BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Judith D. Hendin	:	
	:	
v.	:	C-2018-3003324
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

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I. INTRODUCTION

This decision denies a formal complaint filed by a customer of an electric distribution company who averred that the installation of an advanced metering infrastructure, or "smart meter" will cause her adverse health effects. The complainant requested an order that no smart meter be installed at her residence. The complaint will be denied because the customer has failed to satisfy her burden of demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the installation of a smart meter.

II. HISTORY OF THE PROCEEDING

On June 29, 2018, Judith D. Hendin filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed), averring that she did not want a smart meter installed on her property and that a smart meter was previously installed at her residence that made her sick. Ms. Hendin expressed concerns of how her specific health issues will be affected by the installation of a smart meter. As relief, Ms. Hendin seeks an order providing that no smart meter will be installed on her property and permitting her to keep her existing meter.

On July 31, 2018, Met-Ed filed an answer and new matter in response to the complaint denying the material allegations set forth in the complaint. Met-Ed averred that Ms. Hendin has refused to allow the company access to install a smart meter at her home which constitutes legal grounds to terminate electric service at the service location. Met-Ed further averred it is required by Act 129 of 2008, 66 Pa.C.S. § 2806.1, *et seq*. (Act 129), and other legal obligations, to install the smart meter. In its new matter, Met-Ed reiterated the legal obligations it believes requires the company to install smart meters throughout its service territory.

Also on July 31, 2018, Met-Ed filed preliminary objections in response to the complaint. Met-Ed averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Ms. Hendin has failed to allege that Met-Ed violated any Commission statute, regulation, order or tariff provision with regard to the

installation of the smart meter. By interim order dated October 18, 2018, Met-Ed's preliminary objections were denied by Administrative Law Judge (ALJ) Jeffrey Watson.

Subsequently, various procedural matters occurred in this case. This includes submission of various status reports, a motion for admission of counsel pro hac vice, settlement efforts, the exchange of pre-served written testimony and the issuance of a protective order.

A hearing notice was issued on September 5, 2019, establishing an initial in-person hearing for this matter for December 19, 2019 and December 20, 2019 and assigning me as the presiding officer. A prehearing order dated September 13, 2019, was issued setting forth various procedural issues that would govern that hearing.

The hearing was held as scheduled on December 19, 2019 and December 20, 2019. Joanna Waldron, Esquire, appeared on behalf of Ms. Hendin and presented two witnesses who sponsored multiple exhibits that were admitted into the record. Tori Giesler, Esquire, Lauren Lepkoski, Esquire and Curtis Renner, Esquire appeared on behalf of Met-Ed and presented three witnesses who sponsored multiple exhibits. Due to an unforeseen circumstance with one of Met-Ed's witnesses, however, an additional day of hearings was scheduled for January 24, 2020 to complete the presentation of the third witness. A transcript of 289 pages was created during all three hearings.

On January 21, 2020, counsel for Ms. Hendin filed a motion for an extension of time and, in addition or alternative, a motion for leave to file surrebuttal testimony. On February 10, 2020, Met-Ed filed an answer to Ms. Hendin's motion. Ms. Hendin's request for an extension of time and for leave to file surrebuttal testimony was denied via order dated February 19, 2020.

On February 14, 2020, counsel for Ms. Hendin submitted a motion to admit late-filed exhibits. On March 9, 2020, Met-Ed filed an objection to the admission of late-filed exhibits.

A briefing order was issued on February 19, 2020 formalizing the agreement of the parties that Main Briefs will be filed on March 16, 2020 and Reply Briefs will be filed on April 6,

2020. The briefing order also addressed additional procedural issues regarding briefs. Both Ms. Hendin and Met-Ed filed Main and Reply Briefs on the date they were due.

On March 16, 2020, Met-Ed filed a motion for the admission of Met-Ed Statement No. 3-R, the rebuttal testimony and exhibits of Dr. Mark A. Israel. Dr. Israel was Met-Ed's third witness whose presentation was concluded on January 24, 2020 and whose testimony and exhibits were not admitted at the time of the hearing. No opposition to the motion for admission of Dr. Israel's rebuttal testimony and exhibits was filed; therefore, Met-Ed's motion will be granted as part of this decision. Met-Ed will be directed to provide two copies of the documents to the Commission's Secretary's Bureau for inclusion in the Commission's official files.

On April 6, 2020, Met-Ed filed a motion to strike those portions of Ms. Hendin's briefs that relied on the exhibits not yet admitted into the record. On April 27, 2020, Ms. Hendin filed an answer in opposition to Met-Ed's motion to strike. Both Met-Ed's motion to strike and Ms. Hendin's motion for admission of late-filed exhibits were granted in part and denied in part via the same order dated June 18, 2020.

The record in this case closed on June 18, 2020, the day the order granting in part and denying in part the motion for admission of late-filed exhibits and motion to strike were jointly decided. For the reasons discussed below, Ms. Hendin's complaint will be denied.

III. FINDINGS OF FACT

1. The Complainant in this case is Judith Hendin.

2. The Respondent in this case is Metropolitan Edison Company.

3. The service address is 402 Woodland Road, Easton, Pennsylvania. Hendin St. 1(Amended) at 1.

4. Ms. Hendin has lived at the service address for 23 years. Tr. 22; Hendin St. 1(Amended) at 1.

5. Ms. Hendin pays rent at the service address. Tr. 66.

6. Ms. Hendin is a Somatic Therapist, which is a mind body therapist. Tr. 46; Hendin St. 1(Amended) at 1.

7. Ms. Hendin sees some patients in her home but the majority of her work is either over the computer or telephone or by travelling. Tr. 47, 71; Hendin St. 1(Amended) at 1.

8. The proposed location of the smart meter at her home is six inches from the only door in and out of her home and workplace, which is also four feet from her kitchen, eight feet from where her desk is and 20 feet from where she sleeps. Hendin St. 1(Amended) at 2.

9. Ms. Hendin has taken several proactive measures to avoid exposure to electromagnetic frequencies, including purchasing a meter to test for frequencies, using wired devices, using a low-frequency hair dryer and not using a smart phone. Tr. 47-50; Hendin St. 1(Amended) at 3-4.

10. Ms. Hendin has a cell phone that she uses for emergency purposes that she purchased in 2005 and does not have internet access, GPS, camera or other smart phone features. Hendin St. 1(Amended) at 3.

11. Ms. Hendin's neighbors' smart meter is about 50 feet from her front door. Tr. 51.

12. Ms. Hendin spoke with Met-Ed about the possibility of relocating her smart meter but it was cost prohibitive because she lives on a hill made out of Eastonite. Tr. 52.

13. Ms. Hendin's gas company changed her gas meter in 2012 after Ms. Hendin's primary care physician, Dr. William Kracht, wrote a letter to the gas company on behalf of Ms. Hendin. Tr. 59; Hendin St. 1(Amended) at 5; Kracht St. 1 at 3.

14. Ms. Hendin takes precautions to avoid electromagnetic frequencies when she travels. Hendin St. 1(Amended) at 4.

15. Ms. Hendin got dizzy and disoriented recently when waiting in an airport for a flight when many people were using wireless devices. Tr. 72; Hendin St. 1(Amended) at 9-10.

16. Dr. Kracht is a board-certified physician both in family medicine and integrative medicine with a Bachelor of Science in pre-medicine from Pennsylvania State University and a Doctor of Osteopathy from the Philadelphia College of Osteopathic Medicine. Kracht St. 1 at 2.

17. Dr. Kracht has been Ms. Hendin's primary care physician since 2001 and has treated her consecutively during that time. Tr. 83.

18. Dr. Kracht has been treating Ms. Hendin for electromagnetic hypersensitivity and co-morbid chemical intolerance syndrome. Kracht St. 1 at 2-3.

19. Ms. Hendin called Dr. Kracht's office on August 24, 2012 to report that she was experiencing symptoms, including allergic reactions, after a smart meter was installed for her gas service. Kracht St. 1 at 3.

20. Dr. Kracht has treated allergic conditions since 1991, including many patients allergic to dust molds and pollens, food allergies, chemical and electromagnetic sensitivities. Kracht St. 1 at 4.

21. Dr. Kracht has treated Ms. Hendin with respect to her electromagnetic sensitivity issues. Kracht St. 1 at 5.

22. Hendin Exhibit Number 1 is a report of a visit of Ms. Hendin to Dr. Kracht on September 6, 2019. Tr. 84; Hendin Exh. No. 1.

23. John Ahr is the advisor for regulatory compliance for smart meters for First Energy Service Company, a subsidiary of First Energy Corporation. Tr. 137; Met-Ed St. 1-R at 1.

24. Mr. Ahr has worked for over 35 years with subsidiaries of First Energy or its predecessor companies in a variety of positions in the engineering, operations, customer services, transmission, customer support, energy efficiency and emerging technologies areas of the company. Met-Ed St. 1-R at 1.

25. Mr. Ahr is responsible for regulatory compliance associated with the smart meter project including all filings and resulting regulatory processes associated with implementation and approval of the plan. Met-Ed St. 1-R at 2.

26. Mr. Ahr is the Act 129 and smart meter subject matter expert for the First Energy operating companies. Met-Ed St. 1-R at 2.

27. Met-Ed Exhibit JCA-1 is the Met-Ed smart meter deployment plan that was approved by the Commission. Met-Ed St. 1-R at 9; Met-Ed Exh. JCA-1.

28. The physical smart meter technology deployed by Met-Ed includes the smart meters themselves, connected grid routers, range extenders, the head end consisting of a collection engine and field network director and a meter data management system. Met-Ed St. 1-R at 8.

29. The smart meter deployed by Met-Ed and the communication network and supporting system are referred together as advanced metering infrastructure (AMI) and allows for the bidirectional communication between the meters and Met-Ed, records customers' interval consumption of electricity and allows for the transmission of meter readings over a communication network to a central collection point and supporting systems. Met-Ed St. 1-R at 9-10.

30. The specific smart meter used by Met-Ed is the Itron Open Way Centron smart meter. Met-Ed St. 1-R at 10.

31. Met-Ed's smart meter plan approved by the Commission requires 98.5% of all meters to be deployed by mid-2019 with the remaining 1.5% deployed before December 31, 2022. Met-Ed St. 1-R at 11; Tr. 162.

32. The smart meters deployed by Met-Ed comply with all safety requirements and standards established by the Federal Communication Commission (FCC) and American National Safety Institute (ANSI). Met-Ed St. 1-R at 11.

33. The smart meters deployed by Met-Ed are certified by Underwriters Laboratories (UL). Met-Ed St. 1-R at 12.

34. Met-Ed has not installed a smart meter at Ms. Hendin's residence. Tr. 138.

35. The meter to be installed at Ms. Hendin's home measures usage hourly but does not provide a constant stream of data. Tr. 142.

36. The customer cannot alter the interval of data collection. Tr. 144.

37. A customer would have to affirmatively contact Met-Ed to request that the energy management feature of the smart meter be turned on and have a coordinating device. Tr. 144-145.

38. The smart meter communicates with a connected grid router on the utility pole that transmits the data through public communication backhaul where the data gets brought back to the corporate office. Tr. 149.

39. The data that is transmitted through the network by the smart meter is encrypted. Tr. 150.

40. Christopher Davis is employed by the University of Maryland in College Park, Maryland as a professor of physics and electric engineering, including electromagnetics which includes radio frequency electromagnetics and bioelectromagnetics. Tr. 169-170; Met-Ed St. 2-R at 1.

41. Dr. Davis earned a Ph.D. in Physics at the University of Manchester. Met-Ed St. 2-R at 1-2.

42. Dr. Davis has authored over 257 articles published in peer-reviewed scientific journals, two books and 324 papers presented at scientific conferences. Met-Ed St. 2-R at 3.

43. Dr. Davis has conducted a substantial amount of research on radio frequency (RF) fields of the type produced by the AMI meters being used by Met-Ed and has served on scientific committees that evaluate research related to electromagnetic fields. Met-Ed St. 2-R at 3-4.

44. An RF field is an area around an object where an electric and magnetic component can be detected. Met-Ed St. 2-R at 5.

45. Met-Ed Exhibit CD-1 is a representation of the electromagnetic spectrum which shows sources of different types of electromagnetic fields along the spectrum. Met-Ed St. 2-R at 6; Met-Ed Exh. CD-1.

46. Radiation is a scientific term that describes how energy travels from a source, i.e., it radiates out from the source, like when a stone is tossed in a pond. Met-Ed St. 2-R at 7.

47. The frequency range for RF fields is from 3 kilohertz (kHz) to 300 gigahertz (GHz) and microwaves are part of the RF range between 300 MHz and 3 GHz. Met-Ed St. 2-R at 8.

48. The AMI meters being used by Met-Ed send low level radio signals and produce RF fields which are a natural result of sending radio signals but the RF fields are only produced when the meter sends a radio signal. Met-Ed St. 2-R at 9.

49. When the AMI meter is not sending an RF signal, the RF signal does not remain near the meter. Met-Ed St. 2-R at 9.

50. RF fields do not have the energy to break chemical bonds in DNA and therefore are non-ionizing. Met-Ed St. 2-R at 9.

51. Dirty electricity is a non-scientific term that sometimes is used to refer to electrical characteristics that can be found in household wiring. Met-Ed St. 2-R at 10.

52. The FCC has determined safe maximum permissible exposure limits for non-portable devices, including smart meters, which transmit RF signals. Met-Ed St. 2-R at 10-13; Met-Ed Exh. CD-2.

53. There is no reliable scientific basis for a mechanism by which RF fields could cause effects in the human body other than through heating, i.e., a thermal effect, but the RF fields from the AMI meter being used by Met-Ed are too low to cause a heating effect. Met-Ed St. 2-R at 13; Met-Ed Exh. CD-3.

54. The RF levels from the AMI meters being used by Met-Ed comply with the applicable FCC RF exposure limit. Met-Ed St. 2-R St. 1 at 13.

55. The peak RF field from the meters used by Met-Ed is 65 times lower than the FCC's safety standards. Met-Ed St. 2-R at 13.

56. Met-Ed Exhibit CD-4 shows the RF fields from several sources that people are commonly exposed to. Met-Ed St. 2-R at 14; Met-Ed Exh. CD-4.

57. The levels of RF fields from Met-Ed Itron meters are extremely low and many times lower than the RF fields people commonly encounter from everyday sources. Met-Ed St. 2-R at 15.

58. There is no reliable scientific basis in physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics to conclude that the very low levels of RF fields from Met-Ed's Itron meters can or will cause any adverse thermal or non-thermal biological effects in people. Met-Ed St. 2-R at 15.

59. Ms. Hendin's cell phone emits irregular frequency power in the mid-range of most currently available cell phones. Tr. 172-173.

60. Dr. Davis uses equipment that costs tens of thousands of dollars to measure the RF fields from smart meters in operation. Tr. 176.

61. Smart meters are probably the weakest emitters of RF that are commonly encountered and their level of exposure are tens of thousands of time below the safe limit standards that the FCC has promulgated. Tr. 176.

62. When the smart meter is not sending a signal, there is no RF field produced by the meter. Tr. 190.

63. Symptoms claimed by patients may be caused by something other than exposure to an electromagnetic frequency. Tr. 210.

64. Mark Israel is a medical doctor, researcher, the Executive Director of an international non-profit medical research foundation and Professor Emeritus of Medicine, Pediatrics and Molecular and Systems Biology at Dartmouth Medical School. Met-Ed St. 3-R at 1-3.

65. Dr. Israel has extensive experience as a medical doctor. Met-Ed St. 3-R at 2.

66. Dr. Israel has been conducting medical research for 40 years in a variety of areas, including systems biology, biochemistry, cell biology, cancer, molecular biology and molecular genetics. Met-Ed St. 3-R at 2-3.

67. Dr. Israel has published 250 medical research studies in peer-reviewed scientific journals and has reviewed scientific literature on topics on which he does not personally conduct research. Met-Ed St. 3-R at 3.

68. Dr. Israel's evaluation of the body of scientific research found no reliable medical basis to conclude that non-thermal RF fields cause or contribute to the development of any diseases or illnesses, including the effects alleged by Ms. Hendin. Met-Ed St. 3-R at 7-10.

69. The symptoms of headaches, dizziness, body aches, buzzing in the ears, eye floaters, difficulty concentrating, memory loss, sleep disturbance, nausea, abdominal issues, palpitations, nervousness, fatigue, and lethargy are known as Idiopathic Environmental Intolerance (IEI) and are not caused by exposure to RF fields. Met-Ed St. 3-R at 10-11.

70. It is not generally accepted in the medical community that IEI and the variety of symptoms attributed to IEI are caused by exposure to RF fields. Met-Ed St. 3-R at 13.

IV. DISCUSSION

A. Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950) (Se-Ling Hosiery). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Hendin argued that she should not be required to have a smart meter installed at her home because the smart meter makes her sick. Ms. Hendin would like to continue to be served by Met-Ed through her analog meter. Ms. Hendin, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of

the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In addition, the Commission has established that 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. More recently, 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) (Romeo) (reversing the Commission's decision to dismiss the complaint on preliminary objections because the smart meter complainant should be given an opportunity to present witnesses and evidence as to alleged safety and health issues created by smart meters 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 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." Id., *citing*, 66 Pa.C.S. § 1501. Section 1501 of the Public Utility Code provides, in pertinent part:

> 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. . . .

66 Pa.C.S. § 1501.

B. **Position of the Parties**

1. Hendin Main Brief

In her Main Brief, Ms. Hendin provided several arguments regarding why her complaint should be sustained. Ms. Hendin begins by noting Met-Ed's obligation under Section 1501 of the Public Utility Code to provide safe, reasonable and adequate service and facilities for all customers. Hendin M.B. at 8. Ms. Hendin adds that the Commission's regulations also require Met-Ed to properly warn and protect the public from danger. Id., *citing*, 52 Pa. Code § 57.28(a)(1). Ms. Hendin added that "outside of erroneous Commission determinations, there is no precedent to require Ms. Hendin to prove to a medical certainty, or to demonstrate a causal connection between undisputed RF exposure from the smart meter and her medical suffering." Id. at 9. Ms. Hendin adds that in an administrative proceeding she need only prove her claim by a preponderance of the evidence, not medical causation. Id. at 9-14. Ms. Hendin suggests that the Commission should adopt the "universally accepted 'thin skull' or 'eggshell plaintiff' doctrine" since "the defendant takes the victim as found, even where the resulting harm suffered might be unforeseeable." Id. at 12-13 (citations omitted). Ultimately, Ms. Hendin argued that her medical records show that she got sick when a smart meter was placed on her residence previously and that she recovered when it was removed. Id. at 14.

Ms. Hendin has also argued that the "precautionary principle" requires the Commission to shift the burden of proof for the environmental harm consistent with environmental and regulatory practice, arguing that even if Ms. Hendin has not met her burden of proof to show that a smart meter installed at her home would cause her harm, the precautionary principle compels that the Commission require Met-Ed err on the side of precaution. Id. at 14. Ms. Hendin then provides extensive detail regarding the precautionary principle which provides a specific burden of proof to address fairness in situations where scientific studies can be cited on both sides of a controversy. Id. at 14-18 (citations omitted). Ms. Hendin adds, among other things, that the

Commission is not charged with the technical knowledge of effects on human health. Id. at 17. Ms. Hendin argued in her Main Brief that "Act 129 is about providing options to the consumer, not imposing smart meters on every consumer in direct contravention to a doctor's order" and that "the Commission's interpretation of Act 129 … is antithetical to that." Id. at 18. Ms. Hendin added that the Commission must read both Act 129 and Section 1501 in tandem. Id. at 19. Ms. Hendin then provides extensive argument that "Pennsylvania is the only state in the nation that has heard cases about smart meters causing harm and has still not ruled to allow an opt out." Id. at 20-21.

Next, Ms. Hendin argued that her bases for concern are evidence that Met-Ed's proposed smart meter installation is unreasonable. Ms. Hendin argued that studies now show that smart meters cause biological harm. Id. at 21-22. Ms. Hendin then discussed the BioInitiative Report which she believes "is an objective, balanced reflection of the current state of scientific knowledge concerning the effects of EMFs on health." Id. at 24. Ms. Hendin also discussed the radiation emitted by smart meters that differs from other radio frequencies. In particular, she noted that the emissions "are intermittently going on and off like sharp pulses 24 hours a day, even through the night, at a time when people are normally resting and recovering, not dealing with further stress." Id. at 25. Ms. Hendin noted the similarity of symptoms experienced by people when exposed to smart meters. Id. at 27-28. Ms. Hendin explained her various symptoms when exposed to radiation, including her diagnoses from her treating physician and articulating specific experiences she had that reveal her sensitivities to EMF. Id. at 28-30. Ms. Hendin stated that she has proactively taken many precautions over the last 20 years to avoid exposure to electromagnetic frequencies. Id. at 28. Ms. Hendin then argued that "Met-Ed has a moral, ethical and legal obligation to be sure that any new technological device it brings to people's homes, without their consent, is completely safe." Id. at 31.

Ms. Hendin also argued in her Main Brief that the Commission's interpretation of Act 129 violates the plain meaning of the Act and the rules of statutory construction because it results in an absurd, unreasonable and impossible interpretation. Id. at 32. This primarily includes the Commission's interpretation that nothing in Act 129 prohibits opt outs. Id. at 34-48. Ms. Hendin argued that the Commission's interpretation of Section 2807(f)(2)(iii) as a smart meter mandate "has aided and abetted most [electric distribution company (EDCs)] to force smart meters on all customers, even those who object for medical reasons based on his or her doctor's advice."

Id. at 35. Ms. Hendin provides an argument that the Commission's interpretation of furnishing smart meters "in accordance with a depreciation schedule not to exceed 15 years" is in error. Ms. Hendin argued that depreciation is an accounting term that means an allowance for wear and tear, obsolescence or exhaustion and not for mandatory installation. Id. at 36. Ms. Hendin added that the term "depreciation" is not ambiguous and that the Commission's interpretation is at odds with the plain meaning of the term. Ms. Hendin argued that the term establishes the maximum service life of smart meters, not a mandatory roll out of smart meters by EDCs. Id. at 37. Ms. Hendin references the General Assembly's use of the term depreciation in other contexts in support of its position. Id. at 38. Ms. Hendin also referenced the legislative history of the passage of Act 129 to support her position, arguing that a mandatory deployment scheme was rejected and referencing draft bills and legislators' comments, among other things. Id. at 40-42. Ms. Hendin concluded this argument by stating that "Met-Ed has no statutory basis on which to force smart meters on all of their customers." Id. at 48.

Ms. Hendin then provides multiple arguments attacking the credibility of Met-Ed's witnesses. For example, Ms. Hendin argued that the studies that Dr. Israel cites do not involve smart meters and are ten years old. Id. Ms. Hendin also argued that Dr. Israel never evaluated Ms. Hendin and has no direct knowledge about the proposed location of the smart meter at her residence having never visited. Id. Ms. Hendin added that:

> While Dr. Israel has an impressive list of credentials in certain areas, he has no credentials at all in the particular field of radiofrequency fields and health, except for reading papers. He is claiming to be an expert by reading, even though many of the studies he cites are woefully out of date.

Id. at 49. Ms. Hendin argued that, since three quotations Dr. Israel relied on were written, three states – Maine, Vermont and North Carolina – have recognized that smart meters do pose a health hazard and offer state-wide opt-outs. Id. (citations omitted). Ms. Hendin then questioned Dr. Israel's criticisms of the BioInitiative Report and claims that others of Dr. Israel's quotes are selective, modified or out of context. Id. at 51-52. Ms. Hendin notes that Dr. Israel never examined her and takes the approach of an academic, not a treating physician. Id. at 52-53. Ms. Hendin further attacks the studies relied on by Dr. Israel in reaching his conclusion that smart meters are safe. Id. at 53-55. Ms. Hendin added that other studies show distinctly different results than those

submitted by Dr. Israel and rebuts many of the other claims made by Dr. Israel in his testimony in this case. Id. at 56-62.

Similarly, Ms. Hendin attacks the credibility of Met-Ed witness Dr. Davis by claiming that his statements about UHF are inaccurate and should be questioned, noting as well that Dr. Davis has never visited Ms. Hendin's home. Id. at 62-63. Likewise, Ms. Hendin attacked Dr. Davis' credibility in a manner similar to the attacks on Dr. Israel's credibility. Id. at 63.

Ms. Hendin concludes her Main Brief by raising various additional arguments. These include her position that the proposed location of the smart meter at Ms. Hendin's home is unreasonable, noting that the proposed location is only 6 inches from the only door in and out of Ms. Hendin's residence and workplace, less than 4 feet from the kitchen, 8 feet from the desk where she works much of the day and less than 20 feet from where she sleeps. Id. at 64. Ms. Hendin also argues that installing a smart meter at her home would violate her "due process right to protect her bodily integrity" and that Dr. Israel is violating his Hippocratic oath as a physician to do no harm. Id. at 64-66. Ms. Hendin concludes her Main Brief by arguing that the Commission commits "egregious civil rights violations" under various federal laws. Id. at 66-67.

2. Met-Ed Main Brief

In its Main Brief, Met-Ed argued that Ms. Hendin has failed to meet her burden of proof that the installation of a smart meter at her home would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or any other provision of the Public Utility Code, a Commission order or regulation. More specifically, Met-Ed's arguments in response to Ms. Hendin's complaints fall into four categories.

First, Met-Ed argued that it is required by Act 129 to install a smart meter at all of its customers' locations. Met-Ed M.B. at 10. Met-Ed cites to Act 129, as well as its smart meter technology procurement and installation plan that was approved by the Commission in June 2010, for support of its argument. Id. at 10-12 (citations omitted). Met-Ed added that neither Act 129 nor any Commission orders related to smart meter installation and deployment permit customers to "opt out" from smart meter installation. Met-Ed also references Commission precedent that "is uniform

that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to 'opt-out'." Id. at 12. Met-Ed added that Ms. Hendin's reliance on statutory provisions of other states has little relevance in Pennsylvania. Id. at 13. Met-Ed referenced testimony from its witness Mr. Ahr in support of its legal argument.

Second, Met-Ed argues that Ms. Hendin failed to provide any reliable evidence in support of her allegations that various health and mediation concerns are impacted by RF fields and smart meters. Id. at 15. Met-Ed relied on Section 1501 of the Public Utility Code in support of its position and discussed the testimony of its witness Dr. Davis who testified, among other things, that the RF field levels from the meters more than comply with FCC standards. Id. at 15-17. Dr. Davis testified:

> There is no reliable scientific basis in physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics to conclude that the very low levels of radio frequency fields from Met-Ed's Itron meters can or will cause any adverse thermal or non-thermal biological effects on people.

Id. at 17, *quoting*, Met-Ed St. 2-R at 15-16. Met-Ed witness Dr. Israel testified regarding the specific harms claimed by Ms. Hendin and testified, among other things, that no medical records were provided to verify her conditions. Id. at 17-18. Dr. Israel added that symptoms claimed to be electromagnetic hypersensitivity (EHS) are more accurately described as "Idiopathic Environmental Intolerance (IEI)" in which "idiopathic" means "cause unknown". Id. at 18-19. Met-Ed then detailed the extensive literature that Dr. Israel has reviewed to form his conclusion that there is no medical basis to conclude that Met-Ed's smart meters were the cause of Ms. Hendin's health issues. Id. at 20; *quoting*, Met-Ed St. 3-R at 17-18.

Third, Met-Ed argued that Ms. Hendin's witness, Dr. Kracht, lacked credibility and his testimony should be afforded no weight. Met-Ed argued that Dr. Kracht admitted that there is no scientifically valid method to make a medically reliable diagnosis of Ms. Hendin's alleged conditions. Id. at 21. Met-Ed also argued that Dr. Kracht relied on information gathered by his office and that his view "is that the scientific research on electromagnetic sensitivity does not provide clear evidence of an association between RF exposures and claimed symptoms, much less a medically recognized cause and effect relationship." Id. at 22, *citing*, Tr. 127.

Finally, Met-Ed argued in its Main Brief that Ms. Hendin failed to meet her burden of proof that Met-Ed violated the Public Utility Code, a Commission Order or a Commission regulation because she introduced a number of exhibits and referenced a number of studies in her testimony that were properly objected to as hearsay.[1] Id. Met-Ed added that Ms. Hendin attempted to offer testimony related to health and medical issues without possessing the necessary qualifications to testify on these issues. Id. Met-Ed relied on Pennsylvania Rule of Evidence 701 that limits lay witnesses to giving opinion testimony that is rationally based on the witnesses' own perceptions. Id. at 23, *citing*, Pa.R.E. 701. Met-Ed argued that all such testimony and exhibits were properly objected to and should be excluded. Any testimony not objected to carries insufficient weight to support Ms. Hendin's burden of proof in this proceeding. Id. at 23-24.

3. Hendin Reply Brief

In her Reply Brief, Ms. Hendin responded to the arguments Met-Ed made in its Main Brief. Ms. Hendin argued that Met-Ed has misstated who has the burden of proof in this case by stating that "the Code does not squarely address the applicable burden of proof other than generally." Hendin R.B. at 5. Rather, Ms. Hendin continues to advocate for the Precautionary Principle articulated in her Main Brief "because of the involuntary and ubiquitous nature of the exposure and the fact that the Commission's expertise does not lie in medical diagnoses." Id. at 6. Ms. Hendin added that, "even if the Commission were to reject the Precautionary Principle, Met-Ed completely fails to explain what the burden of proof entails and incorrectly cites the appellate standards for 'substantial evidence,' which is wholly inapplicable here." Id. at 7.

Ms. Hendin next argues in her Reply Brief that Act 129 is not as mandatory as Met-Ed contends and argues that the Commission should consider relevant evidence from other jurisdictions. Ms. Hendin added that "Met-Ed incorrectly cites a number of cases to support its position that the Commission should not consider relevant evidence from other jurisdictions" and that "none of these cases support that position." Id. at 9-10 (citations omitted). Rather, Ms. Hendin argued that "in areas in which the law is emerging, the Commission considers what is happening in

[1] The parties argued in their respective briefs regarding the admissibility of the exhibits that Met-Ed previously objected to as hearsay. Those arguments have subsequently been addressed in the Order Granting in Part and Denying in Part Motion for Admission of Late-Filed Exhibits and Motion to Strike, dated June 18, 2020, and will not be addressed in this Decision.

other jurisdictions as eminently relevant." Id. at 10-11. Likewise, Ms. Hendin argued that Met-Ed's arguments in its Main Brief are wrong by noting that there is no plain language in Act 129 that provides a mandate for smart meter installation. Id. at 11-12. Ms. Hendin added that "[w]ithout considering the plain language of the statute or its legislative history, Met-Ed reflexively points only to its own opt out plan, which cannot be reconciled with the safety and reasonableness requirements of 66 Pa. C.S. § 1501." Id. at 12. Ms. Hendin reiterates her arguments that the Statutory Construction Act supports her position. Id. at 12-14. Ms. Hendin then argues that the legislative history of Act 129 demonstrates that the General Assembly considered and rejected any requirement for 100% deployment. Id. at 15-17.

Ms. Hendin also responded in her Reply Brief to Met-Ed's criticisms of Dr. Kracht made in the company's Main Brief. Ms. Hendin argues that Dr. Kracht, in his role as her treating physician, provides evidence that has been " 'seen, heard, felt, tasted, smelled or done.' " Id. at 17 (citation omitted). Ms. Hendin also refutes the cases that Met-Ed relies upon in making its argument that Dr. Kracht's testimony should be discounted. Ms. Hendin argues that Dr. Kracht has expertise in his field as a board-certified physician in both Family Medicine and Integrative Medicine. Id. at 18, *citing*, St. of Kracht at 5. Ms. Hendin added that Dr. Kracht has personal knowledge of Ms. Hendin and her condition as well as her past experiences with EMF exposure. Id. Ms. Hendin added that Dr. Kracht is the long-time treating physician and has reviewed all testing and medical records and drafted the requested letter of medical necessity. Id. at 19. Ms. Hendin added that Dr. Kracht's testimony and records are probative and admissible evidence establishing Ms. Hendin's need for an accommodation. Id. at 19-21.

Ms. Hendin also responded in her Reply Brief to Met-Ed's arguments in its Main Brief that Ms. Hendin cannot offer evidence in this proceeding. Ms. Hendin argued that she is "uniquely positioned to offer the Commission information regarding the effect of forced exposure to smart meters." Id. at 21-22. Among other things, Ms. Hendin argued that she has specialized knowledge that is helpful to the trier of fact based on her training and many years of practical experience as a somatic therapist, noting too that she graduated Phi Beta Kappa from the University of Chicago and holds a Ph.D. Id. at 22-23.

Finally, Ms. Hendin argued in her Reply Brief that Met-Ed witness Davis' testimony confirms that there has been a lack of independent or industry-backed credible human health safety testimony and no consideration of the effects that consumers will experience. Id. at 29. In particular, Ms. Hendin argued that "time-averaging of a smart meter's sharp emissions, which can occur thousands of times a day, failed to capture the impact it can have on the body receiving this kind of daily exposure for decades." Id. at 30. Ms. Hendin also noted that Dr. Davis has not visited her home and therefore his opinions are based on assumptions. Id. Ms. Hendin refutes Dr. Davis' reliance on FCC guidelines as just that – guidelines – not statutes. Id. Ms. Hendin further addresses other aspects of Dr. Davis' reliance on the FCC guidelines and argues that "at best, Dr. Davis does not address the contemporary findings, and at worst, his clear bias has caused him to ignore them." Id. at 30-32. Ms. Hendin adds:

> Met-Ed failed to conduct any long-term testing of its smart meters. Ms. Hendin cannot be faulted for the fact that no such testing was conducted or required. Ms. Hendin does not wish to participate in this unethical large-scale experiment on humanity when there is ample scientific information available to the Commission and the public that shows that harmful effects at RF levels that are orders of magnitude below that of the FCC guidelines, and no evidence showing the long-term effects of the continuous exposure or the cumulative effect of the combined exposure an individual utility customer will experience.

Id. at 32.

4. Met-Ed Reply Brief

Met-Ed begins its Reply Brief by addressing Ms. Hendin's arguments in her Main Brief regarding the legal standards to be applied to this case. Met-Ed argued that Ms. Hendin has misconstrued the applicable burden of proof in this proceeding. Met-Ed reiterates its arguments regarding the burden of proof to be applied to this case and claims that Ms. Hendin's arguments that she need not prove medical causation to prevail in her complaint are incorrect. Met-Ed R.B. at 3. Met-Ed argued that Ms. Hendin's reliance on the precautionary principle is without merit and should be rejected, noting, among other things, that the Commission has previously rejected the application of this standard in a prior proceeding involving a smart meter. Id. at 3-4.

Met-Ed also argued that Ms. Hendin's argument that the Commission's failure to allow for an opt-out violates Section 1501 should be denied. Met-Ed stated that it has an absolute obligation to install smart meters at all of its customers' service locations and the plain language of Act 129 says that Met-Ed "shall" install smart meters. Id. at 7. Met-Ed further states that, even if the language of Act 129 were silent or ambiguous, the Commission's interpretation of the statute should be considered and given substantial weight. Id. Met-Ed added that the Commission has noted the issues that could arise from non-uniform deployment of smart meters and Ms. Hendin's reliance in her Main Brief on other jurisdictions should be rejected. Id. at 8.

Next, Met-Ed argues that Ms. Hendin has failed to satisfy her burden to demonstrate that smart meters constitute unsafe or unreasonable service. Met-Ed noted that, contrary to Ms. Hendin's assertions, smart meters do not emit electromagnetic frequency radiation that negatively affects human health. Id. at 9. Met-Ed states that Ms. Hendin's reliance on the BioInitiative Report is flawed and should be rejected. Among other things, Met-Ed argued that this report is not at all a consensus scientific review by an expert panel and is not a reliable source upon which an expert opinion can be formed. Id. at 10. Met-Ed also responded to Ms. Hendin's "scattershot ad hominem attacks" on Dr. Israel by noting that, despite longstanding discovery requests for medical records, such documents were not produced until the day of the hearing and the suggestion that she would submit to an in-person exam by Dr. Israel is implausible. Id. at 11. Met-Ed notes that the Commission has recognized Dr. Israel as an expert in other cases involving smart meters and rebuts Ms. Hendin's "pattern of over-interpretation and mischaracterization [that] runs through complainant's arguments about the scientific research on RF fields." Id. at 12. Met-Ed then provides extensive response to Ms. Hendin's criticisms of the foundations of Dr. Israel's opinion. Id. at 12-14.

Met-Ed further argues that Ms. Hendin has failed to carry her burden of proof to demonstrate that Met-Ed's smart meters constitute unsafe or unreasonable service by arguing that Ms. Hendin's own measurements of her neighbor's smart meter do not constitute a scientific study, much less one conducted by a qualified expert using reliable methodology and instrumentation. Id. at 15-16. Met-Ed adds that Ms. Hendin has failed to present credible record evidence demonstrating adverse health effects will result from her exposure to Met-Ed's smart meters. Id. at 17. Met-Ed also contested Ms. Hendin's argument that her symptoms are attributable to a smart

meter because of her belief that her gas utility service also uses an RF-emitting smart meter because such arguments are not based on substantial evidence. Id. at 17-18. Met-Ed then responded to Ms. Hendin's arguments regarding compliance with FCC guidelines as well as her mischaracterization of the findings of the scientific and medical communities. Id. at 18-19.

Met-Ed also argued in its Reply Brief that Ms. Hendin's argument that Met-Ed adequately failed to warn customers of smart meters by noting the testimony of its witness Ahr who addressed the process by which the Commission reviewed and vetted Met-Ed's smart meter plan and the smart meters themselves. Id. at 20. Met-Ed argued that the process ensured the safety and convenience of the public. Id. Met-Ed also responded to Ms. Hendin's argument that Met-Ed is incorrectly interpreting Act 129 by stating that Ms. Hendin has failed to engage in a plain language analysis of Act 129 which means that the word "shall" requires Met-Ed to install smart meters. Id. at 21. Met-Ed then notes that Ms. Hendin's "tortured" interpretation of Act 129 that permits opt outs incorrectly focusses on the use of the word "depreciation" over the word "shall" and disregards the Commission's order approving Met-Ed's smart meter deployment plan. Id. at 21-24. In addition, Met-Ed argued that Ms. Hendin's arguments regarding legislative history should be rejected because the language of Act 129 is clear and free from all ambiguity. Id. at 24-25. Met-Ed argued that Ms. Hendin's reliance on pending laws in support of her position that Act 129 was intended to contain an opt-out provision should be rejected because "it is axiomatic that proposed and/or pending legislation does not constitute law." Id. at 26.

Met-Ed also responded in its Reply Brief to Ms. Hendin's argument in her Main Brief attacking the credibility of Met-Ed's witnesses Dr. Israel and Dr. Davis. Met-Ed noted that Ms. Hendin's counsel never explored Dr. Israel's qualifications on cross-examination. Id. at 27. Met-Ed further stated that Dr. Israel is not offered as a legal expert or an expert on regulatory principles in states other than Pennsylvania; therefore, Ms. Hendin's arguments regarding his knowledge of jurisdictions other than Pennsylvania should be rejected. Id. Met-Ed also addressed Ms. Hendin's argument that Dr. Israel is being selective by noting that Dr. Israel has testified that there is no consistent and reproducible effects from RF fields on cancer or other adverse health effects. Id. at 28. Met-Ed added that Ms. Hendin's arguments regarding the fact that Dr. Israel did not conduct a medical evaluation of Ms. Hendin because Dr. Israel did review Ms. Hendin's medical history based on the documents provided by Ms. Hendin. Id. at 29. Met-Ed again

addresses Ms. Hendin's critique of Dr. Israel based on the studies he reviewed because Ms. Hendin is not an expert herself and also because many of the studies and other things Ms. Hendin relied on had not been admitted into the record of this proceeding and therefore cannot be used to diminish Dr. Israel's qualifications. Id. at 29-31. Met-Ed also responds to Ms. Hendin's critiques of Dr. Davis, again noting, among other things, that Ms. Hendin is not an expert in what she is criticizing. Id. at 31-32.

Next, Met-Ed responded to Ms. Hendin's argument in her Main Brief that the proposed location of the smart meter at her residence constitutes unreasonable service and requests that an alternative location be ordered by the Commission. Met-Ed noted that it was responsive to Ms. Hendin's request to relocate the meter but was unable to do so due to Ms. Hendin being unresponsive. Id. at 33. Met-Ed added that it informed Ms. Hendin that the meter would be relocated at her expense and several customers have pursued this option. Id.

Met-Ed then responded to the arguments Ms. Hendin raised for the first time in her brief regarding the alleged violation of her due process rights under the United States and Pennsylvania Constitutions. Met-Ed noted that it is not a state actor and, even if it were considered a state actor, the Seventh Circuit Court of Appeals has found that the installation of a smart meter is not a violation of constitutional rights. Id. at 34 (citation omitted).

Finally, Met-Ed responded to Ms. Hendin's argument that the Commission's interpretation of Act 129 and the requirement that Ms. Hendin bear the burden of proof somehow illegally supplants the treatment recommendations of her physician. Met-Ed then responds to Ms. Hendin's argument that Dr. Israel is violating his Hippocratic oath by testifying in this proceeding calling this a "specious argument [that] borders upon, if not falls within, the category of statements that can result in sanctions, because it is unsupported by any record evidence, and serves no apparent purpose other than to harass and slander Met-Ed's witness." Id. at 35. Met-Ed stated that "Dr. Israel, by giving his testimony or otherwise, has not caused complainant harm." Id.

C. **Disposition**

Ms. Hendin has failed to satisfy her burden of proof to demonstrate that Met-Ed violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company by seeking to install a smart meter at her residence. Therefore, Ms. Hendin's complaint must be denied.

1. Burden of proof

As a preliminary matter, Ms. Hendin argued that "the Commission is a regulatory agency, and its role in administrative hearings differs from that used in a court of law, where a plaintiff is seeking damages for an injury." Hendin M.B. at 10. Ms. Hendin further argued that, instead, the Commission and other agencies use a threshold of proof "reasonably lower than that appropriate in tort law," calling it a "preventative perspective" or precautionary approach. Id. at 10-11. Ms. Hendin also suggests that "the Commission's standard should address the universally accepted 'thin skull' or 'eggshell plaintiff' doctrine." Id. at 12-13 (citations omitted). In addition, Ms. Hendin argued that the Precautionary Principle provides a specific burden of proof to address fairness in situations where scientific studies can be cited on both sides of a controversy. Id. at 14 (citations omitted). Ms. Hendin cites to toxic tort cases and environmental law in support of her position. Id. at 15-16. Ms. Hendin uses the Precautionary Principle to argue that Met-Ed should carry the burden of proof in this case to prove unequivocally that smart meters are safe for long-term human health. Id. at 16.

However, Ms. Hendin has not identified any Commission precedent that demonstrates that the Precautionary Principle or the thin skull doctrine should be adopted as part of the burden of proof in this proceeding. As a result, Ms. Hendin's argument will be rejected.

The Commission rejected applying a "precautionary principle" standard of proof in Schmukler v. PPL Electric Utilities Corp., Docket No. C-2017-2621285 (Opinion and Order entered July 23, 2019) (Schmukler). In Schmukler, the Commission affirmed the ALJ's conclusion that Mr. Schmukler failed to meet his burden of proof regarding his claim that PPL's smart meter caused or will cause adverse health effects for him. Specifically, the Commission affirmed the ALJ's finding

that the complainant failed to demonstrate a conclusive causal connection between the low-level RF fields from a PPL smart meter and adverse health effects for the complainant. Id. at 43. The Schmukler case is currently pending on appeal before the Commonwealth Court at Schmukler v. Pa. Pub. Util. Comm'n, No. 1102 C.D. 2019 (Pa. Cmwlth. 2019).

The Commission also addressed the burden of proof issue in smart meter cases in Myers v. PPL Electric Utilities Corp., Docket No. C-2017-2620710 (Opinion and Order entered August 29, 2019) (Myers). In Myers, the Commission held in pertinent part:

> First, we address the overall question here of whether the Complainant is required to prove by a preponderance of the evidence that RF exposure from a PPL smart meter will cause adverse health effects. We begin our disposition regarding the Complainant's burden of proof noting that we agree with the ALJ, the correct burden of proof that applies to the Complainant in this proceeding is the preponderance of evidence standard. I.D. at 11. Here, the Complainant must show that PPL is responsible or accountable for the problem described in the Complaint and that the offense is a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701; *Patterson*, *supra*. Upon a careful review of the statements contained in the Complainant's Complaint, this means the Complainant must prove, by a preponderance of the evidence, that the installation of a smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501. *See* Complaint at 3.
>
> While the Complainant asserts that he provided "a preponderance of scientific evidence and expert testimony that proves non-thermal RF radiation emitted by PPL smart meters can have a negative and serious impact on my health and that of others," he also argues that the "Commission does not have to resolve the scientific dispute over health risks from non-thermal radiation." Myers M.B. at 1, 13. The Complainant contends that the Commission should adopt the Precautionary Principle approach with smart meters and allow an opt-out for Mr. Myers, his tenants, and others with health concerns. Myers M.B. at 14.
>
> As we stated in *Povacz* and explained in the "Legal Standards" section of this Order, the Complainant must demonstrate by a preponderance of the evidence a "conclusive causal connection" between the low-level RF exposure from a PPL smart meter and the alleged adverse human health effects. See *2019 Povacz Order* at 28-29.

> Upon review of the record on this issue, the Initial Decision, and the applicable law, we affirm the ALJ's conclusion that the Complainant did not meet his burden of proof regarding his claim that PPL's smart meter caused or will cause adverse health effects for the Complainant. Specifically, we affirm the ALJ's finding that the Complainant failed 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. I.D. at 31. We acknowledge the Complainant's competent lay testimony as to the Precautionary Principle, but we find that the principle is not appropriate here. Rather, the ALJ identified the correct burden of proof as the preponderance of evidence in this quasi-judicial proceeding. The Complainant has the burden of proof in this type of proceeding. Adopting the Precautionary Principle here would be a reversal of the burden of proof, requiring PPL to prove a negative. We cannot apply the Precautionary Principle here.

Id. at 16-17. This decision is also currently on appeal before the Commonwealth Court at Myers v. Pa. Pub. Util. Comm'n, No. 337 C.D. 2019 (Pa. Cmwlth. 2019).

Instead, it is well settled that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As noted above, as the complainant in this matter, Ms. Hendin is the party seeking relief from the Commission – in the form of an order prohibiting Met-Ed from installing a smart meter on her property. Ms. Hendin must show, by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party, that Met-Ed is responsible or accountable for the problem described in the complaint in order to prevail. Patterson, Se-Ling Hosiery. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. Furthermore, all decisions of the Commission must be supported on appeal by substantial evidence – such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. These are the standards to be applied when disposing of Ms. Hendin's complaint.

Even though Ms. Hendin is correct that the case in Woodbourne-Heaton involved a transmission line, and this proceeding involves a smart meter, both matters involve exposure to electromagnetic fields and the Woodbourne-Heaton standard has been adopted in a multitude of smart meter cases by this Commission. Ms. Hendin has failed to demonstrate that anything other

than the well-established standard used by the Commission to establish the burden of proof should be adopted for this case.

2. Section 1501

With regard to Ms. Hendin's argument that smart meters are an unsafe utility service that violate Section 1501 of the Public Utility Code, Hendin M.B. at 19-21, this argument must also be rejected. Ms. Hendin argued that the Commission has remedied other consumer complaints when violations of Section 1501 have been found and that nothing in Act 129 compels the Commission to violate Section 1501 to accomplish the goals of Act 129. Id. at 19. Ms. Hendin added that Pennsylvania is the only state that does not allow consumers to opt out of having a smart meter installed at their home. Id. at 20.

To the extent that Ms. Hendin, or any other consumer opposing the installation at their home of a smart meter, can demonstrate that Section 1501, or any other provision of the Public Utility Code, is somehow violated, that violation could be remedied by the Commission while still adhering to the goals and policies articulated in Act 129. Met-Ed's preliminary objections filed in response to Ms. Hendin's complaint were denied giving Ms. Hendin an opportunity to make such a demonstration. *See,* Interim Order Denying Preliminary Objections (dated October 18, 2018). Yet, as discussed further below, Ms. Hendin has failed to satisfy her burden that Met-Ed's actions in anyway violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company. As a result, Ms. Hendin's complaint must be dismissed.

In addition, it is irrelevant for purposes of disposing of Ms. Hendin's complaint whether other states allow consumers to opt out of receiving a smart meter at their home. Ms. Hendin's arguments regarding other states allowing consumers to opt out of smart meter installation at their home does not outweigh the legal argument presented by Met-Ed that it is obligated to install smart meters to every customer throughout their service territory. Met-Ed is correct that Section 2807 of the Public Utility Code provides:

(f) Smart meter technology and time of use rates.—

* * * *

(2) Electric distribution companies ***shall*** furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa. C.S. § 2807(f)(2) (emphasis added). The Commission has interpreted the use of the word "shall" in the statute to indicate the General Assembly's direction that all customers within an EDC's service territory will receive a smart meter. Furthermore, there is no provision in the statute that allows customers to "opt out" of smart meter installation, as Ms. Hendin desires.

This interpretation has been affirmed by the Commission in numerous complaints involving smart meters as well as other decisions of the Commission. For example, the Commission's Orders implementing this provision of Act 129 or Met-Ed's specific implementation plan do not allow customers to "opt out" of smart meter installation. In addition, as Met-Ed witness Ahr testified, Met-Ed's smart meter deployment plan requires the company to deploy smart meters to 98.5% of its customers by 2019 and the remaining 1.5% of its customers by the end of 2022. Met-Ed St. 1-R at 11; Tr. 162. This total of 100% by the end of 2022 that was approved by the Commission supports Met-Ed's arguments that the Commission has consistently interpreted the Act 129 obligations to mean that 100% of its customers by the end of 2022.

The Commission has concluded that it was the intent of the General Assembly to require all covered electric distribution companies to deploy smart meters system-wide when it included a requirement for smart meter deployment in accordance with a depreciation schedule not to exceed 15 years. *See, e.g.*, Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009). The Commission's Order does not have a provision for customers to "opt out" of the smart meter installation. To the extent that Ms. Hendin

wishes to advocate for an opt out provision in Pennsylvania, she could do so before the Pennsylvania General Assembly.

Finally, it is unreasonable to adopt Ms. Hendin's arguments that consumers in Pennsylvania can opt out of receiving a smart meter at their residence. The other two provisions of Section 2807(f)(2) require the deployment of smart meters upon request of the customer and in new construction. Ms. Hendin's interpretation of Act 129 allowing consumers to opt out of receiving a smart meter at their residence would then be "the exception that swallows the rule" as the number of customers who decide to opt out increases and the overall deployment of smart meters decreases where there are no requests for smart meters and no new construction. There would then likely be large swaths of Pennsylvania (i.e., where there is no new construction and where there are no requests for a smart meter) where there would be no smart meters installed and the goals and objectives of Act 129 would be undermined.

As a result, Ms. Hendin's argument that the Commission is allowing Act 129 to somehow supersede Section 1501 is without merit and will be rejected.

3. Effects of Electromagnetic Frequencies

Next, Ms. Hendin provides several reasons why she believes that the bases for her concerns are evidence that Met-Ed's proposed smart meter installation is unreasonable. Ms. Hendin argued that smart meters emit short bursts of high frequency electromagnetic radiation which studies show cause "non-thermal" biological harm. Hendin M.B. at 21-22. Ms. Hendin then provided extensive argument regarding the BioInitiative Report which she argued is considered a landmark study in understanding the effects of electromagnetic frequencies on health, is updated regularly and has received accolades internationally. Id. at 22-24. Ms. Hendin added that the BioInitiative Report shows that electromagnetic frequencies cause biological harm. Id. at 24. Ms. Hendin also argued that studies support finding that electromagnetic frequencies cause harm in rats. Id. at 27. Ms. Hendin added that she is sensitive to electromagnetic frequencies and that her treating physician has diagnosed her as having electromagnetic sensitivity and provided several examples that reveal her sensitivities and the steps she has taken to reduce her exposure to such frequencies. Id. at 28-30. Finally, Ms. Hendin argued that Met-Ed's lack of evidence and

international consensus make it unreasonable for Met-Ed to force Ms. Hendin to accept a smart meter. Id. at 31-32.

As a preliminary matter, it is noted that throughout much of this proceeding and the record developed by the parties, there is significant argument regarding various scientific reports and medical documents pertaining to the effects of electromagnetic frequencies, how much of those frequencies are emitted by the smart meters deployed by Met-Ed and how those frequencies emitted by the smart meters deployed by Met-Ed will impact Ms. Hendin. The parties are commended for the extensive record developed in this case. However, this Commission should not be in the position to balance the various merits and detriments of multiple scientific reports and medical documents. The expertise of this Commission lies in interpreting the Public Utility Code. Therefore, it is not necessary to determine whether which amongst many competing scientific reports and medical records is true or should be given more weight. The Commission cannot determine whether the BioInitiative Report is correct. That is beyond the scope of this proceeding and the abilities of the Commission to determine. What is within the scope of this proceeding and incumbent upon the Commission to determine is whether there is substantial evidence to determine that Met-Ed's deployment of a smart meter to Ms. Hendin's home violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. When evaluating the record developed in this case, it is clear that the answer to that question is "no."

To begin, I agree with Met-Ed that Ms. Hendin is exposed to more electromagnetic frequencies on a daily basis by electronic devices other than smart meters than she argues in this case, and at much higher levels and longer intervals than those emitted by smart meters. As Met-Ed witness Davis testified, "meters send low level radio signals which produce radio frequency fields as a natural result of sending those signals." Met-Ed St. 2-R at 9. Dr. Davis added that "the levels of radio frequency fields from smart meters, including Itron meters, are not high enough to produce tissue heating." Id. at 10. Dr. Davis also testified that "at only one meter (39.37 inches) away from an Itron meter the radiofrequency field levels for the LAN radio are 62,000 times smaller than the FCC's safety standards and for the Zigbee radio are 527,000 smaller than the FCC's safety standards." Id. at 11-12; *see also*, Met-Ed Exh. CD-2. Even the peak RF field levels from the radios in meters is 65 times lower than the FCC's safety standards and the ZigBee radio is 806 times lower than the FCC standards. Id. at 13; *see also*, Met-Ed Exh. CD-3. Finally, Dr. Davis

compared the level of RF fields from the Itron meters to the background level of RF fields from UHF TV at Ms. Hendin's home. Dr. Davis testified:

> There are 16 UHF TV transmitters within 50 miles of the Hendin property. My Met-Ed Exhibit No. CD-5 shows that the radio frequency fields at one meter (39.37 inches) from an Itron meter are 1.11 times smaller than the background levels of radio frequency fields from UHF TV at the Hendin house and at three meters are 9.99 times smaller than the background levels of radio frequency fields from UHF TV at the Hendin house.

Id. at 14-15; *see also*, Met-Ed Exh. No. CD-5.

Ms. Hendin has also identified various emitters of electromagnetic frequencies throughout her home. While she has attempted to minimize those emitters, there are emitters of electromagnetic frequencies in everyday life that cannot be avoided. It is likely that the emission of electromagnetic frequencies from the clock on Ms. Hendin's stove, for example, are much greater than the emission of electromagnetic frequencies from the Met-Ed smart meter because the clock on the stove is always on whereas the smart meter emits electromagnetic frequencies in pulses. It is also likely that Ms. Hendin would have a reaction to electromagnetic frequencies emitted from wi-fi or x-ray machines in an airport because the prevalence and power of those machines are likely much greater than a single smart meter that emits pulses of electromagnetic frequencies. It does not require a scientific study to see that the x-ray machines at an airport likely emit more electromagnetic frequencies than a smart meter because they are significantly bigger. Nor does it take a scientific study to see that airplanes and airport terminals are a bevy of wireless usage much greater than what would be caused by a smart meter because so many people are using wi-fi at any given time in those areas.

Furthermore, I agree that the device that Ms. Hendin uses to measure the electromagnetic frequencies is not sufficient to determine that the smart meters deployed by Met-Ed violate the Public Utility Code. Ms. Hendin testified that she purchased a "gauss meter" so that she could take measurements of electromagnetic frequency emissions from various items, noting "I bought one of the most recommended for personal use meters that reads radiofrequencies from smart meters and other devices that emit radio frequencies." Tr. 51. In response, however, Dr. Davis questioned the reliability of that meter. Dr. Davis stated:

> Q. Ms. Hendin described or read for us the name of the RF meter that she has used. I don't know if you could hear that earlier on the phone, but it was a Cornet ED88T Plus meter purchased for around a hundred to $150. Are you familiar with that meter?
>
> A. Well, I wasn't familiar with it until I just pulled up its technical spec online which is easy to do. This is one of the many cheap meters that people can buy for consumers to perhaps get an estimate of how much radiofrequency exposure they're getting from various kinds of devices.
>
> Q. Is this the kind of meter which you could as an expert reliably use to measure radiofrequency fields from a smart meter?
>
> A. No. And in particular, because a smart meter only emits for very short periods of time, infrequently, most of these cheap meters don't really have the capability to capture those very small emissions and accurately record what the radiofrequency levels are.

Tr. 175. Dr. Davis explained that equipment costing tens of thousands of dollars is required to capture and accurately record the radiofrequency fields from smart meters because of the low exposure and short period of exposure. Tr. 176.

As a result, this Decision does not determine whether the BioInitiative Report, or any other scientific report or medical document, should be given more or less weight than any other scientific report or medical document when determining whether Met-Ed has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company when seeking to install a smart meter at Ms. Hendin's home. Certainly, if a separate agency or judicial venue – perhaps by the FCC or some similar agency with appropriate expertise – were to determine that smart meters cause adverse health effects, that determination could be used in a Commission proceeding to establish that the use of smart meters in Pennsylvania violates the Public Utility Code. The Commission cannot determine that a violation of Unfair Trade Practices and Consumer Protection Law occurred but if another body with appropriate expertise made such a determination then the Commission could use that determination to establish that a violation of the Public utility Code occurred as well. Absent such a finding by another jurisdiction, Ms. Hendin's arguments regarding the alleged effects of the electromagnetic frequencies on her health will be rejected based on the record developed in this case.

Finally, it is noted that Ms. Hendin requested that the particular details regarding her health issues be kept confidential. As a result, a protective order was issued in this case on December 26, 2019. However, in an attempt to maintain an entirely public Initial Decision and avoid issuing an Initial Decision that includes redacted material, 52 Pa. Code §§ 1.71-1.77, this decision does not specifically reference Ms. Hendin's particular health issues in this Initial Decision, nor are the specifics relevant to the outcome reached in this Decision. The confidential record contains significant amount of detail regarding the symptoms alleged by Ms. Hendin. The specific details of her symptoms are not determinative of whether Met-Ed has violated the Public Utility Code. Nonetheless, those details are available in the confidential portion of the Commission's official file for this case in the Secretary's Bureau to the extent that anyone with permission to see such files has an interest in doing so.

As a result, Ms. Hendin has failed to satisfy her burden of demonstrating that the smart meters deployed by Met-Ed emit electromagnetic frequencies that cause her adverse health effects sufficient to warrant a finding that Met-Ed has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

4. Response to Request to Opt Out

Ms. Hendin also argued in this case that that Met-Ed's response to her request to refuse installation of a smart meter is wrong. Ms. Hendin argued that Section 57.28 of the Commission's regulations require utilities to properly warn and protect the public from danger and that the Public Utility Code requires that electric utilities are subject to steep civil penalties for failure to provide safe service. Hendin M.B. at 32, *citing*, 52 Pa.Code § 57.28(a)(1) and 66 Pa.C.S. § 3301. Ms. Hendin also argued that the Commission's interpretation of Act 129 violates the plain meaning of the statutes and therefore the basic rules of statutory construction by not allowing opt outs. Id. at 32-34. Ms. Hendin then makes an extensive argument that Act 129 does allow for opt outs. Ms. Hendin argues that "the Commission's Implementation Order of June 2009, Met-Ed's Smart Meter Deployment Plan, Pennsylvania's legislative history and accounting and tax authorities and definitions demonstrate that opt outs are permitted and that the Commission's present interpretation of the plain language to contrary is not correct." Id. at 34.

Again, Ms. Hendin's arguments are without merit and will be rejected.

Ms. Hendin is correct that Section 57.28 of the Commission's regulations require electric utilities to properly warn and protect the public from danger and are subject to steep civil penalties for failure to provide safe service. Yet, as noted above, there is not substantial record evidence that demonstrates that the smart meters Met-Ed seeks to install at Ms. Hendin's home in fact cause danger to the public. As a result, Section 57.28 is not violated. Nor is Section 3301 implicated since there is no violation of Section 57.28. Therefore, these arguments will be rejected.

Ms. Hendin's arguments regarding statutory construction will also be rejected. The rules of statutory construction require that "when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). In this case, the language of Section 2807(f) is clear and free from ambiguity and therefore the letter of the statute cannot be disregarded. Simply because Ms. Hendin disagrees with the Commission's interpretation of Section 2807(f) does not mean that the interpretation is incorrect or "tortured," as Ms. Hendin argued in her brief. To the extent that the Commission interpreted the language of Act 129 that "electric distribution companies shall furnish smart meter technology … in accordance with a depreciation schedule not to exceed 15 years" does not mean the words of the statute are not clear and free from all ambiguity. To accept Ms. Hendin's argument would mean that any statute is ambiguous or unclear solely when different entities interpret the statute differently. The Commission is the agency charged with implementing Act 129 and the interpretation of an administrative agency is to be given great deference.

With regards to Ms. Hendin's extensive argument that Act 129 permits opt outs, this argument is incorrect. As Ms. Hendin noted in brief, "nothing in Act 129 addresses opt outs or prohibits EDCs from allowing opt outs from its smart meter deployment plans." Hendin M.B. at 34. Ms. Hendin therefore recognizes that nothing in Act 129 allows customers to opt out of receiving a smart meter. When a statute is silent to an issue, the relevant agency can provide its own reasonable interpretation when interpreting the statute. Furthermore, Ms. Hendin's arguments regarding the Commission's Implementation Order of June 2009, or other past Commission decisions, are untimely. To the extent that Ms. Hendin disagreed with the Commission's Implementation Order of 2009 that the reference to the 15-year depreciation schedule means that

smart meters should be deployed to all customers, she should have raised those arguments at that time. Regardless, that argument does not negate the fact that Act 129 does not include an opt out provision. Where the statute is silent on opt outs, the Commission's determination that customers are not allowed to opt out is not unreasonable, regardless of the Commission's reference to the 15-year depreciation schedule in Act 129. There is no need to reference the Black's Law Dictionary definition of depreciation or how that term is used by the Internal Revenue Service or in the accounting sense, as Ms. Hendin did in her brief, to support the Commission's determination as reasonable.

Ms. Hendin's argument that the legislative history reveals that the General Assembly rejected a mandatory deployment scheme in Act 129 is also without merit and will be rejected. Again, with reference to the Pennsylvania Rules of Statutory Construction, where the plain language of the statute is discernible, as is the case here, there is no need to look to the legislative history. As the rules of statutory construction further require, "when the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters: …. (7) the contemporaneous legislative history." 1 Pa.C.S. § 1921(c)(7); *see also*, Yellow Cab Co. of Pittsburgh v. Pa. Pub. Util. Comm'n, 501 A.2d 323 (Pa. Cmwlth. 1985). In this case, however, the words of Section 2807(f) are explicit and, therefore, there is no need to consider contemporaneous legislative history, as Ms. Hendin suggests. Just because Ms. Hendin disagrees with the Commission's interpretation of Act 129 does not mean that the words of the statute are not explicit and a review of legislative history is required. In fact, in this case, there is no language in the statute that addresses whether consumers can opt out of receiving a smart meter.

The fact that a legislator made certain comments during the legislative debate, or that there are "numerous dissenting comments about the mandatory nature of the deployment," or that prior versions of the bill contained certain language, as Ms. Hendin argues in her brief, does not mean that it is unreasonable for the Commission to interpret the statute as not allowing customers to opt out of receiving a smart meter. Act 129 was duly passed by both the Pennsylvania House of Representatives and the Pennsylvania Senate, and signed into law by the Governor, as it is codified. That is the law that must be followed and there is no record evidence in this case that the Commission did not follow that law in its interpretation of Act 129 when the words of the statute are explicit. Dissenting comments or versions of bills that were not enacted are not precedent. The

fact that subsequent bills have been introduced in the General Assembly would explicitly allow customers to opt out of receiving a smart meter supports finding that the Commission's interpretation that Act 129 does not allow customers to opt out is reasonable. To the extent the General Assembly desired to allow consumers to opt out of receiving a smart meter they could have passed one of the bills that was subsequently presented for their consideration that would have allowed that. They, however, did not. Ms. Hendin's arguments regarding statutory construction are misguided.

Finally, Ms. Hendin's argument that the Commission's interpretation of "depreciation" in 2009 contradicts its current interpretation, or that Met-Ed is inconsistently interpreting the term "depreciation," is without merit. This argument is a recitation of Ms. Hendin's prior argument above that the Commission should not use the reference to a depreciation schedule of 15 years in Act 129 to mean that all customers must receive a smart meter and reliance on legislative history. Ms. Hendin's arguments here will be rejected again as they were above. To the extent that Ms. Hendin disagrees with the Commission's interpretation of the word "depreciation" in any prior order, she could have contested that interpretation in that prior proceeding. Her complaint is not the proper mechanism to do that.

Ultimately, regardless of where the Commission first determined that all customers of electric companies that serve more than 100,000 customers are required to have a smart meter deployed at their home, and whether that determination contradicts rules of statutory construction or is incorrect for some other reason, such is the determination of the Commission that all such customers are to receive a smart meter unless the customer can demonstrate that a violation of the Public Utility Code would result. *See e.g.*, Romeo, *supra*. It has been the position of the Commission in numerous complaint cases that all such customers are to receive a smart meter. This position is supported by the Commission's approval of Met-Ed's smart meter plan that, as Met-Ed witness Ahr testified, requires 98.5% deployment by 2019 and the remaining 1.5% of smart meters to be installed by the end of 2022. *See*, Met-Ed R.B. at 23, *citing*, Met-Ed St. 1-R at 10-11; *see also*, Tr. 162. Absent any direction from an appellate court that the Commission's determination is unreasonable, this determination is the position of the Commission on this issue. While the Commission is not bound by the rule of *stare decisis*, it must render consistent opinions and should either follow, distinguish or overrule its own precedent. *See*, Bell Atlantic-Pennsylvania, Inc. v. Pa.

Pub. Util. Comm'n, 672 A.2d 352, 354 (Pa. Cmwlth. 1995). Ms. Hendin has not provided substantial evidence in this proceeding to warrant distinguishing or overruling the Commission's precedent on this issue.

As such, Ms. Hendin's arguments that Met-Ed's response to the request to refuse installation of a smart meter is wrong will be rejected. Ms. Hendin has not presented substantial record evidence to support her argument that the Commission's interpretation of Act 129, and Met-Ed's actions in response to that interpretation, somehow violate the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

5. Met-Ed's witnesses

Ms. Hendin's arguments that Met-Ed witnesses Dr. Davis and Dr. Israel are not credible will be rejected. While Ms. Hendin has raised legitimate concerns regarding the testimony presented by Dr. Davis and Dr. Israel, such concerns do not discount their testimony and the evidence they supported entirely. Rather, such concerns go to the weight to be afforded to their testimony when determining whether Ms. Hendin has demonstrated that Met-Ed has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company in the service provided to her by a preponderance of the evidence – i.e., evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *See*, Se-Ling Hosiery, *supra*. When balancing the testimony and evidence presented by Met-Ed through Dr. Davis and Dr. Israel, however, against the evidence and testimony presented by Ms. Hendin, such testimony outweighs the testimony and evidence presented in support of the complaint.

For example, the fact that none of Dr. Israel's 250 papers he has published were on the subject of electromagnetic fields and their effect on health and the fact that he has not taught any classes on this subject weigh on his expertise in the relevant areas but do not negate the fact that Dr. Israel has extensive experience as a medical doctor and has been conducting research for 40 years in a variety of areas. Met-Ed St. 3-R at 2-3. Similarly, the fact that Dr. Israel never examined Ms. Hendin or visited her home likewise impact the weight of the testimony Dr. Israel provided in this proceeding but do not negate such testimony in its entirety. Likewise, Dr. Israel's reliance on

exhibits that reference other states also will be given little weight when compared to evidence based on the issues as presented in Pennsylvania.

With regard to Ms. Hendin's arguments regarding Dr. Israel's criticism of the BioInitiative Report and other reports, as noted above, this Commission should not be in the position to balance the various merits and detriments of multiple scientific reports and medical documents. The expertise of this Commission lies in interpreting the Public Utility Code. Therefore, it is not necessary to determine whether which amongst many competing scientific reports and medical records is true or should be given more weight. I cannot determine whether the BioInitiative Report is correct, or the value and merit of the Ogawa and Sommer studies because pregnant rats were only exposed to cell phone radiation for 11 days and not an "entire lifetime of exposure" (which apparently is one to three years for a rat), for example. That is beyond the scope of this proceeding and the abilities of the Commission to determine. What is within the scope of this proceeding and incumbent upon the Commission to determine is whether there is substantial evidence to determine that Met-Ed's deployment of a smart meter to Ms. Hendin's home violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

The Commonwealth Court in Romeo, *supra*, prohibited the Commission's prior practice of dismissing complaints regarding smart meters based on preliminary objections and directed that complainants be given an opportunity to present witnesses and evidence at a hearing to determine whether the installation of a smart meter at their home would in fact somehow violate the Public Utility Code. Romeo did not give the Commission the expertise, however, to determine the intricate medical and scientific details discussed in this case. The parties were given significant opportunity to present evidence to show why Ms. Hendin's complaint should be granted or denied and such evidence remains a part of the record for the Commission or an appellate body to review to the extent those bodies wish to determine whether they change the outcome created by this decision. A determination of the weight to be given to these studies is not necessary as part of this Decision.

With regard Ms. Hendin's argument that the integrity and credibility of Dr. Israel has been attacked before, this argument will also be rejected. The quote provided by Ms. Hendin in her

Main Brief was taken from the Main Brief of another consumer who filed a complaint also seeking to avoid having smart meter installed at her home. To argue in this case that Dr. Israel's credibility has been "questioned before" when such "questioning" was done by a complainant in a separate proceeding also making the same argument against the installation of smart meters is disingenuous at best.

Likewise, Ms. Hendin's critique of Dr. Davis is also without merit. Ms. Hendin's critiques of Dr. Davis' analysis of the UHF TV towers where Ms. Hendin lives misses the point that there are electromagnetic frequencies found commonly in everyday life. UHF TV towers are just one example of everyday items that emit electromagnetic frequencies but there are others and the fact that the nearest tower to Ms. Hendin's home is eight miles away or that Ms. Hendin lives on the side of a mountain misses the point. In addition, Ms. Hendin's other arguments against Dr. Davis' testimony that he also did not visit Ms. Hendin's home, did not physically examine her and never published a single paper on exposure from smart meters will be rejected for the same reasons such arguments against Dr. Israel are also rejected – that is, such arguments go to the weight given to the evidence when determining whether Ms. Hendin has satisfied her burden of proof in this proceeding by a preponderance of the evidence.

In general, the record is clear that Dr. Israel is a medical doctor, researcher, the Executive Director of an international non-profit medical research foundation and professor emeritus of Medicine, Pediatrics and Molecular and Systems Biology at Dartmouth Medical School and, among other things, has extensive experience as a medical doctor. Dr. Davis is employed by the University of Maryland in College Park, Maryland as a professor of physics and electric engineering, including electromagnetics which includes radio frequency electromagnetics and bioelectromagnetics and has a Ph.D. in Physics from the University of Manchester. These qualifications and credentials speak for themselves just as much as the fact that Dr. Kracht is a board-certified physician both in family medicine and integrative medicine with a Bachelor of Science in pre-medicine from Pennsylvania State University and a Doctor of Osteopathy from the Philadelphia College of Osteopathic Medicine and Ms. Hendin is a somatic therapist.

Regardless, it is Ms. Hendin who has the burden of proof in this proceeding. Only after Ms. Hendin establishes a prima facia cases does the burden of going forward with the evidence

shift to the utility. While the burden of going forward with the evidence may shift from one party to another, the burden of proof never shifts – it always remains on the complainant. Milkie, *supra*. In this case, the evidence presented by Ms. Hendin is outweighed by the evidence presented in response to the complaint by Met-Ed and, therefore, Ms. Hendin has failed to satisfy her burden of proof.

6. The Proposed Location of the Smart Meter

Ms. Hendin next argued that the proposed location of the smart meter is unreasonable, noting that it is proposed to be only six inches from the only door in and out of her residence and workplace, less than four feet from the kitchen, eight feet from the desk where she works much of the day and less than 20 feet from where she sleeps. Hendin M.B. at 64. Ms. Hendin stated that the parties met twice to discuss relocating the meter away from her living and working spaces but "no way forward was found because of topography of the land and Met-Ed's insurance policy regarding a relocated wire." Id. Met-Ed stated in its Reply Brief that it was unable to relocate the meter because Ms. Hendin was un-responsive in those discussions regarding relocation. Mr. Ahr testified that "after a local designer met with Ms. Hendin to explore possible relocation the company never heard back from her." Met-Ed R.B. at 33; *see also*, Tr. 164-165. Mr. Ahr further explained that customers who have elected to relocate the smart meter have done so at their own expense. Id.

The issue of who should bear the cost of relocating the placement of a smart meter arose in Povacz v. PECO Energy Co., Docket Number C-2015-2475023 (Opinion and Order entered March 28, 2019) (Povacz). In Povacz, the ALJ determined that the meter socket could be moved away from the complainant's home structure under PECO's tariff if the complainant chooses to move it and that, "if the complainant decides to move her meter at her cost, 'PECO shall absorb the costs to PECO, if any, of connecting to the new location'." Id. at 86 (citation to ALJ's decision omitted). The Commission, however, found that there was no need to move the meter and "reverse[d] the ALJ's related conclusion and directive that PECO is required to absorb costs to PECO related to the Complainant's potential future decision to relocate the meter in accordance with PECO's tariff provisions." Id. at 90. The Povacz case is also currently pending on appeal

before the Commonwealth Court. *See* Povacz v. Pa. Pub. Util. Comm'n, No. 492 C.D. 2019 (Pa. Cmwlth. 2019).

In this case, Met-Ed witness Ahr testified that there is nothing in the company's smart meter deployment plan that discusses relocation of the smart meter. Tr. 164. Mr. Ahr added that "there have been probably less than a handful of customers that have chosen to relocate their meter service at their expense." Tr. 164-165. Mr. Ahr further testified that the company is not permitted to relocate a meter not at the customer's expense, stating "we're not permitted to do that per our tariff. Our tariff requires that any customer that requests relocation that they pay the cost of relocation." Tr. 166.

As a result, to the extent that Ms. Hendin believes that the specific location of the smart meter is unreasonable, Met-Ed's tariff requires that she pay the cost of relocation. Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pa. Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002). It certainly is within the Commission's jurisdiction and area of expertise whether Met-Ed's tariff that requires customers to pay the cost of relocation is consistent with the Public Utility Code in this situation. The facts in this case demonstrates that it is.

The record evidence in this case demonstrates that the parties discussed relocation of the smart meter, and even met at the residence as part of those discussions, but Ms. Hendin did not pursue the matter further. There is nothing in Act 129 or in Commission orders interpreting Act 129 that warrant requiring Met-Ed to pay for the cost of relocating the smart meter. This is true when the proposed location of the meter is only six inches from the only door in and out of the residence and workplace, less than four feet from the kitchen, eight feet from the desk where she works much of the day and less than 20 feet from where she sleeps To the extent that Ms. Hendin wishes to pursue relocation of the meter further, the Commission strongly encourages settlements and she is encouraged to do that. Otherwise, the facts of this case do not warrant a finding that Met-Ed's tariff that requires customers to pay the cost of relocating facilities is unreasonable.

As such, Ms. Hendin's argument that the proposed location of the smart meter is unreasonable is without merit and will be rejected.

7. Due Process

Ms. Hendin argues that she cannot be forced to accept a smart meter at her residence in violation of her due process rights to protect her bodily integrity. Hendin M.B. at 64-65. Ms. Hendin cites to Phillips v. Cty. of Allegheny, 515 F.3d 224, 235 (3d Cir. 2008) (Phillips) in support of her position. Yet, Met-Ed is correct that the Seventh Circuit Court of Appeals specifically found that the installation of a smart meter and the collection of smart meter data by a city-owned public utility was not a violation of constitutional rights. Naperville Smart Meter Awareness v. City of Naperville, 900 F.3d 521, 527-529 (7th Cir. 2018) (Naperville). Although the Third Circuit's decision in Phillips pertained to the 14th Amendment and the Seventh Circuit's decision in Naperville pertained to an invasion of privacy and the 4th Amendment, the Seventh Circuit's decision in Naperville pertained specifically to smart meters whereas the Third Circuit's decision in Phillips did not.

In conducting its constitutional analysis and determining the governments interest in smart meters, the Seventh Circuit in Naperville stated:

> Of course, even a lessened privacy interest must be weighed against the government's interest in the data collection. That interest is substantial in this case. Indeed, the modernization of the electrical grid is a priority for both Naperville and the Federal Government.
>
> Smart meters play a crucial role in this transition. For instance, they allow utilities to restore service more quickly when the power goes out precisely because they provide energy-consumption data at regular intervals. The meters also permit utilities to offer time-based pricing, an innovation which reduces strain on the grid by encouraging consumers to shift usage away from peak demand periods. In addition, smart meters reduce utilities' labor costs because home visits are needed less frequently.
>
> With these benefits stacked together, the government's interest in smart meters is significant. Smart meters allow utilities to reduce costs, provide cheaper power to consumers, encourage energy

> efficiency and increase grid stability. We hold that these interests render the city's search reasonable, where the search is unrelated to law enforcement, is minimally invasive, and presents little risk of corollary criminal consequences.

Id. at 528-529 (citations omitted). The same governmental interests found in Naperville apply here in denying Ms. Hendin's arguments regarding the 14th Amendment to the Constitution.

Furthermore, Ms. Hendin's constitutional arguments do not apply because Met-Ed is not a state actor which is required within the constitutional analysis. *See*, Hughes v. PPL Electric Utilities Corp., Docket No. C-2019-3007631 (Opinion and Order entered July 16, 2020); *see also*, Phillips (involving a county employee) and Naperville (involving a municipally-owned gas utility).

In addition, Ms. Hendin's argument assumes that the smart meter proposed to be installed at her residence by Met-Ed will invade her bodily integrity. Yet, Ms. Hendin did not provide any record evidence to demonstrate that such an invasion would occur and, as noted above, Ms. Hendin has otherwise failed to satisfy her burden to demonstrate that Met-Ed's installation of a smart meter would violate the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Therefore, there can likewise also be no finding that the installation of a smart at Ms. Hendin's residence would invade her bodily integrity.

As a result, Ms. Hendin's argument that installation of smart meter at her residence would violate her Constitutional rights is without merit and will be rejected.

8. Dr. Kracht's Treatment Recommendations

Ms. Hendin's argument that the Commission's interpretation of Act 129 and application of the standard of proof illegally supplant the treatment recommendations from Ms. Hendin's physician, Dr. Kracht, will also be rejected. As noted above, the expertise of this Commission involves the Public Utility Code. This Commission cannot, and should not, attempt to weigh the merits of competing medical reports or studies. To the extent that the proper jurisdiction with the appropriate competencies were to determine that smart meters in fact cause health problems, then this Commission can use that determination to establish a violation of the Public Utility Code when a utility uses those smart meters. This Commission, however, cannot determine

that the smart meters in fact cause health problems. Likewise, to the extent that the recommendations from Dr. Kracht are somehow being overridden or ignored by the Commission due to the Commission's interpretation of Act 129, Ms. Hendin could consider raising her claims in a jurisdiction with the necessary expertise.

Ms. Hendin's reliance on Section 56.113 of the Commission's regulations which prohibits termination of service based on a certification by a medical provider is without merit. Section 56.113 serves to prevent termination of service for people who have a medical necessity for that service. 52 Pa.Code § 56.113. It is not reasonable to extrapolate Ms. Hendin's argument that "the Commission is required to rely on the expertise of outside medical professionals with direct experience with individual customers" in Section 56.113 to require the Commission to allow Ms. Hendin to refuse the installation of a smart meter on her home. Section 56.113 is in place for consumers who, for example, need electric service to their home to operate oxygen machines that are needed to keep the consumer alive. In this case, there is not sufficient evidence to determine that the smart meters are causing the adverse health effects Ms. Hendin avers they are and, therefore, a doctor's certification is not sufficient.

Likewise, Ms. Hendin's attacks in her brief that Dr. Israel is violating his Hippocratic Oath by testifying that the smart meters are safe is likewise rejected for the reasons discussed above.

As a result, Ms. Hendin's argument that the Commission's interpretation of Act 129 illegally supplants the treatment recommendations from Dr. Kracht is without merit and will be rejected.

9. Federal Law

Ms. Hendin's final argument, in its entirety, is that:

> The Commission commits an egregious civil rights violation under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act Amendments, which prohibit discrimination by any entity receiving federal funds and housing discrimination on the basis of

> disabilities by completely disallowing smart meter opt outs, at least for the disabled.
>
> Appeals to an administrative adjudicative body are the means by which the record of an action is fully developed and "[a] party's due process rights are protected. . . ." The process includes pre-hearing discovery, an evidentiary hearing, and post-hearing submissions.

Hendin M.B. at 67 (citations omitted).

As an initial matter, the Commission lacks jurisdiction to hear claims brought under the Rehabilitation Act of 1973 and the Fair Housing Act Amendments.[2] *See,* White v. PPL Electric Utilities Corp., Docket Number C-2018-3003468 (Opinion and Order entered May 21, 2020) at 19 (wherein the Commission held that it lacked jurisdiction to enforce the federal Fair Housing Act and federal Americans With Disabilities Act regarding a similar complaint).

In addition, however, it is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101, *et seq*. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to hear claims regarding the Rehabilitation Act of 1973 or the Fair Housing Act Amendments.

Furthermore, Ms. Hendin has failed in her brief to cite to any record evidence that demonstrates that these federal laws have been violated. Therefore, even to the extent that the Commission has jurisdiction to hear claims regarding the Rehabilitation Act of 1973 or the Fair

[2] The Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, is a federal act intended to protect the buyer or renter of a dwelling from seller or landlord discrimination. Its primary prohibition makes it unlawful to refuse to sell, rent to, or negotiate with any person because of that person's inclusion in a protected class.

Housing Act Amendments, Ms. Hendin has failed to satisfy her burden of proof to demonstrate that Met-Ed in anyway violated such laws.

As such, Ms. Hendin's argument that Met-Ed, or the Commission, has violated any federal laws, such argument is without merit and will be denied.

D. Conclusion

As a result, Ms. Hendin's complaint will be denied because she has failed to satisfy her burden of proof to demonstrate that Met-Ed's actions with regard to installing a smart meter violate the Public Utility Code, a Commission order or regulation or a Commission-approved order of the company.

Act 129 does not permit residents of Pennsylvania to opt out of receiving a smart meter at their home. In part, the goals and objectives of Act 129 including reductions in consumer electricity consumption and improved meter-reading communications are more easily achievable when more people use smart meter technology. As noted by the Seventh Circuit, there are societal benefits to the deployment of smart meters, including modernization of the electrical grid, allowing real-time pricing, reduced labor costs for electric companies, and more. Record evidence also demonstrates the benefits of insuring uniform implementation of the smart meters by not allowing certain customers to opt out. Therefore, it is reasonable that the Commission interpreted Act 129 to not allow consumers to opt out of receiving a smart meter, especially when Act 129 does not explicitly allow opt outs and the General Assembly has not subsequently voted to allow opt outs when given the chance to do so. The Commission's interpretation has been reaffirmed numerous times both in various orders implementing Act 129 as well as a multitude of other consumer complaint cases. In particular, Met-Ed's smart meter deployment plan specifically requires 100% deployment by the end of 2022.

To the extent that Ms. Hendin disagrees with the Commission's interpretation of Act 129, she should have raised those issues in those prior proceedings, which as a customer of Met-Ed she likely received notice of those proceedings before they occurred. Yet, Ms. Hendin did not raise

these arguments in other proceedings. The Commission's interpretation of Act 129 and subsequent affirmation of that interpretation cannot be reversed in this proceeding.

The purpose of this proceeding is to determine whether the installation of a smart meter at Ms. Hendin's home would cause her adverse health effects and, therefore, violate the Public Utility Code; or, to demonstrate that Met-Ed should be required to move the smart meter to another location on Ms. Hendin's property at the company's cost, contrary to its Commission-approved tariff. Ms. Hendin has failed to present substantial record evidence to make such demonstrations. When balanced against the testimony presented in response to the complaint by Met-Ed and its witnesses, Ms. Hendin has failed to demonstrate by a preponderance of the evidence that the smart meter will cause her adverse health effects. The evidence presented by Met-Ed outweighs the evidence presented by Ms. Hendin. To the extent that Ms. Hendin would like to have the meter moved to another location on her property, she is encouraged to contact the company to continue those discussions and pay for the costs of such relocation.

As a result, Ms. Hendin's complaint will be denied.

V. CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. 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).

10. A person must demonstrate by a preponderance of the evidence that an electric and magnetic field 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 *211 (June 29, 1992) (Initial Decision).

11. In AMI meter-related matters, the 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).

12. 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. 66 Pa.C.S. § 1501.

13. Smart meter complainants should be given an opportunity to prove their claim through the testimony of others as well as other evidence that goes to the issues and not have their complaint dismissed on a preliminary basis. Romeo v. Pa. Pub. Util. Comm'n, 154 A.3d 422, 429 (Pa. Cmwlth. 2017).

14. Electric distribution companies shall furnish smart meter technology as follows: (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request. (ii) In new building construction. (iii) In accordance with a depreciation schedule not to exceed 15 years. 66 Pa. C.S. § 2807(f)(2).

15. When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b).

16. When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters, the contemporaneous legislative history. 1 Pa.C.S. § 1921(c)(7).

17. While the Commission is not bound by the rule of *stare decisis*, it must render consistent opinions and should either follow, distinguish or overrule its own precedent. *See*, Bell Atlantic-Pennsylvania, Inc. v. Pa. Pub. Util. Comm'n, 672 A.2d 352, 354 (Pa. Cmwlth. 1995).

18. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. Pa. Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Cmwlth. 1995).

19. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n, 808 A.2d 1044 (Pa. Cmwlth. 2002).

20. The installation of a smart meter and the collection of smart meter data by a city-owned public utility is not a violation of constitutional rights. Naperville Smart Meter Awareness v. City of Naperville, 900 F.3d 521, 527-529 (7th Cir. 2018).

21. It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super. 1945).

22. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

23. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth. 1992).

24. As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. § 101, *et seq*.

25. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

26. Ms. Hendin has failed to satisfy her burden of demonstrating that Met-Ed has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to installing a smart meter at her home.

VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Metropolitan Edison Company for the admission of Met-Ed Statement No. 3-R, the rebuttal testimony and exhibits of Dr. Mark A. Israel, dated March 16, 2020, is hereby granted and Metropolitan Edison Company is directed to provide two copies of the documents to the Commission's Secretary's Bureau for inclusion in the official record of this proceeding.

2. That the formal complaint filed by Judith D. Hendin against Metropolitan Edison Company on June 29, 2018 at docket number C-2018-3003324 is hereby denied and dismissed.

3. That this matter be marked closed.

Date: August 7, 2020

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge