

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alan Andrews	:	
	:	
v.	:	C-2019-3008770
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A residential customer filed an amended 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 his residence for the surcharge on his bill as well as health, safety, fire and privacy concerns. During the hearing, Complainant requested to “opt-out” of smart meter installation and withdrew his claim that the surcharge was an incorrect charge. The amended 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 March 25, 2019, Alan Andrews (Complainant) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL, Company or Respondent) averring he wished to prevent the installation of a smart meter installation at his residence, 40 Beaver Run Drive, Lehighton, Carbon County,

Pennsylvania (account number ending in 013) for “Health, Safety, Fire and privacy concerns” and requesting a directive that PPL be precluded from terminating his electric service for not allowing PPL to do so.

The Complaint was served upon PPL on March 25, 2019. On April 15, 2019, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainant 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. PPL admitted to mailing Complainant a termination notice on March 1, 2019, notifying Complainant of a planned termination of service on March 18, 2019. However, due to the filing of the formal Complaint, PPL has ceased termination procedures.

On August 27, 2019, Complainant filed additional information treated as an amendment to his Complaint to support his allegations. On September 12, 2019, I issued an Order compelling Complainant to provide PPL with full responses to discovery requests no later than October 1, 2019. On October 1, 2019, Mr. Andrews filed a Certificate of Service showing he served Answers to Interrogatories upon PPL. On October 11, 2019, PPL requested a continuance of the hearing because one of its witnesses was unavailable for the hearing. On October 15, 2019, a Call-In Telephonic Hearing Change Notice was issued rescheduling the hearing to February 6, 2020.

On January 31, 2020, Complainant filed an Amended Complaint raising additional issues regarding the calculation and application of PPL’s Smart Meter Rider and the Commission’s interpretation of Act 129. This was served upon Respondent on February 3, 2020. On February 5, 2020, PPL filed an Answer and New Matter to Complainant’s Amended Complaint and submitted copies of PPL Electric Exhibits KD-7 and KD-8 to be used at the evidentiary hearing. In its Answer, PPL again denied the material allegations of the Amended Complaint and in its New Matter denied that it is not authorized to charge Complainant for the costs associated with deploying and installing the new AMI meters. On February 19, 2020, Complainant filed a reply to the New Matter asserting alleging that PPL has been unlawfully charging him for these costs of deployment.

On February 6, 2020, the hearing was held as scheduled. At the hearing, Complainant appeared *pro se* with four exhibits pre-marked A-D, which were all admitted into the record. Exhibit E was not admitted into the record. N.T. 58. Complainant's wife, Jeraldine Andrews, appeared as a witness. Respondent appeared represented by Devin Ryan, Esquire, and Curtis Renner, Esquire, with 17 exhibits and four witnesses: Kevin Durkin, Michael Asbury, Christopher Davis, Ph.D., and Mark Israel, M.D. All statements and exhibits were admitted into the record.

A transcript consisting of 78 pages was filed on February 26, 2020 and the record closed the same day. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is Alan Andrews (Complainant), who has resided with his wife, Jeraldine Andrews, at 40 Beaver Run Drive, Leighton, Pennsylvania (service property), for two years. N.T. 7-8, 25, 28.

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 of 2008 (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 has deployed over one million RF Mesh meters 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, N.T. 44.

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 nine (9) television broadcast towers within a 50-mile radius of Complainants' residence. 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 Complainant's residence is 16.3 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. 14-15, 22.

34. Complainant does HVAC installations, electrical construction and commercial refrigeration as his employment. N.T. 14.

35. Complainant withdrew his complaint against the rider charge on his bill. N.T. 24.

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,

¹ In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015) (*Kreider*); *see also*, *Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue.”)

Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

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

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

66 Pa. C.S. § 1501.

When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Kreider, supra* (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

Mr. Andrews argues PPL’s smart meter is known to cause and exacerbate certain medical conditions and adversely impact important biological processes. Amended Complaint at 4, N.T. 18. Complainant testified he has no health conditions but his wife has had heart problems. Mrs. Andrews testified she has a heart condition and is worried about the installation of a smart meter. N T. 28-29.

Conversely, PPL contends Complainant has failed to meet a *prima facie* showing that the meter will cause or is likely to exacerbate medical conditions.

Disposition

Complainant has no engineering or medical degrees. I find his testimony that PPL’s smart meter will contribute to negative health symptoms to lack credibility. Complainant has failed to show any health concerns such as heart palpitations are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at their service property. Although Complainant offered testimony and articles in support of his argument including: Complainant Exhibit B: *Report of Final Results Regarding Brian and Heart Tumors*; Complainant Exhibit C: *AAEM Wireless Smart Meter Case Studies*; and Complainant Exhibit D: *Radiofrequency Radiation Chart*, 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 alleged health conditions are caused by AMI meters installed close to 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 the service property is non-persuasive. Further, the articles upon which he relies to prove the health claims in Exhibits B and C were authored by persons unavailable for cross-examination at the hearing. N.T. 58.

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 effect²" may present symptoms similar to those Mrs. Andrews 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 heart palpitations claimed by Complainant's wife, 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 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

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.

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 nine (9) television broadcast towers within a 50-mile radius of Complainants' residence. 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 16.3 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. 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. PPL Electric Statement No. 1 at 7-16, Exhibits CD1-CD5. For all of these reasons, I find in favor of PPL on this issue.

Opt-In versus Opt-Out Program

During the hearing, Complainant argued that he is entitled to an opt out from installation pursuant to Act 129. Complainant cited to several excerpts from the Legislative notes of Act 129 and offered Complainant Exhibit A: *Legislative Journal Excerpts*. N.T. 9-12, 58.

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. Under the plain language doctrine of statutory construction, the language in Act 129 is unambiguous and therefore the comments of a few Senators regarding their thoughts on the legislation should not be considered. N.T. 73. Additionally, the Commission has established caselaw through consistent rulings finding the installation to be mandated by legislation. N.T. 73-75

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. *Pa. 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, he could advocate for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills including: PA House Bill Nos. 313, 1564 and 1565; and Senate Bill No. 443. Complainant Exhibit B. These bills are not 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.

Rider Surcharge, privacy and fire safety claims

Complainant withdrew his claim that the rider surcharge on his bill was an incorrect charge. N.T. 24. He failed to offer any substantial evidence to support any privacy or fire safety claims. Accordingly, I find in favor of Respondent on these issues.

CONCLUSION

For all of these aforementioned reasons, the Complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Although the Complainant is genuine in his concerns, the Commission's decisions cited above are controlling.

CONCLUSIONS OF LAW

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

2. PPL Electric Utilities Corporation's smart meter procurement and installation plan, which was approved by Commission Order in the case of *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) does not contain a provision for customers to opt out of smart meter installation.

3. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008) (citation omitted).

5. A person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive;” rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision).

6. In AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015).

7. Section 701 of the Public Utility Code provides that “any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701.

8. 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 his burden of proof that installing the new AMI meter would constitute unsafe or unreasonable service in violation of 66 Pa. C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Amended Formal Complaint filed by Alan Andrews against PPL Electric Utilities Corporation at Docket No. C-2019-3008770 is denied and dismissed.

2. That the docket in this proceeding be marked closed.

Date: April 13, 2020

/s/
Elizabeth H. Barnes
Administrative Law Judge