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File #: 167945

June 28, 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: Jeffrey W. Smiles v. PPL Electric Utilities Corporation  
Docket No. C-2021-3026268**

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Dear Secretary Chiavetta:

Enclosed are the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of Jeffrey W. Smiles, for filing in the above-referenced proceeding.

The attached are to replace the Preliminary Objections previously e-filed at eFiling Confirmation Number: 2184629. Therefore, kindly reject the prior e-filing.

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**

Jeffrey Smiles  
3049 Octagon Avenue  
Sinking Spring, PA 19608  
E-mail: [jeffrsmil@peoplepc.com](mailto:jeffrsmil@peoplepc.com)

Date: June 28, 2021



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Nicholas A. Stobbe

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey W. Smiles,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026268
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS 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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Date: June 28, 2021

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey W. Smiles,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2021-3026268
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

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**PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION TO THE  
COMPLAINT OF JEFFREY W. SMILES**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) and hereby files these Preliminary Objections, 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 Jeffrey W. Smiles (“Complainant”) in its entirety and with prejudice. Alternatively, the Company respectfully requests that the portion of the Complaint filed by Complainant requesting damages be dismissed because the Commission has no power to award damages.

The instant Complaint challenges PPL Electric’s planned installation of a new automated metering infrastructure (“AMI”) meter at 3049 Octagon Ave, Sinking Spring, PA 19608, due to allegations that the new AMI meter is not mandatory. The Complainant previously filed a Formal Complaint disputing the Company’s planned installation of the AMI meter at the same property at Docket No. C-2018-3003895 (“First Complaint”). The case was fully litigated before the Commission. On August 23, 2019, the Commission entered an Opinion and Order dismissing the

Formal Complaint, and on August 27, 2020, the Commission denied the Complainant’s petition for rehearing and/or reconsideration. *See Smiles v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3003895 (Order entered Aug. 23, 2019) (“*First Complaint Order*”); *Smiles v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3003895 (Order entered Aug. 27, 2020) (“*First Complaint Order on Reconsideration*”). Neither of those Commission Orders were appealed.

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 Orders dismissing his First Complaint, pursuant to 66 Pa. C.S. § 316. Alternatively, Complainant’s request for damages should be dismissed because the Commission has no power to award damages.

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 June 7, 2021, PPL Electric was served with the above-captioned Complaint, which challenges the Company’s planned installation of a new AMI meter at 3049 Octagon Avenue, Sinking Spring, PA 19608, due to allegations that the new AMI meter is not mandatory. (Complaint ¶¶ 4-5.) Furthermore, the Complainant requests that the Company be prohibited from

terminating his electric service due to his refusal of the AMI meter. (See Complaint ¶¶ 4-5.) A true and correct copy of the Complaint is attached hereto as **Appendix A**.

4. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Commission summarily 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* and *First Complaint Order on Reconsideration* 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. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 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. Cmwlth. 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 OBJECTIONS**

#### **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 3049 Octagon Avenue, Sinking Spring, PA 19608 due to allegations that the installation of the new AMI meter is not mandatory. (*See Appendix A ¶¶ 4-5.*) The Complainant also argues that PPL Electric should be precluded from terminating his electric service for his refusal of the AMI meter. (*See Appendix A ¶¶ 4-5.*)

11. On August 8, 2018, PPL Electric was served with the First Complaint filed by the Complainant, which, like the current Complaint, challenged the Company's planned installation of an AMI meter at the Complainant's service address. The First Complaint was docketed at

Docket No. C-2018-3003895. A true and correct copy of the First Complaint is attached hereto as **Appendix B.**<sup>1</sup>

12. By Secretarial Letter dated July 12, 2019, the Commission issued Administrative Law Judge Elizabeth H. Barnes's (the "ALJ") Initial Decision at Docket No. C-2018-3003895 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 did not file any Exceptions to the Initial Decision.

14. On August 19, 2019, Complainant filed two documents. The first document was titled "Notice to the Court; Objection to Initial Decision Not Received and Petition for Rehearing and/or Reconsideration" ("First Petition"). The second document was titled "Notice and Petition for Judicial Determination of Jurisdiction" ("Second Petition").

15. On August 23, 2019, the Commission entered the *First Complaint Order* adopting the Initial Decision and dismissing the First Complaint. A true and correct copy of the Commission's *First Complaint Order* is attached hereto as **Appendix D.**

16. On August 28, 2019, PPL Electric filed separate Answers to both the First and Second Petitions.

17. On August 27, 2020, the Commission entered its *First Complaint Order on Reconsideration*, which denied the Complainant's First and Second Petitions. A true and correct

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<sup>1</sup> Due to customer privacy concerns, any account numbers in the Complaint have been redacted.

copy of the Commission's *First Complaint Order on Reconsideration* is attached hereto as **Appendix E**.

18. The Complainant never filed a petition for review with the Commonwealth Court challenging the *First Complaint Order* or the *First Complaint Order on Reconsideration*.

19. The Complainant resides at 3049 Octagon Avenue, Sinking Spring, PA 19608, which is the same service address that he resided at during the adjudication of the First Complaint. (See **Appendix A ¶ 1**; **Appendix B ¶ 1**.)

20. In both the instant Complaint and the First Complaint, the Complainant alleges that the new AMI meter to be installed at 3049 Octagon Avenue, Sinking Spring, PA 19608 is not mandatory. Moreover, like in the First Complaint, the Complainant argues in the instant proceeding that PPL Electric should be precluded from terminating his electric service for his refusal of the AMI meter.

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.<sup>2</sup>

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<sup>2</sup> 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 Objection 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).

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 Co.*, 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).

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* and *First Complaint Order on Reconsideration* were not set aside, annulled, or modified by judicial review. In fact, neither of those Orders was appealed to the Commonwealth Court. Therefore, the *First Complaint Order* and *First Complaint Order on Reconsideration* remain conclusive upon all parties affected thereby. *See Lehigh Valley*, 563 A.2d at 556 (citation omitted).

26. As noted above, the account holder, service address, and service account listed in the instant Complaint are identical to those at issue in the First Complaint. Further, to the extent that his issues are any different in the instant Complaint compared to his First Complaint, the Complainant could have and should have raised all of his concerns regarding the installation of an AMI meter at 3049 Octagon Avenue, Sinking Spring, PA 19608 during his First Complaint proceeding at Docket No. C-2018-3003895, including PPL Electric's authority to terminate his electric service if he continued to refuse the AMI meter's installation for either this customer account or another PPL Electric customer account in his 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 prior Commission Orders that remain conclusive and binding upon the Complainant.

**B. PRELIMINARY OBJECTION NO. 2 – THE COMPLAINANT'S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES.**

29. PPL Electric incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

30. The portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

31. In the Complaint, the Complainant alleges that “[t]he intentional infliction of emotional distress and the physical abuse this causes by a public transmitting utility is a very, very serious matter...” (**Appendix A ¶ 5.**) The Complainant further claims that “Plaintiff/Complainant should be compensated for his suffering.” (**Appendix A ¶ 5.**)

32. It is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

33. Here, the Complainant's request for damages is impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013)

(order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. *See, e.g. id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No C-2011-226876, 2011 Pa. PUC LEXIS 652, at \*8-9, 16-17 (Dec. 21, 2011), *adopted by Comm'n*, 2012 PA. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at \*8-9, 12 (Feb. 4, 2011), *adopted by Comm'n*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

34. Therefore, consistent with longstanding Commission precedent, the Complainant's request for damages is impertinent matter and should be stricken from his Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Formal Complaint filed by Jeffrey W. Smiles at Docket No. C-2021-3026268 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4). Alternatively, PPL Electric respectfully requests that the Complainant's request for damages be summarily dismissed pursuant to 52. Pa. Code § 5.101(a)(2).

Respectfully submitted,



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Date: June 28, 2021

Attorneys for PPL Electric Utilities Corporation

**APPENDIX A**

**FORMAL COMPLAINT FILED BY JEFFREY W.  
SMILES AGAINST PPL ELECTRIC UTILITIES  
CORPORATION AT  
DOCKET NO. C-2021-3026268  
(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.*

**RECEIVED**

MAY 24 2021

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

### 1. Customer (Complainant) Information

PA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

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 Jeffrey W. Smiles

Street/P.O. Box 3049 Octagon Avenue Apt #

City Sinking Spring State PA Zip 19608

County Berks

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

( 610 ) 678-0254 (home) (      ) \_\_\_\_\_ (mobile)

E-mail Address (required): jeffrsmil@peoplepc.com

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.

PPL ELECTRIC UTILITIES

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

**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).

On March 5, 2021 I filed an informal complaint against PPL ELECTRIC UTILITIES because they knowingly and intentionally threatened to turn off my power on March 3, 2021 in direct violation of the PUC's Emergency Order No. M-2020-3019244 that was still in full effect.

This order clearly stated that:

**"THEREFORE, IT IS ORDERED:**

***That all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency consistent with this Emergency Order."***

On March 3,2021, I found a threatening shut-off notice taped to my front door stating reasons that are false and making false claims to intentionally inflict emotional distress and further to intimidate to create fear and panic. I immediately responded and called PPL Electric Utilities and spoke at length to a representative When I requested to speak with a supervisor I was placed on hold. I then opted for a call back and left my number. A automated voice confirmed the request for a call back. No call was received that day or the following day. March 4,2021.

1. The notice claimed they called and found no one home, when someone was home.
2. A False claim is made that there is No access to change out meter
3. PPL threatened the property owner that Electricity would be shut off on March 8, 2021
4. All Electric bills had been paid in Full and were **UP** to date

I was at home during the alleged time of posting written on the shut-off notice and there was no phone call, no door bell ring or knock at the door, nor any attempt to contact me. My attempts to contact PPL Electric Utilities were met with dishonesty, discourtesy and silence. Among the many of PPL's fraudulent claims was the claim that smartmeters are mandatory and that the PUC's emergency orders did not apply to them.

**NEW MATTER**

On May 11, 2021 Charece Z. Collins, Administrative Law Judge, issued the following order in case No. C-2021-3024568:

**"By Order entered November 4, 2020, the Pennsylvania Public Utility Commission (Commission) ordered that any formal complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company's deployment of smart meter technology as being in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, is to be stayed until the Commission takes further action to lift the stay. See, *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered November 4, 2020) (*November 2020 Order*).**

It was made very clear in my informal complaint of March 5, 2021 (#3781308) that All parties must be made acutely aware that such acts described herein and perpetrated by PPL

**RECEIVED**

MAY 24 2021

Electric Utilities not only violate my rights, and those rights under section 1501. but the Orders issued by the PUC and Commonwealth Court, which are clear and distinct.

In the case of *M. Povacz v. PA PUC* the court stated that: "*Act 129 does not mandate installation of wireless smart meters in all homes and does not preclude the PUC from granting Consumers appropriate relief... However, nothing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters.*" see footnote 11

Please note the language in the court's statement again! "*nothing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters.*"

Nothing is contained in act 129 that requires smartmeters be placed on all homes. It does not exist! The utility companies, assuming powers not granted to them by statute or by consent of the people, have under a pretense of authority threatened, intimidated, oppressed and harmed individuals in their rights and persons by promulgating the improbable notion that smartmeters are mandatory and that these utility transmitting companies have the right to terminate power to anyone if they refuse!

The Commission should treat this formal complaint as a petition for relief, and decide that under the totality of the circumstances, PPL's continued disregard and dishonesty concerning the Commissions emergency order M-2020-3019244 and that deployment of an RF-emitting meter on owners property and especially during a stay, is not mandatory but would be violate his rights as well as being inequitable and unreasonable.

As another alternative, the Commission should engage in notice and rulemaking on the subject of the health risks of RF exposure from smart meters, and the necessity or desirability of granting accommodations to customers who object based on their concern about the health risk as recommended by their doctor. Further, Analog meters must be maintained and made available for those who cannot tolerate a wireless smartmeter. It also is unfair and unreasonable for the Commission to expect individuals to bear the enormous cost of engaging in full scale litigation with a public utility that has much greater resources to litigate the complex issues presented.

This complaint is based on New Matter and recent court decisions that impact PPL's aggressive and recalcitrant behavior toward private homeowners and their right to decline the installation of a wireless smartmeter.

**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.

I request that the Commission compel PPL Electric Utilities to abide by the Orders of the PUC, previously mentioned, and the requirements of Section 1501 and 1502 of Public Utility Code and Section 57.194 of the Commission's regulations to provide and furnish and maintain adequate, efficient, safe, and reasonable service to Complainant by continuing measuring electric use with current electromechanical analog meter or by replacing it, if necessary, with a analog meter of similar design, build and operation.

I request that the Commission grant this requested relief from a device that Complainant never requested or agreed to pay for, per § 2807 (f) (2) (i) of Act 129; that is in violation of § 1501 of the Public Utility Code; and that violates a number of rights, privileges, immunities, and protections that are guaranteed to The People of Pennsylvania;

I respectfully requests that the Commission compel PPL Electric Utilities to make an accommodation, if necessary, based on his reasonable request for accommodation, and desist from deploying or attempting to deploy any wireless equipment on the grounds that such deployment or attempt to deploy any wireless equipment on the Complainant's home or property would be an act of assault.

Finally, I request that PPL Electric Utilities be fined or penalized for violating the PUC's emergency order No. M-2020-3019244 to serve as a deterrent for any possible future acts of aggression against homeowners and their rights. The intentional infliction of emotional distress and the physical abuse this causes by a public transmitting utility is a very, very serious matter and Plaintiff/Complainant should be compensated for his suffering.

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)/ Domestic Violence

Has a court granted you a "Protection From Abuse" order or any other order which provides clear evidence of domestic violence against you 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 or any other 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

(one)

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, (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 Jeffrey W. Smiles, 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).

\_\_\_\_\_  
(Signature of Complainant) Jeffrey W. Smiles \_\_\_\_\_ May 24 2021  
(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. **How 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>.

**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 the tracking information as proof of submission:

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

**If you are appealing a BCS decision:** follow the directions in the cover letter you received from the Secretary's Bureau with the formal complaint form. **ONLY** Formal complaints appealing a BCS decision can be filed by fax, email or overnight delivery to meet filing deadlines. **All other formal complaints MUST be filed or mailed.**

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.**

#3781308

Jeffrey W. Smiles  
3049 Octagon Avenue  
Sinking Spring, Pa 19608  
Phone: (610) 678-0254

March 5, 2021

Gladys Brown Dutrieuille, Chairman  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

RECEIVED

MAY 24 2021

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RE; Illegal shut-off of electric utility

Dear Chairman Dutrieuille:

This letter complainant is to notify you of the egregious and unlawful actions of PPL Electric Utilities concerning their blatant and intentional disregard for the Emergency Order you issued on March 13, 2020 ( Order No. M-2020-3019244 ) and of their intentional disregard for the PUC's stay order under the Commonwealth Court's decision in the case of *M. Povacz v. PA PUC* .

#### BACKGROUND

On March 3,2021, I found a threatening shut-off notice taped to my front door stating reasons that are false and making false claims to intentionally inflict emotional distress and further to intimidate to create fear and panic.

I immediately responded and called PPL Electric Utilities and was placed on hold. I then opted for a call back and left my number. A automated voice confirmed the request for a call back. No call was received that day or the following day, March 4, 2021.

1. The notice claims they called and found no one home
2. False claim that there is No access to change out meter
3. PPL is threatening the property owner that Electricity will be shut off on March 8, 2021
4. All Electric bills have been paid in Full and are up to date

This information on the shut off notice is entirely false, misleading and deceptive as well as threatening, causing harm to one who owns the property.

I was at home during the alleged time of posting written on the shut-off notice and there was no phone call, no door bell ring or knock at the door, nor any attempt to contact me. My attempts to contact PPL Electric Utilities were met with silence.

All parties must be made acutely aware that such acts described herein and perpetrated by PPL Electric Utilities not only violate my rights, and those rights under section 1502, but the Orders issued by the PUC and Commonwealth Court are clear and distinct.

Your Emergency Order No. M-2020-3019244 explicitly states in the last paragraph:

**THEREFORE, IT IS ORDERED:**

*That all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency consistent with this Emergency Order.*

Signed Gladys Brown Dutrieuille, Chairman

In the case of *M. Povacz v. PA PUC* the court stated that: "

***Act 129 does not mandate installation of wireless smart meters in all homes and does not preclude the PUC from granting Consumers appropriate relief....However, nothing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters." see footnote 11***

As the Povacz, et al case has been Appealed to the Pa Supreme Court, the PUC has subsequently ordered that no further smartmeters would be installed until the matter was resolved by the court.

**RELIEF REQUESTED**

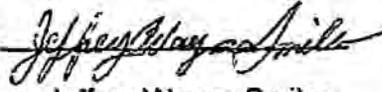
I am requesting an intervention from your Office in this matter as the unlawful shutting off of electricity, without just cause and outside of law, will cause irreparable harm to me any my property. I also suffer health disabilities, including EHS which require no termination of service. Any attempt to shut off

service could lead to a catastrophic event And you are informed of this.

PPL Electric Utilities has no business threatening, harassing, intimidating or intentionally inflicting emotional distress on anyone, especially during the time of a pandemic.

I demand that PPL Electric Utilities cease and desist from any further harassment or face criminal liabilities.

Dated: March 5, 2021

By:   
Jeffrey Wayne Smiles

Cc:

State Representative Jim Cox

Devon Ryan, esq.

PPL Electric Utilities

Attachments:

PUC ORDER  
Shut off Notices  
Bill

Additionally, Commission regulations at 52 Pa. Code §3.2 provide that, in addition to the existence of an emergency, an emergency order is appropriate where the need for relief is immediate, there would be irreparable injury if relief is not granted, and the relief is not injurious to the public interest.

I believe that issuance of an emergency order is appropriate under the unique circumstances. It is beyond argument that the provision of public utility service is necessary for the safety of the public. This is especially the case under the current challenges that resulted in the Proclamation of a pandemic emergency. Irreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.

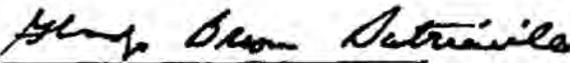
Therefore, all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency, unless to ameliorate a safety emergency, or unless otherwise determined by the Commission.

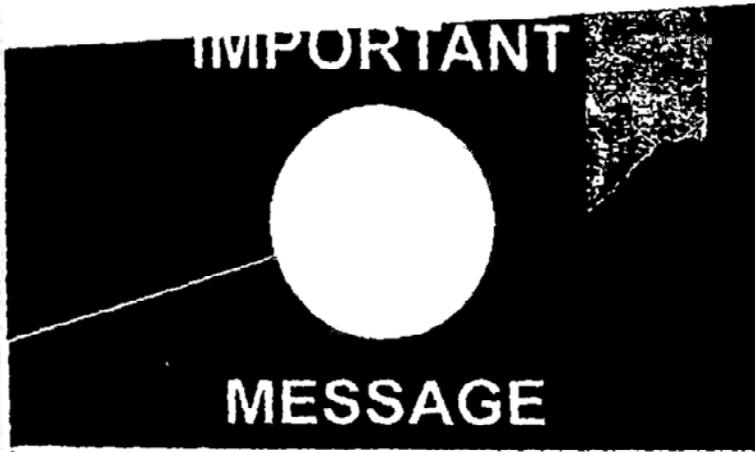
Finally, we encourage utilities to restore service to customers whose service has been terminated, to the extent they can do so safely.

**THEREFORE, IT IS ORDERED:**

That all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency consistent with this Emergency Order.

Date: March 13, 2020

  
Gladys Brown Dutrieuille, Chairman



DATE 3/3/21



# NOTICE

**PPL ELECTRIC UTILITIES REVENUE PROTECTION**  
**3-DAY SHUT-OFF NOTICE**

Date: 3/3/21 Time: 12 pm

Address: 3049 octagon Ave

Meter #: [REDACTED]

We do not have a customer of record for this service address. Please call our Customer Contact Center with the correct date you moved in, so billing can be put in the appropriate name.

If we do not receive a response within three (3) days, your electricity will be shut off on 3/8/21 after 8:00 a.m.

**Please call 1-800-342-5775**

Ext. \_\_\_\_\_  
Revenue Collection Specialist



**APPENDIX B**

**FORMAL COMPLAINT FILED BY JEFFREY W.  
SMILES AGAINST PPL ELECTRIC UTILITIES  
CORPORATION AT  
DOCKET NO. C-2018-3003895  
(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.*

**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 Jeffrey Smiles

Street/P.O. Box 3049 Octagon Ave Apt # \_\_\_\_\_

City Sinking Spring State Pa Zip 19608

County Berks

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

(610) 678-0254 (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 \_\_\_\_\_

**RECEIVED**

AUG 4 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**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.

PPL Electric Utilities

**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.
- 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.**

**On or about July 23, 2018 PPL Electric Utilities sent a letter USPS (attached) stating they were shutting off my electricity on 08/09/2018 claiming the reason for termination was "non-Access to meter." This is not true. PPL Electric Utilities is welcome to inspect the existing analog meter and even replace the existing analog meter with another analog meter of equal quality and construction. I simply declined the installation of a "smartmeter" on or about July 16 and did not "opt in."**

**PPL Electric Utilities is rushing forward with its intent to attach Radio Frequency (RF) transmitting equipment to my home to collect private data that the owner does 'not' want to share, and to facilitate PPL's collection of data from my home, which will impose a 'permanent' physical occupation of the home [without] consent and [without] just compensation.**

**Unlike a traditional analog meter which provides historical data about energy usage, "smart meters" can be accessed remotely and even "hacked" by subversive elements, and contain an enormous amount of data about personal behavior. This information facilitates potential threats to the Owner's physical security and property interests; for example, by providing detailed information regarding when an individual is home.**

**As a direct result of PPL's failure to provide me with FULL DISCLOSURE or any DISCLOSURE for that matter, they have substantially violated my rights! Moreover, The freedom of choice of opting-out of the installation of a so-called "smart meter" on my home, which is clearly required by federal statute, will cause me to suffer substantial and irreparable injuries.**

**By forcing the Owner to [opt-in] accept a "smart meter" [data mining] device, and by not providing FULL DISCLOSURE and the freedom and choice to [opt-out], as mandated by the Energy Policy Act of 2005, PPL Electric Utilities is therefore in violation of my Fourth & Fifth Amendment rights.**

**The Energy Policy Act of 2005 established an optional standard by which utilities are required to make a time-variable rate structure (often accomplished with wireless, digital smart meters, but also with analog meters and wired meters) available "upon customer request."**

**In 2001, the Supreme Court affirmed the primacy of privacy in the home by prohibiting the use of a thermal imager to gather details about the home that would have been previously inaccessible without a physical trespass. See: *Kyllo v. United States*, 533 *u.s.*, 27 (2001). This decision built upon previous judgments in which the Court maintained robust Fourth Amendment protections of the home based on the quality and quantity of the data that can be known.**

**Under the Fourth Amendment, PPL Electric Utilities may not intrude into an area in which a person has an actual expectation of privacy that society would consider reasonable.**

**PPL Electric Utilities has not stated but they can be presumed to be acting pursuant to administrative regulations in installing and maintaining a Smart Meter. However, such administrative regulations are unconstitutional on their face and do not apply against the private man or woman so secured inviolable by the Bill of Rights and Declaration of Rights (Pa. Const.).**

**The Supreme Court has established the three ways federal law may preempt state law: First, state law may be preempted where the United States Congress enacts a provision which expressly preempts the state enactment. [Second], preemption may be found where Congress has legislated in a field that it has implicitly expressed an intention to occupy the given field to the exclusion of state law. Finally, a state enactment will be preempted where a state law conflicts with a federal law. Such a conflict may be found in two instances, when it is impossible to comply with both federal and state law or where the state law stands as an obstacle to the accomplishment and execution of the objectives of Congress." However, no law or statute can violate the natural rights of the people and those enumerated in the plain language of the Bill of Rights.**

**PPL Electric Utilities seems intent to commit civil theft by installing and maintaining a Smart Meter that data mines and data bases private life style choices of Owner and his family's habits through the electromagnetic analysis of utility usage, and indicates they will make that data available to unknown persons without my knowledge and informed consent. Further, PPL Electric Utilities may store that personal data in ways that render it susceptible to hackers, home invaders and other criminals who pose a serious risk of further injury and loss to me personally.**

**Furthermore, the report from the American Academy of Environmental Medicine, Stated : "an immediate caution on Smart Meter installation due to the potentially harmful RF (radio frequency) exposure" and "accommodation for health considerations regarding EMF (electromagnetic field) and RF exposure, including: exposure to wireless Smart Meter technology."**

**"In the last five years with the advent of wireless devices, there has been a massive increase in radio frequency (RF) exposure from wireless devices as well as reports of hypersensitivity and diseases related to electromagnetic field and RF exposure," the report says. "Multiple studies correlate RF exposure with diseases such as cancer, neurological disease, reproductive disorders, immune dysfunction, and electromagnetic hypersensitivity."**

**PPL Electric Utilities clearly plans to cause me personal injury, while acting under color of law, because of their intent to install a Smart Meter that causes electromagnetic waves that will potentially make the owner and his family ill / sick.**

**IT IS ALSO A FACT that smart meters have not been certified by Underwriters' Laboratories for safety and effectiveness and those installed by PPL Electric Utilities are of foreign manufacturer, made of plastic, with explosive components, outside of known and accepted parameters, never subjected to independent UL testing for fire safety.**

**Exploding smartmeters are not a rare occurrence but are now so commonplace that in many areas the entire smartmeter deployment had to be replaced costing millions of dollars. ( "Remote disconnect switch failure resulted in a recall of over 10,000 "smart" meters in Lakeland, Florida where 6 house fires occurred." <http://www.theledger.com/article/20140116/NEWS/140119331> )**

**Because PPL's foreign made, plastic, out-sourced, smart meters are not UL listed/certified, they have no proven safety record and would thus subject Owner to serious Health and fire safety violations. Additionally, The CPSC is taking complaints about smartmeters and is acting on them ( see <https://www.cpsc.gov/About-CPSC/Contact-Information> ) .**

**NOTE: THERE EXISTS NO DOCUMENTED EVIDENCE OF A SINGLE HOME FIRE CAUSED BY A ANALOG ELECTRIC METER!**

**PPL Electric Utilities is willfully threatening me in their thinly vield letter, with intent to do harm, causing fears and worry, that if I do not opt in to their machinations and allow a untested, uncertified, invasive, potentially explosive, information gathering device, that could be hacked or weaponized, to be placed on my home my electricity will be cut off by them, thereby creating another life-threatening stressful situation for me, imperiling my health and violating known laws including 18 PACSA § 2706, § 3923. Theft by extortion.**

**(a) Offense defined.--A person is guilty of theft if he intentionally obtains or withholds property of another by threatening to:**

**(1) commit another criminal offense;**

- (2) accuse anyone of a criminal offense;
- (3) expose any secret tending to subject any person to hatred, contempt or ridicule;
- (4) take or withhold action as an official, or cause an official to take or withhold action;
- (5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;
- (6) testify or provide information or withhold testimony or information with respect to the legal claim or defense of another; or
- (7) inflict any other harm which would not benefit the actor.

**WHEREFORE, I reserve the right to amend this complaint, and further demands an open and impartial hearing on all facts, freely administered without bias, without prejudice, including any acts of malfeasance, corruption and dereliction of duty by any public servant so involved to be entered on the record.**

**NO ONE CAN BE FORCED TO ACT AGAINST THEIR OWN BEST INTERESTS AND ANYONE WHO WOULD FORCE ANOTHER TO ACT AGAINST THEIR BEST INTERESTS WILL BE HELD LIABLE FOR DAMAGES.**

**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.



**PPL Electric Utilities**  
827 Hausman Road  
Allentown, PA 18104-9392  
Tel. 800.342.5775 Fax 484.634.3484  
www.pplelectric.com



**JEFFREY SMILES**  
3049 OCTAGON AVE  
SINKING SPRING, PA 19608

July 23, 2018

**Bill Account Number:** [REDACTED]

**RECEIVED**

AUG 4 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Jeffrey Smiles:

**Proposed Termination Date: 08/09/2018**  
**Reason for Termination: Non-Access to Meter**

To improve our service to you and to comply with state regulations, we need to install a new electric meter at your residence. Among other features, the new electric meters will give customers access to pricing and consumption information to manage their energy use more efficiently. Additionally, the new meters will improve reliability through better detection of power outages.

We've been trying to make arrangements with you to arrange a time that's convenient. Unfortunately, we have not heard back from you to schedule an appointment.

To avoid service interruption, please contact us at the above phone number before the proposed termination date listed above so that we can arrange a time to install the new meter. Service termination is always a last resort and it is our hope that we can avoid this action.

**MEDICAL EMERGENCY NOTICE:**

Let us know if someone living in your home is seriously ill or has a medical condition that will be aggravated by the cessation of service. We will not shut off your service during such illness provided you:

- (a) Have a licensed physician, physician's assistant, or nurse practitioner certify by phone or in writing that such illness exists and that it may be aggravated if your service is stopped; and
- (b) Make some equitable arrangement to pay the company your current bills for service;
- (c) Contact us by calling the following number 1-800-358-6623 or writing to us at PPL Electric Utilities, 827 Hausman Rd., Allentown, PA 18104;
- (d) Have your licensed physician send a letter to the utility within 7 days verifying the medical condition.

If the shut off takes place, we will charge a \$14 (minimum) reconnection fee to restore the electric service after we replace the meter.

## **Understanding Your Rights**

**The Pennsylvania Public Utility Commission (PUC) is a regulatory agency that balances the needs of consumers and utilities to ensure safe and reliable utility service at reasonable rates. Additionally, the PUC establishes the rules and regulations with which utilities must comply.**

**If you do not agree with this report, you may file an informal complaint with the PUC by calling toll-free in PA at 1-800-692-7380. If you prefer, you may write the PUC, P.O. Box 3265, Harrisburg, PA 17105-3265.**

**The PUC will ask you to provide the following information.**

- **The customer's name and phone number.**
- **The customer's address, and if different, the service address.**
- **The utility company's name and the customer's account number, if there is one.**
- **A brief statement of the dispute and the relief sought.**
- **Whether the company has already investigated and reported the dispute.**
- **Whether the same formal or informal complaint was filed with the PUC in the past.**
- **The proposed shut-off date, if any.**

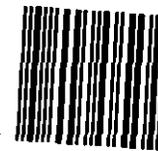
**If you need additional information or have other concerns, please call PPL toll-free at 1-800-DIAL-PPL (1-800-342-5775).**

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL



1005



17120

U.S. POSTAGE  
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FROM

# PRIORITY® ★ MAIL ★

FROM:

*Jeff Smiles  
3049 OJagon Ave  
Sinking Spring, Pa 19608*



DATE OF DELIVERY SPECIFIED\*



USPS TRACKING™ INCLUDED\*



INSURANCE INCLUDED\*



PICKUP AVAILABLE

\* Domestic only

TO:

*Secretary  
Pennsylvania Public Utilities Comm.  
400 North Street  
Harrisburg, PA  
17120*

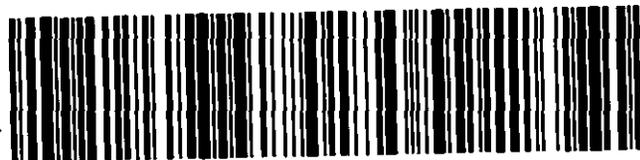
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## **APPENDIX C**

# **THE JULY 12, 2019 *INITIAL DECISION* DISMISSING THE COMPLAINT FILED BY JEFFREY W. SMILES AGAINST PPL ELECTRIC UTILITIES CORPORATION**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffery Smiles	:	
	:	
v.	:	C-2018-3003895
	:	
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” on his service address. 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, regulation, or a Commission-approved tariff of the company.

**HISTORY OF THE PROCEEDING**

On August 4, 2018, Jeffrey Smiles (Complainant) filed the instant Complaint requesting that PPL Electric Utilities Corporation (PPL or Respondent) be precluded from installing a radio frequency (RF) meter on his residence at 3049 Octagon Avenue, Sinking Spring, Pennsylvania, 19608. Complaint at 3.

The Complaint was served upon PPL on August 8, 2018.<sup>1</sup> On August 28, 2018, Respondent filed an Answer. The Answer admits that the Respondent provided electric service to the Complainant at the service address and notified Complainant that it would be installing a new AMI meter. Respondent contends that it is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers.

On September 10, 2018, a Notice was issued scheduling a telephonic hearing on March 8, 2019, and assigning me as presiding officer. Also on September 10, 2018, I issued a Prehearing Order. On February 6, 2019, PPL requested a continuance of the March 8, 2019 hearing to June 11, 2019. On February 19, 2019, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued, rescheduling the hearing to May 24, 2019. On May 14, 2019, PPL filed a Motion to Compel discovery responses to its Interrogatories. On May 23, 2019, PPL filed a Motion in Limine seeking a ruling that Complainant be prohibited from presenting any expert witnesses, medical records, health and safety or privacy-related exhibits.

The hearing was held on May 24, 2019 as scheduled. Complainant appeared *pro se* in person with no exhibits. As Complainant had no exhibits and no expert witnesses, the Motion in Limine will be denied as moot. The Motion to Compel will also be denied as moot as the underlying complaint will be dismissed.

Respondent appeared represented by Devin Ryan, Esquire and Curtis Renner, Esquire with four written statements, 15 exhibits and four witnesses: Kevin Durkin, Donald Vinciguerra, Christopher Davis, Ph.D., and Mark Israel, M.D. Respondent's Statements 1-4 and Exhibits CD-1 – CD-5; MI-1-MI-3; KD-1-KD-6 and DV-1 were admitted into the record. Tr. 4.<sup>2</sup>

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<sup>1</sup> PPL signed a waiver of the Section 702 requirement for registered or certified mail service of formal complaints, 66 Pa. C.S. § 702, and agreed to electronic service under the Commission's waiver of 702 program. *See In Re: Electronic Service of Formal Complaints*, Secretarial Letter Dated December 22, 2014, at Docket Nos. M-2013-2398153 *et al.* Service is listed in the electronic Audit History of the case as entered by the Secretary's Bureau as having been effective on August 8, 2018. Thus, PPL's Answer filed on August 28, 2018 is deemed timely filed.

<sup>2</sup> All transcript citations reference the hearing transcript dated May 24, 2019.

A transcript consisting of 44 pages was filed and the record closed on June 17, 2019. This case is ripe for a decision.

### FINDINGS OF FACT

1. The Complainant in this proceeding is Jeffrey Smiles, who resides at 3049 Octagon Avenue, Sinking Springs, Pennsylvania (service address). Tr. 10-11.

2. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). Tr. 10-11.

3. Complainant resides alone in a single family home in a development about six miles from Reading, Pennsylvania. Tr. 11.

4. Complainant is neither a medical doctor nor an engineer. Tr. 15.

5. Complainant has no education or background in cyber security. Tr. 16.

6. PPL sent Complainant a termination notice for refusal to allow access to install a smart meter. Tr. 20-21, PPL Electric Statement No. 3 at 9.

7. Powerline carrier (PLC) meters do not emit radio frequency (RF) fields and are often referred to by customers as analog meters. PPL Electric Statement No. 4 at 5.

8. A PLC meter uses the power lines as a means of communication with pulses encoded on the 60 Hertz line frequency so that PPL can record the data to the proper account. PPL Electric Statement No. 4 at 5.

9. Complainant has a PLC meter on his service property. PPL Electric Statement No. 3.

10. On June 30, 2014, PPL filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 of 2008 and the Commission's Smart Meter Implementation Order. PPL Electric Exhibit No. DV-1, *PPL Smart Meter Technology Procurement and Installation Plan*, June 30, 2014.

11. PPL selected RF Mesh meters and metering system because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the Smart Meter Implementation Order. PPL Electric Exhibit No. DV-1.

12. The RF Mesh system allows the Company to receive data from the customer's meter wirelessly, unlike PPL's previous PLC system that used the customer's actual wires. PPL Statement No. 3 at 6-7.

13. Under the Smart Meter Plan, the RF Mesh meters are to be deployed by the end of 2019. PPL Electric Statement No. 4 at 6.

14. PPL intends to install a Landis + Gyr E350 FOCUS AXR-SD meter at Complainant's service property. PPL Electric Statement No. 4 at 6, PPL Exhibit No. DV-1.

15. The Federal Communications Commission (FCC) identification number for the new AMI meter is R7PEG1R1S2. PPL Electric Statement No. 4 at 6.

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

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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, 12.

23. “Dirty electricity” is a non-scientific term that sometimes is used to refer to electrical characteristics (harmonics and transients) that can be found on household wiring. Tr. 75-76, PPL Electric Statement No. 1 at 8.

24. The AMI meter in question does not generate spurious harmonics or signals that are commonly referred to as “dirty electricity.” Tr. 72-72.

25. 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.

26. 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.

27. 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. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD2.

28. The level of RF fields from the Landis + Gyr Focus AX-SD AMI meter is 0.0000061 mW/cm<sup>2</sup> at a distance of one meter. PPL Electric Exhibit CD-2.

29. The FCC RF maximum limit standard is 0.6 mW/cm<sup>2</sup> at one meter distance. PPL Electric Exhibit CD-2.

30. 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, PPL Electric Exhibits CD-2 and CD-3.

31. The RF field exposure 30 feet from a person using a cell phone are three times larger than the RF fields from the AMI meter. PPL Electric Statement No. 1 at 14, PPL Electric Exhibit CD4.

32. RF fields from using cell phones near the head can be over 260,000 times higher than the RF fields from the AMI meter. Tr. 14, PPL Electric Exhibit CD4.

33. Complainant has a Tracphone cell phone that he only uses for emergencies when driving. Tr. 15.

34. There are eight television broadcast towers within a 50-mile radius of Complainant's service address in Sinking Springs, Pennsylvania. PPL Electric Statement No. 1 at 15.

35. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainant's residence are 6.7 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

36. The level of RF fields from AMI meters being used by PPL is far too low to cause a thermal or heating effect. PPL Electric Statement No. 1 at 13-14.

37. 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.

38. 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.

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

40. 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.

41. Dr. Israel also 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.

42. 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 12-13.

43. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2 at 15-16.

44. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 15-16.

45. 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 10-16, PPL Electric Exhibit MI-1.

46. The BioInitiative Report is not an objective or balanced reflection of the current state of scientific knowledge. PPL Electric Statement No. 2 at 16.

47. Several state public health authorities in the United States have also 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.

48. As a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data. PPL Electric Exhibit No. DV-1.

49. PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. PPL Statement No. 4 at 7-8.

50. Customer data is encrypted to make the data readable to only PPL personnel who can decode the encryption. PPL Statement No. 4 at 7-8.

51. PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. PPL Statement No. 4 at 7-8.

## DISCUSSION

### Legal Standards

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

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9,

1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).<sup>3</sup>

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.” *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at \*210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”). Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Id.* at \*211. Specifically, in AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015) (*Kreider*); *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.”

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<sup>3</sup> In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be “more than a scintilla and must do more than create a suspicion of the existence of the fact to be established,” *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

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

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

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

66 Pa. C.S. § 1501.

Section 57.28(a)(1) of the Commission’s Regulations provides:

An electric utility shall use reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility service and its associated equipment and facilities.

52 Pa. Code § 57.28(a)(1).

When presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s [Administrative Law Judge’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* (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).

Opt-out v. Opt-in

Act 129 amended Chapter 28 of the Public Utility Code (Code), 66 Pa. C.S. §§ 2801-2815, 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. While Act 129 does not provide customers a general “opt-out” right from smart meter installation at a customer’s residence, a customer’s formal complaint that raises 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 is legally sufficient to proceed to an evidentiary hearing before an ALJ. *See Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013) (*January 2013 Povacz Order*); *see also Kreider*.

To the extent that the Complainant desires the ability to “opt out” of the smart meter installation, he could advocate for such ability before the General Assembly, which is considering amending Section 2807(f) in some pending bills including: PA House Bill Nos. 1564 and 1565; and Senate Bill No. 443. These bills are not law. The Commission has held that it has no authority, absent directive in the form of legislation, to prohibit an EDC from installing a smart meter where a customer does not want one. *See January 2013 Povacz Order*. PPL would be in violation of the law if they did not install a smart meter at similarly situated residences. *Id.* The Commission has held that there is no provision in Pennsylvania law to allow a customer to opt out from the installation of an AMI meter, and thus, this requested relief is outside of the Commission’s jurisdiction and authority. *Hoffman-Lorah v. PPL Electric Utilities Corporation*, C-2018-2644957 (Opinion and Order entered May 23, 2019) at 43-44. There is no legal requirement that PPL be required to wait until legislation is passed allowing customers to opt out of a smart meter installation. Accordingly, I find in favor of Respondent on this issue.

The Commission has addressed whether an EDC can offer some accommodation or alternative to customers who have concerns about AMI meters. In its January 28, 2016 Order, the Commission elaborated upon the kinds of accommodations or alternatives that might be possible, stating:

It may be possible, for example, for the Respondent to install the smart meter in a different location other than outside of the Complainant's bedroom or to use a different type of smart meter at this Complainant's home.

*Kreider at 23.*

The Commission did not state that meter deployment could be delayed upon request to the deadline for smart meter deployment in 2020. In *Povacz v. PECO*, C-2015-2475023 (Initial Decision issued March 16, 2018), the ALJ gave the residential customer an option to notify the EDC whether she would relocate the meter socket at her service address. If timely done, the ALJ further ordered the customer to pay the costs to move her meter socket and ordered the EDC to bear the costs associated with connecting its service to a new location of a meter socket. *Id.* at 32, Ordering Paragraphs Nos. 1-9. On March 28, 2019, the Commission rejected the ALJ's directive that PECO must absorb the costs on its side of the meter to the extent any costs are anticipated to be incurred by PECO should the Complainant opt to relocate the meter board on her property. *Povacz*. Opinion and Order entered March 28, 2019.

In the instant case, PPL Witness Durkin testified PPL Electric Rule 4(I)(1) refers to the relocation of facilities, which would include the meter. Rule 4(I)(1) and (2) provide:

(1) The relocation of customer's facilities due to moving or rearranging Company's facilities at the direction of either the federal, state or local government is the customer's responsibility and expense.

(2) The relocation of Company facilities, when done at the request of others, is at the applicant's expense and payment of the company's estimated cost of the relocation is required in advance of construction. When the request is from an affected property owner and the facilities are on the customer's property, the charges for relocation of distribution system facilities are limited to estimated contractor costs, estimated direct

labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation.

Rule 4(I)(1) and (2), Supplement No. 59, Electric Pa. PUC No. 201, PPL Electric Exhibit KD-6, PPL Electric Statement No. 3 at 10. Mr. Durkin's testimony that a meter is considered part of a Company's facilities is unrefuted. PPL Electric Statement No. 3 at 10.

A public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316, *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Telephone Co. of Pennsylvania*, A.2d 339 (Pa. Cmwlth. 1977). Thus, I find Tariff Rule 4(I)(1) and (2) to be binding upon the parties and Complainant has failed to show the tariff provision to be unreasonable. Under PPL's Tariff Rule 4(I)(1) and (2), Complainant has the option of relocating his meter to a different location because while PPL chooses the type of meter, the customer chooses the location of the meter board and socket. If Mr. Smiles would like a different location for the AMI meter, he can hire an electrician to move the meter board/socket to a new location on the service property. This will, in some situations, require work on the PPL system as well to extend its conductors to the new meter board location. PPL will limit charges for relocation of distribution system facilities to estimated contractor costs, estimated direct labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation in accordance with its tariffed provisions. This option remains open to the parties. However, there is no tariff provision requiring PPL to move an AMI meter solely at the EDC's expense. This is consistent with the Commission's decision in *Torres v. PPL C-2018-2641883* (Final Order entered November 30, 2018 adopting Initial Decision issued October 17, 2018).

#### Health and Safety Concerns

Complainant requests PPL be precluded from installing an AMI meter on his service property for health and safety reasons. Tr. 14. Regarding this issue, Complainant mentions the BioInitiative Report in his discovery responses. PPL Electric Statement No. 2 at 16.

Conversely, PPL contends Complainant has failed to meet his burden of proving the meter intended for his service property will cause deleterious health effects. PPL argues the BioInitiative report is not an objective and balanced reflection of the current state of scientific knowledge. The report does not provide grounds for revising the current views as to the risks of exposure to electromagnetic fields. *Id.* at 16.

### Disposition

Complainant in this proceeding is neither a medical doctor nor an engineer. Tr. 10-11. He offered no medical exhibits and no expert witnesses in medicine or biophysics to support his claim that an AMI smart meter will cause adverse health and safety consequences. Complainant's testimony that there will be deleterious health effects if a smart meter is placed on his property is refuted by the credible expert testimonies of Dr. Mark Israel and Dr. Christopher Davis.

EHS is not a medical diagnosis that is widely accepted among medical practitioners given the credible testimony of Dr. Israel, who describes EHS as an idiopathic environmental intolerance, which has an unknown cause. Dr. Israel opined that Complainant's insomnia was not caused by radio frequency waves emitting from his neighbor's smart meter. I am persuaded to find Complainant had insomnia. However, I am not convinced EHS has a scientific basis as it appears to be based entirely upon self-reporting of adverse reactions to electromagnetic fields at intensities well below the maximum levels permitted by the FCC's radiation safety standards. The symptoms of EHS seem to vary widely and there is a psychological component to EHS. In giving his opinion, Dr. Israel relied on reports, "It is the IEI-EMF individuals' belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals." PPL Electric Statement No. 2.

Complainant's testimony was also refuted by PPL's expert witness Dr. Davis, who 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. 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.

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. 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 5-7, 12.

“Dirty electricity” is a non-scientific term that sometimes is used to refer to electrical characteristics (harmonics and transients) that can be found on household wiring. PPL Electric Statement No. 1 at 8. AMI meters do not generate electricity, do not generate harmonics and transients that are significant compared to the harmonics and transients already present on the 60 Hz power coming into the home and do not interfere with the operation of household wiring.

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

Dr. Davis opined that 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. PPL Electric Statement No. 1 at 15, 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.

The RF field exposure 30 feet from a person using a cell phone are three times larger than the RF fields from the AMI meter. PPL Electric Statement No. 1 at 14, PPL Electric Exhibit CD4. RF fields from using cell phones near the head can be over 260,000 times higher than the RF fields from the AMI meter. PPL Electric Exhibit CD4. Complainant has a Tracphone cell phone that he uses for emergencies while driving. Tr. 15. Complainant is receiving radiofrequency fields at a much higher level while using his Tracphone next to his head than he would be living in a house with an RF Mesh meter attached to it on an outside wall. 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.

Additionally, there are eight television broadcast towers within a 50-mile radius of Complainant's location in Sinking Springs, 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 Complainant's residence are 6.7 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5. Thus, given the background RF exposure to the service property compared to the minimal RF exposure from the AMI meter, I am not persuaded to conclude the AMI meter will cause a deleterious health effect to Complainant. This holding is consistent with recent caselaw precedent including: *Hoffman-Lorah supra.*; *Sunstein Murphy v. PECO Energy Company*, C-2015-2475726 (Opinion and Order entered May 9, 2019); *Benhayon v. PPL Electric Utilities Corporation*, C-2018-3003491 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019) and *Lesniewski v. PPL Electric Utilities Corporation*, C-2018-3004594 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019).

Recently, in *Povacz v. PECO*, C-2015-2475023 (Opinion and Order entered March 28, 2019), the Commission held Ms. Povacz failed to prove she suffered from

electromagnetic hypersensitivity syndrome as she had self-diagnosed the illness. *Id.* at 59-60. Without independent diagnostic evidence to corroborate a Complainant's self-diagnosis, Complainant failed to prove that she was electromagnetically hypersensitive. *Id.* at 60. Specifically, the Commission held:

Based on the foregoing analysis and discussion, we believe the Complainant's evidence is not sufficient to establish a *prima facie* case under 66 Pa. C.S. § 332(a) in demonstrating that the RF exposure levels from a PECO smart meter will cause adverse health effects for the Complainant.

*Id.* at 60.

Similarly, in the instant case, I find Complainant has not established a *prima facie* case to show that any RF exposure levels from a Landis + Gyr Focus AXR-SD meter will cause him to experience adverse health effects. The assertions of Complainant that his health will deteriorate because of radiofrequency fields emitted by an AMI meter are bald assertions, which do not constitute evidence. *Bervinchak v. PPL Electric Utilities Corporation*, Docket No. C-2016-2572824 (Final Order entered on October 2, 2018). *See also, Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d. 12 (Pa. 1987).

No corroborative medical evidence was proffered to support Complainant's testimony. There is insufficient evidence to show that an AMI meter will cause him to suffer deleterious health effects.

Complainant has no medical degree. Nor has he presented evidence from a medical professional. His testimony as to the deleterious health effects of an AMI smart meter was refuted by the credible testimony of PPL's expert witness Mark Israel, 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. Dr. Israel is board certified and licensed to practice medicine. PPL Electric Statement No. 2 at 3. 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. Dr. Israel also 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.

Claimed symptoms related to 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. There are no established medical criteria for the diagnosis or treatment of IEI. PPL Electric Statement No. 2, p. 16, lines 8-9. IEI and the variety of symptoms attributed to it are not caused by exposure to RF fields. PPL Electric Statement No. 2 at 15.

Several state public health authorities in the United States also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. PPL Electric Statement No. 2 at 11, PPL Electric Exhibit MI-2. 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. PPL Electric Statement No. 2. There is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainant, or any other adverse health effects. PPL Electric Statement No. 2 at 14-15. Accordingly, I find in favor of Respondent on this issue.

### Data Privacy

Complainant contends it is unreasonable that the new AMI meter invades his privacy and that the meters are not cyber-secure.

Conversely, PPL contends that Complainant’s assertion that the meter is insecure is a bald assertion unsupported by any evidence other than hearsay. Complainant has no

education in cyber-security. PPL contends its meters are cyber-secure and do not constitute and unreasonable search or invasion of Complainant's privacy.

### Disposition

As a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps the Company will take to protect the data, and the ways in which PPL will use the data. PPL Electric Exhibit No. DV-1. PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. PPL Statement No. 4 at 7-8. Customer data is encrypted to make the data readable to only PPL personnel who can decode the encryption. PPL Statement No. 4 at 7-8. PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. PPL Statement No. 4 at 7-8. Additionally, if Complainant is concerned about the AMI meter's connection to smart appliances in her home, she can decline to have the ZigBee radio activated. *See Lesniewski, Id.* at 24, wherein the Commission found in favor of PPL regarding the same data privacy issue. Specifically, the Commission held that Ms. Lesniewski had an option to decline activation of the ZigBee radio device located within the AMI meter. For these reasons, I find in favor of Respondent on this data privacy issue.

### CONCLUSION

For all of these aforementioned reasons, the complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of a smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or a violation of the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Although the Complainant is genuine in his 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. Complainant has failed to sustain his burden of proof that Respondent violated Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

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

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

11. Complainant has failed to sustain his 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.

12. PPL is legally required to install the RF Mesh meter on the Complainant's property by Act 129 of 2008 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).

13. Nothing in Act 129 of 2008 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).

14. The Commission previously determined that the Company's existing PLC meters are not compliant with Act 129 of 2008 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).

15. 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 of 2008 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).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Jeffrey Smiles against PPL Electric Utilities Corporation at Docket No. C-2018-3003895 is denied and dismissed.
2. That PPL Electric Utilities Corporation's Motion to Compel filed on May 14, 2019 is denied as moot.
3. That PPL Electric Utilities Corporation's Motion in Limine filed on May 23, 2019 is denied as moot.
4. That the docket in this proceeding be marked closed.

Date: July 12, 2019

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/s/  
Elizabeth H. Barnes  
Administrative Law Judge

## **APPENDIX D**

# **THE AUGUST 23, 2019 *FIRST COMPLAINT ORDER* ADOPTING THE *INITIAL DECISION* OF THE ALJ, AND DISMISSING HIS FIRST COMPLAINT AGAINST PPL ELECTRIC UTILITIES CORPORATION**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Jeffery Smiles	:	
	:	
v.	:	C-2018-3003895
	:	
PPL Electric Utilities Corporation	:	

**FINAL ORDER**

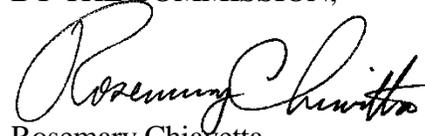
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Elizabeth H. Barnes dated July 12, 2019, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Jeffrey Smiles against PPL Electric Utilities Corporation at Docket No. C-2018-3003895 is denied and dismissed.
2. That PPL Electric Utilities Corporation's Motion to Compel filed on May 14, 2019 is denied as moot.
3. That PPL Electric Utilities Corporation's Motion in Limine filed on May 23, 2019 is denied as moot.
4. That the docket in this proceeding be marked closed.

BY THE COMMISSION,

  
Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ENTERED: August 23, 2019

## **APPENDIX E**

### **THE AUGUST 27, 2020 *ORDER ON RECONSIDERATION* DENYING THE FIRST AND SECOND PETITIONS OF JEFFREY W. SMILES**

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

Public Meeting held August 27, 2020

Commissioners Present:

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

Jeffrey Smiles

C-2018-3003895

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following two documents filed by Jeffrey Smiles (Mr. Smiles) on August 19, 2019, in the above-captioned proceeding: (1) a document titled “Notice to the Court; Objection to Initial Decision Not Received and Petition for Rehearing and/or Reconsideration” (First Petition); and (2) a document titled “Notice and Petition for Judicial Determination of Jurisdiction” (Second Petition). PPL Electric Utilities Corporation (PPL or Company) filed a separate Answer to each Petition on August 28, 2019. For the reasons discussed below, we shall deny Mr. Smiles’ First Petition and Second Petition.

## I. History of the Proceeding

On August 4, 2018, Mr. Smiles filed a Formal Complaint (Complaint), requesting that PPL be precluded from installing a radio frequency (RF) meter on his residence at his service address. Complaint at 3. In his Complaint, Mr. Smiles raised allegations concerning statutory interpretation of Act 129 as an “opt-in” requirement; health, fire, and safety issues related to the installation and use of a smart meter; and, privacy violations under the Fourth Amendment of the United States Constitution related to the use of a smart meter. *See* Complaint at 3-6.

On August 28, 2018, PPL filed an Answer,<sup>1</sup> admitting that PPL provided electric service to Mr. Smiles at the service address and notified him that it would be installing a new Advanced Metering Infrastructure (AMI) meter. PPL contended in its Answer, however, that it is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers, including Mr. Smiles. Answer at 1-5.

The hearing was held on May 24, 2019, as scheduled.<sup>2</sup> Mr. Smiles appeared *pro se* in person with no exhibits and no expert witnesses. I.D. at 2. PPL appeared represented by counsel, who presented four written statements, 15 exhibits, and four witnesses: Kevin Durkin, Donald Vinciguerra, Christopher Davis, Ph.D., and Mark

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<sup>1</sup> The Complaint was served upon PPL on August 8, 2018.

<sup>2</sup> On September 10, 2018, the Parties were served with a Hearing Notice, scheduling a telephonic hearing on March 8, 2019, and assigning Administrative Law Judge (ALJ) Barnes as presiding officer. Also, on September 10, 2018, ALJ Barnes issued a Prehearing Order. On February 6, 2019, PPL requested a continuance of the March 8, 2019 hearing to June 11, 2019. On February 19, 2019, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued, rescheduling the hearing to May 24, 2019. We note that the foregoing Hearing Notice, Prehearing Order, Reschedule Hearing Notice, as issued by the Commission, were served on Mr. Smiles at the service address on record and not returned to the Commission as undeliverable.

Israel, M.D.; PPL's Statement (St.) Nos. 1-4 and Exhibits CD-1 – CD-5; MI-1-MI-3; KD-1-KD-6 and DV-1 were admitted into the record. Tr. 4.<sup>3</sup>

The record closed on June 17, 2019, with a transcript consisting of forty-four pages.

On July 12, 2019, the Initial Decision of ALJ Barnes was issued by the Commission in this proceeding (Initial Decision or I.D.). The Initial Decision dismissed the Complaint due to Mr. Smiles' 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 (Code), a Commission Order, Regulation, or a Commission-approved tariff of the company. I.D. at 1, 20.

On July 22, 2019, the Commission issued a one-page Errata to the Initial Decision (Errata), correcting a typographical error on page seventeen of the Initial Decision<sup>4</sup> and otherwise stating that: "In all other respects the Initial Decision remains in full force and effect in its entirety." Errata at 1.

Per the Secretarial letter serving the Initial Decision (Secretarial Letter), Exceptions were due by Friday, August 1, 2019. No Exceptions were filed by the required due date.

On August 19, 2019, Mr. Smiles filed the First Petition and Second Petition, as noted above.

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<sup>3</sup> All transcript citations reference the hearing transcript dated May 24, 2019.

<sup>4</sup> The Errata amended the word "Mifflintown" on page seventeen to state "Sinking Springs." Errata at 1.

On August 23, 2019, the Commission entered a Final Order stating that, in accordance with the provisions of Section 332(h) of the Code, 66 Pa. C.S. § 332(h), the Initial Decision of ALJ Barnes issued July 12, 2019, “has become final without further Commission action.” Thus, the Final Order, *inter alia*, denied and dismissed the Complaint and marked the proceeding closed.

On August 28, 2019, PPL filed an Answer to the First Petition and an Answer to the Second Petition.

## **II. Discussion**

### **A. Nature of Filing**

We begin by considering the nature of the filings before us, to determine the applicable legal standard of review. Because Mr. Smiles is not represented by an attorney, we shall exercise our discretion to liberally construe our procedural Regulations “to secure the just, speedy, and inexpensive determination” of this proceeding. 52 Pa. Code § 1.2(a). Due to the unique circumstances involving the timing of the filing of the Petitions, and further due to the substantive arguments raised in each Petition, we will review each Petition under the Commission’s standard of review for petitions for rehearing, clarification, and reconsideration, as explained in more detailed below.

As for the timing of the filings, we note that no Exceptions were filed in this proceeding by the required due date, which, as noted above, was August 1, 2019.<sup>5</sup>

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<sup>5</sup> Additionally, we note that Mr. Smiles did not attempt to file Exceptions *nunc pro tunc*. In prior cases, upon request and when good cause is shown, we have considered late-filed exceptions. *See, e.g., Murphy et al. v. PECO Energy Co.*, Docket No. C-2015-2475023, 2018 WL 1745264, (Mar. 26, 2018); *see also, e.g., Grainda v. Penn. Elec. Co.*, Docket No. C-2018-3000992, 2018 WL 6931985, (Dec. 20, 2018).

Because no Exceptions were filed by the required due date, by operation of law pursuant to 66 Pa. C.S. § 332(h),<sup>6</sup> the Initial Decision of ALJ Barnes became final without further Commission action. On August 23, 2019, a Final Order was entered by the Commission, stating as much, and dismissing the Complaint. Mr. Smiles filed the instant Petitions on August 19, 2019, which was a total of eighteen days after the date the Initial Decision became final by operation of law. However, the timing of the filings was also premature in that the Petitions were filed four days before the Final Order was entered. Due to these unique circumstances regarding the timing of the filing of Mr. Smiles' Petitions (1) after the Initial Decision became final by operation of law, but (2) before the Final Order was entered, in our discretion we will deem the filings as timely under Section 5.572(c) (re: petitions for reconsideration, rehearing, or clarification).<sup>7</sup>

As for the substantive arguments raised in each Petition, we note Mr. Smiles' First Petition is titled, in part, as a "Petition for Rehearing and/or Reconsideration." In his First Petition, Mr. Smiles claims he was not afforded due process in this proceeding because he never received service of the Initial Decision from the Commission. First Petition at 1-2, 4. He also requests a rehearing because he claims he "was forced to participate in [the] hearing while in a debilitated condition." First Petition at 3. He does not, however, request the Commission to reopen the record for the

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<sup>6</sup> Section 332(h) states: "If no exceptions are filed, the decision shall become final, without further commission action, unless two or more commissioners within 15 days after the decision request that the commission review the decision and make such other order, within 90 days of such request, as it shall determine." 66 Pa. C.S. § 332(h). By its plain language, there is an exception to the rule that the Initial Decision will become final without further Commission action in the event no exceptions are filed: that is, if two or more Commissioners, upon their own motion, call up the decision for review and determine to modify, reverse, or remand the decision. Here, the exception does not apply, as evidenced by the entry of the Commission's Final Order on August 23, 2019.

<sup>7</sup> Section 5.572(c) of the Commission's Regulations permits petitions for rehearing, re-argument, reconsideration, clarification, supersedeas, or the like, to be filed within fifteen days after a final order is entered or otherwise becomes final.

purpose of taking additional evidence.<sup>8</sup> Thus, based on the substance of the arguments raised in the First Petition, we will review the First Petition as a petition for reconsideration and rehearing.

Meanwhile, in his Second Petition, Mr. Smiles “calls for clarification of jurisdiction” of the Commission’s authority to adjudicate his smart meter Complaint, essentially arguing that the Commission lacks jurisdiction to adjudicate this smart meter Complaint. Second Petition at 1-3. Additionally, he challenges the Commission’s interpretation of Act 129, arguing that the Commission’s prior determinations that Act 129 does not provide customers a general right to “opt-out” of smart meter installation is an error of law violative of the Act’s plain language. Second Petition at 2-3. In the present case, any issue concerning the Commission’s jurisdiction to adjudicate Mr. Smiles’ smart meter Complaint or the Commission’s statutory interpretation of Act 129, was resolved through our adoption of the ALJ Barnes’ Initial Decision and our dismissal of the Complaint in the Final Order. Thus, we will consider Mr. Smiles’ arguments in the Second Petition regarding our jurisdiction and our statutory interpretation of Act 129 under the Commission’s standard of review for petitions for reconsideration and clarification.

## **B. Legal Standards**

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearing, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

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<sup>8</sup> Section 5.571(a) states that a petition to reopen the record may be filed “[a]t any time after the record is closed but before a final decision is issued...for the purpose of taking additional evidence.” 52 Pa. Code § 5.571(a).

As explained by the Pennsylvania Supreme Court, petitions to reconsider, clarify, amend or rescind a final agency action may only be “granted judiciously” and “under appropriate circumstances” because such action results in the disturbance of final agency orders. *See City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980) (*City of Pittsburgh*).<sup>9</sup>

The Commission’s standard for reviewing any petition for reconsideration, rehearing,<sup>10</sup> and clarification following a final order is set forth in the Commission’s Order entered in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982) (*Duick*). In *Duick*, we stated as follows:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the court in the *Pennsylvania Railroad Company* case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

*Duick*, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)). Under the standards of

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<sup>9</sup> Meanwhile, a decision to deny relief is a matter squarely within our discretion, subject to being overturned only where a reviewing court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995).

<sup>10</sup> *See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of their Default Service Programs*, 2012 Pa. PUC LEXIS 1533, at \*4-5 (Order entered Sept. 27, 2012) (explaining that the *Duick* standards applies to “petitions for rehearing, reargument, and clarification” as well).

*Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

We note that the considerations of *Duick*, on application, essentially, require a two-step analysis. See, e.g., *SBG Management Services, Inc./ Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 19, 2019) (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Order entered September 11, 2014)). The first step is that we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. *Id.* The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, in order to determine whether to modify our previous decision. *Id.* We will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. *Id.*

Finally, we note that any arguments not specifically discussed 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. Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993).

### C. ALJ's Initial Decision<sup>11</sup>

In her Initial Decision, ALJ Barnes made fifty-one Findings of Fact (FOF) and reached sixteen Conclusions of Law (COL). I.D. at 3-9, 21-23.

#### Legal Standards Applicable to the Complaint

The ALJ explained the legal standards applicable to the Complaint. I.D. at 9-13. In summary, the ALJ explained that under Section 332(a) of the Code, 66 Pa. C.S. § 332(a), the proponent of a rule or order has the burden of proof and that it is well-established that the burden of proof before administrative tribunals is the preponderance of evidence standard, satisfied by substantial and legally credible evidence. The ALJ explained that the preponderance of evidence standard requires proof by a greater weight of the evidence. This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. I.D. at 9 (citations omitted).<sup>12</sup> If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. I.D. at 9-10 (citations omitted).

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<sup>11</sup> As noted above, on July 22, 2019, the Commission issued a one-page Errata to the Initial Decision, correcting a typographical error on page seventeen of the Initial Decision and otherwise stating that: "In all other respects the Initial Decision remains in full force and effect in its entirety." Errata at 1.

<sup>12</sup> For the omitted citations, please refer to ALJ Barnes' Initial Decision.

In addition, the ALJ explained that 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.” I.D. at 10 (citing *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.” I.D. at 10 (citing *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015) (*Kreider*); citing also *Romeo v. Pa. PUC*, 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”)).

The ALJ explained that Section 701 of the Code, 66 Pa. C.S. § 701, 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.” I.D. at 10-11. Therefore, a complainant must generally demonstrate that the public utility violated the Code or a Commission Regulation or order. I.D. at 11.

The ALJ explained that the Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. I.D. at 11 (citing *Elkin v. Bell of Pa.*, 420 A.2d 371, 374

(Pa. 1980)). The ALJ explained that Section 1501 of the 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. . .

I.D. at 11 (citing 66 Pa. C.S. § 1501).

Additionally, the ALJ explained that Section 57.28(a)(1) of the Commission's Regulations provides:

An electric utility shall use reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers, the public and others may be subjected to by reason of its provision of electric utility service and its associated equipment and facilities.

I.D. at 11 (citing 52 Pa. Code § 57.28(a)(1)).

The ALJ explained that when presented with a challenge to an AMI meter installation, the Commission has pronounced that “[t]he ALJ’s [Administrative Law Judge’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.” I.D. at 11-12 (citing *Kreider* (citing *Woodbourne-Heaton*, 1992 Pa. PUC LEXIS 160, at \*12-13); citing also *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018)).

### Smart Meter Opt-out Request

The ALJ explained that Act 129 amended Chapter 28 of the Code, 66 Pa. C.S. §§ 2801-2815, and required electric distribution companies (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. While Act 129 does not provide customers a general “opt-out” right from smart meter installation at a customer’s residence, a customer’s formal complaint that raises 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 is legally sufficient to proceed to an evidentiary hearing before an ALJ. I.D. at 12 (citing *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Order entered January 24, 2013) (*2013 Povacz Order*); citing also *Kreider*).

The ALJ also explained that the Commission has held that it has no authority, absent directive in the form of legislation, to prohibit an EDC from installing a smart meter where a customer does not want one. I.D. at 12 (citing *2013 Povacz Order*). The ALJ explained that PPL would be in violation of the law if they did not install a smart meter at similarly situated residences. The ALJ explained that the Commission has held that there is no provision in Pennsylvania law to allow a customer to opt out from the installation of an AMI meter, and thus, this requested relief is outside of the Commission’s jurisdiction and authority. I.D. at 12 (citation omitted).

The ALJ further explained that, to the extent that Mr. Smiles desires the ability to “opt out” of the smart meter installation, he could advocate for such ability before the General Assembly, which is considering amending Section 2807(f) in some pending bills including: (1) PA House Bill Nos. 1564 and 1565; and (2) Senate Bill No. 443. The ALJ noted, however, that these bills are not law. The ALJ found that there is no legal requirement that PPL be required to wait until legislation is passed allowing customers to opt out of a smart meter installation. I.D. at 12. Based on all the foregoing, the ALJ found in favor of PPL with respect to Mr. Smiles’ request to opt-out of smart meter installation. I.D. at 12.

The ALJ further explained that a public utility’s Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. I.D. at 14 (citations omitted). After finding PPL’s Tariff Rule 4(I)(1) and (2) to be binding upon the parties and that Mr. Smiles failed to show the tariff provision to be unreasonable, the ALJ explained that under these tariff provisions Mr. Smiles has the option of relocating his meter to a different location because while PPL chooses the type of meter, the customer chooses the location of the meter board and socket. I.D. at 14. The ALJ explained that if Mr. Smiles would like a different location for the AMI meter, he can hire an electrician to move the meter board/socket to a new location on the service property. This will, in some situations, require work on the PPL system as well to extend its conductors to the new meter board location. PPL will limit charges for relocation of distribution system facilities to estimated contractor costs, estimated direct labor and estimated material costs, less an amount equal to any estimated maintenance expense avoided as a result of the relocation in accordance with its tariffed provisions. I.D. at 14. However, the ALJ found there is no tariff provision requiring PPL to move an AMI meter solely at the EDC’s expense. I.D. at 14.

## Health and Safety Claims

The ALJ addressed Mr. Smiles' claim that the AMI meter will cause or contribute to negative health effects. I.D. at 14 (citing Tr. 14). Regarding this issue, Mr. Smiles mentions the BioInitiative Report in his discovery responses. I.D. at 14 (citing PPL Electric St. No. 2 at 16). Conversely, PPL contended that he has failed to meet his burden of proving the meter intended for his service property will cause deleterious health effects. PPL argued the BioInitiative report is not an objective and balanced reflection of the current state of scientific knowledge. PPL also argued the report does not provide grounds for revising the current views as to the risks of exposure to electromagnetic fields. I.D. at 15 (citing PPL Electric St. No. 2 at 16).

The ALJ explained that Mr. Smiles in this proceeding is neither a medical doctor nor an engineer. I.D. at 15 (citing Tr. 10-11). The ALJ noted that Mr. Smiles offered no medical exhibits and no expert witnesses in medicine or biophysics to support his claim that an AMI smart meter will cause adverse health and safety consequences. I.D. at 15, 18. The ALJ concluded that Mr. Smiles had not established a *prima facie* case to show that any RF exposure levels from a Landis + Gyr Focus AXR-SD meter will cause him to experience adverse health effects. I.D. at 18. The ALJ concluded that Mr. Smiles' assertions that his health will deteriorate because of radiofrequency fields emitted by an AMI meter are bald assertions, which do not constitute evidence. I.D. at 18 (citing *Bervinchak v. PPL Electric Utilities Corporation*, Docket No. C-2016-2572824 (Final Order entered on October 2, 2018); citing also *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d. 12 (Pa. 1987)).

Moreover, the ALJ found that Mr. Smiles' lay testimony that there will be deleterious health effects if a smart meter is placed on his property is refuted by the credible expert testimonies of Dr. Mark Israel and Dr. Christopher Davis. I.D. at 15, 18.

Based on the credible testimony of Dr. Israel, the ALJ found that electromagnetic hypersensitivity (EHS) is not a medical diagnosis that is widely accepted among medical practitioners. I.D. at 15, 19. Dr. Israel testified that EHS is an idiopathic environmental intolerance (IEI), which has an unknown cause. I.D. at 15-19. Dr. Israel opined that Mr. Smiles' insomnia was not caused by radio frequency waves emitting from his neighbor's smart meter. While stating she was persuaded to find he had insomnia, the ALJ explained that she was not convinced EHS has a scientific basis as it appears to be based entirely upon self-reporting of adverse reactions to electromagnetic fields at intensities well below the maximum levels permitted by the Federal Communications Commission's (FCC's) radiation safety standards. The symptoms of EHS seem to vary widely and there is a psychological component to EHS. In giving his opinion, Dr. Israel relied on reports, "It is the IEI-EMF individuals' belief that exposure to RF EMFs will cause harm, rather than actual exposure itself, that results in the presence of symptoms in IEI-EMF individuals." I.D. at 15 (citing PPL Electric St. No. 2).

Dr. Israel further testified that several state public health authorities in the United States also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. I.D. at 19 (citing PPL Electric St. No. 2 at 11, PPL Electric Exhibit MI-2). Dr. Israel opined that 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. I.D. at 18 (citing PPL Electric St. No. 2). More specifically, Dr. Israel opined there is no reliable medical basis to conclude that RF fields from the AMI meters being used by PPL would cause, contribute to, or exacerbate any of the symptoms claimed by Mr. Smiles, or any other adverse health effects. I.D. at 18 (citing PPL Electric St. No. 2 at 14-15).

Moreover, the ALJ found that Mr. Smiles' testimony was also refuted by PPL's expert witness Dr. Davis, who has qualified as an expert in the fields of Physics, Biophysics, Electrical Engineering, Bioelectromagnetics and RF Bioelectromagnetics. I.D. at 16 (citing PPL Electric St. No. 1 at 1-5).

The ALJ explained that Dr. Davis conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by PPL. I.D. at 16 (citing PPL Electric St. 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. I.D. at 16 (citing PPL Electric St. 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. I.D. at 16 (citing PPL Electric St. No. 1 at 5-7, 12).

The ALJ further explained that "dirty electricity" is a non-scientific term that sometimes is used to refer to electrical characteristics (harmonics and transients) that can be found on household wiring. I.D. at 16 (citing PPL Electric St. No. 1 at 8). AMI meters do not generate electricity, do not generate harmonics and transients that are significant compared to the harmonics and transients already present on the 60 Hz power coming into the home and do not interfere with the operation of household wiring. I.D. at 16.

The ALJ further explained that the FCC has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. I.D. at 16 (citing PPL Electric St. 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 Food and Drug

Administration (FDA) and the Environmental Protection Agency (EPA). I.D. at 16 (citing PPL Electric St. No. 1 at 9-10).

The ALJ explained that Dr. Davis opined that 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. PPL Electric St. No. 1 at 15; 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. I.D. at 16-17 (citing PPL Electric St. No. 1 at 7).

The ALJ found that the RF field exposure 30 feet from a person using a cell phone are three times larger than the RF fields from the AMI meter. I.D. at 17 (citing PPL Electric St. No. 1 at 14; PPL Electric Exhibit CD-4). RF fields 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 17 (citing PPL Electric Exhibit CD-4). Mr. Smiles has a Tracphone cell phone that he uses for emergencies while driving. I.D. at 17 (citing Tr. at 15). The ALJ found that he is receiving RF fields at a much higher level while using his Tracphone next to his head than he would be living in a house with an RF Mesh meter attached to it on an outside wall. I.D. at 17. 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. I.D. at 17 (citing PPL Electric St. No. 2 at 10-15; PPL Electric Exhibit MI-1).

Additionally, the ALJ found there are eight television broadcast towers within a 50-mile radius of Mr. Smiles' location in Sinking Springs, Pennsylvania. I.D. at 17 (citing PPL Electric St. No. 1 at 15). Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at his residence are 6.7 times higher than the RF signals from the AMI meter. I.D. at 17 (citing PPL Electric

St. No. 1 at 15; PPL Electric Exhibit CD-5). Thus, given the background RF exposure to the service property compared to the minimal RF exposure from the AMI meter, the ALJ stated she was not persuaded to conclude the AMI meter will cause a deleterious health effect to Mr. Smiles. I.D. at 17.

Based on all of the above, the ALJ found in favor of PPL on the health and safety claims raised in the Complaint. I.D. at 19.

### Data Privacy Claims

The ALJ noted that Mr. Smiles contended it is unreasonable that the new AMI meter invades his privacy and that the meters are not cyber-secure. Conversely, PPL contended that his assertion that the meter is unsecure is a bald assertion unsupported by any evidence other than hearsay. PPL pointed out that Mr. Smiles has no education in cyber-security. PPL contended its meters are cyber-secure and do not constitute an unreasonable search or invasion of his privacy. I.D. at 19-20.

The ALJ explained that, as a part of its Smart Meter Plan proceeding, PPL filed a detailed AMI Customer Privacy Policy, which sets forth the data PPL will collect through the new smart meter, the steps it will take to protect the data, and the ways in which PPL will use the data. I.D. at 20 (citing PPL Electric Exhibit No. DV-1). PPL uses firewalls to prevent anyone from obtaining unauthorized access to the AMI network. I.D. at 20 (citing PPL St. No. 4 at 7-8). Customer data is encrypted to make the data readable to only PPL personnel who can decode the encryption. I.D. at 20 (citing PPL St. No. 4 at 7-8). PPL's cybersecurity and data privacy policies are consistent with the national standards for the industry. I.D. at 20 (citing PPL St. No. 4 at 7-8). Additionally, if Mr. Smiles is concerned about the AMI meter's connection to smart appliances in his home, he can decline to have the ZigBee radio activated. I.D. at 20 (citing *Lesniewski v. PPL Electric Utilities Corporation*, Docket No. C-2018-3004594 (Final Order entered

April 29, 2019, adopting Initial Decision issued March 25, 2019) at 24) (finding in favor of PPL regarding the same data privacy issue because the complainant had an option to decline activation of the ZigBee radio device located within the AMI meter). For these reasons, the ALJ found in favor of PPL on this data privacy issue. I.D. at 20.

Based on all of the above, the ALJ dismissed the Complaint for failure to prove, by a preponderance of evidence, that the installation of a smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501, or a violation of the Code, a Commission Order or Regulation or a Commission-approved tariff of the company. I.D. at 20. Accordingly, the ALJ denied and dismissed the Complaint. I.D. at 24.

#### **D. Final Order**

As noted above, on August 23, 2019, the Commission entered a Final Order stating that, in accordance with the provisions of Section 332(h) of the Code, 66 Pa. C.S. § 332(h), the Initial Decision of ALJ Barnes issued July 12, 2019, “has become final without further Commission action.” The Final Order, *inter alia*, denied and dismissed the Complaint and marked the proceeding closed.

#### **E. First Petition, Answer, and Disposition**

In his First Petition, Mr. Smiles claims he was not afforded due process in this proceeding to file Exceptions because he never received service of the Initial Decision from the Commission. First Petition at 1-2, 4. Additionally, he claims he “was forced to participate in [the] hearing while in a debilitated condition” because he was suffering from a migraine headache. First Petition at 3. Additionally, Mr. Smiles submits he propounded interrogatories on PPL but never received an answer. For these reasons, he requests rehearing, reconsideration, or both. First Petition at 1-3.

In its Answer, PPL submits Mr. Smiles's Petition is without merit and should be denied for several reasons. Answer to First Petition at 5. First, PPL asserts he waived all of the issues and arguments that he raises in the Petition because he failed to file Exceptions to the Initial Decision. *Id.* at 5 (citing *Merritt v. Duquesne Light Co.*, 2011 Pa. PUC LEXIS 1197, at \*9-10 (Order entered Mar. 31, 2011) (*Merritt*) (holding that parties waive any arguments that they fail to raise in their Exceptions and properly preserve for appeal)). Second, PPL argues that Mr. Smiles' failure to obtain a copy of the Initial Decision was his own fault as he was given a full and fair opportunity to obtain a copy of the Initial Decision and Secretarial Letter. Answer to First Petition at 5-6. PPL notes that the Commission did, in fact, serve the Initial Decision on Mr. Smiles via certified mail on July 12, 2019. *Id.* at 5. PPL attached a copy of the Commission's envelope and noted that while it showed Mr. Smiles failed to sign for the certified mail after several attempts, and that the certified envelope was ultimately returned to the Commission as unclaimed, the Commission re-sent the Initial Decision by regular mail. *Id.* at 5-6. PPL also notes that the Initial Decision and the Secretarial Letter have been publicly available since July 12, 2019, on the Commission's website. *Id.* at 6. Third, PPL submits he was afforded due process during this proceeding. *Id.* at 6 (citing *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014)). Here, PPL submits that Mr. Smiles was given the opportunity to present his evidence, testify about the issues, and cross-examine all of PPL's witnesses at the evidentiary hearing on May 24, 2019. Moreover, PPL submits that it had served its written testimony and exhibits on April 24, 2019, *i.e.*, one month before the hearing on May 24, 2019, providing Mr. Smiles with more than enough time to review the witnesses' testimony and exhibits in advance of the hearing and prepare questions to ask them on cross-examination. Answer to First Petition at 6. Additionally, even though PPL acknowledges that it did not answer his discovery requests prior to the hearing due to a clerical error, the ALJ agreed with PPL that Mr. Smiles could simply ask all of those questions at the evidentiary hearing. *Id.* at 7 (citing Tr. at 8).

Based on our review of Mr. Smiles' First Petition, PPL's Answer, the record, and the Commission's docketing system, we reject Mr. Smiles' argument that he was not afforded due process to file Exceptions to the Initial Decision based on his claim that he never received service of the Initial Decision from the Commission. As explained in more depth below, we find that he is presumed to have received the Initial Decision and the Secretarial Letter and nothing shown in his First Petition overcomes that presumption.

Section 703(e) of the Code, 66 Pa. C.S. § 703(e), requires the Commission to serve all parties to a proceeding with their order and opinion by registered or certified mail, but this requirement only applies to the first service of the initial order. *See Mazza v. Pa. PUC*, No. 1418 C.D. 2012, 2013 WL 3973797, at \*2 (Pa. Cmwlth. 2013) (quoting *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Can Inc.*, 651 A.2d 1160, 1164 (Pa. Cmwlth. 1994) (“[r]emission of notice by certified mail is sufficient compliance although notice is returned unclaimed and a second notice is never received.”)). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010). “Once this presumption is established, the party alleging that it did not receive the letter has the burden of establishing such, and merely asserting that the letter was not received, without corroboration, is insufficient to overcome the presumption of receipt.” *Donegal Mut. Ins. Co. v. Insurance Dept.*, 719 A.2d 825, 827 (Pa. Cmwlth. 1998).

Here, the Commission satisfied the requirement to serve the Initial Decision and Secretarial Letter by certified mail. 66 Pa. C.S. § 703(e). The certified mail envelope containing the Initial Decision and the Secretarial Letter was returned to the Commission on August 9, 2019, indicating that it was “unclaimed” by Mr. Smiles and that the post office was “unable to forward.” However, when the certified mail envelope

was returned as unclaimed, the Secretary's Bureau re-served these documents by regular mail to his last known address (his service address on file in this proceeding). There is no indication in the Commission's file that the second mailing was returned to the Commission as undeliverable. In his First Petition, other than making his bald assertion that he did not receive the Initial Decision, which does not constitute evidence,<sup>13</sup> he provided no credible evidence to show that he did not receive service by regular mail. Accordingly, he is presumed to have received the re-served Initial Decision and Secretarial Letter by regular mail. Therefore, we reject Mr. Smiles' claim that he did not receive service of the Initial Decision.

Based on the foregoing, we find that Mr. Smiles was provided a full and fair opportunity to file Exceptions to the Initial Decision. However, he failed to file Exceptions in this proceeding. Other than relying on his rejected claim that he did not receive the Initial Decision, Mr. Smiles provides no other reason to explain why he did not file Exceptions. In his First Petition, he additionally claims he "was forced to participate in [the] hearing while in a debilitated condition" because he was suffering from a migraine headache and that he never received answers from PPL to his propounded interrogatories. First Petition at 3. However, because Mr. Smiles did not file Exceptions, he failed to raise these arguments at the appropriate stage of the proceeding. Accordingly, we have the discretion, as PPL argues, to find that he waived these arguments. *See Merritt, supra*, at \*9-10. Nevertheless, because Mr. Smiles is *pro se*, we will provide further explanation as to why we reject his claim regarding his hearing on the merits.

Upon review of the transcript, we note that Mr. Smiles began his request for continuance by stating he was disadvantaged because he was not represented by

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<sup>13</sup> *See Bervinchak v. PPL Electric Utilities Corporation*, Docket No. C-2016-2572824 (Final Order entered on October 2, 2018); *see also Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d. 12 (Pa. 1987)).

counsel. Tr. at 9. Specifically, he stated: “I would be testifying without the assistance of counsel, and I’m really not – if I could request a continuance of this hearing, I would, because I am at a disadvantage.” Tr. at 9. However, individuals have the right to represent themselves before the Commission. 52 Pa. Code § 1.21(a). Mr. Smiles continued by claiming he was then-experiencing a “very severe headache” and admitted to not having taken his medication for it. Tr. at 9. He stated: “[I]f you want to continue, I’ll try, but you know, I could tell you right off, I’m probably not going to do a very good job.” Tr. at 9. PPL objected to a hearing continuance, noting that: (1) a hearing continuance must be submitted in writing at least five days in advance of the hearing per the ALJ’s Prehearing Order; (2) the Complaint had been active for some time, providing several months for all the Parties to prepare for the evidentiary hearing; and (3) the Company had served all of its written testimony and exhibits in advance to Mr. Smiles providing him with sufficient time to prepare questions for PPL’s witnesses during cross-examination. Tr. at 9-10. After listening to both Parties, ALJ Barnes stated that she agreed with PPL’s arguments and she ruled to deny his request for a hearing continuance. Tr. at 10.

Upon review of the transcript, we find no error in the ALJ’s ruling, especially given that Mr. Smiles never stated he was unable to proceed at the hearing due to physical incapacitation and a need to seek emergency medical attention. Rather, he stated he was willing to try to proceed at the hearing while predicting that the quality of his performance would not be “very good.” Based on the statements made by him to support his request for a hearing continuance - which, in our opinion, did not amount to exigent circumstances – the ALJ did not abuse her discretion in agreeing with PPL’s arguments and denying his request at the hearing to reschedule the hearing.

Finally, we will address Mr. Smiles’ claim that he never received PPL’s written responses to his interrogatories before the hearing. This issue was discussed at the hearing. *See* Tr. at 8. PPL acknowledged that it did not answer his discovery

requests prior to the hearing due to a clerical error, but explained that Mr. Smiles may directly ask his interrogatory questions of the Company's witnesses since all of the witnesses were available at the hearing. Tr. at 8; Answer to First Petition at 7. The ALJ agreed with PPL's approach and indicated that Mr. Smiles could directly ask the witnesses all of his interrogatory questions during the hearing. Tr. at 8. Upon review of the transcript and the ALJ's ruling, we find there was no error in the ALJ's ruling, as Mr. Smiles had the full opportunity to ask his interrogatories directly to the Company witnesses at hearing.

Thus, while Mr. Smiles may have raised new or novel arguments for our consideration, upon evaluation of those arguments, for all of the foregoing reasons discussed above, we do not find the "appropriate circumstances" exist to disturb our Final Order in this proceeding. *City of Pittsburgh*, 416 A.2d at 465. Accordingly, we shall deny Mr. Smiles' First Petition.

#### **F. Second Petition, Answer, and Disposition**

In his Second Petition, Mr. Smiles "calls for clarification of jurisdiction" of the Commission's authority to adjudicate his smart meter Complaint, essentially arguing that the Commission lacks jurisdiction to adjudicate this smart meter Complaint. Second Petition at 1-3. Additionally, Mr. Smiles challenges the Commission's interpretation of Act 129, arguing that the Commission's prior determinations that Act 129 does not provide customers a general right to "opt-out" of smart meter installation is an error of law, violative of the Act's plain language. Second Petition at 2-3. Specifically, he argues that the plain language of Act 129 mandates the installation of a smart meter at the customer's request. Second Petition at 2. He argues it is a maxim of statutory construction that a statute be interpreted according to its plain language, "not...abused at the behest of lawyers or for profit utility companies." Second Petition at 2-3.

In its Answer, PPL submits that the Commission clearly had jurisdiction over the Complaint pursuant to Sections 701 and 1501 of the Code, 66 Pa. C.S. §§ 701, 1501. Answer to Second Petition at 4-5. PPL argues that, pursuant to the statutory authority granted by Sections 701 and 1501 of the Code, it is well-established that the Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. *Id.* at 4-5 (citing *Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (*Elkin*)). PPL explains that Mr. Smiles alleged that the installation of the new AMI meter at his service address violated Section 1501 of the Code. Answer to Second Petition at 5. PPL submits that, after reviewing the evidence and arguments of the Parties, the ALJ properly found that: (1) there is no “opt-out” of the AMI meter installations under Act 129; and (2) Mr. Smiles failed to meet his burden to prove that PPL’s installation of the meter violated Section 1501 or any other provision of the Code, a Commission Order or Regulation, or a Commission-approved tariff. *Id.* at 5 (citing I.D. at 12-20).

Regarding Mr. Smiles’ request for clarification regarding our jurisdiction to adjudicate his Complaint, we reject the Second Petition for failing to meet the *Duick* standard for granting clarification. In the Final Order, the Commission adopted the ALJ’s Initial Decision as its final action in this matter, which included the adoption of the ALJ’s FOF and COL without modification. The ALJ clearly concluded that the Commission has jurisdiction over the Parties and the subject matter in this proceeding pursuant to Section 701 of the Code. I.D. at 21; COL Nos. 1, 7 (citing 66 Pa. C.S. § 701). The ALJ further concluded that the Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services. I.D. at 22; COL No. 9 (citing *Elkin*). The ALJ concluded that Mr. Smiles failed to sustain his burden of proof that PPL violated Section 1501 of the Code or would violate any other provision of the Code or any Commission Regulation or Order. I.D. at 22-23; COL No. 8, 11 (citing 66 Pa. C.S. §§ 332(a), 701, 1501). In our opinion, with respect to Mr. Smiles’ request for clarification as to our jurisdiction, the Second

Petition does not raise any new or novel arguments for our consideration, failing to meet the *Duick* standard.

Regarding his “opt-out” request, to support his argument that there is an opt-out, Mr. Smiles raises an argument focused entirely on a portion of the language appearing in Section 2807(f)(2)(i), which states that the EDCs shall furnish smart meter technology “[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request.” 66 Pa. C.S. § 2807(f)(2)(i). He focuses solely on the “upon request from a customer” portion of this language without regarding the entirety of Section 2807(f). In our opinion, Mr. Smiles incorrectly interprets this provision. Section 2807(f) of the Code, in its entirety, prescribes that EDCs must file smart meter plans and “shall furnish smart meter technology” in any of the following situations: (i) “[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request”; (ii) “[i]n new building construction”; and (iii) “[i]n accordance with a depreciation schedule not to exceed 15 years.” 66 Pa. C.S. § 2807(f)(1)-(2). We previously concluded that the use of the word “shall” in Section 2807(f) indicates the General Assembly’s direction that all customers will receive a smart meter. *2013 Povacz Order* at 10. In our opinion, when comprehensively reading Section 2807(f)(2)(i) and (iii) together, subsection (i) directs an EDC to install a smart meter upon the request of a customer in the event the customer desires a smart meter to be installed at the customer’s premises in advance of the time the EDC will install a smart meter at the customer’s premises in accordance with the EDC’s Commission-approved depreciation or deployment schedule. This interpretation is based on the language in (i) requiring the customer to agree to pay the cost for the installation of the smart meter at the time of the request. In contrast, the depreciation schedule referenced in subsection (iii) addresses the length of time the EDCs will recover the depreciation expense in socialized utility rates

associated with the capital investment in deploying smart meters system-wide.<sup>14</sup> Indeed, we declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.” *Smart Meter Installation Order* at 14. We also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.” *Smart Meter Installation Order* at 9, 14. Moreover, we specifically approved PPL’s plan to complete the installment of smart meters for substantially all customers within its service territory by the end of 2019. *See Petition of PPL Electric Utilities Corp. for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781 (Order entered September 3, 2015). Thus, with respect to Mr. Smiles’ statutory construction argument of Act 129, the Second Petition does not raise any new, novel or overlooked arguments or considerations, and therefore fails to meet the *Duick* standard.

### III. Conclusion

Upon our review and consideration of the First Petition, the Second Petition, PPL’s Answers thereto, the Initial Decision, and the record evidence in this proceeding, we shall deny Mr. Smiles’ First Petition and Second Petition because neither Petition provided sufficient grounds under the *Duick* standards to support the requests for reconsideration, clarification or rehearing stated therein; **THEREFORE,**

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<sup>14</sup> In the *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*), we recognized that the EDCs needed time to select the technology, train personnel, and deploy the entire AMI network, including any associated hardware and software. *Smart Meter Installation Order* at 6.

**IT IS ORDERED:**

1. That the Petition titled “Notice to the Court; Objection to Initial Decision Not Received and Petition for Rehearing and/or Reconsideration” filed by Jeffrey Smiles on August 19, 2019, in the above-captioned proceeding at Docket No. C-2018-3003895, is denied.

2. That the Petition titled “Notice and Petition for Judicial Determination of Jurisdiction” filed by Jeffrey Smiles on August 19, 2019, in the above-captioned proceeding at Docket No. C-2018-3003895, is denied.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 27, 2020

ORDER ENTERED: August 27, 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: June 28, 2021



[David Quade \(Jun 28, 2021 12:13 EDT\)](#)

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David Quade



Commonwealth of Pennsylvania  
**Pennsylvania Public Utility Commission**  
Harrisburg, PA 17105-3265  
**EFILING - FILING DETAIL**

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**Docket Number:** C-2021-3026268

**Case Description:**

**Transmission Date:** 6/28/2021 2:14 PM

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