

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Coyle	:	
	:	
v.	:	C-2019-3014261
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision sustains Respondent’s preliminary objections and dismisses a Complaint alleging that the utility is threatening service termination due to Complainant’s refusal of the installation of a smart meter at his residence.¹ Complainant failed to establish a prima facia case evidencing any violation of a Commission statute, regulation, or order on the part of the utility, or that Complainant is entitled to the relief requested.

HISTORY OF THE PROCEEDING

Complaint and Answer

On November 12, 2019, David Coyle (Complainant or Mr. Coyle) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against

¹ A smart meter is an electronic device that records a customer’s consumption of electric energy in increments of an hour or less and communicates that information at least daily back to the electric distribution company for monitoring and billing purposes. See 66 Pa.C.S. § 2807(f)(1), (2)

West Penn Power Company (West Penn or Company or Respondent). Complainant alleged Respondent is threatening to shut off his electric service due to smart meter installation refusal. Complaint alleged there are two children and a pregnant woman living at 184 Oak Manor Drive, Natrona Heights, PA 15065 (the Service Location). As relief, Complainant requested additional options to a smart meter or in the alternative the installation of a frequency blocker at the Service Location.

On December 3, 2019, West Penn filed an Answer and New Matter. West Penn's Answer denied the Company had an active intent to terminate Complainant's electric service. West Penn asserted the Company had attempted to install a smart meter at the Service Location in accordance with Act 129 of 2008 (Act 129).² However, Complainant had refused installation of a smart meter. West Penn contended Complainant's refusal to permit the Company to install a smart meter constituted grounds for termination of service.³ West Penn argued, "[f]urther, if the Commission did rule in the Complainant's favor and barred the Company from installing a smart meter at the Service Location, the Commission would be forcing the Company to be in violation of Act 129." New Matter (N.M.) ¶16. As relief, West Penn requested dismissal of the Complaint with prejudice.

New Matter

In New Matter, West Penn alleged, "The Company is in the process of deploying smart meters in its service territory in accordance with Act 129. Act 129 specifically directs that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval [SMP]." (footnotes omitted). N.M. ¶13. West Penn averred in relevant part that on April 2, 2019, the Company sent correspondence to Mr. Coyle concerning the installation of a smart meter at the Service Location. According to West Penn, on October 5, 2019, it was advised by Wellington

² 66 Pa.C.S. § 2806.1–2807. Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. § 2807(f)(1), (2).

³ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81; *West Penn Power Company Retail Electric Service Tariff*; Electric. Pa. PUC No. 40, pp. 46,61. Issued May 1, 2014. Effective May 3, 2015.

Energy, a contractor for the Company, that they went to the Service Location on May 2, 2019, to attempt to install a smart meter, but Mr. Coyle refused installation. West Penn alleged that on October 8, 2019, the Company attempted to contact Mr. Coyle to address his concerns about a smart meter and left a message seeking a return call; however, no return call was received. West Penn claimed that on October 9, 2019, it sent correspondence to Mr. Coyle to schedule installation of a smart meter at the Service Location. West Penn averred that on October 19, 2019, a pre-disconnection warning letter was issued to Mr. Coyle pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81, and Rules 9 and 20 of the Company's Commission-approved tariff.⁴ According to West Penn, on October 29, 2019, a service termination notice was issued to Mr. Coyle, pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81, and Rules 9 and 20 of the Company's Commission-approved tariff.⁵ West Penn asserted that when it was served with Mr. Coyle's Complaint on November 13, 2019, the Company ceased service termination efforts.

West Penn's Answer and New Matter included a Notice to Plead within 20 days of service of the Answer and New Matter, cautioning Mr. Coyle that failure to respond to the facts set forth in the Answer and New Matter may result in the facts set forth therein being deemed as true, thereby requiring no other proof.⁶ Mr. Coyle did not file a reply to West Penn's New Matter.

Preliminary Objections

West Penn also filed Preliminary Objections on December 3, 2019, which included a Notice to Plead within ten days of service. As grounds for the Preliminary Objections, West Penn submitted the following:

[b]ecause Act 129 and the Commission's orders not only authorize but required the Company to develop and implement

⁴ *Id.*

⁵ *Id.*

⁶ "Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code § 5.63(b).

a smart meter procurement and installation plan, and do not allow a customer to opt out of having a smart meter installed, this Formal Complaint must be dismissed. As a matter of law, the Company is required to install a smart meter at the Service Location. As such, the Commission cannot find the Company to be in violation [of a Commission statute, regulation, or order] for having attempted to follow the law as it has done here.

Preliminary Objections ¶18.

West Penn argued that accepting all the facts of Mr. Coyle's Complaint as true, those facts do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, upon which relief could be granted.⁷ Essentially, West Penn objected that the Complaint was legally insufficient.⁸ Thus, West Penn requested 1) that Complainant's request for an exemption from the installation of a smart meter be struck or 2) that the Complaint be dismissed in its entirety with prejudice.

Mr. Coyle did not file a response to the Preliminary objections.

By Notice dated January 9, 2020, the Parties were informed that this proceeding was assigned to me.

On January 30, 2020, considering Mr. Coyle was self-represented, I issued an Interim Order Holding Preliminary Objections in Abeyance (*Interim Order*). The *Interim Order* referenced the Commission's holding in *Carlock v. The United Telephone Co. of Pennsylvania*, Docket No. F-00163617 (Opinion and Order entered July 14, 1993) (*Carlock*). In *Carlock*, the Commission held that, in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which self-represented complainants could further explain their position and the factual basis for their complaint. The concern was expressed that, in general, self-represented complainants may find it difficult to navigate through prehearing motions and should be given the opportunity to describe their basic

⁷ 66 Pa.C.S. § 701.

⁸ 52 Pa. Code § 5.101(a)(3).

issue and present supporting facts.⁹ The *Interim Order* specifically stated that West Penn's preliminary motion for dismissal of the Complaint was held in abeyance to afford Complainant an opportunity to present his case.

Hearing Notices, Prehearing Order, Continuances

On February 4, 2020, the Commission notified the Parties that this case was scheduled before me for a telephone hearing on April 30, 2020, at 10:00 a.m. On the same date, a Prehearing Order was served upon the Parties informing them about the procedural rules for the hearing. On March 17, 2020, the Commission's Pittsburgh offices were closed due to the COVID-19 pandemic. By letter electronically served on April 7, 2020, the Parties were informed that the April 30, 2020, hearing was cancelled and would be rescheduled due to the COVID-19 pandemic.

By Notice dated May 13, 2020, the Commission informed the Parties that this case was rescheduled before me for a telephone hearing on July 7, 2020, at 10:00 a.m. On July 6, 2020, Mr. Coyle emailed the Office of Administrative Law Judge (OALJ) stating he had been involved in a motor vehicle accident that day. Accordingly, he requested a continuance of the July 7, 2020 telephone hearing. Mr. Coyle's continuance request was granted, and on July 7, 2020, a Notice was issued to the Parties informing them that the hearing was cancelled for July 7, 2020. By Notice dated July 9, 2020, the Commission notified the Parties that this case was rescheduled before me for a telephone hearing on August 21, 2020, at 10:00 a.m.

By email dated July 24, 2020, counsel for West Penn, Tori Giesler, Esquire, requested a continuance of the hearing scheduled for August 21, 2020, due to the unavailability of the Company's witness. Attorney Giesler represented that Mr. Coyle did not object to the continuance request. By Telephonic Hearing Cancellation/Reschedule Notice dated July 27, 2020, the Parties were informed that the August 21, 2020 telephone hearing was cancelled and rescheduled for September 8, 2020.

⁹ See also *Richmond v. PECO Energy Co.*, Docket No. F-2010-2187305 (Opinion and Order entered Dec. 7, 2011).

Evidentiary Hearing

On September 8, 2020 at 10:00 a.m., from Pittsburgh, I convened the telephone hearing in this matter. Mr. Coyle was present with his wife, Rachel Coyle. Attorney Giesler and Lauren Lepkoski, Esquire, were present as counsel for West Penn along with their witness, John Ahr. Testimony was received from Mr. Coyle and his wife; however, counsel for West Penn did not cross-examine them. Tr. 16, 20. No exhibits were offered in this proceeding. Tr. 7. After Mr. Coyle rested his case, West Penn elected not to call its witness and rested its case. Tr. 21. From the bench, I informed the Parties that considering the testimony presented and Mr. Coyle's legal argument, I was compelled to rule that Mr. Coyle had failed to carry his burden of proof, requiring the dismissal of the Complaint. *Id.* Therefore, West Penn's outstanding preliminary objections would be sustained, and dismissal of the Complaint memorialized in an Initial Decision. Tr. 22.

Post Hearing Matters

On November 4, 2020, due to appellate litigation pertaining to smart meters, the Commission, in the matter of Smart Meter Procurement and Installation at Docket No. M-2009-2092655, issued an order staying smart meter proceedings involving challenges to electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code. (*November 4, 2020, Stay Order*). Accordingly, the issuance of the Initial Decision in the instant case was held in abeyance. On August 16, 2022, the Pennsylvania Supreme Court (Court) issued its Opinion in *Povac̆z v Pa. Public Utility Commission*.¹⁰ In *Povac̆z II*, the Court, in relevant part, concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, with no opt-out provisions. *Povac̆z II* at 992-993, 997. Additionally, the Court held that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence, which requires a customer to prove that a service or facility is, more likely than not, the cause of the problem described in their complaint. *Id.* at 999-1000. As a result of the Court's

¹⁰ *Povac̆z v Pa. Pub.Util. Comm'n*, 280 A.3d 975 (Pa. 2022) (*Povac̆z II*).

ruling in *Povacz II*, the Commission on November 9, 2023, issued an Order at Docket M-2009-2092655, lifting the stay implemented with the *November 4, 2020, Stay Order*, thereby permitting pending smart meter matters to proceed.

Accordingly, Respondent's preliminary objections are now ripe for disposition.

FINDINGS OF FACT

1. Complainant is David Coyle, who resides at 184 Oak Manor Drive, Allegheny County, PA 15065 (Service Location). Tr. 4.
2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Complainant and Pennsylvania customers.
3. On April 2, 2019, West Penn sent correspondence to Mr. Coyle concerning the installation of a smart meter at the Service Location. N.M. ¶12.
4. On May 2, 2019, West Penn's contractor, Wellington Energy, went to the Service Location to attempt to install a smart meter. *Id.*
5. On May 2, 2019, Mr. Coyle refused installation of a smart meter at the Service Location. Complaint ¶4; N.M. ¶12.
6. On October 8, 2019, West Penn attempted to contact Mr. Coyle to address his concerns about a smart meter and left a message seeking a return call; however, no return call was received. N.M. ¶12.
7. On October 9, 2019, West Penn sent correspondence to Mr. Coyle to schedule installation of a smart meter at the Service Location. *Id.*

8. On October 19, 2019, West Penn sent a pre-disconnection warning letter to Mr. Coyle. *Id.*

9. On October 29, 2019, West Penn sent a service termination notice to Mr. Coyle. Tr. 11; N.M. ¶2.

10. On November 13, 2019, the Company ceased service termination efforts. *Id.*

DISCUSSION

Legal Standards

Complaints and Burden of Proof

Section 701 of the Code, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹¹

Under the Code, as the party bringing the Complaint in this proceeding alleging threat of service termination and requesting alternatives to the install of a smart meter, Complainant bears the burden of proof.¹² Consequently, Complainant has the burden of proving the allegations he raised in his Complaint and that he is entitled to the relief requested.

The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence.¹³ The term “preponderance of the evidence” means one party must present

¹¹ 66 Pa.C.S. § 701.

¹² *See* 66 Pa.C.S. § 332(a).

¹³ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.¹⁴ Accordingly, one must review the record in this case to determine whether the Complainant has satisfied his burden of proof. If the review indicates the burden has been satisfied, one must then determine whether the Respondent has submitted evidence of co-equal value or weight to refute the Complainant's evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence.¹⁵

Furthermore, substantial evidence in the record must support the decision of the Commission.¹⁶ The term "substantial evidence" means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹⁷

Reasonable Service

Section 1501 of the Code mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public.¹⁸ Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.¹⁹

¹⁴ *Id.*

¹⁵ *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm'n.*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

¹⁶ *See, e.g.*, 2 Pa.C.S. § 704; *Yellow Cab Co. v. Pa. Pub. Util. Comm'n.*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

¹⁷ *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

¹⁸ 66 Pa.C.S. § 1501.

¹⁹ 66 Pa.C.S. § 1505.

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service.²⁰ Further, the Commission has stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service. ^[21]

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness.²² This is also the test to determine the adequacy of a utility's response to customer service complaints.²³

Smart Meter Cases

In smart 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.”²⁴ When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in [the]

²⁰ *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

²¹ *Re Metropolitan Edison Co.*, 80 Pa.P.U.C. 663, 672 (1993).

²² *Thurby v. West Penn Power*, C-2011-2254048 (Order entered Apr. 4, 2013) (*Thurby*); *Bertsch v. PPL Elec. Utils. Corp.*, C-2011-2251784 (Final Order entered Apr. 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket No. C-2008-2061244 (Order entered Jan. 28, 2010).

²³ *Thurby*.

²⁴ *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Opinion and Order entered Sept. 3, 2015); *see also Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

particular case 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.”²⁵

As noted above, the Commission’s holdings on the burden of proof in smart meter matters was reiterated by the Court in *Povacz II*.²⁶

Service Termination

Section 1406 of the Code permits a utility to terminate service under certain conditions. Section 1406, in relevant part, states:

(a) Authorized termination. — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.

....

(4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair, or meter reading.²⁷

Analysis

Complainant’s Argument

In his Complaint, Mr. Coyle alleges West was threatening to shut off his electric service because he refused installation of a smart meter. “In addition, the residence contains two children and a pregnant woman.” Complaint ¶4. While not affirmatively raising the issue, Mr.

²⁵ *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Opinion and Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa.P.U.C. Lexis 160, at *12-13 (1992)); *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018).

²⁶ *Povacz v Pa. Pub. Util. Comm’n*, 280 A.3d 975, 999-1000 (Pa. 2022) (*Povacz II*).

²⁷ 66 Pa.C.S. § 1406(a)(4); *See also* 52 Pa. Code § 56.81(3).

Coyle's allegations seem to suggest that he is claiming that smart meters present a health risk,²⁸ and therefore, West Penn's attempt to install a smart meter at the Service Location violates the reasonable service provisions of the Code.²⁹ In his opening testimony, without offering any expert testimony, Mr. Coyle attempted to reference certain literature that he apparently had read concerning the safety of smart meters. Tr. 11. However, West Penn's counsel's objection to Mr. Coyle's reference to the literature as inadmissible hearsay was sustained. *Id.*

During the hearing, Mr. Coyle argued West Penn was forcing a smart meter upon him to receive service or face service termination. Tr. 11. Mr. Coyle further argued, "and that it's not the sense that we are concerned about safety. We know that the wireless signals from the devices are not good for our health." *Id.* Thus, the safety of the installation of a smart meter from a health perspective is at issue. Whether a smart meter is a safety hazard or presents a threat to one's health involves scientific, technical, or other, specialized knowledge beyond that possessed by a layperson. Expert testimony is needed to assist the factfinder to understand the evidence or to determine the issues surrounding the safety of smart meters.³⁰ Mr. Coyle did not present any expert testimony or evidence to support a claim that the installation of a smart meter at the Service Location would present a safety or health hazard.³¹ Expert scientific testimony is needed to establish that installation of a smart meter at a residence presents a safety hazard. Expert medical testimony is needed to explain a causal connection between one's health and any harmful effects of a smart meter. Without expert testimony and evidence, Mr. Coyle's claims are reduced to unsubstantiated opinions. Assertions, personal opinions or perceptions do not constitute factual evidence.³²

²⁸ Under the holding in *DiSanto v Dauphin*, 436 A.2d 197 (1981), the Commission must determine if there is a statutory or regulatory violation regardless of how inarticulately the issue is raised.

²⁹ 66 Pa.C.S. § 1501.

³⁰ When the issue at hand, here the safety of a smart meter, involves scientific, technical, or other specialized knowledge beyond that possessed by a layperson, expert testimony is needed to assist the factfinder to understand the evidence or to determine a fact in issue. *See* Pa.R.E. 702; *See also Povacz II.*

³¹ *See* Pa.R.E. 702; *Povacz II.*

³² *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Considering Mr. Coyle's lack of expert testimony and evidence concerning the effects of a smart meter on one's health, his claim that West Penn's attempt to install a smart meter at the Service Location constituted unreasonable service under Section 1501 of the Code must be denied.

Smart Meter Mandate

In New Matter, West Penn alleged, "The Company is in the process of deploying smart meters in its service territory in accordance with Act 129. Act 129 specifically direct that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval [SMP]." (footnotes omitted). N.M. ¶13.

Since Mr. Coyle did not file a reply to West Penn's New Matter, he must be deemed to have admitted that West Penn is in the process of deploying smart meters in accordance with its Commission-approved SMP. However, Mr. Coyle argued that the installation of a smart meter by West Penn at his residence is not mandatory under Act 129 as follow:

[t]here's nothing in Act 129 which mandates forced universal deployment of smart meters. Act 129 asks them to come up with a plan . . . which meant that they have a plan to supply smart meter construction.

So it's not a matter of law that West Penn is requiring to install a smart meter on our home.

It's a fabrication. In fact, there's nothing in the law that states some penalty that they have to pay for not installing a smart meter on our home. So why can't we just keep our present meter?

Also, West Penn Power is claiming that there's no opt out of having a smart meter installed, and I completely object to such language because Act 129 is not an opt out or opt in. You can opt in law.

Tr. 13. Mr. Coyle's argument has been addressed by the Commission.

On October 15, 2008, Act 129 was signed into law and codified as part of the Code.³³ In proceedings like Mr. Coyle's, the Commission has held (1) there is no provision in the Code or Commission regulations or orders that allows a customer to opt-out of a smart meter installation; (2) no opt-out provision exists in current Pennsylvania law; and (3) an EDC is legally required to install smart meters under Act 129 and Commission orders.³⁴

More importantly, the Court has now ruled in *Povacz II* that Act 129 does not provide for customers to opt-out of smart meter installation. Therefore, Mr. Coyle's request for relief, that is, additional options or alternatives to the installation of a smart meter at the Service Location, cannot be granted by the Commission.

Threat of Service Termination

In his second claim, Mr. Coyle alleges West Penn threatened him with service termination because he refused installation of a smart meter at his residence. In *New Matter*, West Penn did not dispute Mr. Coyle's allegation. Correspondingly, as mentioned above, Mr. Coyle must be deemed to have admitted the following relevant facts of West Penn's *New Matter*.³⁵ On October 8, 2019, West Penn attempted to contact Mr. Coyle to address his concerns about a smart meter and left a message seeking a return call; however, no return call was received. N.M. ¶12. On October 9, 2019, West Penn sent correspondence to Mr. Coyle to schedule installation of a smart meter at the Service Location. *Id.* On October 19, 2019, West Penn sent a pre-disconnection warning letter to Mr. Coyle. *Id.* On October 29, 2019, West Penn sent a service termination notice to Mr. Coyle. Tr. 11; N.M. ¶12. Upon receipt of Mr. Coyle's Complaint on November 13, 2019, the Company ceased service termination efforts. *Id.*

³³ 66 Pa.C.S. § 101-3316.

³⁴ *Hoffman-Lorah v. PPL Elec. Util. Corp.*, Docket No. C-2018-2644957 (Opinion and Order entered May 23, 2019). *See also, e.g., Lutherschmidt v. Metro. Edison Co.*, Docket No. C-2010 2200353 (Final Order entered Mar. 25, 2011); *Negley v. Metro. Edison Co.*, Docket No. C-2010-2205305 (Final Order entered Mar. 3, 2011).

³⁵ *See* 52 Pa. Code § 5.63(b).

Under Section 1406(a)(4) of the Code and Section 56.81(3) of the Commission's Regulations, a utility may terminate service to a customer, when the customer denies the utility access to the service location to replace a meter.³⁶ Although West Penn did not terminate Mr. Coyle's electric service, the threat of service termination was authorized under the Code and the Regulations because Mr. Coyle refused West Penn access to the Service Location for the purpose of installing a smart meter. Therefore, Mr. Coyle's threat of service termination issue must be dismissed without further discussion.

Ruling

Mr. Coyle did not present any evidence to establish that West Penn had violated the Code or any regulation or order of the Commission. Thus, he did not carry his burden of proof to establish that he was entitled to the relief requested from the Commission. Therefore, his Complaint must be dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

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

2. Complainant as the party filing the Complaint bears the burden of proving that he is entitled to relief from the Commission. 66 Pa. C.S. § 332(a).

3. Complainant must show that the utility company is responsible or accountable for the problem described in his Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 (Opinion and Order entered Sept. 3, 2015).

³⁶ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code §56.81(3).

4. The Public Utility Code mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501.

5. When a complainant challenges the installation of a smart meter there must be sufficient evidence to support a finding that complainant would be adversely affected by the smart meter or whether [the utility's] use of a smart meter would constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances of the case. *Povacz v Pa. Pub.Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

6. When the issue at hand, here the safety of a smart meter, involves scientific, technical, or other, specialized knowledge beyond that possessed by a layperson, expert testimony is needed to assist the factfinder to understand the evidence or to determine a fact in issue. Pa.R.E. 702.

7. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

8. Act 129 of 2008 requires electric distribution companies to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f); *Povacz v Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

9. There is no specific provision in the Code or the Commission's regulations or orders providing for an electric distribution customer to opt-out of smart meter installation. *Povacz v Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa.2022).

10. A utility may issue written notice of service termination to a customer, if a customer does not permit access to meters, service connections, or other property of the public

utility for the purpose of replacement, maintenance, repair, or meter reading, including the installation of a smart meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

11. Complainant failed to carry his burden of proof establishing that West Penn Power Company violated the Code or a regulation or order of the Commission in attempting to install a smart meter at Complainant's residence, or in threatening service termination. 66 Pa.C.S. § 332.

12. Complainant failed to carry his burden of proof to establish that West Penn Power Company provided unsafe or unreasonable service. 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of West Penn Power Company asserting legal insufficiency of the Complaint of David Coyle against West Penn Power Company at Docket No. C-2019-3014261 are sustained.

2. That the Complaint of David Coyle against West Penn Power Company at Docket No. C-2019-3014261 is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3014261 closed.

Date: March 11, 2024

/s/
Conrad A. Johnson
Administrative Law Judge