

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lauren Zonca	:	
	:	
v.	:	C-2019-3007961
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Complainant filed a Formal Complaint against Respondent objecting to the installation of a smart meter at her residence. This decision dismisses the Formal Complaint due to Complainant’s failure to meet her burden of proof.

HISTORY OF THE PROCEEDING

Lauren Zonca (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent, Met-Ed, or Company) on February 8, 2019, objecting to the installation of a smart meter at her residence located at 15 Sherman Road, Ottsville, Pennsylvania (service location or service address) due to health concerns. As relief, Complainant requested she be allowed to opt-out of smart meter installation.

On March 11, 2019, Respondent filed an Answer and New Matter denying the material allegations in the Complaint.

On March 11, 2019, Respondent also filed Preliminary Objections to the Complaint.

On March 28, 2019, Complainant filed a reply to the Company's Answer and New Matter.

On April 10, 2019, a Motion Judge Assignment Notice was issued assigning this proceeding to the undersigned presiding officer.

On May 3, 2019, an Interim Order was issued denying Respondent's Preliminary Objections.

On October 24, 2019, an Interim Order was entered establishing a procedural schedule. On October 28, 2019, a Corrected Interim Order was entered regarding the procedural schedule.

On January 9, 2020, the Commission issued a Call-in Telephone Hearing Notice, scheduling an evidentiary hearing for February 19, 2020.

On February 19, 2020, an evidentiary hearing was held. Complainant presented her case through her own testimony and did not offer any exhibits. Respondent presented its case through the testimony of Company employee Mr. John Ahr and offered exhibits JCA-1 and JCA-2, which were admitted into evidence. Official notice was taken of Respondent's exhibits PD-1 through PD-5.

On April 6, 2020, an Interim Order Setting Briefing Schedule was issued requiring the parties to submit any briefs in this matter on or before May 29, 2020.

On May 29, 2020, Respondent filed its Main Brief. Complainant did not file a brief.

On August 14, 2020, an Interim Order was issued closing the evidentiary record.

FINDINGS OF FACT

1. Complainant is Lauren Zonca, who resides at 15 Sherman Road, Ottsville, Pennsylvania (service address).

2. Respondent is Metropolitan Edison Company, an electrical distribution company (EDC) that provides residential electrical service to Complainant at the service address.

3. Complainant offered her own lay witness testimony at the hearing.¹

4. Respondent offered testimony of Company employee, John Ahr.²

5. On October 15, 2008, the Pennsylvania legislature adopted Act 129 of 2008 (Act 129), requiring all EDC's with at least 100,000 customers to file a smart meter technology procurement and installation plan (SMTPIP) with the Commission for approval.³

6. Metropolitan Edison company is an EDC with at least 100,000 customers.⁴

7. On June 24, 2009, the Commission issued an implementation order providing general directions to EDCs regarding their adoption of smart meter programs and requiring Respondent to submit its initial SMTPIP.⁵

¹ Tr. 10:17-19:9.

² Tr. 20:12-53:20.

³ Tr. 26:24-27:5; Exhibit PD-1.

⁴ Tr. 28:24-29:4.

⁵ Tr. 29:8-14; Exhibit PD-2.

8. On August 14, 2009, Respondent submitted its SMTPIP to the Commission for approval.⁶
9. On June 9, 2010, the Commission approved Respondent's SMTPIP with modifications.⁷
10. On December 31, 2012, Respondent filed its initial smart meter deployment plan (SMDP) with the Commission.⁸
11. Following a review process and some modifications, the Commission approved the Company's final SMDP on June 5, 2014.⁹
12. The final SMDP identifies how the Company's smart meter technology was chosen, the features and characteristics of the smart meter technology, the communication process between the smart meters and the Company, and the benefits associated with the deployment of smart meters.¹⁰
13. Met-Ed is installing Itron OpenWay Centron smart meters.¹¹
14. Respondent's SMDP does not allow customers to opt out of smart meter installation.¹²

⁶ Tr. 31:17-23.

⁷ Tr. 32:2-5; Exhibit PD-3.

⁸ Tr. 33:24-34:1.

⁹ Tr. 34:24-35:2; Exhibit PD-4.

¹⁰ Tr. 36:23-37:3.

¹¹ Tr. 37:23-38:1.

¹² Tr. 38:13-39:18; Exhibit JCA-1, p. 47.

15. The smart meter relays to the Company only information regarding a consumer's electricity consumption and does not relay information regarding what is causing the consumption.¹³

16. Respondent has a Commission-approved privacy policy it must follow.¹⁴

17. Respondent's privacy policy provides that the Company will not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employee identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's informed consent.¹⁵

18. The privacy policy provides that customer names, addresses, Social Security numbers, and similar sensitive account numbers are not transmitted through the smart meter network.¹⁶

19. The smart meter network includes a number of security protections to prevent against the unauthorized access of a customer's usage data, including encryption, firewalls, password protection, and continuous security monitoring.¹⁷

20. The Company's smart meter network complies with the advanced metering infrastructure guidelines published by the North American Energy Standards Board (NAESB) and the National Institute of Standards and Technology (NIST).¹⁸

¹³ Tr.41:1-11.

¹⁴ Tr. 41: 12-42:2; Exhibits JCA-2, PD-5.

¹⁵ Tr. 43:25-44:7; Exhibit JCA-2.

¹⁶ Tr. 44:14-16; Exhibit JCA-2.

¹⁷ Tr. 44:21-25.

¹⁸ Tr. 45:14-46:8.

21. Respondent's smart meters are compliant with the standards set by the Federal Communications Commission (FCC) and the American National Standards Institute (ANSI) and are Underwriter Laboratory (UL) certified.¹⁹

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa.Cmwlth. 2008).

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

¹⁹ Tr. 26:15-27:5.

County, Pa., Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).²⁰

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

When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in [the] particular case, whether there is sufficient evidence to support a finding that Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at *12-13). *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018 at 10).

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

²⁰ 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).

66 Pa.C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

Section 1501 of the Public Utility Code states, in pertinent part, that:

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

66 Pa.C.S. § 1501.

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

Smart Meter Mandate

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).²¹ The Commission recently held in a similar complaint proceeding that: (1) there is no provision in the Code or Commission regulations or orders that allows a customer to opt-out of a smart meter installation; (2) there is Commission precedent that no opt-out provision exists in current Pennsylvania law; and (3) the EDC is legally required to install smart meters by Act 129 and Commission orders.²²

²¹ 66 Pa.C.S. § 101, *et seq.*

²² *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019). *See also, e.g., Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011);

Here, there is no dispute that Act 129 does not provide for customers to opt-out of smart meter installation. Complainant testified she believes Act 129 requires Met-Ed to install a smart meter at the service location.²³ Complainant testified that if Met-Ed were to install a smart meter at the service location, it would be in violation of Section 1501 of the Public Utility Code.²⁴

Unreasonable or Inadequate Service

Complainant testified about the reasons why she does not want a smart meter and addressed her concerns related to health, safety, and privacy.

As noted above, pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.

At the hearing, Complainant testified that smart meters pose a health risk, are a fire risk, and would violate her privacy, but she failed to present any credible or competent evidence to support her general concerns.²⁵

Mr. Ahr testified he had no reason to believe that Respondent's smart meters are unsafe.²⁶ He testified that the smart meters are compliant with the standards set by the FCC and ANSI and are UL certified.²⁷ He also testified about Met-Ed's privacy policy and network

Negley v. Metro. Edison Co., Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011, became final without Commission action on March 3, 2011).

²³ Tr.18:10-13.

²⁴ Tr. 18:15-24.

²⁵ Tr. 11:13-12:2.

²⁶ Tr. 26:5-27:9.

²⁷ Tr. 26:15-27:9.

security. He testified that Met-Ed's smart meter network complies with the advanced metering infrastructure guidelines published by NAESB and NIST.²⁸

Complainant's evidence consists solely of her unsubstantiated personal feelings and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence.²⁹ Complainant failed to meet her burden to demonstrate that the Company's installation of a smart meter at her residence constitutes unreasonable or inadequate service. Accordingly, Complainant's claims must be dismissed.

CONCLUSIONS OF LAW

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

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

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

²⁸ Tr. 45:14-46:8.

²⁹ Tr. *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

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

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

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

7. When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Order entered Jan. 28, 2016) (citation omitted).

8. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990).

9. Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the

burden of persuasion, to rebut the evidence of the complainant shifts to the respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied the burden of proof. The complainant now has to provide some additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

10. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

11. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

12. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

13. There is no specific provision in the Code or the Commission's regulations or orders that provides that an electric distribution customer may opt-out of smart meter installation. *Povacz v. PECO Energy Co.*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013).

14. Act 129 of 2008, 66 Pa.C.S. § 2806.1 *et seq.*, requires electric distribution companies to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f).

15. A utility may issue written notice of termination to a customer if a customer does not permit access to meters, service connections, or other property of the public utility for the purpose of replacement, maintenance, repair, or meter reading, including the installation of a smart meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa.Code § 56.81(3).

16. Complainant failed to carry her burden of proof establishing that Metropolitan Edison Company violated the Public Utility Code or a regulation or order of the Commission in installing a smart meter at Complainant's property. 66 Pa.C.S. § 332.

17. Complainant failed to carry her burden of proof establishing that Metropolitan Edison Company provided unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Lauren Zonca filed against Metropolitan Edison Company at Docket No. C-2019-3007961 is dismissed with prejudice.
2. That Docket No. C-2019-3007961 be marked closed.

Date: September 10, 2020

/s/
Jeffrey A. Watson
Administrative Law Judge