

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherry Yewcic	:	
	:	
v.	:	C-2018-3001276
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

Complainant filed a Formal Complaint against Respondent objecting to the installation of a smart meter at her residence. This decision dismisses the Formal Complaint due to Complainant’s failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On April 17, 2018, Sherry Yewcic (“Complainant” or “Ms. Yewcic”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania Electric Company (“Respondent” or “PENELEC”). The complaint alleged that Respondent was threatening to shut off or already had shut off her electric service. (Complaint ¶¶ 3-4). The complaint further alleged that there should be an option to opt-out of smart meter installation because that technology is harmful to her health. (Complaint ¶¶ 4-5). As relief, Complainant requested that she be exempt from having a smart meter installed at her property. (Complaint ¶ 5).

On May 9, 2018, Respondent filed its “Answer and New Matter of Pennsylvania Electric Company to the Complaint of Sherry Yewcic” (“answer” and “new matter” respectively) in which it admitted and denied various allegations in the complaint. In its answer, Respondent admitted to providing electric service to Complainant and to previously issuing a service termination notice to Complainant based on her refusal to allow Respondent access to install a smart meter. (Answer ¶ 4). Respondent denied having an active intent to terminate Complainant’s service and denied that Complainant can opt-out of smart meter installation. (Answer ¶ 4). In its new matter, Respondent averred that it was in the process of deploying smart meters in accordance with Act 129 and in accordance with the deployment plan approved by the Commission and that neither of these authorities enable the Commission to grant the relief requested by Complainant. (New Matter ¶¶ 13-15). The new matter was accompanied by a notice to plead.

Respondent also filed its “Preliminary Objection to the Formal Complaint of Sherry Yewcic” (“PO”) on May 9, 2018. In the PO, Respondent argued that the complaint should be dismissed as legally insufficient because Complainant failed to allege that Respondent committed or omitted an act in violation of a Commission statute, regulation order or Respondent’s tariff. (PO ¶¶ 17-19). The PO was accompanied by a notice to plead.

Complainant did not respond to the new matter or the PO.

Administrative Law Judge Jeffrey Watson (“ALJ Watson”) was assigned as a motion judge to this matter. On November 20, 2018, ALJ Watson issued an Interim Order dismissing the PO. From November 20, 2018 until the evidentiary hearing on July 22, 2020, ALJ Watson issued a number of interim orders regarding the litigation schedule, status reports and cancellation of the initial April 22, 2020 hearing date.

On July 22, 2020, ALJ Watson convened an evidentiary hearing by telephone. Ms. Yewcic appeared and represented herself. Ms. Yewcic and, her husband, Mr. James Yewcic testified in support of the complaint. No Complainant exhibits were admitted into evidence.¹

¹ Complainant’s Exhibits 1-6 were objected to at the hearing and not admitted into evidence.

Attorneys Lauren Lepkoski and Tori Giesler appeared on behalf of Respondent. John Ahr, adviser of regulatory compliance of smart meters for First Energy Corporation, testified for Respondent. The following Respondent exhibits were admitted into evidence: (1) Exhibit JCA-1 – Smart Meter Deployment Plan, (2) Exhibit PD-1 – Chapter 28, Title 66 of the Public Utility Code, (3) Exhibit PD-2 – Implementation Order, (4) Exhibit PD-3 – Commission Order Dated June 9, 2010 and (5) Exhibit PD-4 – Commission Order Dated June 25, 2014.

The record was closed for evidence at the conclusion of the July 22, 2020 hearing.

By Interim Order dated July 22, 2020, ALJ Watson directed that the parties could file optional briefs on or before September 25, 2020. Respondent filed a brief on September 25, 2020. Complainant did not file a brief.

On November 4, 2020, in view of the appellate court litigation surrounding smart meters, the Commission issued a general stay of all smart meter proceedings pending before it. Following the Pennsylvania Supreme Court's decision in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) ("*Povacz II*"), the Commission lifted the general stay of smart meter proceedings on November 14, 2023 and directed the Office of Administrative Law Judge to proceed with pending complaint proceedings.

Thereafter, the Office of Administrative Law Judge reassigned this case to me.² On January 30, 2024, I convened a status conference to determine if the parties wished to re-open the evidentiary record or briefing schedule. Ms. Yewcic attended and represented herself. Attorney Tori Giesler appeared on behalf of Respondent. Neither party requested to re-open the record or the briefing schedule. The matter is now ready for disposition.

² It is not a denial of due process when the ultimate decision in a case is made by an administrative fact finder who did not hear the testimony (e.g., *Fisler v. State Sys. of Higher Educ.*, 78 A.3d 30 (Pa. Cmwlth. 2013)).

FINDINGS OF FACT

1. Complainant is Sherry Yewcic, who resides at 125 Pudliner Lane, Johnstown, PA 15909 (“service property”) along with, her husband, Thomas Yewcic. (Tr. 11).
2. Respondent is Pennsylvania Electric Company, which is an electric distribution company (“EDC”) with at least 100,000 customers. (Tr. 60).
3. The service property did not have a smart meter installed at the time of the hearing. (Tr. 11-12, 27).
4. John Ahr was an adviser of regulatory compliance of smart meter, who worked for First Energy Service Company for 36 years, and his responsibilities included: providing guidance, acting as a subject matter expert, coordination of smart meter developments, preparation of regulatory filings and management of external consultants. (Tr. 54-56).
5. On June 24, 2009, the Commission entered an order that provided general direction to EDCs, including PENELEC, regarding adoption of smart meter programs. (Tr. 60-61; Ex. PD-2).
6. On August 14, 2009, PENELEC submitted its smart meter procurement and installation plan to the Commission. (Tr. 62).
7. On June 9, 2010, the Commission entered an order which approved PENELEC’s smart meter technology procurement and installation plan. (Tr. 62; Ex. PD-3).
8. On June 25, 2014, the Commission entered an order approving PENELEC’s final smart meter deployment plan. (Tr. 65; Ex. PD-4; Ex. JCA-1).
9. Smart meter technology includes the smart meters, connected routers, range extenders, a head end that consists of a flexion engine, fields network director and a meter data management system. (Tr. 64-65).

10. The combination of smart meters, the communicating network and the supporting systems are referred to as the advance metering infrastructure, which allows for bi-directional communication between the smart meters and PENELEC regarding consumption of electricity. (Tr. 66-67).

11. The smart meters operate on a 900-megahertz frequency, when transmitting a customer's energy consumption. (Tr. 74).

12. The smart meters used by PENELEC comply with all safety requirements and standards of the Federal Communications Commission. (Tr. 69).

DISCUSSION

Complainant contends that PENELEC is in violation of the law by requiring her to accept the installation of a smart meter on her property. Section 701 of the Public Utility Code ("Code") provides that any person may complain, in writing, about anything done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission.³ A person who wants the Commission to do something to resolve their complaint bears the burden of proof.⁴

In this matter, Complainant is the party asking for relief from the Commission; therefore, she has the burden of proof. This means, that Complainant must present facts which support her claims and prove facts that show that PENELEC violated the Public Utility Code, a regulation or Commission order by a preponderance of the evidence.⁵ The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁶ Relief can only be granted if

³ 66 Pa.C.S. § 701.

⁴ 66 Pa.C.S. § 332(a).

⁵ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007) ("*Popowsky*"); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁶ *Popowsky*.

Complainant proves facts by a preponderance of the evidence, which show that PENELEC violated the Public Utility Code or Commission regulations.

In the hearing, Ms. Yewcic generally argued, through her own testimony and that of Mr. Yewcic, that she should not be required to have a smart meter installed on her property. (Tr. 18, 26-27). Both Mr. and Ms. Yewcic opined that electromagnetic field (“EMF”) technology is harmful and offered their belief that EMF technology was causing Ms. Yewcic multiple health issues. (Tr. 14-21). Ms. Yewcic did not offer any medical, scientific or engineering expert testimony.

Ms. Yewcic’s argument that she should be permitted to opt-out of the installation of a smart meter has been definitively resolved by the Pennsylvania Supreme Court. The Supreme Court, in *Povacz II*, concluded that Act 129⁷ mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, such as PENELEC.⁸ Specifically, the court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides instructions for furnishing smart meters to all customers. In short, the Supreme Court found that under Act 129, customers have no right to refuse smart meter installation.⁹ Accordingly, the Supreme Court reversed the Commonwealth Court, and affirmed the Commission’s interpretation that Act 129 mandates universal smart meter installation.¹⁰ Therefore, Complainant’s claim that the law does not require PENELEC to install a smart meter at the service property is dismissed.

Similarly, Complainant’s claim that smart meters are harmful must also be dismissed. The Supreme Court in *Povacz II* noted that a claim that a smart meter is harmful to a customer’s health must be supported by expert testimony. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency (“RF”) or

⁷ 66 Pa.C.S. § 2807(f).

⁸ *Povacz II*, at 992.

⁹ *Id.*, at 997.

¹⁰ *Id.*

emissions from smart meters cause adverse health effects.¹¹ Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm.¹² Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm.¹³

Importantly, the Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501:

[t]o the extent Customers challenge the safety of smart meters based on their individualized concerns about adverse effects, we conclude that neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. Allowing fear — however reasonable given the inconclusiveness of scientific research and studies — to support a finding or conclusion that smart meter technology is unsafe, in the absence of substantial evidence of causality between RF emissions and adverse human health effects, eliminates the requirement that a customer prove the utility is responsible or accountable for the problem described in the complaint.^[14]

The Court reasoned that allowing fear to support a finding or conclusion that smart meter technology is unsafe, in the absence of substantial evidence of causality between RF emissions and adverse human health effects, eliminates the requirement that a customer prove the utility is responsible or accountable for the problem described in the complaint, thereby

¹¹ *Id.*, at 1005.

¹² *Id.*

¹³ *Id.*, at 1006.

¹⁴ *Id.*, at 1005 (footnote omitted).

rendering Section 332(a) of the Code,¹⁵ useless. Relatedly, the Supreme Court noted that an allegation of specific personal harm by an individual customer (versus a more generic claim that there is harm to the general public) does not diminish the need to prove, by a preponderance of the evidence — with expert opinion testimony — that the service or facility is unsafe and that a causal connection exists between the allegedly unsafe service or facility and alleged harm.¹⁶

The only evidence offered by Ms. Yewcic was her and Mr. Yewcic’s belief that EMF¹⁷ radiation is generally harmful, and that EMFs are causing Ms. Yewcic multiple health issues. As explained in *Povacz II*, testimony regarding personal beliefs or perceptions is not enough evidence to conclude that installing a smart meter at the service property would be unsafe or would violate the safe and reasonable service mandate of Section 1501 of the Code.¹⁸ Assertions, personal opinions or perceptions do not constitute factual evidence.¹⁹ Even self-represented complainants must provide relevant and necessary information.²⁰ As such, this claim must be dismissed.

In sum, Complainant failed to prove that PENELEC violated the Public Utility Code or a regulation. Accordingly, the complaint is dismissed.

¹⁵ 66 Pa.C.S. § 332(a) (imposing burden of proof on proponent of rule or order).

¹⁶ *Povacz II*, at 1007.

¹⁷ The term EMF is often used interchangeably with RF as discussed above.

¹⁸ 66 Pa.C.S. § 1501.

¹⁹ *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). *See also Applications of Transource*, Docket No. A-2017-2640195 (Opinion and Order entered May 24, 2021) (discussing the distinction between expert and lay testimony to establish facts that are technical in nature.).

²⁰ *Groch v. Unemployment Comp. Bd. of Rev.*, 472 A.2d 286 (Pa. Cmwlth 1984); *Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081 (Pa. 1985) (Self-represented litigants assume the risk of proceeding without counsel).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.
2. Complainant bears the burden of proof. 66 Pa.C.S. § 332; *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
3. PENELEC is required to install smart meters in accordance with its Smart Meter Deployment Plan. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
4. Customers cannot “opt-out” of the installation of a smart meter. 66 Pa.C.S. § 2807(f); *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
5. Allegations that a smart meter has or would cause harm to a customer must be supported by expert scientific or medical testimony. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
6. The Complainant failed to present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency or emissions from smart meters cause adverse health effects. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
7. The Complainant failed to present expert opinion rendered to a reasonable degree of medical certainty that radio frequency emissions from the smart meters, either alone or cumulative to other sources of radio frequency emissions, caused her harm . *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

