BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Stephanie Ellis	:	
	:	
v.	:	C-2020-3016170
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A residential customer filed a complaint seeking to have an electric distribution company (EDC) remove a smart meter a/k/a "Advanced Metering Infrastructure (AMI) meter" or "Radio Frequency (RF) meter" at her residence for privacy reasons and because she had no written notice prior to the installation. The customer also disputes a charge of $705 on her account from February 2019. The complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Additionally, the customer failed to establish a *prima faci*e case that there were incorrect charges on her account.

HISTORY OF THE PROCEEDING

On January 16, 2020, Stephanie Ellis (Complainant) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed or Respondent) averring the utility erroneously replaced her meter with a smart meter

without notifying her and obtaining her prior consent. Complainant wishes to opt out of a smart meter installation at her residence, 6208 Sullivan Trail, Nazareth, PA 18064, for privacy reasons and she requests a directive that Met-Ed be precluded from terminating her electric service. Complainant also requests a credit on her account for the difference between a high bill of $705 and the average of what she should have been billed to pay in February 2019.

The Complaint was served upon Met-Ed on January 21, 2020. On February 10, 2020, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainant at the address listed on the Complaint. The Answer contends that the Respondent is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers and that it has the right to terminate service for failure of the customer to permit access to the meter.

On March 13, 2020, a Hearing Notice was issued scheduling a hearing for April 24, 2020 and assigning the case to me as presiding officer. The hearing was subsequently cancelled due to the COVID-19 pandemic. On April 27, 2020, due to managerial directives from the Commission regarding the COVID-19 pandemic, the hearing that had been cancelled was rescheduled to June 4, 2020. A Prehearing Order was issued on May 28, 2020. On May 26, 2020 Met-Ed e-mailed the Administrative Law Judge (ALJ) proposed exhibits for the hearing. These proposed exhibits were amended and resubmitted on June 3, 2020. On June 4, 2020, the hearing was held as scheduled.

At the hearing, Complainant Stephanie Ellis appeared *pro se* with no exhibits. Respondent appeared represented by Tori Giesler, Esquire and Lauren Lepkoski, Esquire, with 16 exhibits and three witnesses: Jordan Pineiro, Laurie Peters, and John Ahr. Met-Ed Exhibits JCA-1, JCA-8, LP 1 – LP-6 and JP-1, JP-2 were admitted into the record.

A transcript consisting of 58 pages was filed on June 25, 2020 and the record closed the same day. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is Stephanie Ellis, who resides at 6208 Sullivan Trail, Nazareth, Pennsylvania (service property). N.T. 1, 7.

2. The Respondent in this proceeding is Metropolitan Edison Company, an electric distribution company (EDC). N.T. 3.

3. Pursuant to Section 2807(f) of the Public Utility Code, at Docket No. M-2009-213950, Met-Ed jointly filed its Petition for Approval of Smart Meter Technology Procurement and Installation Plan with Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (Companies) on August 14, 2009 ("2009 SMP Plan").

4. The Commission issued an Order on June 9, 2010, approving 2009 SMP Plan with certain modifications.

5. On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan for Commission approval.

6. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

7. On June 20, 2014, the Commission issued a Secretarial Letter approving the revised Deployment Plan, which requires 98.5% of all meters to be deployed by mid-2019 with the remaining 1.5% deployed before December 31, 2022.

8. John Ahr is the advisor for regulatory compliance for smart meters for First Energy Service Company, a subsidiary of First Energy Corporation. N.T. 14-15.

9. 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. N.T. 14-16.

10. 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. N.T. 14-16.

11. Complainant contacted Respondent to place electric service in her name at the service property on August 16, 2018. N.T. 18.

12. Met-Ed sent a notice of installation of an AMI meter at the service location to a prior tenant and did not send Complainant a written notice prior to removing her analog meter and replacing it with a smart meter. N.T. 18.

13. Rule 9 of Met-Ed's Tariff outlines the Company's agreed upon rights to control and access its meters on a customer's property. Exhibit JCA-8.

14. Laurie Parker has 24 years of experience working in the Pennsylvania Regulatory Compliance Department. N.T. 23-24.

15. Complainant is not on a budget billing plan. N.T. 29.

16. The February 13, 2019 meter read was an actual read resulting in an invoiced amount of $703.04 to Complainant. N.T. 31, Exhibit LP-1.

17. Kilowatt usage at the service property is seasonal whereby usage increases during the heating winter months. N.T. 40, Exhibit LP-6.

18. Total kilowatt hours used from September 2018 through May 2019 were 20,847. N.T. 38-39. Exhibit LP-6.

19. Total kilowatt hours used from June 2019 through May 2020 were 28,363. N.T. 39. Exhibit LP-6.

20. On February 27, 2019, after Complainant and an authorized contact, Mr. Weidlick, contacted Met-Ed, a customer billing analysis was performed and a check reading occurred on February 28, 2019. N.T. 33.

21. Jordan Pineiro is a Supervisor at the Bethel Meter Test Shop, FirstEnergy Service Company. N.T. 44.

22. Meter ending in 1540 was removed on February 27, 2019 for testing on March 5, 2019, resulting in a 100.02% accuracy reading. N.T. 33-34, 49-52, Exhibit JP-1.

23. Meter ending in 8805 was the old meter, which was tested on March 22, 2018 at 100.02% accuracy. Exhibit JP-2.

24. Complainant has no electrical engineering training. N.T. 11-12.

DISCUSSION

Legal Standards

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

Commonwealth v. Williams, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain his or her burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also, Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).[1]

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, "taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive." *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision) (*Woodbourne-Heaton*). Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Id.* at *211. Specifically, in AMI meter-related matters,

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

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

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

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

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

66 Pa. C.S. § 1501.

When presented with a challenge to an AMI meter installation, the Commission has pronounced that "[t]he ALJ's role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility's] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case." *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Opinion and Order entered January 28, 2016) (citing *Woodbourne-Heaton* at *12-13). *Frompovich v. PECO Energy Co.,* Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018) (*Frompovich)*.

Data Privacy

Complainant argues the new AMI meter invades her privacy and that mandatory installation of a smart meter violates her Fourth Amendment Rights against unreasonable search and seizure as she cites to "*Naperville*" and "*Kyllo*" decisions. N.T. 10-11.

Conversely, Met-Ed argues any claim that the installation of the meter violates the Fourth Amendment is incorrect and that the decisions cited are non-controlling as they are not Pennsylvania caselaw.

Disposition

Met-Ed is not a "state actor" in that it is not a sovereign governmental entity also responsible for law enforcement. Rather, it is a private, regulated utility company not constrained by the Fourth Amendment. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974) (*Jackson*). Further, there is no evidence in the instant case that Met-Ed is making its data easily accessible to law enforcement or other third parties.

In *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521 (7th Cir. 2018) (*Naperville*), the Seventh Circuit found the City of Naperville owned and operated a public utility that provides electricity to its residents. Naperville began replacing its residential customers' analog energy meters with digital smart meters. *Naperville*, 900 F.3d at 524.

Naperville's Electric Utility collects residents' energy-consumption data at fifteen-minute intervals, storing it for up to three years. The Seventh Circuit concluded that the use of smart meters intruded upon reasonable expectations of privacy, thus constituting a search subject to Fourth Amendment constraints, but that such searches were "reasonable," and thus constitutionally permissible and consistent with the Fourth Amendment. In finding that the Naperville Electric Utility's use of the smart meters constituted a search, the court relied heavily on *Kyllo v. United States*, 533 U.S. 27, 31–32 (2001). The Court referenced the administrative search doctrine to find that the presumption had been overcome. *Naperville,* 900 F.3d at 528-29 (citing *Camara v. Municipal Court*, 387 U.S. 523 (1967) (*Camara*)). In particular, City of Naperville had "no prosecutorial intent;" "public utility [e]mployees —not law enforcement officials—collect and review the data." *Id.* Thus, the Electric Utility's intrusion was more innocuous than that found to violate the Fourth Amendment in *Camara.*

For these reasons, I find in favor of Respondent on this data privacy issue.

Opt-In versus Opt-Out Program

Complainant argues that she did not receive written notification prior to the installation of an AMI meter and she wishes to opt out from a smart meter installation. N.T. 5-11.

Conversely, Met-Ed contends its installation of an AMI meter is required by Pennsylvania law and that it does not constitute unreasonable or unsafe service to install an AMI meter on Complainant's property without prior written notice. Met-Ed offered in support of this position the testimonies of Laurie Parker and John Ahr as well as JCA-8, a copy of Rule 9 of the Company's tariff that states the utility has the right to access its meters.

Disposition

A public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa.*

Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.,* A.2d 339 (Pa.Cmwlth. 1977). Exhibit JCA-8 is sufficient evidence to show the Company had the right to access its meter to switch meters on the service property. I know of no provision in the Code requiring written notification prior to the installation of a new meter. This appears to be a part of the utility's communications plan as a courtesy to its customers but not a legal requirement.

The Commission has ruled that there is no provision in the Code, the Commission's Regulations or Orders that allows an electric distribution company's customer to "opt-out" of smart meter installation. 66 Pa.C.S. § 2807(f); *See, Bervinchak v. PPL Electric Utilities Corp.,* Docket No. C-2016-2572824 (Final Order October 2, 2018, Initial Decision dated August 16, 2018); *Povacz v. PECO Energy Co.*, Docket No. C-2012-2317176 at 10 (Order and Opinion entered January 24, 2013); *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023 (Initial Decision dated January 26, 2018).

The Commission has consistently held there is no opt-out provision for similarly situated complainants in the past. The instant case is more similar than distinguishable from prior decisions wherein the Commission has dismissed similar complaints. *Pa. Trout v. Dep't of Envtl. Prot.,* 863 A.2d 93 (Pa. Cmwlth. 2004).

On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 into law, which directed electric distribution companies with at least 100,000 customers to file with the Commission a smart meter deployment and installation plan. Thus, there is a statute requiring smart meter deployment by large electric distribution companies operating within the Commonwealth. 66 Pa. C.S. § 2807(f).

The implementation of the Respondent's Smart Meter Deployment Plan and the approval of the costs associated with its implementation have been found by the Commission to be in accordance with Act 129, 66 Pa. C.S. § 2807(f). The Respondent is required by statute and Commission Order to implement a Smart Meter Program, to install smart meters throughout its service territory, and to charge a Smart Meter Technology Surcharge to all of its metered customers.

As the Commission stated in its April 21, 2016 Opinion and Order in the case of *Frompovich*:

> In past cases involving smart meter installation, we have evaluated on an individual case-by-case basis the specific allegations presented in each complaint and reached a conclusion based on those particular circumstances. While PECO is correct that as adopted Act 129 does not provide a general opt out provision, where a complainant's objection to installation of a smart meter was not based upon a general objection to smart meters *per se*, but rather upon facts specific to the individual complainant, we have denied preliminary relief and allowed the complaint to proceed to hearing. *See Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Material Question entered September 3, 2015; Order on Reconsideration entered January 28, 2016) (*Kreider*); *Paul v. PECO Energy Company*, Docket No. C-2015-2475355 (Order entered March 17, 2016). As we stated previously, "the law does not prohibit us from considering or holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1501 of the Code, when a legally sufficient claim is presented." *Kreider*, Order on Material Question at 17.
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> As in *Kreider* and *Paul*, Ms. Frompovich has alleged factual averments specific to her that, *if proven*, could implicate, under her particular circumstances, a violation of Section 1501 of the Code, a statute the Commission has jurisdiction to administer.

Frompovich, supra at 11-12 (Opinion and Order entered April 21, 2016) (emphasis added).

To the extent that Complainant in the instant case desires the ability to opt out of the smart meter installation, she could advocate for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills that are not law. The Commission has held that it does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. *See Povacz v. PECO Energy Company*, Docket No. C-2012-231716 (Opinion and Order entered January 24, 2013). The Commission held that similarly situated Respondents would be in violation of the law if they did not install a smart meter at properties similarly situated to Complainant's residence. *Id.*, *Frompovich* at 10.

Additionally, there is no regulatory requirement that the tenant customer receive written notification prior to installation of the AMI meter. Met-Ed's Commission-approved tariff has the full force and effect of law and is binding on both the public utility and its customers. 66 Pa. C.S. § 1301; *DiSanto v. Dauphin Consolidated Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n,* 437 A.2d 1967, 1070 (Pa. Cmwlth. 1981). Thus, I find in favor of Met-Ed on this issue.

High bill complaint

The Complainant testified that the bill she received in February 2019 in the amount of $705 was high. She requests a credit in the amount of the difference between $705 and her average bill.

Conversely, Met-Ed contends that the monthly bill properly reflected an actual meter read. In support of its position, Met-Ed offered the testimonies of Laurie Parker and Jordan Pineiro as well as 21 months of account activity information, a Bureau of Consumer Services report, customer contact information, and two meter test results.

Disposition

Under the *Waldron* rule, a complainant may establish a *prima facie* case of high billing by showing her power usage for the billing period in question was unchanged from earlier periods and her bill for the same power was higher than previous bills. The burden going forward then shifts to the utility which must rebut the complainant's case with co-equal evidence so that the mere proof by the utility that its power measuring devices were accurate is no longer the sole determination as to whether there is a basis to a complaint of overbilling. *Burleson v. Pa. Pub. Util. Comm'n,* 501 Pa. 433, 461 A.2d 1234 (1983) citing *Waldron v. Philadelphia Electric Co.,* 54 Pa. PUC 98 (1980). The Commission generally applies the *Waldron* test regarding high bill claims. *See Bennett v. Peoples Natural Gas Co., LLC,* Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010) (*Bennett*). In the *Bennett* case, the Commission stated that in order to establish a *prima facie* case of overbilling under *Waldron*, the

complainant must show the disputed bill was abnormally high when compared to prior usage patterns and that his or her pattern of usage has not changed or must provide other relevant evidence showing that the disputed bill is unreasonably high. The Commission stated that Waldron does not limit the establishment of a *prima facie* case to the above two elements alone. Rather, the Commission may consider the billing history of the account, any change in usage patterns (such as change in the number of occupants living in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding. *Id.* at 7.

In *Thomas v. PECO Energy Co.*, Docket No. C-2010-2195286 (Initial Decision August 31, 2011, adopted by Final Order October 28, 2011), the Administrative Law Judge stated that under the *Waldron* rule, the accuracy of the meter is important, but it is not the sole factor in resolving a billing dispute. In doing so, the Commission will consider the billing history, any change in the number of occupants in the household, the potential for energy use, and any other facts or circumstances that are brought to light during the proceeding. *Id.* at 7.

In the instant case, Complainant offered no evidence to show that she had higher than normal bills. There is insufficient evidence to show Complainant was overcharged in February 2019 for the amount of electricity used. I find credible Met-Ed's witness Laurie Parker, who compared the Complainant's electric usage for the period September 2018 through May 2019. During this period, total kilowatt hours used equaled 20,847. N.T. 38-39. Exhibit LP-6. Total kilowatt hours used from June 2019 through May 2020 was 28,363. N.T. 39. Exhibit LP-6. Due to seasonal conditions and outdoor temperatures in January/February 2019, the kilowatt usage was higher than normal, but due to seasonal temperature changes, not an inaccurate meter. JP-1, JP-2. Ms. Parker concluded there was no error in the February bill, and given the evidence in Exhibits LP-2, LP-3 and LP-6, the kilowatt usage over the 21 months is comparable and indicative of seasonal changes with more usage in the heating winter months.

Additionally, I find credible the testimony of Met-Ed's Witness Jordan Pineiro, who testified that the meter ending in #1540 was tested on March 5, 2019, resulting in a 100.02% accuracy read. This is within the 2% deviation from 100% permitted by Chapter 14 and 52 Pa.

Code § 57.20(c). Exhibit JP-1. The older meter ending in #8805 was tested on March 22, 2018 and found to be 100.02% accurate. Exhibit JP-2. Thus, the meters tested were found to be operational within the Commission's regulations. For these reasons, I find Complainant failed to establish a *prima facie* case by presenting facts or circumstances envisioned under *Waldron*. The Complainant therefore failed to present a *prima facie* case on this high billing claim. Accordingly, I find in favor of Respondents on this issue.

CONCLUSION

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

CONCLUSIONS OF LAW

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

2. Metropolitan Edison Company's smart meter procurement and installation plan does not contain a provision for customers to opt out of smart meter installation, and this plan has been approved with modifications via various Commission Orders at Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994.

3. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a). It is well established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and

legally credible." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

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

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

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

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

8. The Commission has exclusive jurisdiction to adjudicate "issues involving the reasonableness, adequacy, and sufficiency" of a public utility's facilities and services. *See, Elkin v. Bell of Pa.,* 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

9. When presented with a challenge to an AMI meter installation, the Commission has pronounced that "[t]he ALJ's role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that the Complainant was adversely affected by the smart meter or whether [the utility's] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case." *Kreider v. PECO Energy Co.,* Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13).

10. Complainant failed to sustain the burden of proof that the installation of the AMI meter on her home violated the Public Utility Code or any Commission regulation or order. *See,* 66 Pa. C.S. §§ 332(a), 701.

11. Met-Ed is legally required to install the AMI meter on the Complainant's property by Act 129 and Commission orders. *See,* 66 Pa. C.S. § 2807(f); *Smart Meter Procurement and Installation,* Docket No. M-2009-2092655, pp. 9, 14 (Order entered June 24, 2009).

12. Nothing in Act 129 permits a customer to "opt-out" of a smart meter installation. *See, e.g.*, *Starr v. PECO Energy Co.,* Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016).

13. The Complainant failed to sustain her burden of proof that the installation of the AMI meter on her home constituted unsafe or unreasonable service in violation of 66 Pa. C.S. § 1501.

14. Under the *Waldron* rule, a complainant may establish a *prima facie* case of high billing by showing her power usage for the billing period in question was unchanged from

earlier periods and her bill for the same power was higher than previous bills. The burden going forward then shifts to the utility which must rebut the complainant's case with co-equal evidence so that the mere proof by the utility that its power measuring devices were accurate is no longer the sole determination as to whether there is a basis to a complaint of overbilling. *Burleson v. Pa. Pub. Util. Comm'n,* 501 Pa. 433, 461 A.2d 1234 (1983) citing *Waldron v. Philadelphia Electric Co.,* 54 Pa. PUC 98 (1980).

15. Ms. Ellis failed to meet her burden of establishing a *prima facie* case of high billing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Stephanie Ellis against Metropolitan Edison Company at Docket No. C-2020-3016170 is denied and dismissed.

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

Date: August 27, 2020

/s/
Elizabeth H. Barnes
Administrative Law Judge