
Nicholas A. Stobbe

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File #: 167945

July 6, 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: Lloyd and Susan Horst v. PPL Electric Utilities Corporation
Docket No. C-2021-3026448

Dear Secretary Chiavetta:

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

Respectfully submitted,



Nicholas A. Stobbe

NAS/jl
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

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

VIA E-MAIL and FIRST CLASS MAIL

Lloyd & Susan Horst
2151 Thoroughbred Lane
Lancaster, PA 17601
E-mail: hjer2911@comcast.net



Date: July 6, 2021

Nicholas A. Stobbe

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lloyd and Susan Horst,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2021-3026448
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

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



Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID # 205681)
PPL Services Corporation
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Date: July 6, 2021

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lloyd and Susan Horst,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2021-3026448
	:	
PPL Electric Utilities Corporation,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
PPL ELECTRIC UTILITIES CORPORATION TO THE
COMPLAINT OF LLOYD AND SUSAN HORST**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

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

The instant Complaint challenges PPL Electric’s planned installation of a new automated metering infrastructure (“AMI”) meter at 2151 Thoroughbred Lane, Lancaster, PA 17601 due to allegations that the new AMI meter is not mandatory. The Complainants previously filed a Formal Complaint disputing the Company’s planned installation of the AMI meter at the same property at Docket No. C-2018-3006774 (“First Complaint”). The case was fully litigated before the Commission. On July 8, 2020, the Commission entered an Opinion and Order dismissing the First Complaint. *See Horst v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3006774 (Order entered July

8, 2020) (“*First Complaint Order*”). The Complainants did not file Exceptions to the *First Complaint Order*, nor did they file a petition for review with the Commonwealth Court.

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 Complainants, are barred by the Commission’s prior Order dismissing their First Complaint, pursuant to 66 Pa. C.S. § 316.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

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

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

3. On June 14, 2021, PPL Electric was served with the above-captioned Complaint, which challenges the Company’s planned installation of a new AMI meter at 2151 Thoroughbred Lane, Lancaster, PA 17601, on the grounds that the new AMI meter is not mandatory due to the Commonwealth Court’s decision in *Povac*.¹ (Complaint ¶ 5.) Furthermore, the Complainants request that the Company be prohibited from terminating their electric service due to their refusal

¹ Although the Commonwealth Court found in *Povac v. Pa. PUC* that Act 129 does not mandate the installation of smart meters for every customer, petitions for allowance of appeal challenging the Commonwealth Court’s *Povac* decision have been granted by the Supreme Court of Pennsylvania. 241 A.3d 481, 488-90 (Pa. Cmwlth. 2020) (“*Povac*”); *allocatur granted*, 2021 Pa. LEXIS 2142 (Pa. May 12, 2021).

of the AMI meter, “at least until the [Supreme Court of Pennsylvania] rules on [*Povacz*].” (*See* Complaint ¶ 5.) A true and correct copy of the Complaint is attached hereto as **Appendix A**.²

4. PPL Electric herein files this Preliminary Objection to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Commission summarily dismiss the Complaint because the issues regarding the installation of the AMI meter at this property, as well as the concerns already alleged therein, are barred by the Commission’s *First Complaint Order* pursuant to 66 Pa. C.S. § 316.

II. STANDARD OF REVIEW

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

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

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

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep’t of Gen. Servs. v. Bd. of*

² Due to customer privacy concerns, any account numbers in the Complaint have been redacted.

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 OBJECTION

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

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

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

10. As explained previously, the Complainants challenge PPL Electric's planned installation of a new AMI meter at 2151 Thoroughbred Lane, Lancaster, PA 17601 due to allegations that the installation of the new AMI meter is not mandatory. (*See Appendix A ¶ 5.*) The Complainants also argue that PPL Electric should be precluded from terminating their electric service for their refusal of the AMI meter, based on the Commonwealth Court's decision in *Povac*. (*See Appendix A ¶ 5.*)

11. On December 27, 2018, PPL Electric was served with the First Complaint filed by the Complainants, which, like the current Complaint, challenged the Company's planned installation of an AMI meter at the Complainants' service address. The First Complaint was docketed at Docket No. C-2018-3006774. A true and correct copy of the First Complaint is attached hereto as **Appendix B**.³

12. By Secretarial Letter dated March 6, 2020, the Commission issued Administrative Law Judge Elizabeth H. Barnes's (the "ALJ") Initial Decision at Docket No. C-2018-3006774, which dismissed the First Complaint because the Complainants 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 Complainants did not file any Exceptions to the Initial Decision.

14. On July 8, 2020, 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**.

15. The Complainants never filed a petition for review with the Commonwealth Court challenging the *First Complaint Order*.

16. The Complainants reside at 2151 Thoroughbred Lane, Lancaster, PA 17601, which is the same service address that they resided at during the adjudication of the First Complaint. (See **Appendix A ¶ 1; Appendix B ¶ 1**.)

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

17. In both the instant Complaint and the First Complaint, the Complainants allege that the Company is not required to install the new AMI meter at 2151 Thoroughbred Lane, Lancaster, PA 17601. Moreover, like in the First Complaint, the Complainants argue in the instant proceeding that PPL Electric should be precluded from terminating their electric service for their refusal of the AMI meter.

18. 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).

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

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

66 Pa. C.S. § 316.⁴

20. 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).

⁴ To the extent that this argument is found to be more appropriately addressed in a motion for judgment on the pleadings, PPL Electric has raised this affirmative defense in its New Matter to the Complaint and respectfully requests that its Preliminary 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).

21. 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).

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

23. 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 the Complainants' issues are any different in the instant Complaint compared to their First Complaint, the Complainants could have and should have raised all of their concerns regarding the installation of an AMI meter at 2151 Thoroughbred Lane, Lancaster, PA 17601 during their First Complaint proceeding at Docket No. C-2018-3006774, including PPL Electric's authority to terminate their electric service if they continued to refuse the AMI meter's installation for either this customer account or another PPL Electric customer account in their name. As such, through the instant Complaint, the Complainants are 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.

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

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

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the above-captioned Formal Complaint filed by Lloyd and Susan Horst at Docket No. C-2021-3026448 be dismissed in its entirety pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



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Date: July 6, 2021

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

**FORMAL COMPLAINT FILED BY LLOYD AND
SUSAN HORST AGAINST PPL ELECTRIC
UTILITIES CORPORATION AT
DOCKET NO. C-2021-3026448
(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

JUN 2 - 2021

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

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

1. Customer (Complainant) Information

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

Name Lloyd & Susan Horst

Street/P.O. Box 2151 Thoroughbred Lane Apt #

Lancaster PA 17601

County Lancaster

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

(717) 517-7406 (home) () (mobile)

E-mail Address (required): hjer2911@comcast.net

Utility Account Number (from your bill): [REDACTED]

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.
PPL keeps threatening to shut off our power. We pay our Bill monthly and on time

- 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

lion.

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.

6. **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.

New Matter!

PPL wants to switch out my analog meter on the grounds that "my meter is not working" I regards this as a trick to give me a smart meter in violation of the Commonwealth Court's decision. As the PUC and utilities have appealed this decision to the Supreme Court

I request that I be allowed to keep my analog meter at least until the Supreme Court rules on this case.

October 8, the Commonwealth Court ruled, in *Povacz et al.* (No 492 C.D. 2019), that "Contrary to the PUC's interpretation, Act 129 does not mandate installation of wireless smart meters..." Can you contact PPL to make sure they do not switch out my meter and turn off my power.

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
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, Lloyd & Susan Horst 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).

Allyson and Susan Howt 6-1-2021
(Signature of Complainant) (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 efiled 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.

APPENDIX B

FORMAL COMPLAINT FILED BY LLOYD AND SUSAN HORST AGAINST PPL ELECTRIC UTILITIES CORPORATION AT DOCKET NO. C-2018-3006774 (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 : Lloyd and Susan Horst _____

Street/P.O. Box _2151 Thoroughbred Lane _____ Apt #

City Lancaster _____ State Pa _____ Zip 17601 _____

County _Lancaster _____

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

(_717_) 517-7406 _____ (home) (_____) _____
(mobile)

E-mail Address (optional): hjer2911@comcast.net

Utility Account Number (from your bill) XXXXXXXXXX

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

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. **Name of Utility or Company (Respondent)**

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

_PP&L

3. **Type of Utility Service**

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

- 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.

#1 A Violation of the 4th Amendment.

#2 Health Reasons

#3 Dirty Electricity

#4 Radiation

#5 To force the people is not only a violation of property rights, it is Government Mandating purchases which is a violation personal rights and a form of fascism.

#6 We want to keep our Analog meter !!!

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.

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:

We, Lloyd and Susan Horst _____, 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) _____ 12-26-2018
(Date)

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

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

10. **Two Ways to File Your Formal Complaint**

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

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

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

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

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

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

Keep a copy of your Formal Complaint for your records.

APPENDIX C

THE MARCH 6, 2020 *INITIAL DECISION* DISMISSING THE FIRST COMPLAINT FILED BY LLOYD AND SUSAN HORST AGAINST PPL ELECTRIC UTILITIES CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lloyd and Susan Horst	:	
	:	
v.	:	C-2018-3006774
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

Two residential customers filed a complaint seeking to prevent an electric distribution company (EDC) from installing a smart meter a/k/a “Advanced Metering Infrastructure (AMI) meter” or “Radio Frequency (RF) meter” at their residence for health, safety, and privacy reasons. The complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of the smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

HISTORY OF THE PROCEEDING

On December 27, 2018, Lloyd and Susan Horst (Complainants) filed the instant Complaint with the Pennsylvania Public Utility Commission (Commission) against PPL Electric Utilities Corporation (PPL or Respondent) averring they wish to opt out of a smart meter installation at their residence, 2151 Thoroughbred Lane, Lancaster County, Pennsylvania (account number

ending in 018) for health, safety, and privacy reasons and requesting a directive that PPL be precluded from terminating their electric service.

The Complaint was served upon PPL on December 27, 2018. On January 16, 2019, Respondent filed an Answer. The Answer admitted that the Respondent provides electric service to the Complainants at the address listed on the Complaint. The Answer contends that the Respondent is required to install AMI, or smart meters, for all automatic meter reading (AMR) customers and that it has the right to terminate service for failure of the customer to permit access to the meter.

On January 22, 2019, a Hearing Notice was issued scheduling a hearing for August 1, 2019 and assigning the case to me as presiding officer. A Prehearing Order was issued on January 28, 2019. On July 16, 2019, PPL filed a Motion for Protective Order and on July 18, 2019, PPL filed a Motion to Compel Discovery Responses. On July 24, 2019, PPL requested a continuance of the hearing because one of its witnesses could no longer attend the hearing on that date. Per PPL's unopposed request, on July 25, 2019, the hearing was continued to January 23, 2020. On August 2, 2019, a Protective Order and an Order Granting PPL's Motion to Compel were concurrently issued. Complainants' discovery responses were due by August 20, 2019. PPL served its direct testimony and exhibits upon the presiding officer and Complainants on January 16, 2020. On January 23, 2020, the hearing was held as scheduled.

At the hearing, Complainant Susan Horst appeared *pro se* with no exhibits. Respondent appeared represented by Devin Ryan, Esquire, Garrett Lent, Esquire, and Curtis Renner, Esquire with 15 exhibits and four witnesses: Kevin Durkin, Michael Asbury, Christopher Davis, Ph.D., and Mark Israel, M.D. All statements and exhibits were admitted into the record.

A transcript consisting of 40 pages was filed on February 10, 2020 and the record closed the same day. This case is ripe for a decision.

FINDINGS OF FACT

1. The Complainants in this proceeding are Lloyd and Susan Horst, who reside at 2151 Thoroughbred Lane, Lancaster County, Pennsylvania (service property). N.T. 6.
2. The Respondent in this proceeding is PPL Electric Utilities Corporation, an electric distribution company (EDC). N.T. 7.
3. On June 30, 2014, PPL filed its new Smart Meter Plan intended to comply with all the requirements of Act 129 of 2008 (Act 129) and the Commission's Smart Meter Implementation Order. PPL Electric Statement No. 4 at 4.
4. PPL selected Radio Frequency (RF) Mesh meters and metering system because the Company determined that the RF Mesh system would support the 15 capabilities required by Act 129 and the Smart Meter Implementation Order. PPL Electric Statement No. 4 at 4.
5. The individual RF Mesh meters are used as relay points to transmit data back to PPL. PPL Electric Statement No. 4 at 5-6.
6. Under the Smart Meter Plan, the RF Mesh meters are to be deployed between 2017 and 2019 for all of PPL's 1.4 million customers. PPL Electric Statement No. 4 at 6.
7. PPL had deployed over one million RF Mesh meters as of the January 23, 2020 hearing and none of them have caused a fire. PPL Electric Statement No. 4 at 10.
8. The RF Mesh meter to be installed at the service property is the Landis + Gyr Focus AXR-SD meter. PPL Electric Statement No. 4 at 5-6.

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

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

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

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

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

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

15. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and Wi-Fi networks. PPL Electric Statement No. 1 at 5-7, 14.

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

17. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). PPL Electric Statement No. 1 at 9-10.

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

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

20. There are 10 television broadcast towers within a 50-mile radius of Complainants' residence in Gap, Pennsylvania. PPL Electric Statement No. 1 at 15.

21. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainants' residence are 12.5 times higher than the RF signals from the AMI meter at 3 meters distance. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5.

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

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

24. Dr. Israel is a Professor of Medicine, Pediatrics, and Molecular and Systems Biology at the Dartmouth Medical School and the Executive Director of the Israel

Cancer Research Fund in New York, an international charitable fund for medical and scientific research programs. PPL Electric Statement No. 2 at 1.

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

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

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

28. Claimed symptoms related to Electromagnetic Hypersensitivity (EHS) are more accurately described as “Idiopathic Environmental Intolerance” (IEI), in which “idiopathic” means “cause unknown,” rather than electromagnetic hypersensitivity. PPL Electric Statement No. 2 at 13.

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

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

31. The World Health Organization (WHO) and a number of other public health authorities have concluded that the scientific research on RF exposures from cell phone

use, which are far higher than the RF from PPL's smart meters, has not shown that RF fields cause adverse health effects. PPL Electric Statement No. 2 at 10-15, PPL Electric Exhibit MI-1.

32. Several U.S. state public health authorities also have investigated claims about health effects from smart meters and have concluded that there is no credible scientific evidence that RF fields from smart meters will cause or contribute to any adverse health effects. PPL Electric Statement No. 2 at 11, PPL Electric Exhibit MI-2.

33. Complainants are neither medical professionals nor engineers. N.T. 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 his or her burden of

proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also, Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence County, Pa.*, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).¹

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.” *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision) (*Woodbourne-Heaton*). Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Id.* at *211. Specifically, in AMI meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015); *see also, Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (*Romeo*) (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

¹ 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).

commission has jurisdiction to administer, or of any regulation or order of the commission.” 66 Pa. C.S. § 701. Therefore, a complainant must generally demonstrate that the public utility violated the Public Utility Code or a Commission regulation or order.

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

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

66 Pa. C.S. § 1501.

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

Health and Safety Concerns

Complainants averred in their Complaint that they seek an opt-out from an AMI meter installation for health reasons. Complaint at ¶ 5. Mrs. Hughes testified that although she was not a licensed medical doctor, that didn't make her a dumb person. N.T. 8. She was "raised Amish" and stands firm in her beliefs. N.T. 8. When asked, Mrs. Horst would neither confirm nor deny that she had any wireless phones, cell phones, microwave ovens, wireless routers or similar devices in her home. N.T. 9-10.

Conversely, PPL seeks an adverse inference that there are wireless devices emitting radio frequency fields in the Horst's service property. N.T. 10-11. PPL argues any health concerns Mr. and Mrs. Horst have are without merit and have been clearly rebutted by PPL's witnesses. N.T. 34. Mrs. Horst produced no medical records, diagnoses or treatment plans from a licensed medical doctor regarding any alleged health conditions. N.T. 34.

Disposition

Complainants have failed to make a *prima facie* showing that any health concerns are likely to be caused, contributed to, or exacerbated by the AMI meter to be installed at their service property. Complainants offered no testimony or medical documentation to show they have any health conditions or to support a finding that the installation of an AMI meter at the service property would likely cause or exacerbate any health condition. PPL Electric Statement No. 2 at 7. Mrs. Horst is neither an engineer nor a medical professional, and her implied lay opinion as to the probable health effects of radio frequency fields or electromagnetic fields emitting from an RF meter to be installed at their service property is non-persuasive. Complainant Lloyd Horst did not testify and the Complainants offered no expert testimony to support their health claim.

I am persuaded by the credible testimony of Dr. Israel, who testified claimed symptoms related to EHS are more accurately described as IEI in which "idiopathic" means "cause unknown." PPL Electric Statement No. 2. Dr. Israel also evaluated scientific research on

RF fields and adverse health effects generally. He testified that he has been systematically examining this research over the past several decades and that many hundreds of studies have been published. PPL Electric Statement No. 2. He testified that three groups of controlled laboratory studies on animals “are particularly informative because they address fundamental biological functions that are very sensitive to any disruption: genetics, reproduction, and growth and development.” PPL Electric Statement No. 2 at 8-9. Dr. Israel described a number of the studies in these areas which he considered good examples of well-designed and well-conducted studies. These studies found no adverse effects on genetics, fertility, reproduction, growth or development in the animals exposed to RF fields. PPL Electric Statement No. 2 at 9. Dr. Israel also provided examples of well-conducted animal studies on RF fields and cancer. He testified that these studies, which involved animals with lifetime exposures to RF fields, did not find any increased incidence in cancer in the RF exposed animals compared to non-exposed animals. PPL Electric Statement No. 2 at 9-10.

Based on the body of scientific research showing no consistent and reproducible effects from RF fields on cancer and other adverse health effects, the WHO has concluded that “no adverse health effects have been established as being caused by mobile phone use.” PPL Electric Statement No. 2 at 9-11. A number of other public health authorities, including agencies in Canada, the U.K., Sweden, Norway, the Netherlands, and New Zealand, among others, have recently reached similar conclusions. PPL Electric Statement No. 2 at 10-11; PPL Electric Exhibit MI-1. In addition, several U.S. state public health authorities and Public Utility Commissions have investigated claims about health effects from smart meters. These include the Maine Center for Disease Control (2010), the Vermont Department of Health (2012), Arizona Department of Health, Office of Environmental Health (2014), and North Carolina Department of Health and Human Services, Division of Public Health, Occupational and Environmental Epidemiology Branch (2015). These evaluations by State public health authorities and Public Utility Commissions conclude that RF fields from smart meters do not pose any public health risk. PPL Electric Statement No. 2; PPL Electric Exhibit MI-2.

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

Electric Statement No. 2 at 16. There is no reliable medical basis to conclude that RF fields from the AMI meter being used by PPL Electric would cause, contribute to, or exacerbate any of the symptoms claimed by the Complainants, or any other adverse health effects. PPL Electric Statement No. 2 at 16.

Additionally, on this issue, I find credible the expert testimony of PPL witness Dr. Christopher Davis who opined the Landis + Gyr AMI meter would not cause adverse health effects. Dr. Davis co-authored 255 articles published in peer-reviewed scientific journals, two books, twelve book chapters and 324 papers presented at scientific conferences. PPL Electric Statement No. 1 at 2. He conducted a substantial amount of research on RF fields of the type produced by the AMI meters being used by PPL. PPL Electric Statement No. 1 at 3. RF fields are part of the lower energy, non-ionizing portion of the electromagnetic spectrum which consists of lower frequency signals that do not have enough energy to break chemical bonds in cells or DNA. PPL Electric Statement No. 1 at 5-6. RF fields come from many sources in our everyday environments, including AM/FM radio, television broadcast, cell phones and their communication networks, portable phones, garage door openers and Wi-Fi networks. PPL Electric Statement No. 1 at 5-6, 14.

The FCC has determined safe public exposure levels for RF fields from devices that transmit RF signals, such as the AMI meters. PPL Electric Statement No. 1 at 9-10. The FCC safe public exposure limits are based on evaluations of the body of scientific research on RF fields and were adopted in consultation with other federal agencies, including the FDA and the EPA. PPL Electric Statement No. 1 at 9-12.

The levels of RF fields from the Landis + Gyr Focus AXR-SD AMI meters are 98,000 times lower than the RF exposure safety limits established by the FCC. PPL Electric Statement No. 1 at 13, PPL Electric Exhibit CD2. RF signals from the AMI meter are of very short duration and will occur for only a total of 84 seconds over a 24-hour period. PPL Electric Statement No. 1 at 7.

There are 6 television broadcast towers within a 50-mile radius of Complainants' residence in Pennsylvania. PPL Electric Statement No. 1 at 15. Based on the locations of each tower and their RF power outputs, the constant background level of RF fields at Complainants' residence are 4.62 times higher than the RF signals from the AMI meter. PPL Electric Statement No. 1 at 15, PPL Electric Exhibit CD-5. The RF exposure from a cell phone used at a person's head is 260,000 times higher than the average RF levels 1 meter away from the Company's new smart meter. PPL Electric Statement No. 1 at 14. For all of these reasons, I find in favor of PPL on this issue.

Data Privacy

Complainants contend that the new AMI meter invades their privacy and that mandatory installation of a smart meter violates their Fourth Amendment Rights against unreasonable search and seizure. N.T. 7, 35-37.

Conversely, PPL argues that any claim that the installation of the meter would violate the Fourth Amendment is incorrect. N.T. 35-36. To support its position, PPL cites as authority the case of *Jackson v. Metropolitan Edison Company*, 419 U.S. 345 (1974) (*Jackson*). N.T. 35.

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 Complainants are concerned about the AMI meter's connection to smart appliances in their home, they can decline to have the ZigBee

radio activated. *See Lesniewski v. PPL Electric Utilities Corporation*, C-2018-3004594 (Final Order entered April 29, 2019, adopting Initial Decision issued March 25, 2019 at 24), wherein the Commission found in favor of PPL regarding the same data privacy issue. Specifically, the Commission held that Ms. Lesniewski had an option to decline activation of the ZigBee radio device located within the AMI meter.

Regarding Complainants' argument that a mandatory smart meter would violate their Fourth Amendment rights of freedom from unreasonable searches and seizures, I agree with PPL that it is not a "state actor" in that it is not a sovereign governmental entity also responsible for law enforcement. Rather, it is a private, regulated utility company not constrained by the Fourth Amendment. *Jackson, supra*. Further, there is no evidence in the instant case that PPL is making its data easily accessible to law enforcement or other third parties.

In *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521 (7th Cir. 2018) (*Naperville*), the Seventh Circuit found the City of Naperville owned and operated a public utility that provides electricity to its residents. Naperville began replacing its residential customers' analog energy meters with digital smart meters. *Naperville*, 900 F.3d at 524. Naperville's Electric Utility collects residents' energy-consumption data at fifteen-minute intervals, storing it for up to three years. The Seventh Circuit concluded that the use of smart meters intruded upon reasonable expectations of privacy, thus constituting a search subject to Fourth Amendment constraints, but that such searches were "reasonable," and thus constitutionally permissible and consistent with the Fourth Amendment. In finding that the Naperville Electric Utility's use of the smart meters constituted a search, the court relied heavily on *Kyllo v. United States*, 533 U.S. 27, 31–32 (2001). The Court referenced the administrative search doctrine to find that the presumption had been overcome. *Naperville*, 900 F.3d at 528-29 (citing *Camara v. Municipal Court*, 387 U.S. 523 (1967) (*Camara*)). In particular, City of Naperville had "no prosecutorial intent;" "public utility [e]mployees—not law enforcement officials—collect and review the data." *Id.* Thus, the Electric Utility's intrusion was more innocuous than that found to violate the Fourth Amendment in *Camara*. For these reasons, I find in favor of Respondent on this data privacy issue.

Opt-In versus Opt-Out Program

Complainants argue Act 129 provides the AMI meters were to be installed as requested by the customers. Complainants did not request the installation and they wish to opt out from a smart meter installation. N.T. 7, 35-36.

Conversely, PPL contends its installation of an AMI Meter is required by Pennsylvania law and that it would not constitute unreasonable or unsafe service to install an AMI Meter on Complainants' property. PPL argues Complainants have failed to demonstrate that the installation of an AMI meter is unreasonable service in violation of 66 Pa. C.S. § 1501. N.T. 33-36.

Disposition

The Commission has ruled that there is no provision in the Code, the Commission's Regulations or Orders that allows a PECO customer to "opt-out" of smart meter installation. 66 Pa.C.S. § 2807(f); *See, Bervinchak v. PPL Electric Utilities Corporation*, C-2016-2572824 and C-2016-2577527 (Final Order October 2, 2018, Initial Decision dated August 16, 2018); *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 at 10 (Order and Opinion entered January 24, 2013); *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Initial Decision dated January 26, 2018). Moreover, the Commonwealth Court has held that federal law does not preempt the Commission's interpretation. *See Romeo*. The Commonwealth Court did not expressly address whether Mr. Romeo could opt-out of a smart meter installation. The Court held that Mr. Romeo's claim that smart meters cause safety and fire hazards and have a negative health impact, is not legally insufficient pursuant to 66 Pa. C.S. § 1501, which requires utilities to maintain adequate, efficient, safe and reasonable service and facilities for their customers. *Id.*

I infer from the *Romeo* decision, that it is legally sufficient to plead the relief requested in the instant case and claim that smart meters are generally unsafe and unhealthy, and the installation of them is unreasonable service in violation of 66 Pa. C.S. § 1501. However, the

Commonwealth Court did not expressly address the opt-in versus opt-out argument. Although Complainants similarly situated to Mr. Romeo are entitled to an evidentiary hearing, there is Commission precedent that there is no opt-out provision in the current law in Pennsylvania.

The Commission has consistently held there is no opt-out provision for similarly situated Complainants in the past. The instant case is more similar than distinguishable from prior decisions wherein the Commission has dismissed similar complaints. *Pennsylvania Trout v. Dep't of Env't. Prot.*, 863 A.2d 93 (Pa. Cmwlth. 2004).

On October 15, 2008, Governor Edward G. Rendell signed Act 129 of 2008 into law, which directed electric distribution companies with at least 100,000 customers to file, with the Commission, a smart meter deployment and installation plan. Thus, there is a statute requiring smart meter deployment by large electric distribution companies operating within the Commonwealth. 66 Pa. C.S. § 2807(f).

The implementation of the Respondent's Smart Meter Deployment Plan and the approval of the costs associated with its implementation have been found by the Commission to be in accordance with Act 129, 66 Pa. C.S. § 2807(f). The Respondent is required by statute and Commission Order to implement a Smart Meter Program, to install smart meters throughout its service territory, and to charge a Smart Meter Technology Surcharge to all of its metered customers.

As the Commission stated in its April 21, 2016 Opinion and Order in the case of *Frompovich*:

In past cases involving smart meter installation, we have evaluated on an individual case-by-case basis the specific allegations presented in each complaint and reached a conclusion based on those particular circumstances. While PECO is correct that as adopted Act 129 does not provide a general opt out provision, where a complainant's objection to installation of a smart meter was not based upon a general objection to smart meters *per se*, but rather upon facts specific to the individual complainant, we have denied preliminary relief and allowed the complaint to proceed to hearing. *See Kreider v. PECO Energy Company*, Docket No. P-2015-2495064 (Order on Material Question entered September 3, 2015;

Order on Reconsideration entered January 28, 2016) (*Kreider*); *Paul v. PECO Energy Company*, Docket No. C-2015-2475355 (Order entered March 17, 2016). As we stated previously, “the law does not prohibit us from considering or holding a hearing on issues related to the safety of smart meters, consistent with our statutory authority in Section 1501 of the Code, when a legally sufficient claim is presented.” *Kreider*, Order on Material Question at 17.

As in *Kreider* and *Paul*, Ms. Frompovich has alleged factual averments specific to her that, *if proven*, could implicate, under her particular circumstances, a violation of Section 1501 of the Code, a statute the Commission has jurisdiction to administer.

Frompovich, supra at 11-12 (Opinion and Order entered April 21, 2016) (emphasis added).

To the extent that Complainants in the instant case desire the ability to opt out of the smart meter installation, they could advocate for such ability before the General Assembly, which is currently considering amending Section 2807(f) in some pending bills including: PA House Bill Nos. 1564 and 1565; and Senate Bill No. 443. These bills are not law. The Commission has held that it does not have the authority, absent a directive in the form of legislation, to prohibit the Respondent from installing a smart meter where a customer does not want one. *See Povacz v. PECO Energy Company*, Docket No. C-2012-231716 (Opinion and Order entered January 24, 2013). The Commission held that similarly situated Respondents would be in violation of law if they did not install a smart meter at properties similarly situated to Complainants’ residence. *Id., Frompovich* at 10. Thus, I find in favor of PPL on this issue.

CONCLUSION

For all of these aforementioned reasons, the Complaint will be dismissed for failure to prove by a preponderance of evidence that the installation of this smart meter constitutes unsafe or unreasonable service under 66 Pa. C.S. § 1501 or otherwise violates the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company. Although the Complainants are genuine in their concerns, the Commission’s decisions cited above are controlling.

CONCLUSIONS OF LAW

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

2. PPL Electric Utilities Corporation's smart meter procurement and installation plan, which was approved by Commission Order in the case of *Petition of PPL Electric Utilities Corp. for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781, p. 24 (Order Entered Sept. 3, 2015) does not contain a provision for customers to opt out of smart meter installation.

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

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

5. A person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, "taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive" rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects. *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in*

Montgomery and Bucks Counties, 1992 Pa. PUC Lexis 160, at *210-11 (June 29, 1992) (Initial Decision).

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

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

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

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

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

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

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

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

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

15. The Complainants have failed to demonstrate that the new AMI meter causes, contributes to, or exacerbates any adverse health effect.

16. The Complainants have failed to sustain their burden of proof that installing the new AMI meter would constitute unsafe or unreasonable service in violation of 66 Pa. C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Lloyd and Susan Horst against PPL Electric Utilities Corporation at Docket No. C-2018-3006774 is denied and dismissed with prejudice.
2. That the docket in this proceeding be marked closed.

Date: March 5, 2020

/s/
Elizabeth H. Barnes
Administrative Law Judge

APPENDIX D

THE JULY 8, 2020 *FIRST COMPLAINT ORDER* ADOPTING THE *INITIAL DECISION* OF THE ALJ, AND DISMISSING LLOYD AND SUSAN HORST'S FIRST COMPLAINT AGAINST PPL ELECTRIC UTILITIES CORPORATION

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

Lloyd and Susan Horst	:	
	:	
v.	:	C-2018-3006774
	:	
PPL Electric Utilities Corporation	:	

FINAL ORDER

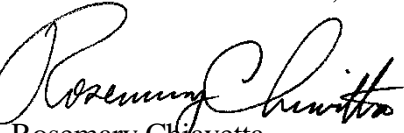
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Elizabeth H. Barnes dated March 5, 2020, has become final without further Commission action:

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Lloyd and Susan Horst against PPL Electric Utilities Corporation at Docket No. C-2018-3006774 is denied and dismissed with prejudice.

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

BY THE COMMISSION,

Rosemary Chavetta
Secretary

(SEAL)

ORDER ENTERED: July 8, 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: July 6, 2021


David Quade (Jul 6, 2021 10:52 EDT)

David Quade