

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Miranda Edwards	:	
	:	
v.	:	C-2018-3002741
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

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

HISTORY OF THE PROCEEDING

On or about June 14, 2018, Miranda Edwards (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) objecting to the installation of a smart meter by Duquesne Light Company (Respondent, DLC, or Company) at her residence at 3835 Acorn Street, Pittsburgh, PA (service location or service address). Complainant alleged, *inter alia*, that she did not agree to the installation of a smart meter at her home, that the Company’s smart meters would damage her health, that the smart meters create a fire hazard, and that smart meters constitute an invasion of Complainant’s privacy.¹ Complainant further averred that the current interpretation of Act 129 and Respondent’s implementation of Act 129 violates Complainant’s rights as specified in the United

¹ Complainant was permitted to assert an amended complaint which she averred was filed on March 4, 2019 but was not served upon the presiding officer.

states Constitution.² Complainant averred “On June 1 (I believe) I filed an Informal Complaint by phone with the PUC against DLC.”³ Complainant averred she was handed a shut off notice by Respondent on June 12, 2018, to take effect on June 15, 2018, and called a Commission representative who did not mention that the unresolved informal complaint made Respondent’s shut off notice void.⁴ Complainant also averred that the Commission is charged with implementing Act 129 which is in direct conflict with the Commission’s implied role as an impartial arbiter between Complainant and Respondent. Accordingly, Complainant averred that the result of her Complaint seems to be a foregone conclusion.⁵

On July 5, 2018, the Company filed its Answer and New Matter denying the material allegations in the Complaint and requesting the scheduling of a prehearing conference. On July 5, 2018, the Company also filed Preliminary Objections.

On July 10, 2018, Respondent filed a Motion For Prehearing Conference. In the Motion, Respondent averred that it would be in the best interest of the Parties to schedule a prehearing conference to establish various deadlines to ensure that the case would proceed in a timely and orderly fashion.⁶ Respondent further averred that a prehearing conference could be useful to establish discovery deadlines to include the identification of witnesses and to exchange a summary of the proposed testimony of the witnesses. Respondent requested that a prehearing conference be scheduled to set a deadline for the filing of dispositive motions, to exchange stipulations, and to submit prehearing motions.⁷

² Respondent’s preliminary objections to this claim were granted and this claim was denied as the Commission has limited jurisdiction conferred upon it by the General Assembly and does not have the authority to declare Act 129 unconstitutional. *See Hribal v. West Penn Power Co.*, Docket C-2019-3008050 (Final Order entered Dec. 26, 2023).

³ Formal Complaint, p. 3.

⁴ Formal Complaint, p. 4.

⁵ Formal Complaint, pp. 3-4.

⁶ *See* Respondent’s Motion For Prehearing Conference, p. 1.

⁷ Respondent’s Motion For Prehearing Conference, pp. 1-2.

No objection or response was filed by Complainant to the Motion For Prehearing Conference filed by Respondent.

On July 12, 2018, Complainant requested additional time to file responses to the Preliminary Objections.

On July 24, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this matter to the undersigned administrative law judge (presiding officer or ALJ).

On August 6, 2018, Complainant filed a response to the Preliminary Objections.

On August 15, 2018, Complainant filed a reply to the Company's Answer and New Matter.

On October 24, 2018, an Interim Order was entered, granting in part and denying in part Respondent's preliminary objections and granting Respondent's request for a prehearing conference.⁸ The preliminary objections were granted to the limited extent that Complainant claims that Respondent has violated her rights under the Fourth Amendment to the United States Constitution.

A prehearing conference was scheduled by Notice issued October 25, 2018.

Complainant filed a letter along with a Request for Cancellation of Prehearing Conference directed to the Commission Secretary dated November 9, 2018 (letter), requesting cancellation of the prehearing conference. The letter from Complainant included a certificate of service certifying that a copy was provided to counsel for Respondent. The letter was not directed to the undersigned presiding officer and the undersigned presiding officer was not included as a recipient of the letter on the certificate of service. In her letter directed to the

⁸ The title of the Interim Order entered on October 24, 2018, provided that Respondent's request for a prehearing conference was granted however there was no ordering paragraph in the Interim Order granting Respondent's Motion For Prehearing Conference.

Commission Secretary, Complainant stated, among other things, that the scheduling of a prehearing conference was “inappropriate,”⁹ that she did not consent to a prehearing conference, and that the schedule proposed in the Motion by Respondent, and proceeding with the scheduled prehearing conference was “more of a waste of time than not.”¹⁰

On November 20, 2018, despite Respondent’s request to hold a prehearing conference and the issuance of a Notice scheduling a prehearing conference where Parties could have discussed the proceeding and attempted to address a litigation schedule, among other matters, an Interim Order was entered granting the request of Complainant and cancelling the prehearing conference scheduled for November 29, 2018. As the prehearing conference, which, *inter alia*, would have provided the Parties with an opportunity to discuss and attempt to determine a litigation schedule, was cancelled, the Parties were further advised that a litigation schedule order would be entered in this case by the undersigned presiding officer.¹¹

On December 10, 2018, Respondent filed a motion to compel discovery responses regarding discovery requests served on Complainant on July 10, 2018. Respondent averred that Complainant served objections and a motion to strike the first set of discovery requests propounded by Respondent, on August 20, 2018, arguing the discovery requests were untimely and irrelevant. Complainant asserted, in part, that the discovery requests are irrelevant and relevant information sought was contained in Complainant’s responses to preliminary objections and because she is arguing an issue of statutory construction. Complainant further asserted that the discovery requests were untimely because the pleadings had not closed. On September 10, 2018, Respondent filed its response to Complainant’s objection to and motion to strike first set of discovery requests. Respondent asserted that it served its first set of discovery requests upon

⁹ Complainant’s Letter dated November 9, 2018, at p. 1.

¹⁰ *Id.* at p. 3.

¹¹ 52 Pa. Code § 35.111 provides: “ In order to provide opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, for settlement of a proceeding, or any of the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the participants for such purposes may be held at any time prior to or during hearings before the agency head or the presiding officer as time, the nature of the proceeding, and the public interest may permit.”

Complainant on July 10, 2018, and that the parties agreed to extend Complainant's deadline to respond until August 20, 2018. On October 24, 2018, an interim order was entered denying Complainant's Objection To And Motion To Strike First Set Of Discovery Requests dated August 20, 2018. Complainant was directed to serve objections upon Counsel for Respondent, where appropriate, to any specific discovery requests and full and complete responses to the interrogatories and requests for production of documents served by Respondent on July 10, 2018, on or before November 30, 2018.

Respondent averred that, in her discovery responses provided on November 30, 2018, Complainant objected to Questions 2, 4, 6, 16, 17, 18, 27, 28 and 29. Respondent indicated in its motion to compel that it would be willing to enter into a confidentiality agreement to protect Complainant's hospital and medical records. Complainant filed her Responses to Respondent's Motion To Compel Discovery Responses dated December 17, 2018 and reiterated her objections to the discovery requests.

On January 28, 2019, an interim order was entered denying Complainant's Objections and Opposition to the Discovery Request Nos. 2, 4, 6, 16, 18, 27, 28 and 29 and sustaining Complainant's objection to Discovery Request No. 17. Complainant was directed to serve counsel for Respondent with full and complete responses to the discovery requests, including Document Request Nos. 2, 4, 6, 16, 18, 27, 28 and 29, no later than February 19, 2019.

On or about March 4, 2019, Complainant served Respondent with an Amended Complaint. On March 25, 2019, Respondent filed an Answer and New Matter to the Amended Complaint.¹²

¹² Tr. 59:19-60:1. The Amended Complaint was not initially served upon the Presiding Officer, nor was it filed in the Commission's online docket for this case. Upon reviewing the online docket in preparation for the evidentiary hearing, the ALJ noted the filing of Respondent's Answer and New Matter to the Amended Complaint but did not see that an Amended Complaint had been filed. Prior to the evidentiary hearing, the ALJ's office contacted the parties who provided a copy of the Amended Complaint served upon Respondent. At the hearing, the ALJ questioned the parties about the Amended Complaint. (Tr. 51:23-59:12). Complainant explained that she e-filed her Amended Complaint with the Commission's Secretary's Bureau and had a confirmation number. (Tr. 54:24-55:1). Respondent's counsel advised he had received the Amended Complaint, filed an Answer and New Matter in response and did not object to moving forward with the Amended Complaint. (Tr.55:3-25). The Amended Complaint was marked as Exhibit ALJ-1.

On April 2, 2019, Complainant filed correspondence in response to the Company's Answer and New Matter to the Amended Complaint and included a request for summary judgment.

On April 22, 2019, Respondent filed a Motion to Strike Complainant's request for summary judgment, which was granted by Interim Order entered June 25, 2019.

On December 20, 2019, the Commission issued a Call-out Hearing Notice, scheduling an evidentiary hearing for February 27, 2020. Also, on December 20, 2019, an Interim Order Confirming Requirements for Evidentiary Hearing was entered.

On December 23, 2019, Respondent filed a motion to compel discovery responses averring that Complainant failed to provide full and complete responses to Duquesne Light's First Set of Discovery Requests 16, 18, 19 and 20. On January 9, 2020, Complainant filed Complainant's Responses To Respondent's Motion To Compel Discovery Responses.

Complainant filed a Motion to Stay the proceedings on December 23, 2019. On January 9, 2020, Respondent filed an Answer in Opposition to Stay of Proceedings. The Motion to Stay was denied by Interim Order entered February 21, 2020.

On January 9, 2020, Complainant filed, via electronic filing, a Request For Entry Of A Protective Order. The certificate of service attached to the Request indicated that a copy of the pleading was served upon counsel for Respondent "via email and e-filing" and that a copy was served upon the undersigned presiding officer "via e-filing." The undersigned presiding officer is not served through e-filing. The document was not served upon the undersigned presiding officer. In addition, no notice to plead directed to Respondent was attached to the Request. Moreover, Complainant did not set forth or detail the information sought to be protected or the way she was requesting that material or information be protected.

Complainant filed a Second Motion to Stay on February 13, 2020, essentially requesting a continuance of the evidentiary hearing scheduled for February 27, 2020. 52 Pa.

Code § 5.61(a)(1) provides that answers to motions shall be filed within the 20 days provided by §§ 5.102 and 5.103 (relating to motions for summary judgment and judgment on the pleadings; and motions). Accordingly, Respondent's response was due on or before March 5, 2024, after the date of the scheduled evidentiary hearing. On February 24, 2020, Respondent filed an Answer in Opposition to Complainant's Second Motion to Stay.

On February 21, 2020, an interim order was entered granting the motion to compel discovery responses filed by Respondent on December 23, 2019, and denying Complainant's objections and opposition to discovery request numbers 16, 18, 19 and 20. As the evidentiary hearing was scheduled for February 27, 2020, in the Second Interim Order Granting Respondents Second Motion To Compel Discovery Responses, Complainant was directed to serve her discovery responses upon Respondent, which were provided to Complainant on July 10, 2018, not later than February 26, 2020, by first class mail and email transmission and file a certificate of service with the Commission Secretary on or before February 26, 2020. As the Parties had not agreed upon terms for a protective order as of the date of the order, Respondent was ordered not to disclose the responses provided by Complainant pursuant to the order to any person or entity, except as necessary to complete its investigation and to present its defense related to this proceeding, and to take all appropriate actions to obtain confidentiality agreements from any person or entity to whom the information was disclosed.

Upon a review of the Docket in this proceeding, the undersigned presiding officer discovered the Complainant's Request For Entry Of A Protective Order in the Record.¹³ To address Complainant's request for a protective order and other outstanding issues, prior to the evidentiary hearing, and for the evidentiary hearing to proceed as scheduled on February 27, 2020, an Interim Order was entered on February 21, 2020.¹⁴

¹³ The Complainant's certificate of service certifies that a copy of Complainant's pleading was served upon counsel for Respondent by email and efilng and upon the presiding officer by efilng. The undersigned presiding officer cannot receive service of documents through the efilng system.

¹⁴ Respondent is provided a ten-day period to respond to the Complainants Second Motion to Stay filed on February 13, 2020, essentially requesting a continuance of the evidentiary hearing scheduled for February 27, 2020. Accordingly, Respondent had until February 24, 2020, to file a response to Complainants Second Motion to Stay.

The Interim Order entered on February 21, 2020, directed the Parties to confer on or before February 26, 2020, and attempt to agree or stipulate to the terms of a Protective Order to address the disclosure and use of discovery materials and any other sensitive information sought to be protected in this proceeding and the way such information or materials were sought to be protected. The Parties were further directed, prior to the hearing in this proceeding on February 27, 2020, to submit a stipulated Protective Order or, in the event an agreement was not reached by the Parties, either Party was permitted to submit a request for a Protective Order and a proposed Protective Order to the undersigned Presiding Officer. The Interim Order further provided that, in the event an agreement was not reached by the Parties, the Parties were directed to make themselves available by telephone at the telephone number provided to participate in the hearing, at 9:00 a.m., to continue their discussions to enter into a stipulated Protective Order. The Parties were directed to remain on the telephone conference until the start of the evidentiary hearing at 10:00 a.m. or until excused by the undersigned presiding officer. The Parties were also reminded to serve all pleadings and requests for relief to the undersigned presiding officer.¹⁵

On February 27, 2020, the evidentiary hearing was convened at 10 a.m., as scheduled. Complainant presented her case through her own testimony and offered Exhibits A through I into evidence. Complainant Exhibits A and B were admitted into the record. Respondent presented its case through the testimony of Michael Belanger, Steven Wright, Michael Tallent, Dr. Benjamin Cotts, Dr. Gabor Mezei, Michael Secchiutti, and Roxanne Morris, and offered Exhibits B-1, D-2, E-2, F-8, G-1, G-3, G-7, I-1, H-1, H-2, H-6, M-1, M-2, N, O, and Q, which were admitted into evidence. Prior to receiving evidence, the undersigned presiding officer advised the Parties that they would address a proposed protective agreement and any other preliminary matters.¹⁶

After a lengthy discussion, it was determined that Complainant did not comply with the Second Interim Order Granting Respondents Second Motion To Compel Discovery

¹⁵ The Parties did not avail themselves of the opportunity to resolve these issues at 9 a.m. prior to the hearing, and it was necessary to address these issues upon convening the hearing at 10 a.m.

¹⁶ Tr. 9.

Responses entered on February 21, 2020 and consideration was given to the concern that the information from Complainant was not provided to Respondent and, in turn, not made available to Respondent's expert witness in advance of the hearing.¹⁷ The receipt of evidence was further delayed as the Parties were required to discuss the amended formal complaint filed by Complainant, but which was not served upon the undersigned presiding officer, to make certain that the amended complaint was properly considered in this proceeding.¹⁸ After a short break was taken at the request of Complainant, the Parties were prepared to present evidence at 11:35 a.m.¹⁹

The Parties were permitted to make opening statements. Complainant was permitted to read an opening statement, and stated, among other things, that Duquesne Light and the Pennsylvania Public Utility Commission were "violating many state and federal laws, such as the federal Americans With Disabilities Act, as amended by the ADA Amendments Act; Section 504 of the Federal Rehabilitation Act of 1973; the Federal Fair Housing Act; the Pennsylvania Constitution; the United States Constitution and the Pennsylvania Public Utility Commission, their own Pennsylvania Code Section 1501 and 1502."²⁰ Prior to the evidentiary hearing, Complainant made the Parties and the undersigned presiding officer aware of her concern regarding an error in an interim order entered on October 24, 2018.

Complainant testified on her own behalf.²¹ Complainant testified that she filed her Complaint to prevent her electricity from being shut off and having a smart meter placed on her house against her consent.²² Complainant testified that Respondent provided her with a three-day shut-off notice on June 12, 2018, after she spoke with an unidentified employee of the

¹⁷ Tr. 31-50.

¹⁸ The amended complaint was marked as ALJ Exhibit 1 and entered into evidence. *See* Tr. 50-62.

¹⁹ Tr. 63-66.

²⁰ Tr. 173.

²¹ Tr. 66-169.

²² Tr. 74.

Public Utility Commission who told Complainant she was not able to file an informal complaint.²³ Complainant further testified that she was actively prevented from filing an informal complaint by an unidentified representative of the PUC, resulting in Complainant being rushed into filing her Formal Complaint, presumably to avoid termination of her electric utility service by Respondent.²⁴ Despite her desire to file an informal complaint, Complainant testified she then filed her Formal Complaint.²⁵

Complainant testified that she called the PUC on October 29, 2018, and recorded the call with notice to the others she spoke with. She testified that she wanted to be advised of the proper procedure to correct the record regarding an error in an interim order entered on October 24, 2018, and spoke with a woman who did not identify herself before connecting her with a man. Complainant testified that the male PUC representative was rude, confrontational and condescending, repeatedly speaking over her and shouting at her, insisting it was impossible to address her issue.²⁶

Complainant also testified she has a very small house with no yard and there is not enough room on her property to move a meter farther away from her living space.²⁷ Complainant also testified that she called Respondent and spoke with an unidentified customer service representative who was agitated and confrontational with her.²⁸ She also testified that there was, at a minimum, an appearance of impropriety “regarding House Consumer Affairs Committee Chairman Bob Godshall and his son having a position at the PUC.”²⁹ Complainant

²³ Tr. 75.

²⁴ Tr. 97-98.

²⁵ *Id.*

²⁶ Tr. 117-118.

²⁷ Tr. 79.

²⁸ Tr. 81-82.

²⁹ Tr. 81-82.

subsequently testified she meant to say the individual was employed by PECO, not the Commission.³⁰

At the request of Complainant, a fifteen-minute recess was taken until 1:30 p.m., at which time Respondent was given an opportunity to cross-examine Complainant.³¹ At approximately 3:55 p.m., I asked counsel for Respondent, who was presenting his case, if he wanted to talk about how we were going to conclude the hearing, and counsel indicated his desire to address that subject after concluding the examination of Respondent witness Miller.³² Counsel for Respondent then indicated he had two experts who were present for the hearing all day and anticipated it would take approximately one hour to complete each expert witness's testimony. Counsel indicated he had three other witnesses to present whose testimony would be much shorter. Counsel indicated he had one witness internal to Duquesne Light who had a schedule conflict and was present all day. I advised the Parties that I was willing to continue to take testimony for as long as the Parties wished to proceed, within reason, and I advised the Parties that if there were witnesses that we had to hear from, we could do that, and if there was a possibility of concluding the hearing, we could do that. I asked the Parties to talk and determine how they wished to proceed. Both Parties agreed to talk about scheduling off the record.³³ We returned on the record at 4:45 after the Parties concluded their discussion, and counsel for Respondent indicated he anticipated finishing his case in a couple hours or so. Complainant indicated that she did not have a problem continuing, but at some point she would like to wrap it up, the earlier the better.³⁴

The examination and cross examination of witness Tallent concluded at 5:30 p.m. and Dr. Ben Cotts was called to testify at that time.³⁵ During direct examination of Dr. Cotts, at

³⁰ Tr. 84.

³¹ Tr. 144-145.

³² Tr. 246-47.

³³ Tr. 255-57.

³⁴ Tr. 257.

³⁵ Tr. 295-296.

6:40 p.m., Complainant again disconnected from the conference bridge, and after a brief delay was reconnected to the conference bridge.³⁶ At 6:56 p.m., the examination and cross examination of Dr. Cotts was concluded, and the undersigned presiding officer again initiated a discussion with the Parties as to how the Parties wanted to proceed. Counsel for Respondent noted that he had witnesses who were present all day and stated that he could present the remainder of his testimony in approximately one hour. Complainant could not estimate the amount of time that she anticipated for cross examination. I advised the Parties that I would like to take any crucial testimony and reschedule any other testimony, but based upon the representations made, I indicated that I would estimate we could complete the case in approximately 90 minutes.³⁷ In order to determine if we should reschedule any testimony or attempt to complete the hearing, I asked Complainant if we were able to continue for an additional ninety minutes and Complainant responded “Sorry, I didn’t realize. Yes, I suppose so.”³⁸ Counsel for Respondent responded “Yes, Your Honor. Thank you.”³⁹

Upon conclusion of the testimony, Complainant was advised she could make a closing summary or she could submit a written brief. Complainant indicated her desire to make a closing statement at that time and to subsequently file a brief. Complainant was told she could do both if that was most comfortable for her,⁴⁰ and Complainant made a closing statement and the Parties were advised that an order setting a briefing schedule would be entered. The hearing was adjourned at 9:12 p.m.⁴¹

An Interim Order was entered on April 8, 2020, setting a briefing schedule with briefs to be filed by May 29, 2020. No briefs were filed by the parties. Accordingly, on June 1, 2020, an Interim Order was entered closing the evidentiary record.

³⁶ Tr. 344-345.

³⁷ Tr. 355-357.

³⁸ Tr. 356-357.

³⁹ Tr. 357.

⁴⁰ Tr. 454-455.

⁴¹ Tr. 454-459.

During the period when the Commission offices were closed because of the Covid-19 pandemic beginning on March 16, 2020, the undersigned presiding officer was made aware that the parties may not have been served with the Order entered on April 8, 2020. Therefore, an Interim Order was entered on June 2, 2020, reopening the hearing record and establishing a new briefing schedule. The parties were directed to file main briefs, if any, by July 3, 2020.

On July 2, 2020, the Company filed its main brief. On July 8, 2020, the undersigned was provided with a copy of an email from Complainant acknowledging that she received a brief from Respondent but indicating that she did not receive the order entered June 2, 2020, setting the briefing schedule. Accordingly, on July 9, 2020, an Interim Order was entered, extending the briefing schedule such that main briefs were due to be filed on or before August 6, 2020, and reply briefs were due on or before September 11, 2020. Complainant filed Complainant's Post-Hearing Brief on August 6, 2020.

Both parties filed reply briefs on September 11, 2020. In her reply brief, Complainant referred to several articles and documents that she did not offer into evidence at the hearing.

On September 22, 2020, Respondent filed a Motion to Strike Improper and Inadmissible Material in Complainant's Post-Hearing Brief and Reply Brief averring that Complainant made several improper disclosures and repeatedly referred to evidence not included in the record. On October 2, 2020, Complainant filed Complainant's Objections to Duquesne Light Company's Motion to Strike, requesting that Respondent's Motion to Strike be denied.

On October 16, 2020, an interim order was entered granting the Motion to Strike Improper and Inadmissible Material in Complainant's Post-Hearing Brief and Reply Brief filed by Respondent on September 22, 2020, and denying Complainant's Objections to Duquesne Light Company's Motion to Strike, filed by Complainant on October 2, 2020. In addition, the evidentiary record was closed.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*,⁴² (*Povacz I*), the first of several appeals involving PECO Energy Company’s (PECO) deployment of smart meter technology pursuant to Act 129 of 2008 (Act 129), codified at 66 Pa.C.S. § 2807(f).

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* 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.

On August 16, 2022, the Supreme Court issued its Opinion in *Povacz II*,⁴³ affirming the Commission’s determinations in all respects. The Supreme Court affirmed 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.”⁴⁴ The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.⁴⁵

⁴² *Povacz v. Pa. Pub. Util. Comm’n*, 241 A.3d 481 (Pa. Cmwlth. 2020).

⁴³ *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

⁴⁴ *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d at 1014.

⁴⁵ *Povacz II* at 992.

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.

The Parties previously filed briefs in this proceeding and no requests were made to the undersigned presiding officer to view the hearing transcript, or other request not identified herein, even though the Commission offices had reopened for some time and the Commission website provided regular updates to the public regarding Commission operations. Accordingly, instead of issuing an initial decision in this proceeding, the undersigned presiding officer provided the Parties with citations related to the Supreme Court decision referenced above, and the Commission action lifting of the stay of smart meter cases in Pennsylvania, by Interim Order entered on December 20, 2023. Without any request from the Parties, given the decision in *Povacz II*, the undersigned also reopened the record in this proceeding and permitted the Parties to file supplemental briefs and any other appropriate requests for relief, on or before January 19, 2024.

On January 19, 2024, Complainant filed a supplemental brief. On January 19, 2024, Respondent also filed its supplemental post hearing brief in this proceeding.

On January 19, 2024, Complainant also filed a Motion To Recuse Administrative Law Judge Jeffrey A. Watson (Motion to Recuse). Upon lifting the stay, no other requests for relief were filed or directed to the undersigned presiding officer.

In her Motion to Recuse, Complainant averred that the undersigned presiding officer ignored Commission rules to weigh the case against Complainant, by incorrectly stating in an Interim Order entered on October 24, 2019, that Complainant averred that Respondent

provided her with a termination notice after Complainant filed a Formal Complaint.⁴⁶ A Formal Complaint had not been filed when Respondent provided Complainant with a termination notice, but instead Complainant averred in her Formal Complaint that she had filed an Informal Complaint prior to receiving a termination notice from Respondent. Complainant averred in her Motion To Recuse that “[I]n his order, ALJ Watson misinterpreted Complainant’s claim that PUC itself actively prevented her from filing an **informal** complaint on June 1, 2018, and that by doing so PUC acted in violation of **PA Code §56.92, §56.142, §56.151, and §56.162-§56.166.**”⁴⁷ Due to Complainant’s inconsistent averments in her Formal Complaint and Motion To Recuse, it is unclear if Complainant filed an Informal Complaint prior to receiving a termination notice from Respondent.

The October 24, 2018 Order states that Complainant averred that Respondent provided her with a termination notice after she filed a formal complaint. The actual averment in the Formal Complaint was that Respondent provided Complainant with a termination notice after she filed an informal complaint.

The error by the undersigned, referencing the Informal Complaint as a Formal Complaint, in the interim order, was a harmless typographical error, as both the filing and service of a formal and informal complaint would preclude Respondent from terminating service, in this proceeding, pending resolution of the dispute. Moreover, Complainant’s averments throughout the proceeding were confusing or even contradictory. In her Formal Complaint, Complainant averred that she believed she filed her Informal Complaint on June 1, but testified that the Commission actively prevented her from filing an informal complaint on June 1, 2018.⁴⁸ In her Motion To Recuse, Complainant averred that an unnamed PUC representative actively prevented her from filing an informal complaint on June 1, 2018, and that by doing so the Commission

⁴⁶ In her Formal Complaint, Complainant averred “On June 1 (I believe) I filed an Informal Complaint by phone with the PUC against DLC.”⁴⁶ Complainant averred she was handed a shut off notice by Respondent on June 12, 2018, to take effect on June 15, 2018. *See* Formal Complaint, p. 3.

⁴⁷ Complainant’s Motion to Recuse at 2 (emphasis original).

⁴⁸ Tr. 116-117.

violated PA Code §56.92, §56.142, §56.151, and §56.162-§56.166.⁴⁹ At the hearing, Complainant appeared to testify that she attempted to file an informal complaint after receiving a termination notice on June 12, 2018, but was told by a Commission employee that she couldn't file an informal complaint⁵⁰ and that she was prevented from filing an informal complaint by an unidentified Commission representative.⁵¹ Complainant also testified that "I aver that the shutoff notice never should have [sic] served to me in the first place because I had a complaint already that was unresolved."⁵² Although the Complainant's claim is that the Commission somehow rushed Complainant into filing a Formal Complaint, preventing her from utilizing the Informal Complaint process, it appears that Complainant acknowledged her belief that she did, in fact, file an Informal Complaint.

During the hearing, Complainant testified she called the Commission to correct the record regarding the error in the October 24, 2018 Order, but from the beginning of the conversation, the man's behavior was rude, confrontational and condescending. She testified the unidentified man repeatedly spoke over Complainant, and when she tried to speak, he would shout at her.⁵³

In her Motion to Recuse, Complainant also averred that the undersigned failed to dismiss Complainant's February 12, 2020 Second Motion to Stay of Proceedings before holding the evidentiary hearing on February 27, 2020.⁵⁴ Complainant actually filed a Motion to Stay the

⁴⁹ Complainant's Motion to Recuse at 2.

⁵⁰ Tr. 74-75; Complainant testified "I was actually served a 3-day shutoff notice on June 12, 2018 by an employee of Duquesne Light Company that was after I had spoken on the phone with an employee of the Public Utility Commission. That employee told me that I was unable to file an informal complaint. As a result of that – I tried to file an informal complaint on that day. I was told that I couldn't.

⁵¹ Tr. 97-98.

⁵² Tr. 98.

⁵³ Tr. 117.

⁵⁴ Complainant's Motion to Recuse at p. 3; *see also* footnote 7 above.

proceedings on December 23, 2019⁵⁵ and a second Motion to Stay of Proceedings on February 13, 2020. The Second Motion to Stay did not provide sufficient time under the regulations for Respondent to file a response and for the undersigned to enter an order, as the hearing was scheduled for February 27, 2020. Complainant's request to stay the proceedings was denied by Interim Order entered February 21, 2020, rendering the second motion to stay, filed on February 13, 2020, moot.

Complainant also averred that the undersigned presiding officer contrived the litigation schedule to Complainant's disadvantage, by entering an Interim Order on November 28, 2018, requiring identification of witnesses and a summary of the proposed witnesses testimony by January 4, 2019. In actuality, on July 10, 2018, Respondent filed a Motion For Prehearing Conference, submitting it would be in the best interest of the Parties to conduct a conference to establish various deadlines to ensure that the case would proceed in a timely and orderly fashion and to establish discovery deadlines to include the identification of witnesses, exchange a summary of the proposed testimony of the witnesses, filing of dispositive motions, to exchange stipulations, and to submit prehearing motions. No objection was filed and prior to setting a litigation schedule, the undersigned presiding officer caused a prehearing conference to be scheduled by notice issued October 25, 2018. Subsequently, Complainant filed a request to cancel the prehearing conference, suggesting that a conference was inappropriate and a waste of time. Complainant's request was granted, and the Parties were advised that a litigation schedule would be established. Complainant had an opportunity to contribute to the terms of the litigation schedule and other matters at a prehearing conference and chose to forego participation at a conference and an Interim Order was entered granting the request of Complainant and cancelling the prehearing conference scheduled for November 29, 2018. The Order also advised the Parties that a litigation schedule order would be entered in this case by the undersigned presiding officer. Complainant further averred that the undersigned presiding officer acted inappropriately towards Complainant throughout the telephonic hearing and showed favoritism toward Respondent; refused the introduction of any evidence contrary to Respondent's position; routinely made rude

⁵⁵ On January 9, 2020, Respondent filed an Answer in Opposition to Stay of Proceedings with regard to Complainant's first motion to stay proceedings, and a response to the second motion to stay on February 24, 2020.

and sarcastic comments to Complainant and shouted at her on multiple occasions. These averments are factually incorrect and not supported by the record.

In her Motion to Recuse, Complainant averred that the undersigned presiding officer frequently noted the time of day and duration of the hearing after Complainant stumbled, paused or finished questioning a witness and would tell Complainant to take her time when Complainant “fell silent for too long.” In her Motion to Recuse, Complainant also averred that the undersigned presiding officer did not allow her to raise an objection regarding proceeding with the hearing, which ultimately concluded at approximately 9 p.m., when Complainant avers she asked if the hearing could be finished another day, at approximately 4:30 p.m. Complainant also averred she did not consent to the length of the hearing.⁵⁶ Although, in her Motion to Recuse, Complainant expressed a concern with the length of the hearing, at the conclusion of the testimony, Complainant asked to make a closing statement and submit briefs⁵⁷ yet used her closing statement, in part, to state “I want to be the one to say what time it is.”⁵⁸ The hearing was adjourned at 9:12 p.m.⁵⁹

There was a substantial delay in receiving evidence at the hearing, in significant part resulting from the actions of Complainant. There was a delay in receiving evidence as a non-witness that Complainant wished to participate in the proceeding, but not testify, and was not available when contacted to join the conference bridge. In addition, Complainant, who was texting with another individual participating in the hearing, received another telephone call and disconnected from the hearing, resulting in further delay.⁶⁰ Upon rejoining the hearing, Complainant stated that she accidentally hung up on the conference call. The undersigned advised the Parties that they requested a telephone hearing, that this was an important proceeding, provided instructions in the event that someone inadvertently left the conference bridge and

⁵⁶ Motion to Recuse, at 4.

⁵⁷ Tr, 454-455.

⁵⁸ Tr. 455.

⁵⁹ Tr. 458.

⁶⁰ Tr. 19-23.

advised the Parties that the hearing would proceed as scheduled.⁶¹ The receipt of evidence was further delayed in order to address Complainant's request for a protective order, as the Parties did not reach an agreement regarding a protective order prior to the hearing and did not convene on the hearing date at 9 a.m., to address the Complainant's request, and to address Complainant's compliance with the second order granting Respondent's motion to compel entered on February 21, 2020.⁶²

Accordingly, it was necessary to take time needed to receive evidence, to address Complainant's request for a protective order, and to determine that Complainant did not comply with the Second Interim Order Granting Respondents Second Motion To Compel Discovery Responses entered on February 21, 2020 and to consider that the information from Complainant was not provided to Respondent and, in turn, not made available to Respondent's expert witness in advance of the hearing.⁶³ After a short break was taken at the request of Complainant, the Parties were prepared to present evidence at 11:35 a.m.⁶⁴

In addition, during the presentation of her case, Complainant frequently took long pauses, indicating she was unsure how to proceed and expressed that she was not an attorney and not familiar with the process.⁶⁵ Complainant acknowledged that she was distracted during the hearing as her neighbor was at Complainant's home.⁶⁶ Complainant seemed unprepared and would require delays to locate documents⁶⁷ and took long pauses between statements or questions.⁶⁸ Complainant contributed to significant delays in the proceeding as Complainant lost

⁶¹ Tr. 19-24.

⁶² Tr. 31-49.

⁶³ Tr. 31-50.

⁶⁴ Tr. 63-66.

⁶⁵ See, e.g., *V.S. v. Dep't of Pub. Welfare*, 131 A.3d 523, 529 (Pa. Cmwlth. 2015) (quoting *Rich v. Acrivos*, 815 A.2d 1106, 1108 (Pa. Super. 2003) ("due process rights were not violated [by the absence of legal representation in a civil proceeding] because '[t]he law is well settled that there is no right to counsel in civil cases'").

⁶⁶ Tr. 63-65.

⁶⁷ Tr. 90, 125-127, 130-131, 134, 138, 140, 200, 230-231, 265, 303, 304, 411-414.

her place in her testimony responding to someone appearing at her door during her testimony;⁶⁹ Complainant's cross-examination of witness Tallent was delayed because Complainant was typing;⁷⁰ during a pause in the presentation of Complainant's case when Complainant was asked if she had any other evidence to present, Complainant was on the internet and stated "I'm poking around this website while we're talking";⁷¹ Complainant was distracted and had to break because she heard a noise outside of her home and had to check it out;⁷² required various breaks⁷³ and spent time disputing rulings made during the pendency of the litigation that she disagreed with or anticipating what a ruling would be on an objection instead of supporting her position.⁷⁴ Complainant would argue with the undersigned presiding officer after a ruling on an objection was made, despite my instructions, further resulting in a delay of the hearing process.⁷⁵ Complainant would also request breaks during testimony⁷⁶ and asked if she could take her time in presenting her case and was told she could take her time.⁷⁷

Complainant left the hearing again at 2:35, resulting in a delay of the hearing⁷⁸ and at 6:40, again, for unknown reasons, resulting in a delay of the hearing.⁷⁹

⁶⁸ Tr. 91, 92, 94-95, 166, 209, 215, 235-236, 241-242, 265, 279-280, 286-287, 289, 425.

⁶⁹ Tr. 119-120.

⁷⁰ Tr. 276-277.

⁷¹ Tr. 167.

⁷² Tr. 206

⁷³ Tr. 144.

⁷⁴ Tr. 102-103, 120-121, 105-106, 107-109, 113-114, 117-119, 120-122, 123, 150,

⁷⁵ Tr. 102-103, 104-108,

⁷⁶ Tr. 110.

⁷⁷ Tr. 113.

⁷⁸ Tr. 192-194.

⁷⁹ Tr. 344-346.

During the hearing, I reminded the Parties that a prehearing conference was scheduled to inform the Parties how the process works and would have been helpful to the Parties, but that the conference was cancelled at Complainant's request based upon Complainant's concern that it would be a waste of her time.⁸⁰ Complainant commented during her testimony regarding her frustration that she was being given an open forum in which to testify with no real structure and concluded that the undersigned presiding officer seemed to be getting upset when she didn't know what to say next. I explained that there was absolutely no basis for the comment by Complainant as I gave no indication that I was upset with anyone, had not raised my voice, and to the contrary, was trying to assist Complainant.⁸¹ I also asked Complainant to please take her time and to present her case.⁸²

Unfortunately, Complainant's actions during the prehearing process and during the hearing, as well as her failure to provide copies of pleadings to the undersigned presiding officer or to comply with Orders issued in this proceeding and to acknowledge her failure to obey orders and to unnecessarily require the use of hearing time to make lengthy inquiries to obtain responses to simple questions, contributed to unnecessary delays during the proceeding. Much of the delay could have been prevented by adequately preparing for the hearing and simply complying with Orders issued in this case and acknowledging such failures when asked.

Complainant concluded her testimony and stated "I am just going to conclude there." Complainant had not identified or offered any documentary evidence for admission into the record. I then reminded the Parties that Complainant had previously submitted documents marked as A through I, and asked Complainant if it was her desire to offer those documents into evidence,⁸³ whereupon Complainant offered her documents into evidence. At 1:11 p.m., during Complainant's presentation of her case, Complainant stated that she did not want to waste

⁸⁰ Tr. 108-109.

⁸¹ I would note that I was required to raise my voice and asked the parties to raise their voices at one point during Complainant's testimony as the Parties were having difficulty hearing. *See* Tr. 114-115.

⁸² Tr. 109-110.

⁸³ Tr. 123.

anyone's time, including her own, and stated that it didn't seem like it mattered what she said. I explained that I did not understand why Complainant would make that comment and that as I had repeated several times, I was trying to be helpful to Complainant and encouraged her to take her time and to articulate what it was that she wanted to establish.⁸⁴ At the request of Complainant, a fifteen-minute recess was taken until 1:30 p.m., after which, Respondent was given an opportunity to cross-examine Complainant.⁸⁵

When Respondent's witness, Michael Tallent was made available for cross examination, Complainant, who was texting someone during the proceeding, was not ready, stating "Give me a second. I'm still typing."⁸⁶ She then stated she was not prepared to give up her rights to take the time that she needed and that she did not get a chance to say that before. Complainant stated she did not want to be made to rush and not have the time to collect her thoughts and ask questions.⁸⁷

Finally, Complainant averred that the undersigned presiding officer obstructed Complainant's access to the hearing transcript. Complainant averred she had to ask directly to receive any information about obtaining a transcript, stated that she was instructed to contact the undersigned presiding officer's office and suggested that the undersigned presiding officer may have an opportunity to edit the transcript before anyone else saw it. Complainant also appeared to suggest that the undersigned presiding officer caused the hearing to take more time than necessary, in order to increase the cost of the transcript.⁸⁸

Contrary to Complainant's assertions, the Parties were advised that if anyone wished to purchase a transcript of the hearing they could contact my office to obtain the court reporting service information to contact the reporting service directly. The Parties were also

⁸⁴ Tr. 140-1142.

⁸⁵ Tr. 144-145.

⁸⁶ Tr. 258.

⁸⁷ Tr. 276-277.

⁸⁸ A review of the record establishes that these allegations are not factually correct.

advised that they could contact my office to make arrangements to view the transcript.⁸⁹ The undersigned presiding officer also addressed the hearing process, the burden of proof, the right to present and object to evidence, to cross examine witnesses, as well as the issuance of a decision and the filing of exceptions.⁹⁰

On January 19, 2024, nearly four years after the hearing, Complainant filed a Motion to Recuse the undersigned presiding officer. On January 31, 2024, Respondent filed its Answer in Opposition to Complainant's Motion to Recuse Administrative Law Judge Jeffrey A. Watson (Answer to Motion to Recuse). In its Answer to the Motion to Recuse, Respondent pointed out that Complainant had approximately 18 months from the filing of her Complaint until the hearing was held on February 27, 2020, to file a motion to recuse.⁹¹ Respondent averred that Complainant merely contended that she was rushed by the Commission into filing a formal complaint; however, Complainant had more than enough time, specifically one and a half years, to develop her case and present it at the hearing on February 27, 2020.⁹² Respondent disagreed with Complainant's accusations that the undersigned acted inappropriately towards Complainant throughout the hearing and showed favoritism toward Respondent and argued the record speaks for itself on this issue. Although Complainant argued that the length of the hearing was somehow disadvantageous to her, Respondent averred that it is also a party to the case and reserved the day for its witnesses to testify.⁹³

In addition, regarding Complainant's assertion that the undersigned obstructed Complainant's access to the hearing transcript, Respondent argued that Complainant's displeasure with the cost of the transcript and the barriers imposed by COVID-19 are not relevant to the disqualification of the presiding officer. In addition, Respondent explained that

⁸⁹ Tr. 15-16.

⁹⁰ Tr. 16-19, 24-27.

⁹¹ Answer to Motion to Recuse, pp. 2-3.

⁹² *Id.* at 3.

⁹³ *Id.*

the Commission offices have reopened, and that Complainant has had ample opportunity to view the transcript prior to filing her supplemental brief.⁹⁴

On March 29, 2024, an Interim Order was entered denying Complainant's Motion for Recusal of Administrative Law Judge Jeffrey A. Watson, and closed the evidentiary record.

FINDINGS OF FACT

1. Complainant is Miranda Edwards, who resides at 3835 Acorn Street, Pittsburgh, Pennsylvania. Tr. 4.
2. Respondent is Duquesne Light Company, an electrical distribution company, (EDC) providing residential electrical service to Complainant at the service address. Tr. 417-18.
3. Act 129 of 2008, 66 Pa.C.S. § 2702, requires EDCs with more than 100,000 customers to adopt smart meter technology procurement and installation plans. Tr. 404-05.
4. Respondent is an EDC with more than 100,000 customers. Tr. 404.
5. Complainant offered her own lay witness testimony and no expert testimony at the evidentiary hearing. Tr. 66-169.
6. Respondent offered testimony of Itron employees, Michael Bellanger and Steven Wright; Company employees Michael Tallent, Michael Secchiutti, and Roxanne Morris; and Drs. Benjamin Cotts and Gabor Mezei. Tr. 171-454.
7. The electric meter that is currently installed at the Service Address, was installed at the Service Address on December 14, 1996, and is an Automatic Meter Reading

⁹⁴ *Id.* at 5.

(AMR) meter that operated on Duquesne Light's AMR fixed network. Tr. 417,438-39; DLC Ex. Q.

8. Duquesne Light is replacing its AMR meters with smart meters throughout its service territory, and the Company's AMR fixed network is no longer operational. Tr. at 418.

9. When Duquesne Light's AMR fixed network was still operational, the Company would obtain meter readings from the Current Meter via radiofrequency (RF). Tr. at 417.

10. Duquesne Light is installing the Itron Open Way Centron smart meter throughout its service territory. Tr. 173, 221.

11. The smart meters collect and convey information regarding a customer's consumption, voltage information, tamper events, and outage events. Tr. 174-179.

12. The radios in the Company's smart meters emit radiofrequency (RF) signals. Tr. 177, 188-89.

13. The Federal Communications Commission (FCC) established safe levels, or maximum permissible exposure limits (MPE) for RF transmissions in the United States. Tr. 187-88, 322.

14. On June 29, 2012, the Company filed a Smart Meter Plan with the Commission at Docket No. M-2009-2123948, which the Commission approved. Tr. 404-05; DLC Ex. B-1.

15. The smart meter that Duquesne Light plans to install at the Service Address has all the functionalities required by Act 129. Tr. 406-07.

16. Rule 9B of Duquesne Light's Tariff has been approved by the Commission and states that smart meters conforming to Company standards must be installed at each metered service premises pursuant to Act 129 and Duquesne Light's Smart Meter Plan and that customers cannot refuse the installation of a smart meter for any reason. DLC Ex. D-2.

17. Rule 9B of Duquesne Light's Tariff states that meter relocation is the sole remedy for customers who do not wish to receive a smart meter from Duquesne Light and that customers are responsible for paying the costs associated with meter relocation. DLC Ex. D-2; Tr. 418-20.

18. Duquesne Light made meter relocation available to Complainant. Tr. 421.

19. Duquesne Light's AMI network uses RF to transmit information on a two-way communication system. Tr. 174, 177, 306.

20. Duquesne Light's smart meters send communications through the Company's "mesh network" to a collection point, which was previously a cell relay but is now a router. Tr. 175.

21. The Company's smart meter contains two radios: the Local Area Network (LAN) radio and the Zigbee radio. Tr. 175, 306, 407.

22. The LAN radio transmits at 900 megahertz and communicates with nearby smart meters to form a mesh network. Tr. 175.

23. Each communication from a LAN radio lasts just 20-150 milliseconds and occurs at a power of 0.69 watts. Tr. 180, 315-16.

24. The LAN radio provides the Company with consumption data, which is the amount of electricity consumed by the residence. Tr. 409-10.

25. Duquesne Light currently takes two consumption readings per day. Tr. 416.
26. The consumption readings measure the aggregate consumption in the home. Tr. 262-63.
27. Duquesne Light does not collect consumption data on a granular, appliance-by-appliance basis, nor does the Company send any personally-identifiable information in messages transmitted through its mesh network. Tr. 262-63.
28. The LAN radio communicates other information that Duquesne Light uses to provide safe and reliable service to its customers, including 60-minute interval data voltage information, on-demand reads, tamper events, outages, and other system events that notify the Company of problems relating to the meter. Tr. 179-80, 409-10, 416.
29. The ZigBee radio transmits at 2.4 gigahertz and, when enabled by the customer, will communicate consumption data from the meter to certain types of devices within the service address, such as an in-home display unit. Tr. 175, 407.
30. The Zigbee radio is not automatically paired with any devices inside the customer's home when Duquesne Light installs a smart meter at a residence. It only pairs with a device if the customer requests it from Duquesne Light. Tr. 177, 407-08.
31. Complainant can decide whether to connect any device inside her home to the Zigbee radio. Tr. 408.
32. The Federal Communications Commission (FCC) established safe levels, or maximum permissible exposure limits (MPE) for RF transmissions in the United States. Tr. 187-88, 322.

33. The FCC's regulations establish that the MPE to RF fields emitted by the LAN radio is 0.61 milliwatts per square centimeter. Tr. 187-88, 325; DLC Ex. H-6.

34. The MPE for the Zigbee radio is 1.0 watts per square centimeter. Tr. 325-26; DLC Ex. H-6.

35. The Institute of Electrical and Electronics Engineers (IEEE) and the International Commission on Non-Ionizing Radiation Protection (ICNIRP) also developed exposure limits for electromagnetic fields based on lengthy and comprehensive assessments of the scientific literature. DLC Ex. H-2.

36. ICNIRP is an independent, non-governmental scientific organization that sets guidelines to protect the public from potential health effects relating to EMF and RF. Tr. 376.

37. ICNIRP is recognized by the World Health Organization (WHO) as an organization that provides guidance on standards and guidance development relating to non-ionizing radiation. DLC Ex. H-2.

38. Both radios in the Company's smart meters comply with the exposure limits set by the FCC, IEEE, and ICNIRP. Tr. 326.

39. The FCC issued a "Grant of Equipment Authorization" in 2011, which is the agency's official verification that the radios in the Company's smart meter meet the FCC's requirements. DLC Ex. G-7; Tr. 191-92.

40. The FCC's Grant of Equipment Authorization remains in effect today. Tr. 192.

41. The amount of RF emitted from the radios in the Company's smart meters is just a tiny fraction of the FCC's limits. Tr. 188-89, 302-03; DLC Ex. H-2 and H-6.

42. WHO and the FDA have concluded that the scientific evidence does not confirm the existence of any adverse health effects for exposure levels that are below the exposure guidelines. Tr. 378; DLC Ex. H-1.

43. The scientific and medical evidence does not establish that RF exposure below accepted guidelines causes any adverse health effects. Tr. 364-65.

44. The estimated time that a Duquesne Light smart meter would transmit energy during a 24-hour period – commonly called the “duty cycle” – was assessed through a study that analyzed the deployment of roughly 13,000 OpenWay smart meters, which are the ones being deployed by Duquesne Light. Tr. 181, 183-84, 316.

45. The study found that the average duty cycle of the LAN radio to be just 0.21%, which means that the radio communicates information by RF for just 0.21 percent of the day; this translates to slightly less than three minutes per day on average. Tr. 184-85, 318; DLC Ex. F-8, H-2, H-6.

46. The expected maximum duty cycle for the LAN radio is roughly 8 percent, meaning that the meter would transmit for 115.2 minutes in a 24-hour period. Tr. 201-02, 214, 318; DLC Ex. H-6.

47. The estimated minimum duty cycle for the Company’s smart meters is about 0.03 minutes per day, which is a fraction of a second. Tr. 318; DLC Ex. H-6.

48. For a Zigbee radio that is not paired with another device inside the customer’s home, the duty cycle is roughly 0.01%, which is slightly less than 10 seconds per day. Tr. 319; DLC Ex. H-6.

49. A smart meter’s duty cycle is very low compared to other RF-emitting devices such as television and radio broadcasting stations, which have a 100 percent duty cycle. Tr. 318.

50. Complainant would not suffer any adverse health effects as a result of being exposed to RF from a smart meter as proposed by Respondent. Tr. 365-66.

51. A person standing inside the Service Address and 10 feet from the smart meter would be exposed to approximately 0.0000007% of the FCC's RF limit, assuming that the LAN radio was transmitting at an average duty cycle. Tr. 338; DLC Ex. H-6.

52. A person 10 feet away from a smart meter outside the home likely would be exposed to just 0.0000090% of the FCC'S limit (again assuming an average duty cycle). Tr. 338; DLC Ex. H-6.

53. Even if Complainant stood outside her home and was only eight inches away from the smart meter and it transmitted as much as possible (i.e., at the maximum duty cycle), she still would only be exposed to less than 8 percent of the FCC's exposure limits. DLC Ex. H-2 and H-6.

54. Complainant presented no medical evidence, witnesses, or records at the hearing demonstrating that RF emitted from a smart meter will harm her. Tr. 147- 48.

55. Complainant does not claim to suffer from a specific health condition that makes her sensitive to RF or that she is a member of a group that is allegedly vulnerable to harm from RF. Tr. 147-48.

56. The American National Standards Institute (ANSI) establishes safety and performance criteria for electric revenue meters. Tr. 224, 228-29.

57. ANSI C12.1 and C12.20 set forth the required safety and performance criteria for electric revenue meters and describe acceptable in-service performance levels for those meters. Tr. 228-29.

58. Itron tested the Company's smart meter for compliance with ANSI C12.1 and ANSI C12.20. Tr. at 229.

59. Trained employees of Itron's qualification lab ran a battery of tests to verify compliance, including but not limited to No Load and Starting Load tests; Load Performance and Stability tests; tests evaluating the Effect of High Voltage Line Surges; Temperature Extremes testing; and Voltage Interruption tests. Duquesne Light's smart meter passed all of the tests that Itron conducted as part of ANSI C12.1 and ANSI C12.20 testing. Tr. 232-33; DLC Ex. G-1.

60. Itron also submitted the Company's smart meter to Underwriters Laboratories (UL) for testing under UL 2735 (Standards for Safety for Electric Utility Meters). UL 2735 is a certification standard that applies to electric utility meters, including smart meters. Tr. 225-26, 252.

61. If a meter is UL-certified, it means that it has undergone extensive testing by UL and meets UL's certification standards. Tr. 227; DLC Ex. G-3.

62. UL performed several tests on the Company's smart meter before certifying that it was safe. Tr. 228.

63. UL certified that Duquesne Light's smart meter complies with UL 2735, which validates that it is safe. Tr. 225, 227; DLC Ex. G-3.

64. Itron also performed its own flammability tests. Tr. 234.

65. Itron monitors the test to ensure that the meter emits no flames. Tr. 234.

66. Itron performs similar testing on the smart meter's outer cover. Tr. 234-35.

67. Duquesne Light's smart meter passed Itron's flammability tests. Tr. 234-35.

68. Duquesne Light has installed roughly 620,000 smart meters throughout its service territory. Tr. 408.

69. The Company's smart meters have not caused any fires. Tr. 235, 409.

70. Complainant could not identify any instance in which Duquesne Light's smart meter caused a fire. Tr. 150, 152.

71. Duquesne Light's smart meters gather gross consumption information, which is used for monthly billing. Tr. 409.

72. Duquesne Light does not gather information about how often customers use specific appliances in their homes. Tr. 262-63.

73. The usage information passing through the Company's smart meter network is aggregate information for a household; it does not identify individual appliance use within the customer's home. Tr. 262-63.

74. There is no personally identifiable information such as Social Security numbers, customer names or address, or bank account information in the consumption data or other messages that Duquesne Light sends through its smart meter network. Tr. 263.

75. Duquesne Light deploys numerous cybersecurity measures to protect the information collected by its smart meters and uses several protections within its data collection engine itself, such as multiple redundant firewalls, identity access management controls, security event monitoring, security patching, and vulnerability management. Tr. 273, 276.

76. Duquesne Light does not sell customer information to third parties with whom it does not have a business relationship. Tr. 413-14; DLC Ex. I-1.

77. Duquesne Light's smart meter network has never been hacked. Tr. 260-62.

78. Over a two-month period beginning in early April 2018, Duquesne sent at least three letters and made two phone calls to Complainant at the Service Address, informing Complainant that the Company was required to install a smart meter at the Service Address and provided information about smart meters and the exchange process. Tr. 79-80, 88, 96, 443-44, 446-47; DLC Ex. M-1, M-2, N, O.

79. A Duquesne Light contractor visited the Service Address two different times during this two-month period to exchange the meter and Complainant blocked both attempted exchanges. Tr. 81-82, 443, 448; DLC Ex. M-1.

80. The Company could not install a smart meter during those visits and has not tried to install a smart meter at the Service Address since Complainant filed the Formal Complaint. Tr. 75-77, 448; DLC Ex. M-1.

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁹⁵

⁹⁵ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The preponderance of evidence standard requires proof by a greater weight of the evidence.⁹⁶ This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.⁹⁷

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.⁹⁸ Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof.⁹⁹

In pertinent part, Act 129 imposes the following requirements concerning an EDC's obligation to furnish smart meter technology to its customers:

(f) Smart meter technology and time of use rates.

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. The plan shall describe the smart meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish smart meter technology as follows:

⁹⁶ *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

⁹⁷ *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008).

⁹⁸ *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944).

⁹⁹ *See Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (Order entered Oct. 9, 1980); *see also Dist. of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa.*, Docket No. A-212285F0148 (Opinion and Order entered Oct. 29, 2008).

- (i) Upon request from customer that agreed to pay the cost of the smart meter at the time of the request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.¹⁰⁰

In *Povacz II*, the Pennsylvania Supreme Court concluded that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and radio frequency (RF) emissions.¹⁰¹ First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that RF 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.¹⁰² 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.¹⁰³ Neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.¹⁰⁴

Installation of Smart Meters

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).¹⁰⁵ Act 129 required EDCs with at least 100,000 customers, such as

¹⁰⁰ 66 Pa.C.S. § 2708(f).

¹⁰¹ *Povacz II* at 1005; 66 Pa.C.S. § 1501.

¹⁰² *Povacz II* at 1005-06.

¹⁰³ *Id.* at 1006.

¹⁰⁴ *Id.* at 1005.

¹⁰⁵ 66 Pa.C.S. § 101-3316.

Respondent, to file a smart meter technology procurement and installation plan (SMP Plan) with the Commission for approval.¹⁰⁶ Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.¹⁰⁷

Respondent established that Act 129 of 2008 requires it to install smart meters throughout its service territory.¹⁰⁸ On June 29, 2012, the Company filed a Smart Meter Plan (SMP) with the Commission at Docket No. M-2009-2123948, which the Commission approved.¹⁰⁹ The SMP does not include a provision for a customer to opt-out of smart meter installation. As explained above, the Supreme Court of Pennsylvania has concluded that “Act 129 is mandatory, requiring the system-wide installation of smart meter technology by EDCs, including smart meters.”¹¹⁰

In addition, Respondent’s Tariff establishes that the Company can install a smart meter at the Service Address. Commission-approved tariffs have the force of law.¹¹¹ Rule 9B of the Company’s Tariff provides that smart meters conforming to Duquesne Light’s standards *must* be installed at *each* metered service premises:

B. Meter Relocation for all Customers

Pursuant to Act 129 of 2008; the Commission’s Smart Meter Procurement and Installation Implementation Order entered June 24, 2009, at Docket No. M-2009-2092655; and Duquesne Light’s Smart Meter Procurement and Installation Plan, approved in relevant part by Order entered April 7, 2017, at Docket No. P-2015-2497267; smart meter(s) conforming to

¹⁰⁶ 66 Pa.C.S. § 2807(f).

¹⁰⁷ 66 Pa.C.S. § 2807(f)(2).

¹⁰⁸ Tr. 404-405.

¹⁰⁹ Tr. 404-05; DLC Ex. B-1.

¹¹⁰ *Povacz II*, 280 A.3d at 1014.

¹¹¹ *Warren v. Duquesne Light Co.*, Docket No. F-2014-2399085 (Final Order entered Sept. 12, 214).

Company standards must be installed at each metered service premises. Customers may not decline smart meter installation for any reason. Instead, as their sole remedy, customers may designate an alternative location on the premises for the smart meter. The Company shall relocate the smart meter to such alternative location where (i) the relocation (including associated customer service equipment) conforms to the Company's "Electric Service Installation Rules" (see Rule No. 6) and the National Electric Safety Code, as determined by the Company in its sole judgment; (ii) the relocation can be readily, safely, and reliably interconnected to the Company's facilities, as determined by the Company in its sole judgment; (iii) the customer provides any easements, permits, or other governmental or third-party approvals the Company deems necessary to accommodate such relocation; and (iv) the Company receives, in advance, payment for the Company's estimated total direct and indirect costs including the related income tax of such relocation.^[112]

In light of Act 129, Pennsylvania Supreme Court precedent, the Commission Implementation Order, and the Company's Tariff, Respondent is required to install a smart meter at the Service Address, and Complainant may not refuse the installation.

In *Povacz II*, the Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.¹¹³ Complainant failed to present any evidence or cite any authority to establish that Respondent was not required to install a smart meter at her residence. In addition, Complainant failed to demonstrate that Respondent violated any provision of the Public Utility Code, a Commission Order, or a Commission Regulation regarding smart meter installation. Based upon the authority addressed above, this claim must fail.

¹¹² DLC Ex. D-2.

¹¹³ *Povacz II* at 992.

Unsafe, Unreasonable or Inadequate Service under Section 1501

Pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate 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. Section 1501 of the Code provides, in pertinent part:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.^[114]

First, Complainant testified that she called Duquesne Light's customer service number and talked to an unidentified Company representative in April of 2018 who was agitated and confrontational with Complainant and denied Complainant's request to speak with a manager. Complainant was unable to identify the date of the alleged incident or the individual involved and no other evidence was presented to support Complainant's claim of unreasonable service in this regard. Complainant's testimony regarding this alleged incident failed to establish a claim under Section 1501.

In regard to Complainant's claims concerning alleged adverse health effects, in order to prove that smart meters are unsafe or unreasonable under Section 1501, complainants must present substantial evidence that either: (1) there is a "conclusive causal connection

¹¹⁴ 66 Pa.C.S. § 1501.

between [smart meter emissions] and adverse human health effects;” or (2) the installation of a smart meter “would create a proven exposure to harm.”¹¹⁵

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.¹¹⁶ 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 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 RF 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.¹¹⁷ 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.¹¹⁸

Complainant alleged that she did not agree to the installation of a smart meter at her home, that the Company’s smart meters would damage her health, that the smart meters create a fire hazard, and that smart meters constitute an invasion of Complainant’s privacy. Despite the concerns raised by Complainant, Complainant presented no medical or expert

¹¹⁵ *Povacz I* at 493.

¹¹⁶ 66 Pa.C.S. § 1501.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1006.

evidence to establish her claims.¹¹⁹ In addition, Complainant did not claim to suffer from a specific health condition that makes her sensitive to RF or that she is a member of a group that is allegedly vulnerable to harm from RF.¹²⁰ Instead, Complainant presented her lay opinion that smart meters generally cause harm to individuals exposed to them, present a fire hazard and constitute an invasion of privacy. Complainant's personal beliefs alone, however, no matter how strongly held, do not constitute evidence sufficient to support her claims.¹²¹

Contrary to Complainant's claims, Respondent established that the Company's smart meters have not caused any fires,¹²² and that Duquesne Light's smart meters gather gross consumption information, which is used for monthly billing, but do not gather information about how often customers use specific appliances in their homes.¹²³ In addition, there is no personally-identifiable information such as Social Security numbers, customer names or address, or bank account information in the consumption data or other messages that Duquesne Light sends through its smart meter network.¹²⁴ Furthermore, Respondent established that it deploys numerous cybersecurity measures to protect the information collected by its smart meters.¹²⁵

Complainant failed to establish a conclusive causal connection as required by *Povac II*.¹²⁶ She presented no expert testimony or other credible evidence that establishes her claims.¹²⁷

¹¹⁹ Tr. 147-48.

¹²⁰ *Id.*

¹²¹ *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Povac II*.

¹²² Tr. 235, 409.

¹²³ Tr. 262-63, 405.

¹²⁴ Tr. 263.

¹²⁵ Tr. 276.

¹²⁶ "Conclusive causal connection means that the proffered evidence must support the conclusion that a causal connection existed between a service or facility and the alleged harm." *Povac II*, 280 A.3d at 1006.

¹²⁷ *See, Povac II*, 280 A.3d at 1006.

Furthermore, Duquesne Light presented significant evidence to show that its smart meters pose no health risks. Dr. Benjamin Cotts, who was accepted as an expert witness in the field of electrical engineering, physics, and electromagnetics with an emphasis on the field effects of electromagnetic frequency and RF, established that both radios in its smart meters emit just a tiny fraction of the applicable RF limits set by respected organizations like the FCC, IEEE, and ICNIRP.¹²⁸ In addition, the FCC issued a “Grant of Equipment Authorization” for Duquesne Light’s smart meter, which is the agency’s official approval that the smart meter satisfies its exposure limits.¹²⁹

Duquesne Light also established, through the testimony of Dr. Gabor Mezei, an epidemiologist accepted as an expert in the field of epidemiology, health sciences, and research with an emphasis on electromagnetic fields and radiofrequency fields that there is no established connection between RF exposure below legally-accepted limits and adverse health effects.¹³⁰ Dr. Mezei testified that many reputable agencies have conducted thorough, weight of the evidence studies evaluating whether RF exposure below prescribed legal limits causes adverse health effects.¹³¹ All of them concluded that there is no scientific evidence establishing a cause and effect relationship between low-level RF exposure and adverse health effects.¹³²

Dr. Mezei concluded there was no evidence suggesting that Complainant would be harmed by the installation of a smart meter at the Service Address.¹³³

Regarding the claims that Duquesne Light’s smart meters are a fire hazard or otherwise unsafe, Complainant did not establish that she had any knowledge, qualifications, or

¹²⁸ Tr. 188-89, 302-03.

¹²⁹ Tr. 191-92.

¹³⁰ Tr. 363-66.

¹³¹ Tr. 375-77.

¹³² Tr. 377-78.

¹³³ Tr. 366.

experience that would establish these claims. She did not claim to be an expert witness on any subject, including fire issues,¹³⁴ and was not aware of any instances in which Duquesne Light's smart meter caused a fire.¹³⁵ The basis of Complainant's concerns regarding this issue seemed to originate from information which she obtained online, and Complainant did not attempt to offer any of these reports or materials into evidence at the hearing.¹³⁶

To the contrary, Respondent presented substantial evidence that its smart meters passed extensive testing (including flammability testing) and meet all applicable safety standards. First, Duquesne Light proved that its smart meters have been certified by UL under the 2735 safety standard, which applies to electric utility meters (including smart meters).¹³⁷ Duquesne Light also proved that its smart meters satisfy the applicable ANSI standards (ANSI C12.1 and C12.20), which establish safety and performance criteria for electric revenue meters.¹³⁸ Itron also conducted numerous tests to determine if the smart meter met the ANSI standards.¹³⁹ In addition, the smart meter passed all of the tests and complies with ANSI C12.1 and C12.20.¹⁴⁰

Duquesne Light also established that its smart meters passed extensive flammability testing performed by Itron¹⁴¹ and demonstrated that it has installed roughly 620,000 smart meters throughout its service territory and none have caused a fire.¹⁴² Complainant provided no evidence that Duquesne Light's smart meters pose a fire hazard, while the Company

¹³⁴ Tr. 107.

¹³⁵ *Id.* at 150-52.

¹³⁶ *Id.*

¹³⁷ Tr. 225-26, 252.

¹³⁸ Tr. 229.

¹³⁹ Tr. 232-33; DLC Ex. G-1.

¹⁴⁰ Tr. 233.

¹⁴¹ Tr. 234.

¹⁴² Tr. 235, 408-09.

presented substantial evidence establishing that its smart meters passed extensive testing by UL and Itron.

Complainant alleged various health and safety concerns related to radio frequency fields and smart meters but failed to provide any reliable evidence in support of her allegations. By contrast, Respondent rebutted the Complainant's allegations. As such, the Complainant failed to establish her burden of proof to show that the deployment of smart meters is unsafe or unreasonable or that it would constitute inadequate utility service.

Complainant presented no expert testimony to corroborate her health and safety allegations. To the extent the Complainant relied upon hearsay or other inadmissible evidence to attempt to support her claims, this evidence was properly objected to upon hearsay and relevance grounds and cannot support a finding of fact.

Although Complainant contends that Duquesne Light's smart meter will violate her privacy, Complainant offered no evidence to support this claim other than her own opinion.¹⁴³ Complainant identified no relevant work experience, education, or training regarding this issue and presented no other witnesses to support her privacy claims. In contrast, Respondent established that it collects only aggregate household information, not data about specific appliances or devices Complainant uses.¹⁴⁴

Duquesne Light further established that it provides adequate, efficient, safe, and reasonable service by taking many steps to ensure that customer information is protected.¹⁴⁵ In addition to using authentication and encryption to protect confidential information, Respondent uses security event monitoring, network segmentation, multiple redundant firewalls, data access restriction, and complex passwords to protect data.¹⁴⁶

¹⁴³ Tr. 107.

¹⁴⁴ Tr. 262-63.

¹⁴⁵ Tr. 260-62.

¹⁴⁶ Tr. at 271-76.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding, with the exception of the claim that the installation of a smart meter violates Complainants Fourth Amendment rights under the United States Constitution. 66 Pa.C.S. §§ 701, 1501.

2. The Commission lacks jurisdiction to consider a claim that the installation of a smart meter violates Complainants Fourth Amendment rights under the United States Constitution. *See Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. Ill. 2014).

3. The proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

4. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

5. The preponderance of evidence standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008) (citation omitted).

6. Any person having an interest in the subject matter may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. 66 Pa.C.S. § 701.

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

8. Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

9. Smart meter customers 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; *see Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

10. 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. *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

11. 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).

12. In order to prove that smart meters are unsafe or unreasonable under Section 1501, a complainant must present substantial evidence that either: (1) there is a “conclusive causal connection between [smart meter emissions] and adverse human health

effects;” or (2) the installation of a smart meter “would create a proven exposure to harm.”
Povacz v. Pa. Pub. Util. Comm’n, 280 A.3d 975 (Pa. 2022).

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

14. Consumers may establish a violation of Section 1501 of the Public Utility Code by showing the wireless smart meter requirement is either unsafe *or* unreasonable. *Povacz v. Pa. Pub. Util. Comm’n*, 241 A.3d 481 (Pa. Cmwlth. 2020).

15. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102, 1501.

16. Electric distribution companies are required to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2806.1-2807.

17. A utility may issue written notice of 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).

18. Complainant failed to carry her burden of proof establishing that Respondent violated the Public Utility Code or a regulation or order of the Commission in installing a smart meter at Complainant’s property. 66 Pa.C.S. § 332.

