

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Konzelmann	:	
	:	
v.	:	C-2019-3009218
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

Initial Filings by the Parties

On April 5, 2019, Eric Konzelmann (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed, Respondent or Company), objecting to the installation of a smart meter at his residence at 357 Black Matt Road, Douglassville, PA 19518 (service location). Complainant avers, *inter alia*, he does not want a smart meter installed at his residence due to health and safety concerns; smart meters release radio frequencies that have

been established as a carcinogen; and smart meters have caused fires. As relief, Complainant requests that he be allowed to keep his analog meter.

On May 6, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent admitted that it provides residential electric service to Complainant at the service location. Respondent averred, *inter alia*, that Complainant refused installation of a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent also averred that installation of the smart meter is required by Act 129 of 2008¹ (Act 129) and Respondent's Commission-approved Smart Meter Deployment Plan (SMP). Neither Act 129 nor the SMP permit Complainant to opt-out of smart meter installation. Respondent denied the remaining material averments set forth in the Complaint.

In its New Matter, Respondent argued the Complaint should be dismissed for legal insufficiency, because it is required by Act 129 and its SMP to install a smart meter at the service location; neither Act 129 nor the SMP permit Complainant to opt-out of smart meter installation; and the Commission is unable to grant the relief requested by Complainant.

On May 6, 2019, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request to opt-out of smart meter installation is not legally recoverable and Complainant failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the installation of the smart meter at the service location. Respondent further averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. Respondent argued a hearing is not in the public interest, and the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

The Preliminary Objections contained a Notice to Plead, requiring Complainant to file a response within ten days of service. Complainant did not file a response to the Preliminary Objections.

¹ 66 Pa.C.S. § 2806.1–2807.

On June 11, 2019, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

On June 17, 2019, I issued an Interim Order denying the Preliminary Objections, and a second Interim Order establishing a litigation schedule. I directed the Parties to exchange fact and expert witness information by July 26, 2019; conclude discovery by September 20, 2019; and file a status report by October 11, 2019.

On June 18, 2019, the Commission issued a Prehearing Conference Notice, and I issued an Interim Order scheduling a prehearing conference for August 13, 2019.

On July 12, 2019, the Company filed a certificate of service evidencing their service of Interrogatories and Requests for Production of Documents (discovery requests) upon Complainant.

The prehearing conference convened as scheduled on August 13, 2019. Complainant was present and represented himself. Tori Geisler, Esq., and Lauren Lepkoski, Esq., were present on behalf of the Company. The Parties discussed a variety of topics and engaged in settlement discussions, which were ultimately unsuccessful.

The parties filed multiple status reports, advising on their availability for a hearing.

Evidentiary Hearing

On May 6, 2020, the Commission issued a Notice, scheduling an evidentiary hearing for June 24, 2020. I also issued a Prehearing Order dated May 6, 2020.

The evidentiary hearing convened as scheduled on June 24, 2020. Mr. Konzelmann appeared on his own behalf. He testified on his own behalf, but his exhibits had not

yet been received at the time of the hearing. Ms. Giesler and Ms. Lepkoski appeared on behalf of the Company. The Company presented the testimony of John Ahr, Advisor for Regulatory Compliance. Company's exhibits PD-1, PD-2, PD-3, PD-4, JCA-1, and JCA-3 were admitted into the record. I ordered Complainant to serve his proposed late-filed exhibits on the Company within ten days and advised the Company to file any objections to the proposed late-filed exhibits within ten days of service of Complainant's proposed exhibits. Further, I informed the parties I would issue a briefing order, setting a deadline for the filing of briefs.

Complainant served his fifteen proposed late-filed exhibits on me and the Company on June 26, 2020.

On July 9, 2020, the Company filed objections to Complainant's proposed exhibits.

On July 10, 2020, the transcript was filed.

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

The Commission's handling of complaints challenging the installation of smart meters on consumer's residences has been the subject of recent appellate litigation. 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 in Maria Povacz and related cases. *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 those

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 electric distribution company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501 (*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 I*.

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 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 that Act 129 mandates universal smart meter installation. *Id.*

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 radio frequency (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. 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.

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 December 11, 2023, I issued an Interim Order detailing the Supreme Court's holding in *Povacz II* and setting deadlines for Complainant to file responses to the Company's objections to his proposed late-filed exhibits and for the parties to file briefs. Complainant was ordered to file responses to the objections, if any, by December 22, 2023. The Parties were directed to submit main briefs, if any, by January 26, 2024. Finally, I directed the Parties to file any appropriate motions by January 26, 2024, and responses to any motions by February 7, 2024.

Complainant did not file a response to the Company's objection to his proposed late-filed exhibits.

On January 26, 2024, the Company filed a main brief. Complainant did not file a brief.

On March 8, 2024, I Issued an Interim Order sustaining all of the Company's objections to Complainant's proposed late-filed exhibits and closing the evidentiary record. This matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Eric Konzelmann, who resides at 357 Black Matt Road, Douglassville, PA.
2. Respondent is Metropolitan Edison Company, an electrical distribution company (EDC) that provides residential electrical service to Complainant at the service address.
3. Act 129 of 2008 required EDCs with at least 100,000 customers to adopt smart meter technology procurement and installation plans (SMTPIPs) to the Commission. Tr. 57-58; Met-Ed Ex. PD-1.
4. Act 129 also defined some of the specific characteristics the meters need to have, including bi-directional communication with the utility and the ability to report consumption data in at least hourly intervals. Tr. 58-59; Met-Ed Ex. PD-1.
5. Met-Ed is an EDC with at least 100,000 customers. Tr. 59.
6. On June 24, 2009, the Commission issued an Implementation Order, providing general direction to EDCs regarding their adoption of smart meter programs and requiring EDCs to submit SMTPIPs to the Commission. Tr. 59; Met-Ed Ex. PD-2.

7. On August 14, 2009, Met-Ed's SMTPIP was submitted to the Commission. Tr. 60.
8. On June 9, 2010, the Commission entered an Order approving Respondent's SMTPIP with modifications. Tr. 60; Met-Ed Ex. PD-3.
9. On December 31, 2012, Respondent filed its initial smart meter deployment plan (SMDP) with the Commission. Tr. 61.
10. By Order entered June 5, 2014, the Commission approved Respondent's final SMDP. Tr. 62; Met-Ed Ex. PD-4.
11. The SMDP does not provide an opt-out for customers. Tr. 65-67; Met-Ed Ex JCA-1.
12. Respondent is installing Itron OpenWay CENTRON smart meters. Tr. 65.
13. Met-Ed's SMDP requires Met-Ed to deploy 98.5% of smart meters to its customer service locations by mid-2019, and the remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, by 2022. Tr. 66-67; Met-Ed Ex. JCA-1.
14. Respondent's smart meters are compliant with standards set by the Federal Communications Commission (FCC) and the American National Standards Institute (ANSI) and are Underwriters Laboratory (UL) certified. Tr. 67-68.
15. As of the date of the hearing, Met-Ed has not installed a smart meter at the service location. Tr. 68.

16. Complainant offered his own lay witness testimony at the hearing and did not testify as an expert. Tr. 46.

17. Respondent offered testimony of Company employee, John Ahr. Tr. 53-73.

DISCUSSION

General Burden of Proof for Consumer Complaints

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consol. Edison Co. of New York v. Nat’l Labor Rel. Bd.*, 305 U.S. 197, 229 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence,

determines which party must come forward with evidence to support a particular claim or defense. *Moore v. Nat'l Fuel Gas Distrib.*, Docket No. C-2014-2458555 (Final Order entered Aug. 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See, Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See Milkie*; *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Burden of Proof Applied to Section 1501 Complaint Challenging Smart Meter Installation

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain "adequate, efficient, safe, and reasonable service and facilities" and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501. Section 1501 of the Code, provides, in pertinent part, as follows:

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 and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

As discussed above, the Supreme Court held 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 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. *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 (emphasis added).

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.

Complainant's Case-in-Chief

At the hearing, Mr. Konzelmann said he had found "upwards of 7,000 studies on radio frequencies on the effects on physiology." Tr. 39. He said it would be unreasonable for him to print all of it out to submit as evidence. Tr. 39. He said, "I think if we can find even one case of a study where they found radio frequencies to be harmful or potentially harmful to the human physiology. I think that would sufficiently be enough to cause at least a pause in the rollout of these smart meters before more studies are done on that." Tr. 39.

Mr. Konzelmann testified that that he started doing research on smart meters when the Company sent him information on its smart meter deployment plan. Tr. 43-44. He testified he "knew from previous studies on cell phones and radio frequencies that it does have the potential to disrupt the human physiology." Tr. 43-44. When the Company objected to his testimony scientific studies and conclusions, he stated, "So, I don't claim to be the expert. I simply read the documents. I am basically regurgitating a conclusion that I found from the evidence ... This is just sample evidence of what I have seen from the experts." Tr. 46.

Mr. Konzelmann further testified the smart meter, if it were to be installed at the location of his existing meter, would be "approximately four feet from my daughter's head, where she sleeps at night. My daughter already has existing issues with anxiety and is very susceptible to allergens, and she doesn't want a smart meter four feet from her head." Tr. 47. Mr. Konzelmann reported that his daughter was 19 years old at the time of the hearing. Tr. 47. Additionally, Mr. Konzelmann testified that the smart meter would be 20 feet away from his

younger daughter's bedroom, and 20 feet away from the bedroom he shares with his wife. Tr. 47.

He further testified, “[W]hat I'm stating is I believe the studies show there could at least have some impact on humans. I don't think it should be forced on my home against my will until there's more than sufficient evidence to prove that it will not result in any potential harm to humans or life in general. That is pretty much what I'm stating. I don't want a smart meter proposed [sic] on my house.” Tr. 49.

After the hearing, Complainant submitted fifteen proposed late-filed exhibits. With the exception of two proposed exhibits, which are purportedly related to a California court case, all were articles printed off the internet. Respondent objected to all of them on various grounds: hearsay, relevance, lack of authenticity, and inherent unreliability. In my March 5, 2024, Order disposing of the Company's objections to the proposed exhibits, I held all of the proposed exhibits were inadmissible due to hearsay, lack of relevance, lack of authenticity, or inherent unreliability.

Whether Complainant Met His Burden of Proof

As discussed above, there is no opt-out of smart meter installation, but if a customer is able to make a *prima facie* case, the customer may be entitled to an accommodation. To make a *prima facie* case under 1501, a complainant must satisfy his burden of proof by a preponderance of the evidence. The burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a complainant must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, the complainant must be required to 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.

Although Complainant raised concerns about health and safety, these claims consisted solely of Complainant's lay opinions and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Further, the Supreme Court held that a complainant could not make a *prima facie* case in smart meter cases with only such evidence. *Povacz II* at 1005. As such, there is no record evidence to support the conclusion that Respondent's installation of the smart meter at the service location constitutes a violation of Section 1501 of the Code. Accordingly, Complainant's claims must be dismissed. In view of Complainant's failure to meet his burden of proof, the Complaint must be denied and dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. Act 129 mandates the systemwide installation of smart meters. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
4. 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).
5. 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).

6. 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).

7. 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).

8. 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).

9. Complainant failed to meet his burden of proof. 66 Pa.C.S. § 332(a); *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

ORDER

THEREFORE,

IT IS ORDERED;

1. That the Formal Complaint of Eric Konzelmann filed against Metropolitan Edison Company at Docket No. C-2019-3009218 is dismissed with prejudice.

2. That Docket No. C-2019-3009218 be marked as closed.

Date: May 31, 2024

_____/s/
Emily I. DeVoe
Administrative Law Judge