

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen Anthony	:	
	:	
v.	:	C-2018-3000490
	:	
PPL Electric Utilities Corporation	:	

**INITIAL DECISION**

**\*\*\*NON-PROPRIETARY VERSION\*\*\***

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**INTRODUCTION**

A residential customer filed a complaint seeking to prevent an electric distribution company (EDC) from installing a smart meter a/k/a “Advanced Metering Infrastructure (AMI) meter” or “Radio Frequency (RF) meter” on her residence. 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.

**HISTORY OF THE PROCEEDING**

On March 12, 2018, Kathleen Anthony (Complainant) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) averring she wishes to opt-out of a smart meter installation at her residence, 505 Norway Place, Bethlehem, Pennsylvania pursuant to Act 129 of 2008 and for health and safety reasons. On March 15, 2018, the

Complaint was served upon PPL Electric Utilities Corporation (PPL, PPL Electric, Company or Respondent).

On April 4, 2018, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainant at the address shown 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 April 9, 2019, the Complaint was Amended adding a claim that her current powerline carrier meter (PLC) meter system in her neighborhood for over 17 years was harming her health. Respondent did not submit an Answer to the amended Complaint.

After several continuances, an evidentiary hearing was held on June 25, 2020. At the hearing, Complainant appeared *pro se* with 10 exhibits, premarked A-J. Respondent appeared represented by Devin Ryan, Esquire and Curtis Renner, Esquire with 15 exhibits and four witnesses: Mike Asbury (who adopted pre-served testimony and exhibits of Donald Vinciguerra), Kevin Durkin, Christopher Davis, Ph.D., and Mark Israel, M.D. An 89-page transcript of the hearing was filed on July 10, 2020, and the record closed the same date. This case is ripe for a decision.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is Kathleen Anthony, who resides with her spouse at 505 Norway Place, Bethlehem, Lehigh County, Pennsylvania (service address). Tr. 7-8.

2. Complainant requests a smart meter not be installed at the service address and she wishes to continue to use a powerline carrier (PLC) meter; however, she requests PPL conduct an investigation into whether a PLC meter has harmful health effects. Tr. 7-12.

3. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 12.

4. On June 30, 2014, PPL filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 and the Commission's Smart Meter Implementation Order. PPL Electric Exhibit No. 3.

5. PPL selected Radio Frequency (RF) Mesh meters and metering system because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the Smart Meter Implementation Order. PPL Electric Exhibit No. 3 at 5-6.

6. Under the Smart Meter Plan, the RF Mesh meters are to be deployed between 2017 and 2019 for all of PPL's 1.4 million customers. PPL Electric Exhibit No. 3.

7. PPL had deployed over 1,000,000 RF Mesh meters as of the July 27, 2020 hearing. PPL Electric Exhibit No. 3.

8. The RF Mesh meter to be installed for the Complainant's residential account is the Landis + Gyr Focus AXR-SD meter. PPL Electric Statement No. 4.

9. Complainant has a Bachelor of Arts degree in music education. Tr. 36.

10. Complainant is employed at a pharmacy. Tr. 36.

11. Complainant does not have a degree in engineering or medicine. Tr. 36.

12. Complainant uses a cell phone. Tr. 36-38.

13. The Landis + Gyr Focus AXR-SD meter is certified by the Underwriters Laboratories at UL 2735. PPL Electric Statement No. 4.

14. The Landis + Gyr Focus AXR-SD meter is compliant with the American National Standards Institute (ANSI). PPL Electric Statement No. 4.

15. PPL Witness Davis has a Ph.D. in Physics and is a retired Professor from the University of Maryland, where for over 30 years he taught Physics, Electrical Engineering, Electromagnetics, and RF Electromagnetics to undergraduate and graduate students. PPL Electric Statement No. 1 at 1-5.

16. In addition to his teaching, Dr. Davis is an active scientific researcher in the fields of Physics, Biophysics, Electrical Engineering, Bioelectromagnetics and RF Bioelectromagnetics, conducting many scientific studies in these fields and publishing over 250 studies in peer-reviewed scientific journals. PPL Electric Statement No. 1 at 1-5.

17. Dr. Davis conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by PPL. PPL Electric Statement No. 1 at 3.

18. RF fields are part of the lower energy, non-ionizing portion of the electromagnetic spectrum which consists of lower frequency signals that do not have enough energy to break chemical bonds in cells or DNA. PPL Electric Statement No. 1 at 5-6.

19. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and Wi-Fi networks. PPL Electric Statement No. 1 at 5-6, 12.

20. The Federal Communications Commission (FCC) has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. PPL Electric Statement No. 1 at 9-10.

21. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies,

including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). PPL Electric Statement No. 1 at 9-10.

22. The levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 13, PPL Electric Exhibit CD2.

23. RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. PPL Electric Statement No. 1 at 7.

24. There are five television broadcast towers within a 50-mile radius of Complainant's location in Bethlehem, Pennsylvania. PPL Electric Statement No. 1 at 14-15.

25. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 197 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 14-15, PPL Electric Exhibit CD-5.

26. The RF exposure from a cell phone used at a person's head is 260,000 times higher than the average RF levels one meter away from the Company's new smart meter. PPL Electric Statement No. 1 at 14.

27. PPL Witness Israel received his undergraduate degree from Hamilton College and his medical degree from the Albert Einstein College of Medicine, and he completed his medical training at Harvard Medical School. PPL Electric Statement No. 2 at 1.

28. Dr. Israel is a Professor of Medicine, Pediatrics, and Molecular and Systems Biology at the Dartmouth Medical School and the Executive Director of the Israel Cancer Research Fund in New York, an international charitable fund for medical and scientific research programs. PPL Electric Statement No. 2 at 1.

29. Dr. Israel is board certified and licensed to practice medicine. PPL Electric Statement No. 2 at 3.

30. Dr. Israel has conducted medical research for 40 years in a wide variety of areas, including systems biology, biochemistry, cell biology, cancer, molecular biology, and molecular genetics and has published over 245 medical research studies in leading peer-reviewed scientific journals. PPL Electric Statement No. 2 at 3-4.

31. Dr. Israel has taught medicine and science for more than 30 years to medical students, graduate students, interns, residents, and practicing physicians in a number of fields, including endocrinology, immunology, hematology, neurology, cardiology, biochemistry, cell biology, genetics, molecular genetics, medical oncology, and radiation oncology. PPL Electric Statement No. 2 at 3.

32. Claimed symptoms related to Electromagnetic Hypersensitivity (EHS) are more accurately described as “Idiopathic Environmental Intolerance” (IEI), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. PPL Electric Statement No. 2.

33. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2.

34. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2.

35. The World Health Organization (WHO) and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone use, which are far higher than the RF from PPL’s smart meters, has not shown that RF fields cause adverse health effects. PPL Electric Statement No. 2, PPL Electric Exhibit MI-1.

36. Several U.S. state public health authorities also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. PPL Electric Statement No. 2, PPL Electric Exhibit MI-2.

37. There are no reliable consistent studies on whether exposure to RF fields causes or contributes to cancer in laboratory animals. PPL Electric Statement No. 2.

38. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2.

39. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. PPL Electric Statement No. 2.

## 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 County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).<sup>1</sup>

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, 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.*

---

<sup>1</sup> 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).

*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”).

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*, 1992 Pa. PUC Lexis

160, at \*12-13). *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018) (*Frompovich*).

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, *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997) (*Kossmann*); *Stiteler v. Bell Telephone Co. of Pa.*, A.2d 339 (Pa. Cmwlth. 1977).

Under the relaxed evidentiary standards applicable to administrative proceedings, *see*, 2 Pa. C.S. § 505, it is well-settled that simple hearsay evidence, which otherwise would be inadmissible at a trial, generally may be received into evidence and considered during an administrative proceeding. *D'Alessandro v. Pa. State Police*, 937 A.2d 404, 411 (Pa. 2007). (*D'Alessandro*). The Supreme Court of Pennsylvania stated: "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Pa.R.E. 801(c). Hearsay evidence is normally inadmissible at trial unless an exception provided by the Pennsylvania Rules of Evidence, jurisprudence, or statute is applicable. Pa.R.E. 802. Therefore, hearsay evidence may generally be received and considered during an administrative proceeding. *See A.Y. v. Pa. Dep't of Pub. Welfare, Allegheny County Children & Youth Serv.*, 641 A.2d 1148, 1150 (Pa. 1994).

However, whether simple hearsay may support a finding of an agency depends on whether the evidence meets the criteria of the *Walker/Chapman* rule. The *Walker/Chapman* rule provides that simple hearsay evidence may support an agency's finding of fact so long as the hearsay is admitted into the record without objection and is corroborated by competent evidence in the record. *See Walker v. Unemployment Compensation Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (*Walker*) (citations omitted); *see also Chapman v. Unemployment Compensation Bd. of Review*, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. 2011) (*Chapman*).

Under Pennsylvania's *Walker/Chapman* Rule, it is well-established that "[h]earsay evidence, properly objected to, is not competent evidence to support a finding." Even if hearsay evidence is "admitted without objection," the ALJ must give the evidence "its natural

probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record,” as “a finding of fact based solely on hearsay will not stand.” *Walker* at 370 (citations omitted).

To be “properly objected to” in an administrative proceeding, the hearsay evidence must not fall within one of the recognized exceptions to the rule against hearsay. Hearsay that falls within one of the recognized exceptions to the hearsay rule is competent evidence that may be relied upon by the agency. *See Chapman, supra*, n. 8 (finding that the Board properly relied upon a party’s admission as competent evidence as a recognized exception to the hearsay rule); *see also, Sanchez v. PPL Electric Utilities Corp.*, Docket No. C-2015-2472600 (Order entered July 21, 2016) (*Sanchez*) (finding that testimony related to the issuance of a termination letter fell within the business records exception to the hearsay rule, and, therefore, was not simple hearsay, and was competent evidence to be relied upon in the proceeding to determine whether the complainant satisfied her burden of proof); *see also*, Pa.R.E. 802, 803, 803.1 and 804.

#### Health and Safety Concerns

Ms. Anthony testified that **\*\*\*BEGIN PROPRIETARY\*\*\***

**\*\*\*END PROPRIETARY\*\*\*** Complainant claims these health issues are disabilities within the meaning of the American With Disabilities Act and as such, PPL should grant them an accommodation. Complainant argues that an accommodation of continued electric service using an analog meter will not cause any undue burden on PPL. Rather, the accommodation is offered to customers in over 30 other states. In support of her claim, Complainant cites to several authorities including the Americans With Disabilities Act, Section 504 of the Federal Energy Act of 1973, Section 794 of the Federal Fair Housing Act, 42 U.S.C. § 3601, and 66 Pa C.S. §§ 1501, 1502, and 1505. Complainant offered several exhibits consisting of articles, which PPL objected to on the grounds of hearsay.

Conversely, PPL contends Complainant's health and safety concerns were thoroughly rebutted by PPL's witnesses Dr. Davis and Dr. Israel, who in their expert opinions, testified there is no reliable, scientific, or medical basis to conclude that the AMI meter causes, contributes to, or exacerbates adverse health effects. Thus, Ms. Anthony has failed to sustain her burden of proof on this issue. PPL argues no federal law preempts state law at Act 129 and that the Commission has no authority to rule whether the Americans With Disabilities Act is being violated.

### Disposition

Complainant's exhibits contain statements made by third persons not available for cross examination at the hearing. Thus, the articles contain hearsay evidence and could be excluded on that ground. Complainant has a bachelor's degree in music education; however, she is not an expert in medicine or electrical engineering. Her opinion that the AMI meter will cause her medical symptoms and her husband's medical symptoms to become worsened based upon the exhibits submitted is successfully rebutted by the testimonies of Dr. Davis and Dr. Israel. Ms. Anthony's opinion is not an expert opinion and it was successfully refuted by Dr. Israel and Dr. Davis. 66 Pa. C.S. § 332(c). *Answerphone, Inc. & Elite Answering Serv. v. The Bell Tele. Co. of Pa.*, 1993 Pa. PUC LEXIS 70, at \*29-30 (Order entered April 1, 1993).

Additionally, given the credible testimony of Mr. Asbury that the current PLC meter does not emit any radio frequency fields, I am not persuaded to direct PPL to investigate its PLC system per Complainant's request based upon her opinion that radiofrequency fields emitted by the PLC meter in her neighborhood is exacerbating her medical conditions or that the current PLC meter is exacerbating these conditions. The PLC meter does not emit radio frequency fields. Devices in Complainant's household such as the cell phone that she uses in her residence do emit radio frequency fields. The service property in Bethlehem is surrounded by five television UHF towers that emit radio frequency fields exposing Complainant and her spouse to levels at least 197 times greater than she would receive standing within three meters from an AMI meter. Thus, any exposure to radio frequency fields by the Landis + Gyr AMI

meter intended for installation would be *de minimus* in comparison to other background radio frequency fields.

Even if I were persuaded to find Complainant has the claimed ailments, the evidence is inconclusive that radio frequency fields from an AMI mesh meter would cause or exacerbate these health issues. Complainant's testimony based upon hearsay is insufficient to refute the credible testimonies of Dr. Israel and Dr. Davis.

Dr. Israel describes EHS as an IEI, which has an unknown cause. PPL Electric Statement No. 2. The symptoms of EHS seem to vary widely and there is a psychological component to EHS. I am persuaded by the credible testimony of Dr. Israel, who testified that claimed symptoms related to EHS are more accurately described as IEI in which "idiopathic" means "cause unknown." PPL Electric Statement No. 2.

Dr. Israel also evaluated scientific research on RF fields and adverse health effects generally. He testified that he has been systematically examining this research over the past several decades and that many hundreds of studies have been published. PPL Electric Statement No. 2. Dr. Israel described a number of the studies in these areas which he considered good examples of well-designed and well-conducted studies. These studies found no adverse effects on genetics, fertility, reproduction, growth, or development in the animals exposed to RF fields. PPL Electric Statement No. 2. Dr. Israel also provided examples of well-conducted animal studies on RF fields and cancer. He testified that these studies, which involved animals with lifetime exposures to RF fields, did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. PPL Electric Statement No. 2.

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the WHO has concluded that "no adverse health effects have been established as being caused by mobile phone use." PPL Electric Statement No. 2. A number of other public health authorities, including agencies in Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. PPL Electric Statement No. 2; PPL Electric Exhibit MI-1.

In addition, several U.S. state public health authorities and Public Utility Commissions have investigated claims about health effects from smart meters. These include the Maine Center for Disease Control (2010), the Vermont Department of Health (2012), Arizona Department of Health, Office of Environmental Health (2014), and North Carolina Department of Health and Human Services, Division of Public Health, Occupational and Environmental Epidemiology Branch (2015). These evaluations by State public health authorities and Public Utility Commissions conclude that RF fields from smart meters do not pose any public health risk. PPL Electric Statement No. 2; PPL Electric Exhibit MI-2.

There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL Electric will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2. There is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, including tinnitus, or any other adverse health effects. PPL Electric Statement No. 2.

Additionally, on this issue, I find credible the expert testimony of PPL witness Dr. Davis who opined the Landis + Gyr AMI meter would not cause adverse health effects. Complainant's articles hold less weight than the studies relied upon by Dr. Davis in forming his expert opinion as they are not published in scientific or medical journals.

Dr. Davis conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by PPL. PPL Electric Statement No. 1. RF fields are part of the lower energy, non-ionizing portion of the electromagnetic spectrum which consists of lower frequency signals that do not have enough energy to break chemical bonds in cells or DNA. PPL Electric Statement No. 1. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and Wi-Fi networks. PPL Electric Statement No. 1.

The FCC has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. PPL Electric Statement No. 1. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the FDA and the EPA. PPL Electric Statement No. 1.

The levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1, PPL Electric Exhibit CD2. RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. PPL Electric Statement No. 1.

There are five television broadcast towers within a 50-mile radius of Complainant's location in Bethlehem, Pennsylvania. PPL Electric Statement No. 1 at 14-15. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 197 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 14-15, PPL Electric Exhibit CD-5. The RF exposure from a cell phone used at a person's head is 260,000 times higher than the average RF levels 1 meter away from the Company's new smart meter. PPL Electric Statement No. 1 at 14.

For all of these reasons, I find in favor of PPL on this issue.

Finally, the Commission is not a federal court, which is designed to make such determinations regarding violations of the Americans With Disabilities Act.<sup>2</sup> *See also, Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 30 (entered May 19, 1999) (*MAPSA*), and *Mid-Atlantic Power Supply Assoc. v. Pa. Pub.*

---

<sup>2</sup> The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services. The current text of the ADA includes changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA is published in the United States Code. The Federal Communications Commission is the federal agency regulating telephone relay services.

*Util. Comm'n*, 746 A.2d 1196 (Pa.Cmwlth. 2000), wherein the Commonwealth Court affirmed that the Commission did not have jurisdiction to find a violation of the federal Unfair Trade Practices Act. Accordingly, the Commission has no jurisdiction to find Mr. or Ms. Anthony to be disabled within the meaning of the ADA or to direct PPL to provide them with an ADA accommodation such as an opt-out from a smart meter installation as requested by Ms. Anthony.

### Opt-In versus Opt-Out Program

Complainant argues that over 30 other States have an opt-in program and that the Commission misconstrued Section 2807 of Act 129 of 2008, 66 Pa. C.S. §§ 2806.1-2807. She contends there is nothing in the statute requiring the EDC to deploy smart meters to all service locations. Rather, she argues that only those individuals requesting the meters and locations that involve new construction should receive them.

Conversely, PPL contends its installation of an AMI Meter is required by Pennsylvania law and that it would not constitute unreasonable or unsafe service to install an AMI Meter on Complainant's property.

### Disposition

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.*, C-2016-2572824 and C-2016-2577527 (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). Moreover, the Commonwealth Court has held that federal law does not preempt the Commission's interpretation. *See Romeo*. The Commonwealth Court did not expressly address whether Mr. Romeo could opt-out of a smart meter installation. The Court held that Mr. Romeo's claim that smart meters cause safety and fire hazards and have a negative health impact, is not legally insufficient pursuant to 66 Pa. C.S.

§ 1501, which requires utilities to maintain adequate, efficient, safe, and reasonable service and facilities for their customers. *Id.*

I infer from the *Romeo* decision that it is legally sufficient to plead the injunctive relief requested in the instant case and claim that smart meters are generally unsafe and unhealthy, and the installation of them is unreasonable service in violation of 66 Pa. C.S. § 1501. However, the Commonwealth Court did not expressly address the opt-in versus opt-out argument. Although Complainants similarly situated to Mr. Romeo are entitled to an evidentiary hearing, there is Commission precedent that there is no opt-out provision in the current law in Pennsylvania.

The fact that other States have opt-out provisions in their law is noted but is non-binding. The Commission is formulating binding policy through adjudications which constitute binding precedent regarding this issue. *See Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007), *citing Pacific Gas & Electric Co. v. FPC*, 164 U.S. App. D.C. 371, 506 F.2d 33 (D.C. Cir. 1974). 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. Dept. of Env'tl. 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 EDCs 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 of 2008, 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.

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 desires the ability to opt-out of the smart meter installation, she can continue advocating for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills. These bills are not yet 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 Co.*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013). The Commission held that similarly situated respondents

would be in violation of law if they did not install a smart meter at properties similarly situated to Complainant's residence. *Id.*, *Frompovich* at 7-8. Thus, I find in favor of PPL on this issue.

### Data Privacy

Complainant contends that the new AMI meter will invade her privacy and that mandatory installation of a smart meter violates her Fourth Amendment Rights against unreasonable search and seizure. Tr. 75-80.

Conversely, PPL argues that any claim that the installation of the meter would violate the Fourth Amendment is incorrect. Tr. 85-87. To support its position, PPL cites the caselaw decision in *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974)(*Jackson*) and contends that PPL is not a state actor involved in the installation of smart meters that could violate the constitutional rights of the Complainants. Rather, PPL is a private corporation as defined under Section 102 of the Public Utility Code as an electric distribution company. N.T. 85-87. PPL argues it is deploying to all of its 1.4 million customers, the AMI meters after a fully litigated proceeding before the Commission regarding this specific technology that was approved by the Commission. N.T. 81-87.

### Disposition

As a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data. PPL Electric Exhibit No. DV-1. PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. PPL Statement No. 4. Customer data is encrypted to make the data readable to only PPL personnel who can decode the encryption. PPL Statement No. 4. PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. PPL Statement No. 4. Additionally, if the Complainant is concerned about the AMI meter's connection to smart appliances in their home, she can decline to have the ZigBee radio activated. *See Lesniewski v. PPL Electric Utilities Corp.*, C-2018-3004594 (Final Order entered April 29,

2019, adopting Initial Decision issued March 25, 2019 at 24), wherein the Commission found in favor of PPL regarding the same data privacy issue. Specifically, the Commission held that Ms. Lesniewski had an option to decline activation of the ZigBee radio device located within the AMI meter.

Regarding Complainants' argument that a mandatory smart meter would violate their Fourth Amendment rights of freedom from unreasonable searches and seizures, I agree with PPL that it 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, supra*. Further, there is no evidence in the instant case that PPL is making its data easily accessible to law enforcement or other third parties.

In *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 Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 524 (7th Cir. 2018) (*Naperville*). 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* at 528-29 (citing *Camara v. Municipal Court*, 387 U.S. 523 (1967)). 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 all of these reasons, I find in favor of Respondent on this data privacy issue.

## CONCLUSION

For all of these aforementioned reasons, the complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of this 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. 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. PPL Electric Utilities Corporation's smart meter procurement and installation plan, which was approved by Commission Order in the case of *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) does not contain a provision for customers to opt-out of smart meter installation.

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. Cmwlt. 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. Complainant has failed to sustain her burden of proof that Respondent violated Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

9. 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).

10. 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).

11. Under Pennsylvania’s “*Walker/Chapman Rule*,” it is well-established that “[h]earsay evidence, properly objected to, is not competent evidence to support a finding.” *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976) (citations omitted); *see also, Chapman v. Unemployment Compensation Bd. of Review*, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. 2011).

12. Even if hearsay evidence is “admitted without objection,” the ALJ must give the evidence “its natural probative effect and may only support a finding . . . if it is corroborated by any competent evidence in the record,” as “a finding of fact based solely on hearsay will not stand.” *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976).

13. Complainant has failed to sustain her burden of proof that installing the new AMI meter would violate the Public Utility Code or any Commission regulation or order. *See* 66 Pa. C.S. §§ 332(a), 701.

14. PPL is legally required to install the RF Mesh 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).

15. 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).

16. The Commission previously determined that the Company’s existing PLC meters are not compliant with Act 129 and the Commission’s Smart Meter Implementation Order. *See Petition of PPL Electric Utilities Corporation for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123945, p. 24 (Order entered June 24, 2010).

17. Under the Company’s Commission-approved Smart Meter Plan, PPL must replace all of the PLC meters with the RF Mesh meters, which the Commission declared as meeting all of the requirements of Act 129 and the Commission’s Smart Meter Implementation Order. *See Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015).

18. The Complainant has failed to demonstrate that the new AMI meter causes, contributes to, or exacerbates any adverse health effect.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Amended Formal Complaint filed by Kathleen Anthony against PPL Electric Utilities Corporation at Docket No. C-2018-3000490 is denied and dismissed.

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

Date: September 15, 2020

\_\_\_\_\_  
/s/

Elizabeth H. Barnes  
Administrative Law Judge