the installation of a smart meter because of health concerns, the risk of fires posed by smart meters, and privacy issues. As relief, Complainant requested that she be permitted to keep her safe and reliable analog meter.

Respondent argued that, under Act 129, it has an absolute obligation to install smart meters at all of its customers' service locations. Respondent asserted that neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to opt-out from smart meter installation.

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).²⁴ 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.²⁵ Specifically, Section 2807(f)(2) of the Code directed EDCs to

²³ In fact, because a smart meter has yet to be installed at her Service Location, the Complainant has no personal knowledge or experience of relevance here.

²⁴ 66 Pa.C.S. § 101 *et seq.*

²⁵ 66 Pa.C.S. § 2807(f).

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.²⁶

On December 31, 2012, Respondent, along with FirstEnergy Corp.'s other EDCs in Pennsylvania (collectively, the Companies), filed their Joint Petition for Approval of their SMP 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 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.²⁷ On March 19, 2014, the Companies submitted their revised SMP Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan. The Companies' SMP Plan was approved by the Commission on June 5, 2014.²⁸

In this proceeding, the Complainant's primary legal argument is that Act 129 does not require the mandatory installation of smart meters for all customers. In support of this argument, Complainant points to portions of the Commonwealth of Pennsylvania Legislative Journal dated October 8, 2008, which she alleges prove that the Legislature did not intend Act 129 to mandate smart meter installation for all customers.²⁹ However, Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters

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

²⁷ *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.

²⁸ *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, and M-2013-2341994 (Opinion and Order dated June 5, 2014); see Exhibit JCA-1.

²⁹ See Complainant Ex. 89; see also Tr. 56:25-57:8, 152:10-16.

be installed by allowing customers to “opt-out.” Neither the Company’s Commission-approved SMP Plan nor Act 129 permit such opt-outs to occur.³⁰ The Commission has recently reaffirmed this conclusion, holding in a similar complaint proceeding that (1) there is no provision in the Code, Commission regulations or Orders that allows a customer to “opt-out” of a smart meter installation; (2) there is Commission precedent that no opt-out provision exists in current Pennsylvania law; and (3) the EDC is legally required to install smart meters by Act 129 and Commission Orders.³¹

Complainant’s claim that there is an opt-out provision in Act 129 is based upon her interpretation of the statute and legislative history. Complainant’s personal opinions or perceptions do not constitute evidence. Personal opinions, no matter how strongly held, do not constitute evidence.³² Even a *pro se* complainant must provide relevant and necessary information.³³ Other than providing her personal interpretation of the statute, Complainant presented no credible or competent evidence to support her claim. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.³⁴

The Commission has ruled that there is no provision in the Code, the Commission’s regulations or Orders that permit a customer of Respondent to opt-out of smart meter installation. 66 Pa.C.S. § 2807(f); *Frompovich*. Moreover, the Commonwealth Court has held that federal law does not preempt the Commission’s interpretation. *Romeo*.

³⁰ Exhibit JCA-1, 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. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

³¹ *Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

³² *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

³³ *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa.Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985).

³⁴ *Norfolk and Western Ry. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

Based upon the statutory mandate and *stare decisis*, Complainant’s allegation that the installation of a smart meter is not mandated by the Code is without merit and, based upon the record evidence. Furthermore, there is no basis to conclude that Respondent’s refusal to allow Complainant to opt-out of smart meter installation is a violation of the Company’s SMP Plan or other Commission order. Accordingly, under the circumstances, Complainant’s claim in this regard must be dismissed.

Inadequate or Unreasonable Service

Complainant raised various health, safety and privacy concerns related to smart meters. Complainant concluded that the proposed installation of a smart meter at her residence would constitute unreasonable or inadequate service provided by Respondent.

There is no dispute that, pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate, and reasonable service and facilities, and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.³⁵

At the evidentiary hearing, Complainant stated that she “do[esn’t] have a smart meter, so [she] do[esn’t] have any health effects from them.”³⁶ While Complainant testified that her brother’s health problems may have been caused by the installation of a smart meter at his residence, she indicated that she “has no proof of this” and that “[i]t’s just [her] own opinion.”³⁷ Further, Complainant was unaware whether her brother was a customer of Respondent or any of its affiliated utilities.³⁸ Complainant provided no competent evidence, however, that the smart meters deployed by Respondent present health risks for its customers.

³⁵ 66 Pa.C.S. § 1501.

³⁶ Tr. 44: 17-19.

³⁷ Tr. 44: 21-45:24.

³⁸ Tr. 73: 8-14.

At hearing, the Complainant also expressed her belief that the information gathered by Respondent through the use of smart meters was a violation of her privacy and that such information was subject to be sold or otherwise obtained by third parties.³⁹ Although Complainant acknowledged that Respondent measures her usage, she asserted that, through a smart meter, the Company or third parties could determine which appliances she is using.⁴⁰ The Complainant further asserted that Respondent may sell her information to third parties.⁴¹

Company witness Ahr explained the Company's Commission-approved Privacy Policy related to smart meters.⁴² The Company's Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information. The policy states that Respondent will not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's informed consent.⁴³ In addition, Respondent's smart meters have no access to specific appliance usage data, only the total electric usage of the home.⁴⁴ The Privacy Policy also explains the security protections in place when a customer's usage data is transmitted across the smart meter network. The smart meter network includes several security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.⁴⁵

³⁹ Tr. 39: 18-41:18, 47:7-15, 74:5-79:19.

⁴⁰ Tr. 75: 5-19.

⁴¹ Tr. 59: 14-18.

⁴² *See* Respondent Statement No. 1R at 11:27-13:13; *see also* JCA-2.

⁴³ *Id.* at 12:14-19.

⁴⁴ *Id.* at 12:3-5.

⁴⁵ *Id.* at 13:6-10.

Mr. Ahr further explained that Respondent's smart meter network complies with the advanced meter infrastructure guidelines published by the North American Energy Standards Board and the National Institute of Standards and Technology.⁴⁶

Complainant also expressed concerns about the safety of smart meters and the potential impact the installation of a smart meter may have on the service at her property.⁴⁷ However, Complainant's concerns were based on her beliefs; they were not supported by any record evidence about the meters actually being deployed by the Company. Rather, the record evidence demonstrated that the smart meters used by Respondent comply with the safety standards and requirements established by agencies such as the Federal Communications Commission;⁴⁸ are developed and tested to meet the requirements of the American National Standards Institute;⁴⁹ and are certified by Underwriters Laboratory.⁵⁰ Respondent presented expert testimony demonstrating that the smart meters deployed by the Company comply with applicable standards for electric service.

Based upon the evidence of record, Complainant failed to meet her burden to demonstrate that the installation of a smart meter constitutes unreasonable or inadequate service. While the Complainant raised general concerns about the health, safety, and privacy impacts of smart meters, these claims were unsupported by record evidence. Accordingly, these claims must be dismissed as Complainant failed to establish a *prima facie* case, and there is no record basis to conclude that Respondent's installation of smart meters is in violation of Section 1501 of the Code.

Complainant offered no evidence that the Privacy Policy and related smart meter privacy protections were unreasonable. Other than asserting general allegations related to her

⁴⁶ *Id.* at 13:10-13.

⁴⁷ *See, e.g.*, Tr. 51: 20-24.

⁴⁸ Respondent Statement No. 1R at 13:22-24.

⁴⁹ *Id.* at 13:24-14:7.

⁵⁰ *Id.* at 14:7-9.

general concerns, Complainant failed to provide any testimony or other evidence establishing that the installation of a smart meter would constitute unreasonable or inadequate service. The claims asserted by Complainant were based on her beliefs and what she has read from various sources. Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.⁵¹ Complainant did not establish that she has any personal knowledge or specialized training related to smart meters, cyber security, safety or related privacy issues. Accordingly, Complainant's testimony regarding these matters failed to support her claims that the installation of a smart meter violated any Commission rule, regulation or order, or that Respondent provided unreasonable or inadequate service.

Based upon the record evidence in this proceeding, Complainant's claims regarding privacy concerns as well as unreasonable or inadequate service are not supported by the evidence and must be dismissed.

Complainant failed to present any credible or relevant evidence to support her privacy allegations or that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. In view of Complainant's failure to support her claims or to meet her burden of proof, the Complaint must be denied and dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 52 Pa.C.S. § 331; 66 Pa.C.S. §§ 102, 107, 1501, 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

⁵¹ Pa.R.E. 701.

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 Advanced Metering Infrastructure (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 this 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

this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citation omitted).

8. To satisfy her burden of proof, Complainant 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 Complainant 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 Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal weight, Complainant has not satisfied the burden of proof. Complainant now has 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. Assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

12. A public utility is required to provide adequate, efficient, safe and reasonable service. 66 Pa.C.S. §§ 102 and 1501.

13. There is no specific 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-2012-2317176 (Opinion and Order entered January 24, 2013).

14. 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).

15. A utility may issue written notice of termination to a customer if a customer does not permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading, including the installation of an AMI meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa.Code § 56.81(3).

16. Complainant has failed to carry her burden of proof establishing that Respondent 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.

17. Complainant has failed to carry her burden of proof establishing that Respondent provided unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

18. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight. *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Betty Hazen filed against Pennsylvania Electric Company at Docket No. C-2017-2633811 is dismissed with prejudice.

2. That Docket No. C-2017-2633811 be marked closed.

Date: April 20, 2020

/s/

Jeffrey A. Watson
Administrative Law Judge