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File #: 167945

April 1, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Christie Brzostowski v. PPL Electric Utilities Corporation
Docket No. C-2021-3024568

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objection of PPL Electric Utilities Corporation to the Complaint of Christie Brzostowski for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Nicholas A. Stobbe

NAS/jl
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

Christie Brzostowski
1 East Avenue
Mt. Carmel, PA 17851
E-mail: christiebrz613@yahoo.com



Date: April 1, 2021

Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christie Brzostowski,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3024568
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR PPL ELECTRIC UTILITIES CORPORATION.



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Michael J. Shafer (ID # 205681)
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Date: April 1, 2021

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christie Brzostowski,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3024568
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
PPL ELECTRIC UTILITIES CORPORATION TO THE
COMPLAINT OF CHRISTIE BRZOSTOWSKI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss the above-captioned Formal Complaint (“Complaint”) filed by Christie Brzostowski (“Complainant”) in its entirety and with prejudice.

The instant Complaint challenges PPL Electric’s planned installation of a new automated metering infrastructure (“AMI”) meter at 1 East Avenue, Mt. Carmel, PA 17851, due to allegations that the new AMI meter: (1) is not mandatory; and (2) will cause, contribute to, or exacerbate adverse health effects.

As explained herein, the Commission should summarily dismiss the Complaint because the issues regarding the installation of the AMI meter at this property, as well as the alleged concerns of the Complainant, are barred by the Commission’s prior order in *Brzostowski v. PPL*

Electric Utilities Corp., Docket No. C-2019-3009320 (Order entered May 21, 2020) (“*First Complaint Order*”),¹ pursuant to 66 Pa. C.S. § 316.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. PPL Electric is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

3. On March 12, 2021, PPL Electric was served with the above-captioned Complaint, which challenges the Company’s planned installation of a new AMI meter at 1 East Avenue, Mt. Carmel, PA 17851, due to allegations that the new AMI meter: (1) is not mandatory; and (2) will cause, contribute to, or exacerbate adverse health effects. (Complaint ¶¶ 4-5.) Furthermore, the Complainant requests that the Company be prohibited from terminating her electric service due to her refusal of the AMI meter. *See Appendix A* ¶¶ 4-5. A true and correct copy of the Complaint is attached hereto as **Appendix A**.²

4. PPL Electric herein files this Preliminary Objection to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Commission summarily

¹ PPL Electric notes that the Commission’s May 21, 2020 *First Complaint Order* referred to Complainant as “Christine” Brzostowski. For the purposes of this Answer and New Matter, Complainant will be referred to as “Christie” Brzostowski, consistent with her March 12, 2021 Complaint and her account records on file with the Company.

² PPL Electric notes that no customer account number was provided in the instant Complaint.

dismiss the Complaint because the issues regarding the installation of the AMI meter at this property, as well as the concerns already alleged therein, are barred by the Commission's *First Complaint Order* pursuant to 66 Pa. C.S. § 316.

II. STANDARD OF REVIEW

5. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwth.*, 910 A.2d 775, 781 (Pa. Cmwth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwth. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

7. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT IS BARRED BY SECTION 316 OF THE PUBLIC UTILITY CODE AND, THEREFORE, IS LEGALLY INSUFFICIENT

8. PPL Electric incorporates by reference Paragraphs 1 through 7 as if fully set forth herein.

9. The Complaint should be dismissed in its entirety because it is barred by Section 316 of the Public Utility Code, 66 Pa. C.S. § 316, and, therefore, is legally insufficient. *See* 52 Pa. Code § 5.101(a)(4).

10. As explained previously, the Complainant challenges PPL Electric’s planned installation of a new AMI meter at 1 East Avenue, Mt. Carmel, PA 17851 due to allegations that the installation of the new AMI meter: (1) is not mandatory; and (2) will cause, contribute to, or exacerbate adverse health effects. *See Appendix A ¶¶ 4-5*. The Complainant also argues that PPL Electric should be precluded from terminating her electric service for her refusal of the AMI meter. *See Appendix A ¶¶ 4-5*.

11. On April 22, 2019, PPL Electric was served with the Complaint of Christie Brzostowski (“First Complaint”). The First Complaint was docketed at Docket No. C-2019-3009320. A true and correct copy of the First Complaint is attached hereto as **Appendix B**.³

³ Due to customer privacy concerns, any account numbers in the Complaint have been redacted.

12. By Secretarial Letter dated December 26, 2019, the Commission issued Administrative Law Judge Elizabeth H. Barnes's (the "ALJ") Initial Decision at Docket No. C-2019-3009320, which dismissed the First Complaint because the Complainant failed to prove by a preponderance of the evidence that the installation of the AMI meter constitutes unsafe or unreasonable service under Section 1501 of the Code or that it violates any other provision of the Code, Commission Regulation, Commission Order, or the Company's Commission-approved Tariff. A true and correct copy of that Initial Decision is attached hereto as **Appendix C**.

13. The Complainant filed Exceptions to the Initial Decision dismissing the First Complaint on January 15, 2020.

14. PPL Electric filed Replies to Exceptions on February 3, 2020.

15. On May 21, 2020, the Commission entered an Opinion and Order denying Complainant's Exceptions, adopting the Initial Decision, and dismissing the First Complaint. *See First Complaint Order*. A true and correct copy of the *First Complaint Order* is attached hereto as **Appendix D**.

16. The Complainant never filed a petition for reconsideration challenging the *First Complaint Order*.

17. The Complainant never filed a petition for review with the Commonwealth Court disputing the *First Complaint Order*.

18. The Complainant resides at 1 East Avenue, Mt. Carmel, PA 17851, which is the same service address that she resided at during the adjudication of the First Complaint. *See Appendix A ¶ 1; Appendix B ¶ 1*.

19. In both the instant Complaint and the First Complaint, the Complainant alleges that the new AMI meter to be installed at 1 East Avenue, Mt. Carmel, PA 17851: (1) is not mandatory;

and (2) will cause, contribute to, or exacerbate adverse health effects. Moreover, like in the First Complaint, the Complainant argues in the instant proceeding that PPL Electric should be precluded from terminating her electric service for her refusal of the AMI meter.

20. In fact, the Complainant specifically indicates that the instant Complaint relates to the First Complaint at Docket No. C-2019-3009320. *See Appendix A ¶ 1.*

21. Under Section 5.101(a)(4) of the Commission’s regulations, a party may file a preliminary objection for “legal insufficiency.” 52 Pa. Code § 5.101(a)(4).

22. Pursuant to 66 Pa. C.S. § 316, the instant Complaint is barred by the *First Complaint Order*. Section 316 states, in relevant part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa. C.S. § 316.⁴

23. Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. *See Moore, Jr. v. PECO Energy Company*, Docket No. C-2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), *adopted without modification*, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012); *see also Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Initial Decision issued Feb. 24, 2020), *adopted without modification*, Docket No. C-2019-3014786 (Order entered May 21, 2020).

⁴ To the extent that this argument is found to be more appropriately addressed in a motion for judgment on the pleadings, PPL Electric has raised this affirmative defense in its New Matter to the Complaint and respectfully requests that its Preliminary Objections be treated as a Motion for Judgment on the Pleadings in the interest of administrative and judicial efficiency. *See Raintree Farm Solar v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621826 (Initial Decision dated Nov. 9, 2017), *adopted*, Docket No. C-2017-2621826 (Order entered Jan. 16, 2018).

24. Section 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *See Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989) (citing 66 Pa. C.S. § 316).

25. The *First Complaint Order* was not set aside, annulled, or modified by judicial review. In fact, the *First Complaint Order* was not appealed. Therefore, the *First Complaint Order* remains conclusive upon all parties affected thereby. *See Lehigh Valley*, 563 A.2d at 556 (citation omitted).

26. As noted above, the account holder and service address listed in the instant Complaint are identical to those at issue in the First Complaint. Moreover, to the extent that her issues are any different in the instant Complaint compared to her First Complaint, the Complainant could have and should have raised all of her concerns regarding the installation of an AMI meter at 1 East Avenue, Mt. Carmel, PA 17851 during her First Complaint proceeding at Docket No. C-2019-300932, including PPL Electric's authority to terminate her electric service if she continued to refuse the AMI meter's installation for either this customer account or another PPL Electric customer account in her name. As such, through the instant Complaint, the Complainant is seeking to litigate the same factual and legal issues, related to the same account holder, service address, and service account, which were raised or could have been raised in the First Complaint.

27. Thus, the Complainant's claims and issues are barred by Section 316 of the Public Utility Code, 66 Pa. C.S. § 316.

28. For these reasons, the instant Complaint should be dismissed because the claims and issues raised therein are already subject to a prior Commission order that remains conclusive and binding upon the Complainant.

WHEREFORE, PPL Electric respectfully requests that the above-captioned Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Formal Complaint filed by Christie Brzostowski at Docket No. C-2021-3024568 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



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E-mail: crenner@w-r.com

Date: April 1, 2021

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

**FORMAL COMPLAINT FILED BY CHRISTIE
BRZOSTOWSKI AGAINST PPL ELECTRIC
UTILITIES CORPORATION AT
DOCKET NO. C-2021-3024568
(INSTANT COMPLAINT)**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an Informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Christie Brzostowski

Street/P.O. Box 1 East Avenue Apt #

City Mt. Carmel State PA Zip 17851

County Northumberland

Telephone Number(s) Where We Can Contact You During the Day (required):

(570) 205-1045 (home) () (mobile)

E-mail Address (required): christiebrz613@yahoo.com (can't receive all the time)

Utility Account Number (from your bill) Previous Docket # C-2019-3009320 - Advised to ReFile in Reference to the Decision.

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PP&L

RECEIVED

FEB 24 2021

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
- GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
- WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
- STEAM
HEAT

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
*Threatening to turn off service for Refusal of Smart Meters
See attached page labeled Question 4 Explanation*
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

Note: If your complaint is only about removing or modifying a municipal lien filed by

Question 4 Explanation

I respect the Court and the decision made by the honorable Judge Elizabeth H. Barnes. At the time of the hearing I was unable to properly defend myself due to lack of counsel. I don't understand court procedures, how to accurately present evidence or generate questions to support my case to defend myself. I was also unaware an actual decision was made. I never received an official copy of the decision from the Public Utility Commission. I was notified by PPL after receiving a call approximately two weeks ago that power was going to be disconnected on our property unless we agreed to having a smart meter installed. I informed PPL that I never received a copy of the decision from the Public Utility Commission. I thought there may have been a delay due to COVID. They informed me a copy would be forwarded via email. I informed them that my phone is antiquated and my email app won't open at times since my phone won't accept an update. If I was aware of a decision being made I would have appealed it. I mentioned the State Commonwealth decision from October 2020 written by Judge Ellen Ceisler interpreting the law to support customer choice in the use of smart meter technology. The court has now determined that universal deployment is not required, and that individual customers may be able to "opt out" of receiving a smart meter. The decision was signed by six supporting judges. The PUC issued a stay on dozens of legal challenges from customers opposing the smart meters contingent upon the State Commonwealth decision.

I ask you to consider this perspective from an ethical standpoint. If a PPL customer fails to pay an invoice, a customer has the ability to seek a medical waiver to prevent a customer's power from being disconnected. I've presented a medical issue to PPL and the PUC and our power is going to be cut during the winter months of a pandemic. This is unethical.

On February 18, 2021 I contacted the PUC. It prompted me to leave a message. Shortly after I received a callback from Audry Brown. I informed Audry of my phone call from PPL about disconnecting my service and my concerns regarding the October 2020 decision supporting customer opt out. I provided the case # C-2019-3009320 for Audry to review. I informed Audry I never received an official copy of the decision from the PUC. I asked him for the date of the decision. He informed me it was made May 21, 2020. He took time to review the case and advised me to file a Formal Complaint with the PUC again regarding the matter. Audry also forwarded a copy of the decision. I clarified with him that even though an apparent decision was made can I still file? He said yes, file an Formal Complaint. I thanked him for his time and insight.

Since two of the judges from the October 2020 decision stated that there is no opt out provision, citing if the General Assembly wished to give customers a veto, they could've done so in 2008 or any year since, I reached out to a State Senators office to see if they could review Act 129 by providing legislation to support constituents ability to opt out without having to go through the legal challenges with a billion dollar corporation for freedom of choice. I've also reached out to Steve Harvey's office (Attorney Representing three PECO customers from October 2020 decision).

After reaching out to these offices, I spoke to Joe Chunko at PPL to inform him of my correspondence with the PUC and how I was advised to file another Formal Complaint regarding the matter. On 2-23-21 a door tag was placed on our property that "service will be cut - meter needs changed 3-1-21." I contacted PPL. I received a return call from Joe Chunko informing me that PPL legal team is moving forward with the disconnect regardless of the opt out provision or stay order. He said he couldn't respond to any legal questions regarding the matter.

the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

~~Both~~ Since I never received an official copy of the PUC's decision ^(until the last) ^(2 weeks) regarding case C-2019-3069320 providing me an opportunity to appeal the decision I'm asking the PUC to consider the State Commonwealth's decision made by Judge Ellen Ceisler in October 2020 supporting individuals' choice to opt out of the smart meter technology. I would also like the PUC to consider how PPL customers can provide a medical waiver to prevent their service from termination. I have a legitimate medical issue with symptoms that are uncontrollable at times. Turning off power during winter months of a pandemic is immoral. I would appreciate if the PUC consider the new interpretation of Act 129 by applying it to my case. I would like the PUC to consider that ~~the~~ other judges in Pennsylvania agreed with Judge Ceisler's decision.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Joe Chunko advised me that legal dept said they're moving forward with disconnecting service regardless of the State Commonwealth's decision written by Judge Ellen Cisler interpreting the law to support customer's choice in the use of smart meter technology and that the court has now determined that universal deployment is not required, and individual customers may be able to "opt out" of receiving the smart meter.

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

A door-tag was placed on 2-23-21 stating service will be cut. meter needs to be changed 3-1-21

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, (all required contact information). Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City State Zip _____

Area Code/Phone Number _____

E-mail Address _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

Verification:

I Christie Burrowsky, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Christie Byrd
(Signature of Complainant)

2-23-21
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, priority mail, or overnight delivery to this address and retain tracking information as proof of submission:

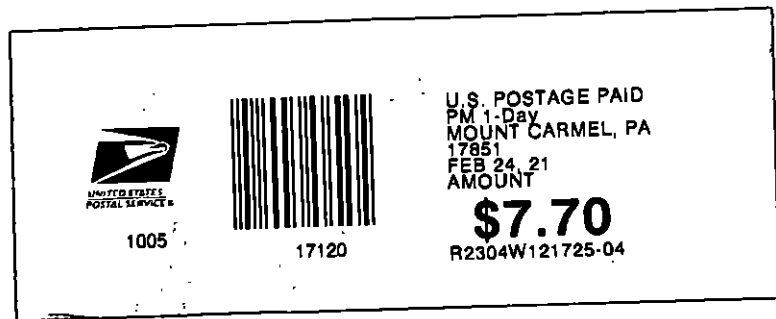
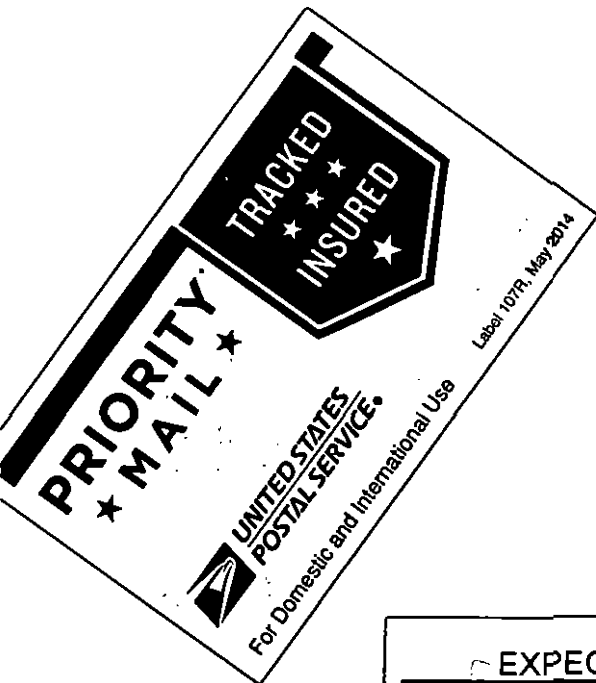
Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

Christie Brzostowski
1 East Avenue
Mt. Carmel, PA 17851



*Secretary
Public Utility Commission
400 North Street
Harrisburg, PA 17120*



RECEIVED
MAR 9 2021
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX B

**FORMAL COMPLAINT FILED BY CHRISTIE
BRZOSTOWSKI AGAINST PPL ELECTRIC
UTILITIES CORPORATION AT
DOCKET NO. C-2019-3009320
(FIRST COMPLAINT)**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an Informal Complaint.

RECEIVED
2019 APR 22 AM 10:29
PA PUC
SECRETARY'S BUREAU

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Christie Brzostowski

Street/P.O. Box 1 East Avenue Apt #

City Mt. Carmel State PA Zip 17851

County Northumberland

Telephone Number(s) Where We Can Contact You During the Day:

(570) 205-1045 (home) () (mobile)

E-mail Address (optional):

Utility Account Number (from your bill)

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PP + L

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.

- I would like a payment agreement.

- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

- Other (explain)

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. **Requested Relief**

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

The utility company has sent letters stating this is mandatory to place smart meters on our private residence. On 4-1-19 a grid one employee attempted to place a meter on our home without consent. I do not want one on or in our home/private residence. No opt out was provided for Pennsylvania residents.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

1 East Avenue
Mt. Carmel, PA 17851



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U.S. POSTAGE PAID
FCM LG ENVY
MOUNT CARMEL, PA
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Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd floor.
Harrisburg, PA 17120

APPENDIX C

THE DECEMBER 26, 2019 *INITIAL DECISION* DISMISSING THE COMPLAINT FILED BY CHRISTIE BRZOSTOWSKI AGAINST PPL ELECTRIC UTILITIES CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christie Brzotowski	:	
	:	
v.	:	C-2019-3009320
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

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” at her residence for health and safety, and privacy reasons. 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 April 22, 2019, Christie Brzotowski (Complainant) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) averring she wished to opt out of a smart meter installation at her residence, 1 East Avenue, Mt. Carmel, Northumberland County, Pennsylvania (account number

ending in 012) and requesting a directive that PPL be precluded from terminating her electric service.

The Complaint was served upon PPL on April 22, 2019. On May 13, 2019, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainants at the address listed on the Complaint. The Answer contends that the Respondent is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers and that it has the right to terminate service for failure of the customer to permit access to the meter.

On May 17, 2019, a Hearing Notice was issued scheduling a hearing for November 7, 2019 and assigning me as presiding officer. On May 20, 2019, a Prehearing Order was issued. On October 10, 2019, PPL filed a Motion to Compel Discovery Responses. On October 30, 2019, an Order Granting Motion to Compel was issued.

The hearing was held as scheduled on November 7, 2019. At the hearing, Complainants appeared *pro se* with no exhibits. Respondent appeared represented by Devin Ryan, Esquire, and Curtis Renner, Esquire with 15 exhibits and four witnesses: Kevin Durkin, Donald Vinciguerra, Christopher Davis, Ph.D., and Mark Israel, M.D. All statements and exhibits were admitted into the record.

A transcript consisting of 42 pages was filed on December 5, 2019 and the record closed the same day. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainant in this proceeding is Christie Brzotowski, who resides at 1 East Avenue, Mt. Carmel, Northumberland County, Pennsylvania (service property). N.T. 5.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). N.T. 5-6.

3. 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 Statement No. 4 at 4.

4. 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 Statement No. 4 at 4.

5. The individual RF Mesh meters are used as relay points to transmit data back to PPL. PPL Electric Statement No. 4 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 Statement No. 4 at 6.

7. PPL had deployed over one million RF Mesh meters as of the September 19, 2019 hearing and none of them have caused a fire. PPL Electric Statement No. 4 at 10.

8. The RF Mesh meter to be installed at the service property is the Landis + Gyr Focus AXR-SD meter. PPL Electric Statement No. 4 at 5-6.

9. The Landis + Gyr Focus AXR-SD meter is certified by the Underwriters Laboratories at UL 2735. PPL Electric Statement No. 4 at 8.

10. The Landis + Gyr Focus AXR-SD meter is compliant with the American National Standards Institute (ANSI) C12.10. PPL Electric Statement No. 4 at 8.

11. PPL Witness Davis has a Ph.D. in Physics and is a fulltime Professor with an endowed Chair at the University of Maryland, where for over 30 years he has taught Physics,

Electrical Engineering, Electromagnetics, and RF Electromagnetics to undergraduate and graduate students. PPL Electric Statement No. 1 at 1-5.

12. 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.

13. 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.

14. 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.

15. 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 5-7, 14.

16. 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.

17. 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.

18. 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.

19. 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.

20. There are eleven television broadcast towers within a 50-mile radius of Complainants' residence in Mt. Carmel, Pennsylvania. PPL Electric Statement No. 1 at 15.

21. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainants' residence are 10.3 times higher than the RF signals from the AMI meter at 3 meters distance. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

22. 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.

23. 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.

24. 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.

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

26. 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.

27. 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.

28. 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 at 13.

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

30. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 13.

31. The World Health Organization 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 at 10-15, PPL Electric Exhibit MI-1.

32. Several U.S. state public health authorities 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 at 11, PPL Electric Exhibit MI-2.

33. Complainant has lived at the service property, which is a large Victorian home on a corner lot, for seventeen years. N.T. 8.

34. Complainant has familial hemiplegic migraines.¹ N.T. 10.

35. Complainant has a bachelor's degree from Bloomsburg University in sociology and a master's degree in early childhood development. N.T. 10.

36. Complainant is neither a medical professional nor an engineer. N.T. 10-11, 15.

37. On April 1, 2019, a Grid One technician attempted to install an AMI RF meter at the service property, but did not because Complainant told him that she had complained to the Commission. N.T. 13-14, PPL Electric Exhibit KD-1.

38. The technician would not have attempted to install the meter if PPL had been served a copy of a formal complaint before April 1, 2019. N.T. 24-25, PPL Electric Exhibit KD-1.

39. Complainant has a cell phone that she uses on average less than an hour per day. N.T. 15-16, 18-20.

40. There is wireless Internet service at Complainant's service property. N.T. 16.

41. The exposure to radio frequency fields Complainant receives from her cell phone is so much larger than the exposure that she would receive from the AMI meter. N.T. 32.

¹ Familial hemiplegic migraine is a form of migraine headache that runs in families and usually causes intense, throbbing pain in one area of the head, often accompanied by nausea, vomiting and extreme sensitivity to light and sound. <https://ghr.nim.nih.gov/condition/familial-hemiplegic-migraine> .

42. It would take at least four hundred years sitting one meter away from the AMI meter to get the same exposure from Complainant's cell phone use in one year. N.T. 32-33.

DISCUSSION

Legal Standards

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

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

Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa., Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).²

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. 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.”)

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.

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

The Commission has 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*).

Health and Safety Concerns

Complainant claims she has familial hemiplegic migraines. N.T. 10. She has not claimed to be electromagnetic sensitive. However, Complainant argues her cell phone is something she can turn off, whereas she cannot shut off an AMI meter. Complainant testified,

“[Y]ou can’t project into the future how my health is going to be impacted until I’m actually around the meter, and at that time it may be too late.” N.T. 39.

PPL argues that to the extent Complainant has raised any health concerns with respect to the AMI meter, those concerns have been thoroughly and substantially rebutted by PPL’s witnesses, including expert witnesses Dr. Davis and Dr. Israel, who in their expert opinion have testified that there is no reliable or scientific or medical basis to conclude that the AMI meter causes, contributes to, or exacerbates adverse health effects or will cause, contribute to or exacerbate adverse health effects. N.T. 38.

Disposition

Ms. Landis has resided at 1 East Avenue, Mt. Carmel, Pennsylvania and has received electric service from PPL for seventeen years. N.T. 8. Complainant filed a complaint because she believed PPL would terminate her electric service for her failure to allow an installation of an AMI meter. Complainant has a bachelor’s degree from Bloomsburg University in sociology and a master’s degree in early childhood development. N.T. 10. Complainant is neither a medical professional nor an engineer. N.T. 10-11, 15. Complainant has a cell phone that she uses on average less than an hour per day. N.T. 15-16, 18-20. There is wireless Internet service at Complainant’s service property. N.T. 16.

Complainant has failed to show any health concerns such as migraine headaches are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at her service property. Complainant offers her testimony; however, this is insufficient evidence to meet the *prima facie* burden of proof to show PPL’s service is unsafe or unreasonable.

There is insufficient evidence to show her health condition is a result of radio frequency fields from AMI meters installed close to her premises or that the health conditions would be exacerbated by the installation of an AMI meter at the service property. PPL Electric Statement No. 2 at 7. Complainant’s lay opinion as to the probable health effects of radio

frequency fields or electromagnetic fields emitting from an RF meter to be installed at her service property are non-persuasive.

Self-reported symptoms of electromagnetic hypersensitivity claimed to be caused by RF fields include: buzzing in ears, sleep disturbance, palpitations, nervousness, fatigue and lethargy. PPL Electric Statement No. 2 at 12-15. A “nocebo effect³” may present symptoms similar to those Complainant complains of in IEI-EMF and control participants; however, there is no reliable medical basis to conclude that RF fields from the AMI meters being installed by PPL would cause, contribute to, or exacerbate any of the symptoms of headaches claimed by Complainant, or any other adverse health effects. PPL Electric Statement No. 2 at 14-17.

I am persuaded by the credible testimony of Dr. Israel, who testified 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. He testified that three groups of controlled laboratory studies on animals “are particularly informative because they address fundamental biological functions that are very sensitive to any disruption: genetics, reproduction, and growth and development.” PPL Electric Statement No. 2 at 8-9. 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 at 9. 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 at 9-10.

³ A nocebo effect is said to occur when negative expectations of the patient regarding a treatment cause the treatment to have a more negative effect than it otherwise would have.

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the World Health Organization (“WHO”) has concluded that “no adverse health effects have been established as being caused by mobile phone use.” PPL Electric Statement No. 2 at 9-11. 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 at 10-11; 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 meter being used by PPL Electric will cause or contribute to the development of illness or disease. PPL Electric Statement No. 2 at 16. 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 Complainants, or any other adverse health effects. PPL Electric Statement No. 2 at 16.

Additionally, on this issue, I find credible the expert testimony of PPL witness Dr. Christopher Davis who opined the Landis + Gyr AMI meter would not cause adverse health effects. Dr. Davis co-authored 255 articles published in peer-reviewed scientific journals, two books, twelve book chapters and 324 papers presented at scientific conferences. PPL Electric Statement No. 1 at 2. He 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. 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. 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, 14.

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 at 9-10. 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 at 9-12.

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. 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.

There are eleven television broadcast towers within a 50-mile radius of Complainants' residence in Mt. Carmel, Pennsylvania. PPL Electric Statement No. 1 at 15. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainants' residence are 10.3 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 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 one meter away from the Company's new smart meter. PPL Electric Statement No. 1 at 14.

Dr. Davis' testimony that the exposure to radio frequency fields Complainant receives from her cell phone is so much larger than the exposure that she would receive from the AMI meter is credible. N.T. 32. It would take at least four hundred years sitting one meter away from the AMI meter to get the same exposure from Complainant's cell phone use in one year. N.T. 32-33. Therefore, the amount of exposure from the AMI meter to radio frequency emissions is negligible in comparison to the radio frequency fields Complainant is exposed to through the use of her cell phone and other wireless devices as well as UHF tower emissions

within 50 miles radius of her service property. Dr. Davis' testimony that the radio frequency fields emitted by an AMI meter are far below the current federal safety standards regarding exposure levels and that these standards protect the public is also credible. PPL Electric Statement No. 1 at 7-16, Exhibits CD1-CD5. For all of these reasons, I find in favor of PPL on this issue.

Opt-In versus Opt-Out Program

During the hearing, Complainant requested an opt out of an AMI meter installation and a continuance of her electric service. N.T. 39.

Conversely, PPL contends its installation of an AMI Meter is required by Pennsylvania law Act 129 of 2008 and that it would not constitute unreasonable or unsafe service to install an AMI Meter on Complainants' property. N.T. 38.

Disposition

The Commission has ruled that there is no provision in the Code, the Commission's Regulations or Orders that allows a PECO customer to "opt-out" of smart meter installation. 66 Pa.C.S. § 2807(f); See *Bervinchak v. PPL Electric Utilities Corporation*, C-2016-2572824 and C-2016-2577527 (Final Order October 2, 2018, Initial Decision dated August 16, 2018); *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 at 10 (Order and Opinion entered January 24, 2013); *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (ALJ Heep Initial Decision dated January 26, 2018). Moreover, the Commonwealth Court has held that federal law does not preempt the Commission's interpretation. See *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017). 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 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 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. *Pennsylvania Trout v. Dep't 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 EDCs 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 in the instant case desires the ability to opt out of the smart meter installation, she could advocate for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills including: PA House Bill Nos. 313, 1564 and 1565; and Senate Bill No. 443. Complainant Exhibit B. 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 Company*, Docket No. C-2012-231716 (Opinion and Order entered January 24, 2013). The Commission held that similarly situated Respondents would be in violation of law if they did not install a smart meter at properties similarly situated to Complainants’ residence. *Id., Frompovich* at 10. Thus, I find in favor of PPL on this issue.

CONCLUSION

For all of these aforementioned reasons, the Complaint will be dismissed for failure to prove by a preponderance of evidence that 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. Cmwlth. 2008) (citation omitted).

5. A person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, "taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive" rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse

health effects. *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision).

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

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

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

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

10. Complainant has failed to sustain the 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.

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

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

13. The 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).

14. 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).

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

APPENDIX D

**THE MAY 21, 2020 *FIRST COMPLAINT ORDER*
DENYING THE COMPLAINANT'S EXCEPTIONS
AND DISMISSING HER FIRST COMPLAINT
AGAINST PPL ELECTRIC UTILITIES
CORPORATION**

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held May 21, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
John F. Coleman, Jr.
Ralph V. Yanora

Christine Brzostowski

C-2019-3009320

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Christine Brzostowski (Complainant or Ms. Brzostowski) filed on January 15, 2020, to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, served on the Parties on December 26, 2019, in the above-captioned proceeding. On February 3, 2020, PPL Electric Utilities Corporation (PPL or the Company) filed Replies to Exceptions. The Initial Decision denied the Formal Complaint (Complaint) filed by Ms. Brzostowski on April 22, 2019, at this docket. For the reasons discussed below, we shall deny the

Complainant's Exceptions, adopt the Initial Decision of ALJ Barnes and dismiss the Complaint, consistent with this Opinion and Order.

Background

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PPL proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant refuses to permit PPL to install a smart meter at her residence due to her concerns regarding her health related to exposure to the level of radiofrequency (RF) fields, or electromagnetic fields (EMFs), from the smart meter.

PPL is an electric distribution company (EDC) subject to the jurisdiction of the Commission. PPL furnishes, owns, and maintains the meters in its distribution system. PPL's Tariff Electric Pa. P.U.C. No. 201, Section 8.A at 12.

The Complainant is a PPL customer who has been notified of PPL's intent to install a smart meter at her residence.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a

Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

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

(ii) In new building construction.

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

66 Pa. C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See* H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including PPL, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Procurement and Installation Order*). PPL sought and obtained the Commission’s approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by late 2019. *See Petition of PPL Electric Company for Approval*

of Its Smart Meter Deployment Plan, Docket Nos. M-2014-2430781 (Order entered September 3, 2015) (*2015 Smart Meter Order*) at 24.

History of the Proceeding

On April 22, 2019, Ms. Brzostowski filed the instant Complaint requesting to opt out of PPL's installing an AMI meter on her residence and requesting that PPL be precluded from terminating her electric service. Complaint at 2-3; I.D. at 1-2.

On May 13, 2019, the Company filed an Answer, admitting that PPL provides electric service to the Complainant but contending that it 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. Answer at 1-4; I.D. at 2.

On November 7, 2019, an evidentiary hearing was held. The Complainant appeared *pro se*, testified on her behalf, and presented no exhibits. The Company was represented by counsel and presented the testimony of four witnesses: (1) Kevin Durkin; (2) Donald Vinciguerra; (3) Christopher Davis, Ph.D.; and (4) Mark Israel, M.D. PPL also offered sixteen exhibits which were admitted into the record as follows: PPL's Statements 1-4 and Exhibits CD-1 – CD-5; MI-1-MI-3; KD-1-KD-6 and SL-1.¹ The hearing produced a transcript of thirty pages and the record was closed on April 25, 2019.

In the Initial Decision issued on December 26, 2019, the ALJ dismissed the Complaint for failing to prove by a preponderance of the evidence that the installation of the smart meter constitutes unsafe or unreasonable service under Section 1501 of the

¹ Donald Vinciguerra adopted the written testimony of Scott Larson and sponsored Exhibit SL-1. I.D. at 2, n. 2 (citing Tr. at 13).

Code or that it violates any other provision of the Code, Commission Regulation, Commission Order or Commission-approved Company tariff. I.D. at 1, 17-18, 21.

As previously noted, the Complainant filed Exceptions on January 15, 2020, and PPL filed Replies to Exceptions on February 3, 2020.

Discussion

Legal Standards

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701. Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more

convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See Milkie*, 768 A.2d at 1220; *see also Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on

a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also, Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder² may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber*.

The Commission has determined that there is no provision in Act 129 or in the Code, the Commission's Regulations or Orders that permits a customer to "opt out" of smart meter installation. *See Maria Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013) (*2013 Povacz Order*); *see also Catherine J. Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Order entered May 3, 2018) (*Frompovich*). However, the Commission has determined that a customer's formal complaint can raise a claim under Section 1501 of the Code, 66 Pa. C.S. § 1501, related to the safety of a utility's installation and use of a smart meter at the customer's residence and, if such a claim is raised, it is legally sufficient to proceed to an evidentiary hearing before an ALJ. *See Susan Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order entered January 28, 2016) (*Kreider*). At the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

² In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)).

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, 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. *See*, 66 Pa. C.S. § 1501. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

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 and facilities shall be in conformity with the regulations and orders of the commission.

The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered, or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities, *See* 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Pursuant to Section 57.28(a)(1) of our Regulations,³ an EDC must use reasonable efforts to properly warn and protect the public from danger and to exercise reasonable care to reduce the hazards to which customers may be subjected to by reason of the EDC’s provision of electric utility service and its associated equipment and facilities. *See* 52 Pa. Code § 57.28(a)(1).

³ *See Final Rulemaking Order, Rulemaking Re: Electric Safety Regulations, 52 Pa. Code Chapter 57, Docket No. L-2015-2500632 (Order entered April 20, 2017) (Electric Safety Final Rulemaking Order).*

As we ruled in *Maria Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Order entered March 28, 2019) (*2019 Povacz Order*), in order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused or will cause adverse health effects or harm to human health, the Complainant must demonstrate by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the RFs from the AMI meter. *See 2019 Povacz Order* at 28-29 (citing *Letter of Notification of Philadelphia Electric Company 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*, 1993 WL 855896 (Pa. P.U.C. 1993), Docket No. A-110550F0055 (Order entered November 12, 1993) (*Woodbourne-Heaton Final Order*) at 11).

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Initial Decision

In the Initial Decision, ALJ Barnes made forty-two Findings of Fact and reached sixteen Conclusions of Law. I.D. at 2-8, 18-21. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ first addressed the Complainant’s request that electric service be maintained with an analog meter for health and safety reasons. I.D. at 10-11. The ALJ

noted the Complainant's testimony that she has familial hemiplegic migraines. I.D. at 10 (citing Tr. at 10). The Complainant argued that her cell phone is something she can turn off, whereas she cannot shut off an AMI meter. She testified that "[Y]ou can't project into the future how my health is going to be impacted until I'm actually around the meter, and at that time it may be too late." I.D. at 10-11 (citing Tr. at 39). The ALJ also acknowledged the Company's argument that to the extent the Complainant has raised any health concerns with respect to the AMI meter, those concerns have been thoroughly and substantially rebutted by PPL's witnesses, including expert witnesses Dr. Davis and Dr. Israel, who in their expert opinions, have testified that there is no reliable scientific or medical basis to conclude that the AMI meter causes, contributes to, or exacerbates adverse health effects or will cause, contribute to or exacerbate adverse health effects. I.D. at 11 (citing Tr. at 38).

The ALJ rejected the Complainant's claims for unreasonable service based on her health and safety concerns related to PPL's installation of a smart meter at the residence. I.D. at 11-15. Noting that the Complainant is neither a medical expert nor an engineer, the ALJ found that the Complainant failed to show any health concerns such as migraine headaches are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at her service property. I.D. at 11 (citing Tr. at 10-11, 15). The ALJ concluded that the Complainant's testimony is insufficient evidence to meet the *prima facie* burden of proof to show that PPL's service will violate Section 1501 of the Code. I.D. at 11. Specifically, the ALJ concluded that there is insufficient evidence to show her health condition of migraines is a result of RF fields from AMI meters installed close to her premises or that the health condition would be exacerbated by the installation of an AMI meter at the service property. I.D. at 11 (citing PPL St. 2 at 7). The ALJ concluded that the Complainant's lay opinion testimony as to the probable health effects of RF fields or EMFs emitting from an AMI meter to be installed at her service property are non-persuasive. I.D. at 11-12.

The ALJ stated she was persuaded by the credible testimony of PPL's expert witnesses, Dr. Israel, M.D., and Dr. Davis, Ph.D. I.D. at 12, 13.

The ALJ summarized Dr. Israel's testimony that 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. I.D. at 12 (citing PPL St. 2 at 8-10, 12-17). Dr. Israel testified also to his evaluation of 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 and he described a number of studies in these areas which are considered good examples of well-designed and well-conducted animal studies which found no adverse effects on genetics, fertility, reproduction, growth or development in the animals exposed to RF fields. I.D. at 12 (citing PPL St. 2 at 8-10).

Additionally, the ALJ referenced Dr. Israel's testimony pertaining to the conclusion of international public health authorities that scientific research on RF exposures from cell phone use, which are far higher than the RF exposures from PPL's smart meters, has not shown that RF fields cause adverse health effects. Moreover, Dr. Israel testified about additional investigations of state public health authorities and state public utility commissions and the lack of credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. I.D. at 13 (citing PPL St. 2 at 9-11, PPL Exhs. MI-1 and MI-2).

According to Dr. Israel, there is no reliable medical basis to conclude that RF fields from the AMI meters intended for installation by PPL will cause or contribute to the development of illness or disease or would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. I.D. at 13 (citing PPL St. 2 at 16).

The ALJ also summarized the testimony of PPL's expert witness Dr. Davis, who testified about his substantial amount of research on RF fields of the type produced by the AMI meters being used by PPL. According to Dr. Davis, 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. 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. I.D. at 13 (citing PPL St. 1 at 3, 5-6, 14).

Moreover, the ALJ cited to Dr. Davis's testimony about the determinations of the Federal Communications Commission (FCC) related to the safe public exposure levels from devices that transmit RF signals such as the AMI meters. I.D. at 14 (citing PPL St. 1 at 9-12). The levels of RF fields from the Landis + Gyr Focus AX-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. In addition, the RF signals from the AMI meter are of short duration and occur for a total of only 84 seconds over a 24-hour period. I.D. at 14 (citing PPL St. 1 at 7).

In further summary of the expert evidence, the ALJ stated that regarding cell phone use: the RF field exposure thirty feet from a person using a cell phone is three times larger than the RF fields from the AMI meter; and the exposure from using cell phones near the head can be over 260,000 times higher than the RF fields from the AMI meter. I.D. at 14 (citing PPL St. 1 at 14). The ALJ also referenced Dr. Davis's testimony that there are eleven television broadcast towers within a 50-mile radius of the Complainant's location in Stroudsburg, Pennsylvania. According to Dr. Davis, the locations of each tower and their RF fields result in a constant background level of RF fields at Ms. Brzostowski's residence that are 10.3 times higher than the RF signals from the AMI meter. I.D. at 14 (citing PPL St. 1 at 15).

In comparing the RF exposure at the service property with the minimal RF exposure from the AMI meter, the ALJ found Dr. Davis' testimony that the RF fields emitted by an AMI meter are far below the current federal safety standards regarding exposure levels and that these standards protect the public health to be credible. I.D. at 14-15 (citing PPL St. 1 at 7-6, Exhs. CD1-CD-5).

Finally, the ALJ addressed the Complainant's request at the hearing to "opt out" of the Act 129 plan requiring the installation of smart meters at all of the service locations of PPL's customers. The ALJ agreed with PPL that there is no provision in Pennsylvania law allowing a customer to opt out from installation of an AMI meter. The ALJ explained that the Commission has ruled that there is no provision in the Code, or our Regulations or Orders that permit a PPL customer to opt out of smart meter installation. I.D. at 15-16 (citing *2013 Povacz Order*, *2019 Povacz Order*, *Frompovich*). The ALJ noted that to the extent that the Complainant desires the ability to opt out of the smart meter installation, she could advocate for such ability before the General Assembly, which at the time of the issuance of the Initial Decision was considering legislative bills to allow for it. However, the ALJ continued, without such a legislative directive the Commission has no authority to prohibit an EDC from installing a smart meter where a customer does not want one. I.D. at 17 (citing *2013 Povacz Order*; *Frompovich* at 10).

For all of the foregoing reasons, the ALJ found that the Complainant failed to prove by a preponderance of the evidence that the installation of a smart meter constitutes a violation of PPL's duty to provide safe and reasonable service under 66 Pa. C.S. § 1501 or a violation of any other provision of the Code, a Commission Order or Regulation or Commission-approved, Company tariff. The ALJ stated that although the Complainant is genuine in her concerns, the Commission's decisions cited above are controlling here. Accordingly, the ALJ ruled to dismiss the Complaint. I.D. at 17-18.

Exceptions and Replies

The Complainant's Exceptions⁴ are not numbered but she raises two main Exceptions to the Initial Decision, arguing the ALJ erred as to her rulings regarding: (1) the Complainant's failure to sustain her burden of proof that PPL's installation of a new AMI meter would violate Section 1501 of the Code; and (2) rejecting the Complainant's request to "opt out" of the AMI meter installation. Exc. at 1-3.

Initially we note that, as alleged support for her arguments, the Complainant attempts to introduce and rely on several items of extra-record evidence in her Exceptions. See Exc. at 1-6; see also R. Exc. at 11-13. We will address the Complainant's argument regarding the new AMI meter and Section 1501 based on the record evidence in this proceeding, but we will not address the extra-record material.⁵

Regarding her health safety claim under Section 1501 of the Code, according to the Complainant, the installation of the new AMI meter could cause adverse health effects because "[t]here were no longitudinal studies" about the impact the AMI meter could have on her health. Exc. at 1. The Complainant also contends that she was diagnosed with "familial hemiplegic migraines" and that the evidence presented by PPL

⁴ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination.

⁵ We concur with PPL's arguments in its Reply Exceptions, R. Exc. at 12-13, that good cause has not been shown for our consideration of such extra-record material, pursuant to 52 Pa. Code § 5.431(b). Specifically, the Complainant has not made a showing in her Exceptions that there is reason to believe that conditions of fact or law have so changed since the close of the record in this proceeding as to require, or that the public interest otherwise requires, the reopening of the record.

was not “representative of people” who have that specific condition. Exc. at 1. However, the Complainant admits that she provided no medical records to support her alleged diagnosis. Exc. at 2.

In its Replies to Exceptions, PPL asserts that the Complainant’s position is without merit and that the ALJ properly concluded that there was no reliable scientific or medical basis to conclude that the AMI meter will cause or contribute to any adverse health effects or cause or contribute to the development of illness or disease. R. Exc. at 2-3 (citing I.D. at 10-15, 13). In support, PPL notes that the ALJ relied upon PPL’s credible and reliable expert testimony of Dr. Israel and Dr. Davis refuting the Complainant’s bald assertions that the AMI meter could cause or contribute to adverse health effects. R. Exc. at 3 (citing PPL St. 1 at 5-16; PPL Exhs. CD-1 through CD-5; PPL St. 2 at 7-18; PPL Exhs. MI-1 through MI-3). PPL cites to and recounts the record evidence it presented through expert witnesses Dr. Davis and Dr. Israel, as summarized and considered by the ALJ in the Initial Decision based on the record. R. Exc. at 3-7. Based on the record evidence presented, PPL submits that the ALJ correctly concluded that the “Complainant has failed to show any health concerns such as migraine headaches are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at her service property.” R. Exc. at 7 (citing I.D. at 11). According to PPL, the ALJ was correct even in concluding that the Complainant failed to present sufficient evidence to “meet the *prima facie* burden of proof to show PPL’s service is unsafe or unreasonable.” R. Exc. at 7 (citing I.D. at 11). Moreover, PPL submits that even if the Complainant did establish a *prima facie* case, the Company presented overwhelming evidence through its scientific and medical expert witnesses, Dr. Davis and Dr. Israel, respectively, to support the ALJ’s finding that there is no reliable basis to conclude that the new AMI meter will cause or contribute to any adverse health effects. Accordingly, PPL urges the Commission to reject the Complainant’s arguments in Exceptions because she mischaracterizes the record evidence and applicable law. R. Exc. at 7.

Next, for the first time in this proceeding, the Complainant in her Exceptions contends that the new AMI meter PPL wishes to install at her residence is unsafe because AMI meters have been “linked to fires” that occurred in “Saskatchewan and Philadelphia.” Exc. at 2. PPL submits the Commission should reject entirely the Complainant’s argument in Exceptions regarding the new AMI meter being a fire hazard. PPL submits that the unrebutted record evidence demonstrates that the new AMI meters meet the standards issued by the American National Standards Institute (ANSI) and Underwriters Laboratories (UL), specifically ANSI C12.10 and UL 2735. R. Exc. at 9 (citing PPL St. 4 at 8). Furthermore, when selecting the type of new AMI meter, safety was a paramount concern of PPL. *Id.* Accordingly, the Company held the new AMI meters to a higher standard than the national standards and even conducted independent testing with a third party of the potential new AMI meters. *Id.* The Landis + Gyr RF Mesh meter selected by PPL was the best performer in all of these tests and met PPL’s stringent requirements. *Id.* The testing was mainly designed around the meter baseplate material and its capacity to withstand a temperature equal or greater than 160 degrees Celsius. *Id.*

Additionally, PPL explains that, through the Company’s testing, PPL was able to determine and simulate the root cause of the vast majority of overheating issues. PPL R. Exc. at 9 (citing PPL St. 4 at 9). It was determined as a loose or broken connection within the customer-owned meter base. *Id.* PPL explains that it has taken several steps to address potential issues with loose or broken connections, including expanding its inspection criteria and training its installers to perform enhanced inspections that include: (1) checking for signs of wear or detachment on the customer’s facility; (2) carefully removing the meter ensuring facility hardware is intact; (3) inspecting the removed meter for signs of pitting or discoloration (an indication of micro-arc); (4) inspecting the meter base’s jaws for signs of pitting, discoloration, or separation; and (5) inspecting the meter and meter base generally for loose and broken parts and tightness. PPL R. Exc. at 9-10 (citing PPL St. 4 at 9). Moreover, as mentioned,

PPL tested the AMI meters' baseplate material to ensure they could withstand a temperature equal to or greater than 160 degrees Celsius, in case any micro-arcings were to occur. PPL R. Exc. at 10 (citing PPL St. 4 at 9).

Furthermore, PPL submits that unrebutted record evidence shows that AMI meters are equipped with software and mechanisms that address issues with overheating. R. Exc. at 10 (citing PPL St. 4 at 10). For example, the meter's temperature is sent to the Company in 15-minute intervals. *Id.* PPL monitors the meter's temperature data, so it can track the meter's temperature and identify any current issues or problematic trends. *Id.* Also, there is a heat alarm, so when the temperature of the meter hits an established 85-degree Celsius level, the Company is alerted. *Id.* When PPL determines there may be an issue or when the heat alarm is triggered, the Company dispatches personnel to investigate. *Id.* In contrast, the Complainant's currently installed powerline carrier or PLC meter does not have these capabilities. *Id.* Finally, PPL's witness, Mr. Vinciguerra, testified that the Company has deployed over one million of these meters in its service territory, and none of them has caused any fires. *Id.*

Finally, the Complainant argues in her Exceptions that she should be able to "opt out" of having an AMI meter installed at her property. Exc. at 1-4. The Complainant concedes that "with the meter there is no exemption in Pennsylvania;" however, she alleges that, based on her alleged experiences, she should be able to opt out of the AMI meter's installation. Exc. at 1-4. In Replies, PPL submits that the ALJ did not err in her ruling in which she determined that nothing in Act 129 permits a customer to "opt out" of a smart meter installation. In fact, PPL avers that the Commission has repeatedly held that PPL and similarly-situated EDCs must install new AMI meters for all customers. R. Exc. at 14-15 (citing, *inter alia*, *Frompovich, 2013 Povacz Order, 2019 Povacz Order*). Moreover, PPL submits that it must comply with the relevant Commission Orders directing the Company to deploy new AMI meters as approved in PPL's *2015 Smart Meter Order, supra*. R. Exc. at 16.

Disposition

In considering the record evidence and arguments before us, along with the Exceptions and Reply Exceptions of the Parties, we find that the Complainant's Exceptions lack merit. Based on the record evidence, we do not find error in any of the ALJ's findings, analysis, or conclusions.

We agree with the well-reasoned analysis in the Initial Decision and the ALJ's conclusion that the Complainant did not meet her burden of proof regarding the claim that the smart will cause adverse health effects for the Complainant. Specifically, we affirm the ALJ's finding that the Complainant failed to demonstrate a conclusive causal connection between the low-level RF fields from a PPL smart meter and any adverse health effects for the Complainant. Similarly, the Complainant failed to assert any competent evidence of record to establish the claim that PPL's installation of a smart meter will pose a safety risk due to RF exposure. Moreover, the Company presented overwhelming evidence through its scientific and medical expert witnesses, Dr. Davis and Dr. Israel, respectively, to support the ALJ's finding that there is no reliable basis to conclude that the new AMI meter will cause or contribute to any adverse health effects, and therefore PPL's installation of the new AMI meter will not violate Section 1501 of the Code. Upon review of the record, we conclude that the ALJ's underlying discussion, rationale, Findings of Fact and Conclusions of Law are supported by substantial evidence of the record and consistent with prior Commission and Commonwealth Court decisions, as cited in the Initial Decision. *See* I.D. at 10-15 (citations omitted).

Additionally, the Complainant presented no evidence at the hearing to support her fire hazard claim raised for the first time in this proceeding in her Exceptions. Nevertheless, upon our review of the un rebutted, overwhelming record evidence presented by PPL relating to the safety of new AMI meters as pertains to fire hazards,

there is no basis to make a finding that PPL's installation of the new AMI meters will violate Section 1501 of the Code.

Finally, the Commission has previously held that, under the existing iteration of Section 2807(f) of the Code, no "opt out" provision exists. *See e.g. 2013 Povacz Order; Frompovich; Kreider.* We have concluded that we do not have the authority, absent directive in the form of legislation, to prohibit an EDC from installing a smart meter where a customer does not want one simply due to the customer's preference. *See e.g. 2013 Povacz Order; see also 2019 Povacz Order.* Because there is no provision in Pennsylvania law to allow a customer to opt out of the installation of an AMI meter, the Complainant's request to "opt out" of a smart meter installation is denied.

Upon review of the record, we find that PPL is acting in accordance with the Code, Commission Regulations and relevant Commission Orders, including, but not limited to, the *2015 Smart Meter Order*, which directed the Company to deploy new AMI meters in accordance with Act 129 and the requirements therein.

Based on the foregoing, we shall deny the Complainant's Exceptions and dismiss the Complaint.

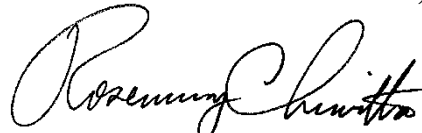
Conclusion

Based upon our review of the record and the applicable law, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Christine Brzostowski on January 15, 2020, are denied.
2. That the Initial Decision of Administrative Law Judge Elizabeth H. Barns, issued on December 26, 2019, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Christine Brzostowski on April 22, 2019, at this docket, is dismissed.
4. That this proceeding shall be marked closed.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 21, 2020

ORDER ENTERED: May 21, 2020

VERIFICATION

I, DAVID QUADE, being the Manager – Regional Metering at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 31, 2021

David Quade

David Quade (Mar 31, 2021 14:33 EDT)

David Quade