

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Diane Distefano	:	
	:	
v.	:	C-2017-2631007
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
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 October 27, 2017, the Complainant, Diane Distefano, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) objecting to the installation of a smart meter by Metropolitan Edison Company (Met-Ed) at her residence at 111 Brittany Court, Red Lion, Pennsylvania (residence or service location).

On November 17, 2017, Met-Ed filed an answer denying the material allegations in the formal complaint, new matter and preliminary objections (POs).

On December 5, 2017, Complainant filed responses to Met-Ed's POs and new matter.

On January 4, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (ALJ) Jeffrey A. Watson as the Presiding Officer in this proceeding.

On January 8, 2018, ALJ Watson issued an order denying Met-Ed's POs.

On January 19, 2018, an Interim Order Setting Resolution Conference was issued which required the parties to hold a conference to discuss a possible resolution of Ms. Distefano's complaint. This process was unsuccessful.

On November 7, 2018, ALJ Watson issued an interim Order Establishing Litigation Schedule.

On April 23, 2019, an Interim Order Scheduling Prehearing Conference was issued and on April 24, 2019, a Call-In Telephonic Prehearing Conference Notice was issued which scheduled a Prehearing Conference for May 15, 2019. The prehearing conference was held as scheduled and all parties appeared and participated in the conference.

On July 10, 2019, a Hearing Notice was issued which scheduled an in-person evidentiary hearing for September 3, 2019 and informed the parties that the ALJ in this proceeding had been changed from Judge Watson to Judge Steven K. Haas.

On September 3, 2019, the evidentiary hearing was held. The Complainant appeared and presented her case through her own testimony and the submission and admission into the record of Complainant Exhibits A, C, G, I and J. Met-Ed presented its case through the testimony of Mr. John Ahr and the submission and admission into the record of Met-Ed Exhibits 1-8.

On September 3, 2019, an Order Setting Briefing Schedule was issued establishing a deadline of November 1, 2019, for main briefs and November 22, 2019 for reply briefs. Both parties submitted main briefs. Only Met-Ed submitted a reply brief.

The record was closed on November 22, 2019, upon receipt of Met-Ed's reply brief. The record consists of a 130-page transcript, five Complainant exhibits and eight Met-Ed exhibits.

### FINDINGS OF FACT

1. Complainant is Diane Distefano, who resides at 111 Brittany Court, Red Lion, Pennsylvania.
2. Respondent is Metropolitan Edison Company, an electricity distribution company that provides residential electrical service to Complainant at her residence.
3. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter technology procurement and installation plans. Tr. 86.
4. Act 129 sets forth a list of required smart meter functionality. Tr. 88-89.
5. Met-Ed's Smart Meter Technology Procurement and Installation Plan was approved by the Commission on June 5, 2014. Tr. 91; Met-Ed Ex. 3.
6. Met-Ed filed its original Smart Meter Deployment Plan with the Commission on December 31, 2012. Tr. 92; Met-Ed Ex 4.
7. Met-Ed's Smart Meter Deployment Plan was approved by the Commission in June 2014. Tr. 92; Met-Ed Ex. 5.

8. Met-Ed's Smart Meter Deployment Plan identifies Itron as the Company's smart meter vendor and network provider. Tr. 94.

9. Neither Act 129 nor Met-Ed's Smart Meter Deployment Plan provides an opt-out for customers. Tr. 95.

10. Met-Ed's Smart Meter Deployment Plan requires Met-Ed to deploy 98.5% of smart meters to its customer service locations by mid-2019, and the remaining 1.5% of smart meters to hard-to-access locations, such as remote hunting cabins, by 2022. Tr. 96.

11. As of the date of the hearing, Met-Ed has not installed a smart meter at Complainant's Service Location. Tr. 78, 102.

12. Complainant did not offer any expert testimony at the hearing in this matter. Tr. 40-81.

13. Met-Ed offered the testimony of John Ahr, the Advisor of Regulatory Compliance for Smart Meters for the First Energy Companies. Tr. 82-124.

14. The smart meters used by Met-Ed do not collect or communicate personally identifiable customer information. Tr. 98.

15. Met-Ed's smart meters have no access to information regarding what devices are using electricity behind the meter. The smart meters communicate the total usage and not what is causing the usage. Tr. 98.

16. Met-Ed's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to a customer's usage data. Tr. 99-101.

17. Met-Ed's Privacy Policy related to the confidentiality and cybersecurity protections applicable to its smart meters was approved by the Commission on May 1, 2015. Tr. 101; Met-Ed Ex. 7.

18. On September 13, 2016, Met-Ed sent a smart meter pre-installation letter to the Complainant by which it informed her of the company's intention to install a smart meter at her residence. Tr. 102-103.

19. On October 4, 2016, Met-Ed received a letter from the Complainant in which she informed Met-Ed of her refusal to allow the installation of a smart meter at her residence. Tr. 77, 103.

20. On October 4, 2016, Met-Ed attempted to contact the Complainant via telephone to discuss her concerns about the installation of a smart meter at her residence but did not get an answer. Tr. 103.

21. On May 5, 2017, Met-Ed sent a pre-disconnection warning letter to the Complainant indicating that the installation of a smart meter at the Service Location was required and that continued refusal to allow installation of a smart meter could lead to disconnection of service. Tr. 104.

22. On May 15, 2017, the Complainant called Met-Ed to discuss the smart meter issue and was informed that Act 129 mandates the installation of smart meters and that there is no provision in the Act allowing customers to opt-out of smart meter installation. Tr. 104.

23. During the May 15, 2017 call, the Complainant informed Met-Ed that she wanted the intended location of the smart meter moved away from her home. Tr. 104.

24. On June 6, 2017, Met-Ed sent to the Complainant a 10-day pre-disconnection letter. Tr. 104.

25. On June 23, 2017, a Met-Ed representative spoke with the Complainant about the smart meter issue and was informed by the Complainant that she had a medical condition. Tr. 104.

26. The Met-Ed representative instructed the Complainant to have her doctor send a letter to Met-Ed informing it of her medical condition. The representative provided to the Complainant an e-mail address for use by her doctor. Tr. 104.

27. On June 26, 2017, Met-Ed received an e-mail from a doctor on the Complainant's behalf requesting that she not receive a smart meter because of health reasons. Tr. 105.

28. There is no record evidence indicating that the Complainant suffers from a medical condition that will be impacted by installation of a smart meter at her residence.

29. Deployment of a smart meter at the Complainant's residence was postponed as a result of receipt of the letter from her doctor. Tr. 105.

30. On September 25, 2017, Met-Ed sent a letter to the Complainant about its intention to install a smart meter at her residence, and on October 5, 2017, it sent a 10-day pre-termination letter to her. Tr. 106.

31. Met-Ed postponed any termination action on the Complainant's account upon notification of her filing a formal complaint. Tr. 106-107.

## 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).<sup>1</sup> 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).

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<sup>1</sup> 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).

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

When presented with a challenge to 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 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).

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 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).

### **Smart Meter Mandate**

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code). Act 129 required EDCs with at least 100,000 customers, such as Met-Ed, to file a smart meter technology procurement and installation plan (SMIP Plan) with the Commission for approval. 66 Pa.C.S. § 2807(f). Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years. 66 Pa.C.S. § 2807(f)(2).

On December 31, 2012, Met-Ed, along with FirstEnergy Corp.’s other EDCs in Pennsylvania (collectively, the Companies), filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order (Met-Ed Ex. 2); (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.<sup>2</sup> On March 19, 2014, the Companies submitted a revised Smart Meter Deployment Plan, which, *inter alia*, accelerated the smart meter deployment schedule laid out in their original Deployment Plan and was ultimately approved by the Commission on June 5, 2014.<sup>3</sup>

Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation. Met-Ed’s Smart Meter Deployment Plan, approved by the Commission, does not allow for an opt-out option. Tr. 95; Met-Ed Ex. 1.

Complainant argues in her attempt to avoid having a smart meter installed at her residence that Met-Ed has not provided any safety or environmental impact studies indicating that smart meters are not harmful to humans and other living beings. Tr. 45. She further argues that the smart meters utilized by Met-Ed produce dirty electricity that has a negative impact on health and degrades the performance of home appliances. Tr. 63.

In support of her arguments, Complainant attempted to introduce and discuss a number of articles addressing the issue of smart meters and their impacts on human health and the environment. For example, Complainant offered an article that appeared in the Environmental Research Journal titled, “Wi-Fi is an Important Threat to Human Health.” (Complainant Ex. B). She also offered an article containing information from the California Department of Public Health addressing the results of a study conducted by the California Council on Science and Technology (Complainant Ex. F). Both articles addressed the issue of smart meters and their purported impacts on human health. Counsel to Met-Ed objected to the admission of these articles, as well as to the admission of several other exhibits offered by the Complainant, on the ground that they constituted inadmissible hearsay. The authors of the

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<sup>2</sup> *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.

<sup>3</sup> *See* Exhibits PD-4 and JCA-1.

articles were not available to authenticate the articles or to be cross examined on their contents. Accordingly, Met-Ed's objections were sustained, and the articles were not admitted into the record in this case.

According to Pennsylvania Rule of Evidence 701,<sup>4</sup> 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."<sup>5</sup> 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.<sup>6</sup> In this case, the Complainant's testimony related to issues outside the scope of her personal knowledge and were based on hearsay.<sup>7</sup> All such testimony was properly excluded upon objection.

In addition to her concerns about negative potential health impacts, the Complainant also raised concerns about privacy and cybersecurity threats associated with the installation of smart meters. Tr. 64-65. As a result of her various concerns, Complainant requests that she be permitted to opt out of the installation of a smart meter at her residence.

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<sup>4</sup> Pa.R.E. 701.

<sup>5</sup> *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).

<sup>6</sup> Pa.R.E. 701.

Commission precedent supports Met-Ed's conclusion that the Commission may not grant exceptions to the statutory directive that smart meters be installed by allowing customers to "opt-out."<sup>8</sup> Tr. 95. Neither the Company's Commission-approved Smart Meter Deployment Plan nor Act 129 provide for such opt-outs to occur.<sup>9</sup> 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.<sup>10</sup>

It is clear that Act 129 does not provide for customers to opt-out of smart meter installation. In addition, no evidence was presented to support the conclusion that Met-Ed's refusal to allow Complainant to opt-out of smart meter installation is in any way a violation of the Company's Smart Meter Deployment Plan or other Commission order. Accordingly, Complainant's claim is not supported by record evidence and, therefore, must be dismissed.

### **Unreasonable or Inadequate Service**

As noted, Complainant raised health and privacy concerns related to smart meters but failed to provide any competent evidence to support her allegations. Complainant's evidence, consisting primarily of unsubstantiated personal feelings and beliefs, fails to meet her burden of proof to show that the deployment of smart meters and the proposed installation at the service location is unreasonable or constitutes inadequate utility service.

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

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<sup>8</sup> See, e.g., *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

<sup>9</sup> JCA-1, pp. 9 and 47; 66 Pa.C.S. § 2807(f); see Exhibit PD-1.

<sup>10</sup> *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part:

§ 1501. Character of service and facilities.

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.<sup>[11]</sup>

Here, the Complainant failed to demonstrate that the installation of a smart meter at her residence would constitute unreasonable or inadequate service under Section 1501.

At the hearing, Complainant presented testimony based upon her beliefs and lay opinions that smart meters are unsafe to human health and that there are privacy and cybersecurity issues associated with the use of smart meters. However, assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Complainant did not present any credible or competent evidence to establish or prove her general concerns. Further, the Complainant presented no record evidence as to any medical conditions experienced by her that may be impacted by the installation of a smart meter at her residence.

In contrast, Met-Ed presented witness John Ahr. Mr. Ahr has a B.S. degree in electrical engineering and a Masters of Business degree. He has been with the company for 35 years and currently serves as the Advisor of Regulatory Compliance for Smart Meters for the

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<sup>11</sup> 66 Pa.C.S. § 1501.

First Energy Companies. Tr. 83. He is the Company's subject matter expert for Act 129 and smart meters. Tr. 84.

With respect to the Complainant's allegations about negative health impacts, Mr. Ahr testified that, based on his experience, smart meters are not unsafe. Tr. 97. He testified that the smart meters used by Met-Ed comply with all Federal Communications Commission (FCC) standards, as well as all relevant American National Standards Institute (ANSI) standards. Tr. 97. Mr. Ahr also testified that the smart meters are certified by the Underwriters Laboratories (UL) and meet all UL standards for smart meters. Tr. 97.

With respect to Complainant's privacy allegations and concerns, Met-Ed offered into evidence its Commission-approved Privacy Policy. Met-Ed Ex. 6. The 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. Tr. 99-100. The Privacy Policy states that Met-Ed 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 consent. Tr. 99-100. The Privacy Policy 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. Tr. 100.

Based on a review of the record evidence in this proceeding, I am more persuaded by the evidence submitted by Met-Ed and find that the Complainant failed to meet her burden to demonstrate that the installation of a smart meter constitutes unreasonable or inadequate service. Although Complainant raised general concerns about the health and privacy impacts of smart meters, these claims were not supported by record evidence, nor were they based on her personal knowledge or observations. As such, there is no competent record evidence to support the conclusion that Respondent's installation of smart meters and proposed installation at the Service

Location constitutes a violation of Section 1501 of the Code. The Complainant has failed to meet her burden of proof and, accordingly, her complaint must be dismissed.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 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 legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

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

4. In AMI meter-related matters, “[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, “[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 meter 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 Met-Ed 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 failed to carry her burden of proof establishing that Met-Ed 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 Diane Distefano filed against Metropolitan Edison Company at Docket No. C-2017-2631007 is dismissed with prejudice.
2. That Docket No. C-2017-2631007 be marked closed.

Date: May 20, 2020

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/s/  
Steven K. Haas  
Administrative Law Judge