

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory and Donna Kollmar	:	
	:	
v.	:	C-2019-3014650
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Motion for Summary Judgment filed by West Penn Power Company and dismisses the Complaint filed by Complainants. Complainants repeatedly failed to identify their expert witnesses and cannot prevail as a matter of law on their smart meter Complaint without the testimony of expert witnesses.

HISTORY OF THE PROCEEDING

Initial Filings by the Parties

November 26, 2019, Gregory and Donna Kollmar (Complainants or the Kollmars) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (WPP, Company, or Respondent) regarding service at their residence at 1749 Freeport Road, Arnold, PA (service location). Complainants averred the Company has threatened to shut off their service and that “the smart meter is a direct energy weapon that can burn down our homes” and smart meters “can be used as a tracking device.”

They averred the smart meter constitutes unsafe conditions as prohibited by 66 Pa.C.S. § 1501. As relief, they requested they be permitted to “negotiate and file a new contract with [WPP] with other terms to accept smart meter if they pay [them] \$50,000 a week.”

On December 16, 2019, Respondent filed an Answer and New Matter. Respondent admitted that it provides residential retail electric service to Complainants, but denied the smart meter poses a health or safety risk. Further, WPP averred it is legally required to install and retain the smart meter by the Public Utility Code, the Commission’s orders, and the Company’s Commission-approved Smart Meter Deployment Plan (SMP). *See* 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered June 9, 2010).

In its New Matter, WPP averred smart meter installation is required by Act 129 of 2008 (Act 129) and WPP’s SMP and the Commission are unable to provide the requested relief sought by Complainant.

The New Matter included a Notice to Plead, directing Complainants to file a response within twenty days of service.

On December 16, 2019, WPP filed a Preliminary Objection. WPP argued the Complaint was legally insufficient because Complainants sought relief the Commission was unable to provide as a matter of law.

The Preliminary Objection included a Notice to Plead, directing Complainants to file a response within ten days of service.

Complainants did not file a response to either the New Matter or the Preliminary Objection.

On January 22, 2020, this matter was assigned to Deputy Chief Administrative Law Judge Mark Hoyer (DCALJ Hoyer).

On January 31, 2020, DCALJ Hoyer issued an Interim Order denying the Preliminary Objection.

On May 20, 2020, the Commission issued a Notice, reassigning this matter to me and scheduling a prehearing conference for July 31, 2020.

On May 21, 2020, I issued an Interim Order, scheduling the prehearing conference and detailing the Commission's procedural rules regarding service, representation, and discovery.

On July 30, 2020, Ms. Kollmar contacted my office requesting the prehearing conference be cancelled because she was sick.

On July 30, 2020, the prehearing conference was cancelled via a Cancellation Notice and Interim Order.

On July 30, 2020, I issued an Interim Order establishing a litigation schedule. I directed the Parties to exchange witness information by August 14, 2020; conclude discovery by October 9, 2020; and file dispositive motions and status reports by October 16, 2020.

On October 16, 2020, WPP filed its status report as directed by the July 30, 2020, Interim Order. WPP advised, *inter alia*, that Complainants failed to provide their witness information as directed.

Complainants did not file a status report.

Povacz I, Povacz II, and The Commission's Stay Order

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129, codified at 66 Pa.C.S. § 2807(f). In the *Povacz I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission's March 28, 2019, and May 9, 2019, Orders. *Povacz I* at 495. Specifically, the Commonwealth Court, in *Povacz I*, held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers accommodations based on their health concerns. *Id.* at 490. However, the Commonwealth Court affirmed: (1) the Commission's application of the preponderance of evidence standard; (2) the Commission's finding that the customers in the underlying cases failed to sustain their burden of proof; and (3) that the Commission's findings of fact were supported by substantial evidence. *Id.* at 490-491, 493-495. The Commonwealth Court also declined to find that the deployment of smart meters violated the customers' Fourteenth Amendment liberty interests in bodily integrity. *Id.* at 487- 488.

In light of the Commonwealth Court's decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020, Stay Order*). The *November 4, 2020, Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. The *November 4, 2020, Stay Order* applied to and was docketed at the instant case.

The Commission, as well as all other parties in *Povacz I*, subsequently sought and were granted review of the Commonwealth Court's *Povacz I* decision by the Supreme Court of Pennsylvania.

Previously, the Commonwealth Court stayed the proceedings in several other unconsolidated appeals that raised the same, or similar, smart meter issues pending its disposition of *Povacz I*. Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court's disposition of *Povacz II*.

On August 16, 2022, the Supreme Court issued an Opinion and Order, *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). In its Opinion in *Povacz II*, the Supreme Court affirmed the Commission's determinations in all respects. The Supreme Court reversed the Commonwealth Court's determination that Act 129 does not mandate smart meter installation and that Court's remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501.

The Supreme Court did, however, affirm the Commonwealth Court's conclusion that the "Customers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects." *Id.* at 1014. The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. *Id.* at 992. The Supreme 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 may choose what to do with smart meter technology but have no right to refuse smart meter installation. *Id.* at 997. Accordingly, the Supreme Court reversed the Commonwealth Court, and affirmed the Commission's interpretation in the underlying cases that Act 129 mandates universal smart meter installation. *Id.*

Given the Supreme Court's decision in *Povacz II*, the Commission lifted the stay implemented by the *November 4, 2020, Stay Order* on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the

Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

Proceeding Post-*Povacz II* in the Instant Case

After the Commission lifted the Stay, I carefully reviewed the procedural history of this case. On November 28, 2023, I issued an Interim Order detailing the Supreme Court’s holding in *Povacz II*, and explaining that, per the Supreme Court, Complainants could not successfully present a *prima facie* case of an alleged violation of 66 Pa.C.S. § 1501 unless they present expert scientific and/or medical testimony. I wrote,

In this case, Complainants **must** present expert medical and/or scientific evidence to meet their burden of proof. If they are able to meet their burden of proof, they may be entitled to an accommodation to the extent allowed by Act 129 and the Company’s tariff. However, that accommodation may not rise to the level of an opt-out from smart meter installation. While the Commission is not able to allow Complaints to opt-out of smart meter installation, Complainants, if able to meet their burden of proof, may be entitled to an “accommodation.” While the Supreme Court did not expound upon what such an “accommodation” may be, the fact remains that such an “accommodation” exists as a matter of law.¹

I ordered Complainants to provide their expert witness information to WPP and myself by December 22, 2023. I explained that Complainants were required to provide the name, business address, summary of expected testimony, and curriculum vitae for each expert they intend to call to testify at a hearing, if one were to be held. I noted, **“Failure to provide this information by December 22, 2023, may result in dismissal of the Complaint.”**²

My November 28, 2023, Order also set a deadline of January 10, 2024, for dispositive motions, if any.

¹ Emphasis in original.

² Emphasis in original.

Complainants did not serve any expert witness information as directed.

On January 10, 2024, WPP filed a Motion for Summary Judgment. The Motion included a Notice to Plead, directing Complainants to file a response within twenty days of service.

Complainants did not file a response to the Motion by the deadline of February 9, 2024.

On February 13, 2024, I Issued an Interim Order closing the record. This matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainants are Gregory and Donna Kollmar.
2. Respondent is West Penn Power Company, a jurisdictional public utility.
3. On November 26, 2019, Complainants filed a Complaint with the Commission, alleging, *inter alia*, that they wanted to opt-out of smart meter installation at their residence at 1749 Freeport Road, Arnold, PA.
4. In their Complaint, Complainants argued, *inter alia*, installation of a smart meter would constitute unsafe conditions as prohibited by 66 Pa.C.S. § 1501.
5. On December 16, 2019, Respondent filed an Answer and New Matter to the Complaint, averring, *inter alia*, that Respondent was required to install a smart meter at the service location and the Commission was unable to provide the requested relief.

6. On December 16, 2019, WPP filed a Preliminary Objection arguing, *inter alia*, the Complaint was legally insufficient because Complainants sought relief the Commission was unable to provide as a matter of law.

7. The Preliminary Objection included a Notice to Plead, directing Complainants to file a response within ten days of service.

8. Complainants did not file a response to either the New Matter or the Preliminary Objection.

9. On January 22, 2020, the Commission issued a Motion Judge Assignment Notice, assigning this matter to DCALJ Hoyer.

10. Prior to January 22, 2020, Complainants enrolled in eService, such that they were eServed with all notices and Orders issued by the Commission, beginning with the Motion Judge Assignment Notice on January 22, 2020.

11. On January 31, 2020, DCALJ Hoyer issued an Interim Order denying the Preliminary Objection.

12. On May 20, 2020, the Commission issued a Notice, reassigning this matter and scheduling a prehearing conference for July 31, 2020.

13. On May 21, 2020, the Commission issued an Interim Order, scheduling the prehearing conference and detailing the Commission's procedural rules regarding service, representation, and discovery.

14. On July 30, 2020, the prehearing conference was cancelled via a Cancellation Notice and Interim Order.

15. On July 30, 2020, I issued an Interim Order establishing a litigation schedule. The parties were directed to exchange witness information by August 14, 2020; conclude discovery by October 9, 2020; and file dispositive motions and status reports by October 16, 2020.

16. On October 16, 2020, WPP filed its status report as directed by the July 30, 2020, Interim Order. WPP advised, *inter alia*, that Complainants failed to provide their witness information as directed.

17. Complainants did not file a status report.

18. On November 4, 2020, the Commission, at Docket No. M-2009-2092655, entered an Order and Notice, pursuant to 66 Pa.C.S. § 501, instituting a stay of formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code.

19. The instant Complaint was one of the cases stayed by the Commission's November 4, 2020, Order and Notice.

20. On November 9, 2023, the Commission entered an Order at Docket No. M-2009-2092655, lifting the stay and explaining that cases that had been stayed would proceed as directed by the assigned presiding officer.

21. On November 28, 2023, I issued an Interim Order directing Complainants to provide their expert witness information to WPP and myself by December 22, 2023. I explained that "expert witness information" included the witness's name, business address, summary of expected testimony, and curriculum vitae.

22. The November 28, 2023, Interim Order advised, “**Failure to provide this information by December 22, 2023, may result in dismissal of the Complaint.**”

23. Complainants did not serve the expert witness information as directed.

24. On January 10, 2024, WPP filed a Motion for Summary Judgment. The Motion included a Notice to Plead, directing Complainants to file a response within twenty days of service.

25. Complainants did not file a response to the Motion for Summary Judgment.

DISCUSSION

Section 5.102 of the Commission’s regulations provides the Commission’s standard of review for a request for summary judgment:

(1) Standard for grant or denial on all counts. The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) Standard for grant or denial in part. The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1)-(2).

Further, the Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

In its Motion for Summary Judgment, Respondent argues the Complaint be dismissed in its entirety and with prejudice due to the Complainants' inability to carry their burden of proof in support of their claims. In smart meter cases such as this one, the Supreme Court, in *Povacz II*, made clear that a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects, as well as 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 or would cause them harm. Yet, Complainants have failed to indicate they plan to provide any expert testimony evidencing, to a reasonable degree of scientific certainty, that smart meters emit a radio frequency and that such an emission would be a violation of 66 Pa.C.S. § 1501. Therefore, Complainants are unable to meet their burden of proof as a matter of law, and the Complaint must be dismissed.

I will consider the Respondent's Motion for Summary Judgment as a Motion to dismiss the Complaint.

In cases such as this one where a customer is challenging the installation of a smart meter, the Supreme Court has made clear that customers must present expert testimony, and that without it, customers are unable to meet their burden of proof as a matter of law. *See Povacz II*.

The Supreme Court noted that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code,

66 Pa.C.S. § 1501. The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Supreme Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Id.* at 1005. The Supreme Court opined that while a customer’s evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Supreme Court noted that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meter, 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. *Id.* 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. *Id.* at 1006. 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. *Id.* at 1005. The Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff. However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id.* at 1015.

Complainants have been given multiple opportunities to identify their expert witnesses. On July 30, 2020, I issued an Interim Order establishing a litigation schedule, directing parties to exchange witness information by August 14, 2020. On November 28, 2023, I

issued an Interim Order directing Complainants to provide their expert witness information to WPP and myself by December 22, 2023. I explained that “expert witness information” included the witness’s name, business address, summary of expected testimony, and curriculum vitae. I also explained that Complainant’s failure to provide this information by the deadline may result in dismissal of the Complaint.

Both the July 30, 2020, Interim Order and the November 28, 2023, Interim Order were eServed on Complainants, consistent with their registration in the Commission’s eService program. As of the date of this Initial Decision, Complainants have failed to provide any expert witness information.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant’s failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). Complainants have failed to comply with two of my Orders.

Well-established Commission precedent tends to afford unrepresented complainants the opportunity to orally set forth their cases on the record and cautions against dismissing cases on a preliminary basis. *Carlock v. The United Tel. Co. of Pa.*, Docket No. F-00163617 (Opinion and Order entered July 14, 1993). In *Carlock*, the complainant alleged, *inter alia*, the utility suspended his telephone service without prior notice. *Id.* The utility filed an answer concurrent with a Motion for Summary Judgement, averring, *inter alia*, that Mr. Carlock had made only four payments on his account during the period of time at issue, and a suspension notice was mailed in accordance with the Commission’s rules and regulations. *Id.* The Administrative Law Judge recommended the utility’s Motion for Summary Judgement be granted and complainant’s complaint be dismissed without a hearing because the complainant did not dispute any facts set forth in the utility’s motion, the facts did not rise to an inference of a genuine pertinent fact being at issue (i.e. a fact tending to show that the utility had violated the law or a regulation or order of the Commission), and the complaint was not substantively

directed against the utility's conduct but rather sought a change in the Commission's regulations.
Id.

The Commission reversed the ALJ's recommendation. In its Opinion and Order, the Commission explained,

[A] Motion to Dismiss and a Motion for More Specific Pleading should not be granted against unrepresented complainants who are pursuing small claims until they have had a least an oral opportunity to explain their position. **We did not...and do not now, rule out the possibility that pretrial motions can be granted in such cases, only that such motions should not be granted on the pleadings.** The ALJ must first develop a sufficient record.

In more complex cases with counsel participating, the record is likely to include depositions, answers to interrogatories, admissions and supporting affidavits. Answers to the motion may include similar filings. Certainly, in our view, unrepresented complainants cannot be expected to navigate through such complex procedural territory. **Rather than relying on the pleadings, the ALJ has an affirmative duty to ensure the development of a record that reasonably presents the underlying grievance.**

In this case, the ALJ has recommended that we grant Respondent's Motion for Summary Judgement on the pleadings ... [T]he Complainant is unrepresented by Counsel and did not file an answer to the pre-trial motion. We recognize that unrepresented plaintiffs often are not able to file an effective response to a pre-hearing motion. Yet, in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form. Therefore, to deny unrepresented complainants a meaningful opportunity to be heard in such cases, can be viewed as a gross abuse of our authority.

Id. at 2 (citations omitted) (emphasis added).

In the instant case, a hearing was not held and Complainants did not have an opportunity to be heard orally. However, the instant case is distinguishable from *Carlock*. Unlike the ALJ in *Carlock*, I am not dismissing the Complaint on the pleadings; I am dismissing

the Complaint due to Complainant's failure to provide expert witness information, which is required, as a matter of law, for them to be able to make a *prima facie* case and have any chance of meeting their burden of proof. *Povacz II*.

Consistent with the Commission's holding in *Carlock*, DCALJ Hoyer denied the Preliminary Objection, and I and set a litigation schedule, moving the case toward a hearing, wherein the parties would have the opportunity to develop the record envisioned by the Commission in *Carlock*. I then gave Complainants ample opportunity to provide their expert witness information.

While unrepresented complainants cannot be expected to comply with every procedural rule, the lenience afforded to the complainants must be weighed against the due process rights of the respondent. While an unrepresented complainant has an interest in proceeding to a hearing where he may be better able to express his grievance, the respondent cannot be expected to expend resources and incur the expense of a hearing in cases such as this one, where Complainants have failed to demonstrate they will be able to make a *prima facie* case as a matter of law at a hearing, if one were held. To proceed to a hearing in this case, where Complainants have repeatedly failed to identify expert witnesses, when expert witness testimony is required as a matter of law, would require Respondent expend time and resources in a case where Complainants could not meet their burden of proof, violating Respondent's due process rights. The case cannot move forward at this juncture because Complainants have failed to identify their expert witnesses as they were repeatedly ordered to do.

Carlock does not excuse an unrepresented complainant from complying with a presiding officer's interim orders. Nor does *Carlock* prohibit a presiding officer from dismissing a complaint if a complainant fails to demonstrate he or she will be able to make a *prima facie* case as a matter of law. Complainants failed to provide their witness information as ordered by

the Interim Orders. A hearing in this matter is not necessary or appropriate and is not in the public interest. Accordingly, the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. Section 5.102 of the Commission's regulations provide the standard of review for summary judgment. 52 Pa. Code §§ 5.102(d)(1)-(2).
3. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).
4. Act 129 mandates the systemwide installation of smart meters. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
5. While Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates 66 Pa.C.S. § 1501. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
6. The burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. 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. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

7. Complainants seeking relief from the Commission in smart meter cases must satisfy their burden of proof by a preponderance of the evidence. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

8. Inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

9. Neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

10. The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

11. The due process rights of Complainants have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa.Code § 5.245(a).

THEREFORE,

IT IS ORDERED;

1. That the Motion to Dismiss filed by West Penn Power Company is granted.

2. That the Complaint filed by Gregory and Donna Kollmar against West Penn Power Company at Docket No. C-2019-3014650 is dismissed.

3. That Gregory and Donna Kollmar be prohibited from filing another formal complaint challenging the installation of a smart meter unless that complaint contains the name(s), address(es), and curriculum vitae(s) of their proposed expert witness(es).

4. That the Secretary's Bureau mark Docket No. C-2019-3014650 as closed.

Date: May 21, 2024

/s/
Emily I. DeVoe
Administrative Law Judge