

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas and Norma Mosley	:	
	:	
v.	:	C-2018-3001526
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

Complainants filed a Formal Complaint against Respondent alleging Respondent was threatening to terminate their service and objecting to the installation of a smart meter at their residence. This decision dismisses the Formal Complaint for failure of Complainants to meet their burden of proof.

HISTORY OF THE PROCEEDING

On April 25, 2018, Thomas and Norma Mosley (Complainants) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) objecting to the installation of a smart meter by Metropolitan Edison Company (Respondent, Met-Ed, or Company) at their residence at 197 Forgehill Road, Hamburg, Pennsylvania (service location or service address).

On May 21, 2018, the Company filed its Answer denying the material allegations within the Formal Complaint and submitted Preliminary Objections.

On June 27, 2018, a Motion Judge Assignment Notice was issued assigning the undersigned Administrative Law Judge (Presiding Officer or ALJ) as the Presiding Officer in this proceeding.

On June 27, 2018, Complainants filed a response to the Company's Preliminary Objections.

On July 24, 2018, an Interim Order was entered denying the Company's Preliminary Objections and referring the matter for mediation.

On August 21, 2018, correspondence was submitted to the Commission on Complainants' behalf.

On October 18, 2018, an Interim Order was entered establishing a procedural schedule in this proceeding.

Complainants subsequently filed correspondence related to their Formal Complaint on December 31, 2018; January 2, 2019; January 14, 2019; January 17, 2019; February 6, 2019; February 13, 2019; February 26, 2019; March 4, 2019; March 11, 2019; March 14, 2019; March 15, 2019; March 18, 2019; April 4, 2019; April 11, 2019; April 29, 2019; and May 14, 2019.¹

On March 13, 2019, and July 26, 2019, Interim Orders were entered revising the procedural schedule in this proceeding.

On August 14, 2019, Complainants submitted a voluminous filing containing a variety of hand-written and printed documents styled as "Evidentiary Hearing and Litigation

¹ Due to multiple dates appearing on Complainants' correspondence, these documents are identified in this Initial Decision by the date stamp applied by the Commission's Secretary's Bureau.

Papers.”² These documents were not offered by the Complainants at the hearing for admission into the record.

On September 4, 2019, September 25, 2019, and October 18, 2019, Complainants submitted additional correspondence regarding their Formal Complaint.

On October 24, 2019, Respondent served its witness’ written testimony and proposed exhibits.

On November 6, 2019, an evidentiary hearing was held in this matter. Ms. Mosley appeared *pro se* and presented her case through her own testimony and exhibits. Exhibits 4a, 4b, and pages 31-39 of Exhibit 7 were admitted into the record.³ Met-Ed presented its case through the written and oral testimony of Mr. John Ahr. Mr. Ahr’s written testimony was admitted into the record as Statement No. 1. Additionally, the Company offered Exhibits JCA-1, JCA-2, and JCA-3, which were admitted into evidence. Official notice was taken of House Bill No. 1565, Session 2017⁴ and the entirety of the Public Utility Code.⁵

On December 20, 2019, an Interim Order Setting Briefing Schedule was issued requiring the parties to submit any briefs in this matter on or before January 22, 2020. The Order also provided that no reply briefs would be accepted unless authorized by the Presiding Officer.

² It is unclear from the record to what extent Complainants intended these documents to be written testimony and/or proposed exhibits. Ultimately, at the evidentiary hearing, Complainants provided oral testimony and identified several documents contained in this filing as proposed exhibits.

³ Exhibit 4c was initially admitted into the hearing record. (Tr. 81:9). However, upon the undersigned’s further consideration of the exhibit, it was ultimately not admitted. (Tr. 124:19-125:12)

⁴ Tr. 44:9-10.

⁵ Tr. 123:14-15.

On November 20, 2019, Complainants filed a brief.⁶ On January 10, 2020, Complainants filed a second brief.⁷

On January 22, 2020, Respondent filed its Main Brief.

The hearing record closed by Interim Order on May 27, 2020.

FINDINGS OF FACT

1. Complainants are Thomas and Norma Mosley, who reside at 197 Forgehill Road, Hamburg, Pennsylvania (service location or service address).

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

3. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to install smart meters throughout their service territories.⁸

4. Respondent has more than 100,000 customers.⁹

⁶ Complainants' brief filed on November 20, 2019, contains extra-record information. This extra-record information was not considered by the ALJ in preparing this Initial Decision.

⁷ Complainants' brief filed on January 10, 2020, contains extra-record information. This extra-record information was not considered by the ALJ in preparing this Initial Decision. On January 29, 2020, Complainants filed additional correspondence in response to the Company's brief. This correspondence was filed after the January 22, 2020, deadline for briefs, and the Presiding Officer did not authorize the filing of reply briefs. Therefore, the undersigned disregarded Complainants' January 29, 2020, correspondence in its entirety.

⁸ Stmt. No. 1, 4:13-14.

⁹ Stmt. No. 1, 4:9-10.

5. Act 129 provides a list of required smart meter functionality, including bidirectional communications, the ability to record consumption data in at least hourly intervals, and the ability to provide customers with access to this interval usage data.¹⁰

6. Respondent's final Smart Meter Deployment Plan (SMDP) was approved by the Commission on June 5, 2014.¹¹

7. The SMDP does not provide for customers to "opt-out" of smart meter deployment.¹²

8. Respondent's SMDP requires it to deploy 98.5% of smart meters to its customer service locations by mid-2019, and the remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, by 2022.¹³

9. The smart meters and the communication network and supporting system are referred to together as advanced metering infrastructure (AMI).¹⁴

10. The AMI being deployed by Respondent allows for bidirectional communication between the meters and Respondent, 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.¹⁵

¹⁰ Stmt. No. 1, 4:14-19.

¹¹ Stmt. No. 1, 9:4-5.

¹² Exhibit JCA-1 at 9 and 47.

¹³ *Id.*

¹⁴ Stmt. No. 1, 10:3-4.

¹⁵ Stmt. No. 1, 10:3-8.

11. The manufacturer of Respondent's smart meters, Itron, Inc., enlists certified personnel to perform the required American National Standards Institute (ANSI) tests on metering products commercialized by Itron.¹⁶

12. Respondent's smart meters are Underwriters Laboratories (UL) certified.¹⁷

13. Respondent's smart meters can communicate a customer's total electric usage to Respondent, but not what is causing the usage.¹⁸

14. Respondent's Privacy Policy related to the confidentiality and cybersecurity protections applicable to smart meters was approved by the Commission on March 18, 2015.¹⁹

15. Respondent's smart meter network utilizes a number of cybersecurity protections to guard against unauthorized access to customer's usage data.²⁰

16. As of the date of the hearing, Respondent had not installed a smart meter at the service location.²¹

17. Complainants offered lay witness testimony of Ms. Mosley at the evidentiary hearing in this matter and presented documentary evidence.²²

¹⁶ Stmt. No. 1, 12:6-9.

¹⁷ Stmt. No. 1, 12:13-15.

¹⁸ Stmt. No. 1, 12:17-13:2.

¹⁹ Stmt. No. 1, 13:4-5; JCA-2.

²⁰ Stmt. No.1, 14:3-8.

²¹ Stmt. No. 1, 7-9.

²² Tr. 20:9-130:18.

18. Respondent offered testimony by Company employee, John Ahr.²³

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*

²³ Stmt. No. 1; Tr. 134:11-12.

County, Pa., Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).²⁴

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

When presented with a challenge to 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 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.”

²⁴ 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).²⁵ Act 129 required EDCs with at least 100,000 customers, such as Met-Ed, to file a smart meter deployment plan with the Commission for approval.²⁶ Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows:

1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the

²⁵ 66 Pa.C.S. § 101 *et seq.*

²⁶ 66 Pa.C.S. § 2807(f); *see* Exhibit JCA-1.

request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.²⁷

Respondent's final Smart Meter Deployment Plan (SMDP) was approved by the Commission on June 5, 2014.²⁸ The SMDP requires Met-Ed to deploy 98.5% of smart meters to its customer service locations by mid-2019, and the remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, by 2022.²⁹ The SMDP does not provide an opt-out for customers.³⁰

Complainants argue that there is no federal mandate for smart meters.³¹ Ms. Mosley testified it was her understanding that under the "Energy Policy Act of 2005" and the "2007 Energy Bill," residential customers needed to opt-in to receive a smart meter.³²

Ms. Mosley also argued that Act 129 is fraudulent because it "is based on false information,"³³ but she did not specify which information was allegedly false. Furthermore, she argued customers must opt-in to smart meter installation under Act 129³⁴, and by making smart meters mandatory, the Commission has implemented Act 129 in an "unauthorized way."³⁵

Ms. Mosley testified she considers the smart meter mandate to be an "adhesion contract" that is "unconscionable" and an "act of fraud," because the contract terms were not

²⁷ 66 Pa.C.S. § 2807(f)(2).

²⁸ Stmt. No. 1, 9:4-5.

²⁹ *Id.*

³⁰ Exhibit JCA-1 at 9 and 47.

³¹ Tr. 36:2-3.

³² Tr. 37:18-19, 38: 5-8.

³³ Tr. 44:14-15.

³⁴ Tr. 52:12-15.

³⁵ Tr. 44:16-23.

fully disclosed to her.³⁶ Finally, Ms. Mosley argued that forcing people to pay to opt-out of smart meter installation violates the Fourth Amendment to the United States Constitution³⁷, but there is no evidence in the record showing that anyone was requiring Mrs. Mosley to pay to opt-out of smart meter installation.

Commission precedent supports Respondent's conclusion that the Commission cannot grant exceptions to the statutory directive that smart meters be installed at all service locations and allow customers to "opt-out."³⁸ Neither the Company's Commission-approved SMDP nor Act 129 provide for such opt-outs to occur.³⁹ The Commission has recently reaffirmed this conclusion, holding 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.⁴⁰

The issue of whether smart meters are required by Act 129 and Commission Orders is a question of law, which at this point is well-settled. In addition, Complainants presented no evidence to show that Respondent's refusal to allow Complainants to opt-out of smart meter installation is in any way a violation of the Company's SMDP or other Commission Order. Accordingly, this claim is not supported by the evidence and must be dismissed.

Unreasonable or Inadequate Service

Complainants raised several health, safety, and privacy concerns related to smart meters. Complainants' evidence, consisting primarily of Ms. Mosley's unsubstantiated lay

³⁶ Tr. 45:11-24.

³⁷ Tr. 51:19-52:12.

³⁸ See, e.g., *Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered March 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Final Order entered March 3, 2011).

³⁹ 66 Pa.C.S. § 2807(f); Exhibit JCA-1.

⁴⁰ *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

opinions, failed to meet their burden of proof to show that the proposed installation of a smart meter at the service location constitutes unreasonable or inadequate utility service.

As cited 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.⁴¹ Complainants have failed to demonstrate that the installation of a smart meter at their residence would constitute unreasonable or inadequate service under Section 1501.

Regarding her privacy concerns, Ms. Mosley presented her belief and lay opinion that smart meters “consistently snoop[] into your home 24 hours a day with data on what you are doing, what part of the house you’re in, whether the electricity is being used, [and] what appliances you are using.”⁴²

Regarding her safety concerns, Ms. Mosley testified she is concerned that the smart meter would cause a fire,⁴³ and because her house is made completely of wood,⁴⁴ she “wouldn’t have a chance”⁴⁵ if it did. She also testified that she lives in a 150-year-old farmhouse, and she is concerned that her house is “not going to work with the smart meter because [the smart meter] will be too powerful for my electricity.”⁴⁶

⁴¹ 66 Pa.C.S. § 1501.

⁴² Tr. 51:9-18.

⁴³ Tr. 101:6.

⁴⁴ Tr. 105:8-15.

⁴⁵ Tr. 106:4-8.

⁴⁶ Tr. 105:8-15.

Regarding her health concerns, Ms. Mosley testified she suffers from various conditions including “severe asthma”⁴⁷ and migraines,⁴⁸ has had operations on her spine⁴⁹ and heart,⁵⁰ and has artificial valves in her heart.⁵¹ She testified that she is sensitive to the “EMF and RF fields”⁵² emitted by smart meters and cannot go into any structure where a smart meter has been installed.⁵³ She testified she fears for her health⁵⁴ and has suffered stress and anxiety as a result this case.⁵⁵ She offered some of her medical records into evidence.⁵⁶ Notably, her doctor writes, “Norma mentioned that a new ‘smart meter’ instead of analog electric meter is about to be installed outside her home. She is very distressed by that thought. I have no competence to evaluate the effect of such ‘smart meter’ on people’s health. In general, however, I can see that this is very distressing for Norma generating high anxiety in her case and that could definitely affect her well-being and overall health.”⁵⁷

The medical records offered by Ms. Mosley entered the hearing record without objection. However, the statements and opinions written by her doctor are hearsay; he was not present to be recognized as an expert or explain the bases for his opinions. By his own admission he is not competent to evaluate the health effects of smart meters. As a result, the undersigned does not give weight to the opinions of Ms. Mosley’s doctor contained in her medical records.

⁴⁷ Tr. 58:3-7.

⁴⁸ *Id.*

⁴⁹ Tr. 93:4-6.

⁵⁰ *Id.*

⁵¹ Tr. 57:23-24.

⁵² Tr. 91:1-3.

⁵³ Tr. 58:3-7.

⁵⁴ Tr. 104:24-25.

⁵⁵ Tr. 92:9-11.

⁵⁶ *See* Exhibit 7, pgs. 31-39.

⁵⁷ Exhibit 7, pg. 32.

In rebuttal, the Company offered the testimony of employee Mr. John Ahr. Mr. Ahr testified that the only information that is accessible to the Company through a smart meter is the customer's electricity usage.⁵⁸ He testified that the smart meters installed by the Company comply with all safety requirements and standards established by the Federal Communications Commission, meet ANSI standards, and are UL certified.⁵⁹ He also testified he was unaware of smart meters causing any fires in Respondent's service territory.⁶⁰

Respondents' Commission-approved Privacy Policy was also admitted into evidence.⁶¹ The Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information.⁶² The Privacy Policy states that Respondent will not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's consent.⁶³ The Privacy Policy explains the security protections in place when a customer's usage data is transmitted across the smart meter network. The smart meter network includes several security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.⁶⁴

⁵⁸ Stmt. No.1, 12:21-13:2.

⁵⁹ Tr. 146:2-8.

⁶⁰ Stmt. No. 1, 11:27-29.

⁶¹ Exhibit JCA-2.

⁶² *Id.*

⁶³ *See Id.* at 2-3; Tr. 146:9-149:1.

⁶⁴ Tr. 148:8-16; Exhibit JCA-2 at 3-4.

There is no competent evidence in the hearing record to support Ms. Mosley's privacy, safety, or health concerns except for her own lay testimony and her unsupported assertions and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence.⁶⁵

As a lay witness, Ms. Mosley is not qualified to testify or offer information contained in reports and other sources related to any issues outside of her direct personal knowledge. According to Pennsylvania Rule of Evidence 701,⁶⁶ a lay witness is limited to giving opinion testimony that is rationally based on the witness's own perceptions. Specifically, Rule 701 provides as follows:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot allow lay witnesses to testify to technical matters "without personal knowledge or specialized training."⁶⁷ Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.⁶⁸

In this case, much of Complainant's testimony was related to issues outside the scope of her personal knowledge and was based on hearsay. All such testimony was properly excluded upon objection.

⁶⁵ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁶⁶ Pa.R.E. 701.

⁶⁷ *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

⁶⁸ Pa.R.E. 701.

While Complainants undoubtedly suffer from various medical issues, there is insufficient evidence in the hearing record to show that the installation of a smart meter at the service location would constitute unreasonable or inadequate service under Section 1501. Accordingly, the Formal Complaint must be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 102, 107, 331, 701, 1501.

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

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

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

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

which the commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa.C.S. § 701.

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

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

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

9. Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal weight, Complainant has not satisfied the burden of proof. Complainant now has to provide some additional evidence to rebut the evidence of Respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

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

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

12. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102 and 1501.

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

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

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

16. Complainants have failed to carry their burden of proof establishing that Metropolitan Edison Company violated the Public Utility Code or a regulation or order of the Commission in requiring installation of a smart meter at Complainants' property. 66 Pa.C.S. § 332.

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

