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May 22, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Linda Biconik v. Pennsylvania Electric Company
Docket No. C-2017-2632380

Dear Secretary Chiavetta:

Enclosed please find the Main Brief of Pennsylvania Electric Company with regard to the above-captioned matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDA BICONIK

v.

PENNSYLVANIA ELECTRIC COMPANY

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DOCKET NO. C-2017-2632380

**MAIN BRIEF
ON BEHALF OF
PENNSYLVANIA ELECTRIC COMPANY**

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Dated: May 22, 2020

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I. INTRODUCTION

On November 6, 2017, Pennsylvania Electric Company (“Penelec” or the “Company”) was served with the Formal Complaint filed by Linda Biconik (the “Complainant”) with the Pennsylvania Public Utility Commission (“Commission”). In her Complaint, the Complainant contests Penelec’s planned installation of a smart meter at her property located at 73 Cherry Lane, Homer City, Pennsylvania 15748 (“Service Location”).

As explained in this Main Brief, the Complainant failed to sustain her burden of proof that installing the smart meter on her property would constitute a violation of the Public Utility Code or any Commission regulation or order. Therefore, the Commission should dismiss the Complaint in its entirety and with prejudice.

II. STATEMENT OF THE CASE

On or about November 6, 2017, the Complainant filed a Formal Complaint against Penelec with the Commission.

Administrative Law Judge (“ALJ”) Jeffrey A. Watson was assigned as the Presiding Officer in the above-captioned proceeding.

On November 27, 2017, the Company filed its Answer and New Matter denying the material allegations in the Complaint. On the same day, the Company also filed Preliminary Objections to the Complaint.

On December 8, 2017, the Complainant filed an Answer to Penelec’s Preliminary Objections.

On November 15, 2018, ALJ Watson issued an Order denying Penelec’s Preliminary Objections.

On or about February 8, 2019, the Company issued Interrogatories and Requests for Production of Documents Set I to the Complainant. In its Set I discovery requests, Penelec sought information and documents related to the Complainant's allegations regarding the Company's smart meters.

On July 23, 2019, ALJ Watson issued an Interim Order establishing a litigation schedule.

On September 10, 2019, the Company filed a Motion to Compel the Complainant to respond to the Set I discovery requests.

On September 19, 2019, the Complainant filed an Answer to the Company's Motion to Compel.

On September 24, 2019, ALJ Watson granted the Company's Motion to Compel and directed the Complainant to provide full and complete responses to the Set I discovery requests.

On December 10, 2019, Penelec filed a status report.

On December 16, 2019, ALJ Watson issued an Initial Telephonic Hearing Notice.

An evidentiary hearing was held on January 23, 2020.

On April 7, 2020, ALJ Watson issued an Order Setting Briefing Schedule. Penelec submits this brief in accordance with the ALJ's Order.

III. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.¹ The first step in carrying the burden of proof is establishing a *prima facie* case that Penelec violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.² In order to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.³ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁴

Although the factual burden may shift during the course of a proceeding, the Complainant always maintains the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."⁵ A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁶

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."⁷ Section 1501 of the Public Utility Code states, in relevant

¹ 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

² *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

³ *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

⁴ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁵ *Lansberry*, 578 A.2d at 602.

⁶ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015), *supra*.

⁷ 66 Pa.C.S. § 701.

part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”⁸ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.⁹

IV. SUMMARY OF ARGUMENT

The Complainant failed to meet her burden of proof that the installation of a smart meter at her Service Location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

In this proceeding, the Complainant argued that smart meters present a threat to her health and safety. The Complainant stated her general concerns with smart meters at the evidentiary hearing.¹⁰ However, the Complainant presented no evidence in support of these arguments.

The Complainant failed to establish that Penelec is not required to install smart meters for the customers in its service territory or that installation of a smart meter would violate the law. In fact, at the evidentiary hearing held in this case, the Complainant admitted that the current law in Pennsylvania requires Penelec to install a smart meter at all service locations.¹¹ Specifically, Penelec has an absolute obligation to install smart meters at all of its customers’ service locations under Act 129 of 2008 (“Act 129”).¹² Neither Act 129 nor subsequent Commission orders related

⁸ 66 Pa.C.S. § 1501.

⁹ *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

¹⁰ Tr. at 11.

¹¹ Tr. at 16.

¹² 66 Pa.C.S. § 2806.1, *et seq.*

to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.¹³ Further, both Act 129 and the Commission’s Implementation Order require that electric distribution companies (“EDCs”) install wireless smart meters with specific functionality.¹⁴ Penelec’s smart meters adhere to the requirements of Act 129 and the Commission. The smart meter components and deployment of smart meters in Penelec’s territory were identified in Penelec’s Smart Meter Deployment Plan, which was ultimately approved by the Commission on June 20, 2014.¹⁵ Penelec is seeking to install a smart meter at the Complainant’s Service Location in order to remain in compliance with Act 129, related Commission orders, and the Company’s Smart Meter Deployment Plan.

In addition, the Complainant failed to establish that the installation of a smart meter constitutes unreasonable service. The Complainant offered no evidence to support her allegations that the smart meter would present a threat to her healthy or safety.

By contrast, the Company’s witness John C. Ahr directly rebutted the Complainant’s allegations. Mr. Ahr is employed by FirstEnergy Service Company as the Advisor, Regulatory Compliance – Smart Meters. Mr. Ahr presented credible testimony that Med-Ed’s smart meters are safe.

The evidence of record weighs heavily against the Complainant’s assertions. In comparison to the Company’s expert testimony, the lay testimony offered by the Complainant should carry little, if any, weight. Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any

¹³ *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“Implementation Order”).

¹⁴ *Id.*

¹⁵ *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 (Sec. Letter dated June 20, 2014) (hereinafter, “Smart Meter Deployment Plan” or “SMDP”).

relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters “without personal knowledge or specialized training.”¹⁶ 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.¹⁷ As such, all lay testimony from the Complainant related to more specialized topics, including health, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

In sum, the Complainant failed to establish by a preponderance of the evidence that Penelec violated a statute, Commission regulation or order. Specifically, the Complainant has not met her burden of proof that the installation of a smart meter constitutes unreasonable service by the Company. Accordingly, Penelec requests that the Commission to dismiss the Complaint with prejudice.

V. ARGUMENT

A. Background on Act 129 and the Company’s Smart Meter Deployment Plan

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code.¹⁸ Act 129 required EDCs with at least 100,000 customers, such as Penelec, to file a smart meter technology procurement and installation plan (“SMP Plan”) with the Commission for approval.¹⁹ 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.²⁰

¹⁶ *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).

¹⁷ Pa.R.E. 701.

¹⁸ 66 Pa.C.S. § 101, *et seq.*

¹⁹ 66 Pa.C.S. § 2807(f).

²⁰ 66 Pa.C.S. § 2807(f)(2).

Pursuant to Section 2807(f) of the Public Utility Code, Penelec filed a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan on August 14, 2009 (“2009 SMP Plan”).²¹ The Commission issued an Order on June 9, 2010, approving 2009 SMP Plan with certain modifications.²²

On December 31, 2012, Penelec, Metropolitan Edison Company, Pennsylvania Power Company, and West Penn Power Company (collectively referred to hereafter as “the Companies”) filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission’s Implementation Order; (2) approve the Companies’ proposed procurement and deployment of approximately 2.1 million smart 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.²³ On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.²⁴ Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁵ In its June 25, 2014 Opinion and Order, the Commission recognized the

²¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Petition dated Aug. 10, 2009).

²² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).

²³ *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 (Petition filed December 31, 2012).

²⁴ *Id.*

²⁵ *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, p. 8 (Order entered June 25, 2014).

benefits of early deployment of smart meters and approved the revised Smart Meter Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.²⁶

B. The Complainant Failed to Meet her Burden of Proof that Penelec Violated the Public Utility Code, a Commission Order, or a Commission Regulation.

1. The Installation of Smart Meters is Required by Law.

The Complainant admits that current Pennsylvania law requires Penelec to install smart meters at all service locations.²⁷ Specifically, section 2807(f) of the Public Utility Code prescribes that EDCs, like Penelec, must file smart meter plans and “shall furnish smart meter technology” in any of the following situations: (1) “[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request”; (2) “[i]n new building construction”; and (3) “[i]n accordance with a depreciation schedule not to exceed 15 years.” 66 Pa.C.S. § 2807(f)(1)-(2) (emphasis added).²⁸ In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.”²⁹ The

²⁶ *Id.*, p. 16.

²⁷ Tr. at 16.

²⁸ Importantly, Pennsylvania courts have long held that the word “shall” means “must.” See *Whiteford v. Dep’t of Transp.*, 728 A.2d 1127, 1131 (Pa. Cmwlth. 2001) (“[T]he word ‘shall’ denotes a mandatory, not discretionary instruction.”) (citations omitted); *C.B. v. J.B.*, 65 A.3d 946, 952 (Pa. Super. 2013) (finding that “[t]he use of ‘shall’ means . . . must” and that to hold otherwise “would be to flout the legislative will”); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1233 (Pa. 2004) (“[W]e are not compelled to pretend that ‘shall’ means ‘may’ under Section 3146.6(a).”); *Griesmer v. Hill*, 36 Pa. Super. 69 (Pa. Super. 1908) (“This provision is mandatory, and not directory merely. It means what it says. The word ‘shall’ means ‘shall’ [The defendant] not only may but ‘must.’”).

²⁹ *Implementation Order*, p. 14.

Commission also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.”³⁰ Therefore, Penelec must install the new smart meters for every customer in its service territory, including the Complainant.

Moreover, Penelec must comply with the relevant Commission orders directing the Company to deploy the new AMI meters. Neither Act 129 nor the Commission’s related orders permit customers to “opt-out” from smart meter installation. In fact, Penelec’s Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.³¹ Under Act 129, Penelec has an absolute obligation to install smart meters at all of its customers’ service locations.

The Complainant noted that prior versions of Act 129 contained opt-out provisions, but the final version contains no such opt-out provision.³² In fact, the Commission has found in several other cases that Act 129 contains no opt-out language.³³ Specifically, in *Starr*, the Commission observed that it has “rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible under Act 129.”³⁴ Only the General Assembly can amend Act 129 to add an opt-out provision. The Complainant stated that there is pending legislation on this

³⁰ *Id.*, pp. 9, 14; see also *Springirth v. Nat’l Fuel Gas Distrib. Corp.*, 1991 Pa. PUC LEXIS 44, at *1-3, 6, 16-17 (Order entered Apr. 12, 1991) (dismissing complaint of customer seeking to make installation of automated meter reading devices optional, noting that the Commission previously found in another case that “[t]he customer should not be given the option of refusing installation of equipment” because “[t]o permit customer discretion in this area would be inefficient and uneconomical”) (quoting *Stenker v. The York Water Co.*, Docket No. C-871318 (Order entered July 27, 1987)).

³¹ *Smart Meter Deployment Plan*, p. 6.

³² Tr. at 16.

³³ See, e.g., *Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted).

³⁴ *Id.*; see *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *11-13 (Order entered May 3, 2018); *Povacz v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 102, at *156-59 (Order entered Mar. 28, 2019), *appeal pending*, 492 C.D. 2019; *Sunstein Murphy v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 159, at *157-59 (Order entered May 9, 2019), *appeal pending*, 606 C.D. 2019; *Randall & Albrecht v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 160, at *145-48 (Order entered May 9, 2019), *appeal pending*, 607 C.D. 2019.

issue, and installation of a smart meter should be delayed until the outcome of that legislation is known.³⁵ Although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. Thus, a customer cannot opt-out of the AMI meter installation under Act 129, and Penelec must comply with the law as it currently stands by installing smart meters at all service locations.

Finally, the Complainant commented that she believes other states provide an option for customers not to have a smart meter installed.³⁶ The Commission and Pennsylvania courts have made clear that the practices and policies of other jurisdictions have little, if any, relevance for Pennsylvania.³⁷

For these reasons, the Complainant has failed to demonstrate that smart meters are not mandatory or that she can legally opt-out of the smart meter's installation under Act 129 and related Commission orders.

2. The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service.

³⁵ Tr. at 12.

³⁶ Tr. at 11.

³⁷ See, e.g., *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plant; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282, 2014 Pa. PUC LEXIS 93, at *34-35 (Recommended Decision Feb. 25, 2014) (“Although the OCA points to the practice of utilities in other states to support its argument to include ADIT in the DSIC, the jurisdictions that the OCA has identified in this proceeding have mechanisms that are dissimilar from the Pennsylvania mechanism. In the instant case, even if a review of the practices of other states in interpreting the Pennsylvania statute was appropriate, the mechanisms in the other states vary significantly from the Pennsylvania DSIC such that they provide no relevant guidance in judging the reasonableness of the proposed ADIT adjustment.”), *adopted*, Docket Nos. P-2012-2338282, et al. (Order entered May 22, 2014); *Performance Metrics & Remedies (PMO III F0013) 2008 Guidelines Updates*, 2008 Pa. PUC LEXIS 1105, at *19-20 (Order entered July 22, 2008) (“[W]hether the NY PSC has adopted a particular change for use in NY (or whether other states in the footprint have adopted a particular change) does not control Pennsylvania’s decision to adopt or reject a particular change for use in Pennsylvania. . . . We shall not, however, adopt changes or refrain from adopting changes for use in Pennsylvania based solely on what happens in NY or any other jurisdiction.”); *Petition for Declaratory Order Regarding Ownership of Alt. Energy Credits, Associated with Non-Utility Generating Facilities Under Contract to Pa. Elec. Co. and Metro. Edison Co.*, 2007 Pa. PUC LEXIS 7, at *26-27 (Order entered Feb. 12, 2007) (stating that neither the ALJ nor the Commission grounded their decisions on the analysis of the decisions of foreign jurisdictions); see also *Elder v. Orlucky*, 515 A.2d 517, 522 (Pa. 1986) (noting that it was not appropriate to consider another jurisdiction’s statute where there was no indication that the General Assembly based Pennsylvania legislation on legislation adopted in other jurisdictions).

The Complainant concedes that Penelec has not acted in violation of the law.³⁸ However, the Complainant did express that she has health and safety concerns related to the smart meter.³⁹ Pursuant to Section 1501 of the Code, 66 Pa.C.S. § 1501, 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. 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.⁴⁰

The Complainant failed to demonstrate that the installation of a smart meter at her Service Location would constitute unreasonable or inadequate service under Section 1501. The Complainant did not present any credible evidence in support of her claims aside from expressing her concerns about the safety of the smart meters. Such bald assertions, personal opinions, or perceptions do not constitute evidence.⁴¹ Further, testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims.⁴² Thus, the Complainant failed to establish a *prima*

³⁸ Tr. at 17.

³⁹ Tr. at 11.

⁴⁰ 66 Pa.C.S. § 1501.

⁴¹ See *Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted).

⁴² See *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960).

facie case that the smart meter’s installation would violate Section 1501 of the Public Utility Code, and her testimony should be disregarded.

Even assuming *arguendo* that the Complainant established a *prima facie* case, her evidence was fully rebutted by Penelec. At the hearing, the Company presented the testimony of John C. Ahr, who has a degree in electrical engineering and has worked for Penelec since 1984 in various positions, including Director of System Operations, Director of Energy Procurement, Director of Meter Reading and Collections, and Manager, Regulatory Compliance for Smart Meters.⁴³

Mr. Ahr testified that Penelec’s smart meters are safe. Based on Mr. Ahr’s experience, he is not aware of any fires caused by smart meters in Penelec’s service territory.⁴⁴ Penelec has taken several measures to ensure that the smart meters are safe. Penelec’s smart meters comply with all safety requirements and standards established by agencies such as the Federal Communications Commission.⁴⁵ The meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required American National Standards Institute or “ANSI” testing.⁴⁶ Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards.⁴⁷ In addition, the smart meters are also Underwriter Laboratories or “UL” certified.⁴⁸

The Complainant also alleged that smart meters could cause health effects.⁴⁹ However, the Complainant failed to produce any evidence supporting this claim. Having failed to present any competent evidence into the record that Penelec’s installed smart meters would cause any health effects, the Complainant’s claim must be rejected.⁵⁰

⁴³ Tr. at 22-23.

⁴⁴ Tr. at 26.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Tr. at 26-27.

⁴⁸ Tr. at 27.

⁴⁹ Tr. at 11.

⁵⁰ *See, e.g., Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, *90.

Based on the foregoing, the Complainant failed to sustain her burden of proof that the installation of a smart meter would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code. Thus, the Complaint should be dismissed with prejudice.

VI. CONCLUSION

WHEREFORE, Pennsylvania Electric Company respectfully requests that Administrative Law Judge Jeffrey Watson recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Linda Biconik with prejudice.

Respectfully submitted,



Dated: May 22, 2020

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APPENDIX A

PROPOSED FINDINGS OF FACT

1. Penelec filed a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan on August 14, 2009 (“2009 SMP Plan”).⁵¹
2. The Commission issued an Order on June 9, 2010, approving 2009 SMP Plan with certain modifications.⁵²
3. On December 31, 2012, Penelec, Metropolitan Edison Company, Pennsylvania Power Company, and West Penn Power Company (the “Companies”) filed their Joint Petition for Approval of their Smart Meter Deployment Plan.⁵³
4. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.⁵⁴
5. The Complainant offered only lay witness testimony at the hearing in this matter.
6. Penelec presented the testimony of John C. Ahr. Mr. Ahr is employed by FirstEnergy Service Company with the title Advisor, Regulatory Compliance – Smart Meters.⁵⁵
7. Penelec’s smart meters comply with all safety requirements and standards established by the Federal Communications Commission.⁵⁶

⁵¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Petition dated Aug. 10, 2009).

⁵² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).

⁵³ *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 (Petition filed December 31, 2012).

⁵⁴ *Id.*

⁵⁵ Tr. at 23-24.

⁵⁶ Tr. at 26.

8. Itron is the meter manufacturer for Penelec's smart meters.⁵⁷
9. Itron enlists certified personnel to perform the required American National Standards Institute or ANSI tests on its meter products.⁵⁸
10. Penelec's smart meters are Underwriter Laboratories or UL certified.⁵⁹

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.⁶⁰

2. The first step in carrying the burden of proof is establishing a prima facie case that Penelec violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a prima facie case does it become the responsibility of the Company to provide rebuttal evidence.⁶¹

3. In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁶²

4. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.⁶³

5. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁶⁴

6. In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation,

⁶⁰ 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

⁶¹ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

⁶² *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Assoc. v. Pa. Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. Ct. 2000).

⁶³ *Lansberry*, 578 A.2d at 602.

⁶⁴ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015); *see also Se-Ling Hosiery, supra*.

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”⁶⁵

7. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”⁶⁶

8. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.⁶⁷

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁶⁸

10. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s service location would violate Act 129 or any related Commission orders.⁶⁹

11. A lay witness may only provide testimony related to his or her direct knowledge or experience.⁷⁰

⁶⁵ 66 Pa.C.S. § 701.

⁶⁶ 66 Pa.C.S. § 1501.

⁶⁷ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

⁶⁸ 66 Pa.C.S. § 2806.1, *et seq.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

⁶⁹ *See id.*; *see also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penelec Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

⁷⁰ Pa.R.E. 701.

12. The Company has the absolute right to access a customer's premises to remove or exchange any or all Company equipment including a meter.⁷¹

13. The Company is permitted to terminate a customer's electric service for denying access to the meter.⁷²

14. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁷³

15. The Complainant failed to sustain her burden of proof that the installation of a smart meter would constitute unsafe or unreasonable service by the Company.

⁷¹ 66 Pa. C.S. § 1406; 52 Pa. Code § 56.81; Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

⁷² *Id.*

⁷³ *See Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Linda Biconik filed against Pennsylvania Electric Company at the above-referenced docket is dismissed with prejudice.
2. This matter shall be marked as closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDA BICONIK

v.

PENNSYLVANIA ELECTRIC COMPANY

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:
:
:
:

Docket No. C-2017-2632380

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Main Brief of Pennsylvania Electric Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic mail only as follows:

Linda Biconik
rubywildcrow@gmail.com

Administrative Law Judge Jeffrey A. Watson
jeffwatson@pa.gov

Dated: May 22, 2020



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