

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darlene Shedlock	:	
	:	
v.	:	C-2018-3001414
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Jeffrey A. Watson  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint for failure of Complainant to meet her burden of proof. Complainant filed a Formal Complaint against Respondent alleging Respondent was threatening to terminate her service. The Formal Complaint also identified Complainant’s objection to the installation of a smart meter at her residence.

**HISTORY OF THE PROCEEDING**

Darlene Shedlock (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent or Company) on April 23, 2018, alleging that Respondent was threatening to shut off her electric service and objecting to the installation of a smart meter. Complainant averred she does not consent to a smart meter installed at her home, claiming it will harm her as she suffers from late-stage Lyme disease.

As relief, Complainant requested that the Commission prohibit Respondent from installing a smart meter at her residence and permit her to keep her existing analog meter.

On May 15, 2018, Respondent filed an Answer and New Matter to the Complaint. Respondent admitted that Complainant refused access to her property for the installation of a smart meter and that termination notices were previously provided to Complainant. Respondent denied the remaining material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008<sup>1</sup> (Act 129) to install a smart meter at the service location. Respondent also requested that this matter be referred to mediation.

On May 15, 2018, Respondent also filed preliminary objections to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Complainant failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision. Respondent further averred it is required by Act 129 to install a smart meter at the service location. Finally, Respondent argued that the Formal Complaint is legally insufficient because it failed to state a claim upon which the Commission can grant relief, that a hearing is not in the public interest, and that the Complaint does not meet the standards set forth in recent Commission decisions in order to survive preliminary objections.

Complainant did not file a response to the preliminary objections.

A Motion Judge Assignment Notice was issued and received by the undersigned on July 9, 2018, and assigned the undersigned Presiding Officer to this proceeding.

On July 17, 2018, an Interim Order was entered denying the preliminary objections.

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<sup>1</sup> 66 Pa.C.S. Sections 2806.1–2807.

On October 15, 2018, an Interim Order was entered establishing a litigation schedule. The order required the parties to identify their witnesses and the substance of their proposed testimony by January 25, 2019, and to conclude discovery by April 25, 2019.

On May 10, 2019, Respondent filed a status report advising that it completed discovery, and that Complainant did not identify her proposed witnesses.

On June 10, 2020, an Interim Order was issued requiring that the parties confer and attempt to agree upon proposed hearing dates in September of 2020 and to file status reports, on or before July 3, 2020.

On August 3, 2020, a Telephonic Hearing Notice was issued which scheduled the evidentiary hearing for September 4, 2020.

On August 5, 2020, an Interim Order was issued scheduling a telephonic evidentiary hearing for September 4, 2020, and requiring the parties to exchange their proposed exhibits not later than August 27, 2020.

On September 4, 2020, a telephonic evidentiary hearing was held. Complainant presented her case through her own testimony and testimony from her husband, Gary Shedlock.

Respondent presented its case through the testimony of John Ahr, Respondent's Manager of Regulatory Compliance for Smart Meters; further, Respondent's Exhibit JCA-1 was admitted into the record. In addition, Official Notice was taken of PD-1 through PD-4 at the request of Respondent.

On September 30, 2020, the undersigned Presiding Officer received a transcript of the evidentiary hearing.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*,<sup>2</sup> (*Povacz I*), as the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129. 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 entered in *Povacz* and its related cases.<sup>3</sup>

On October 16, 2020, the undersigned Presiding Officer received a Motion to Stay the Proceeding filed by Respondent, based upon the Commonwealth Court's decision in *Povacz I*. Respondent requested that the Commission stay the instant proceeding and extend all applicable deadlines. The Motion to Stay included a Notice to Plead directed to Complainants. No responsive pleading was filed by Complainants and no briefing schedule was established.

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 an electric distribution company's (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020, Stay Order*). The *November 4, 2020, Stay Order* also directed that the stay would 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.

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<sup>2</sup> *Povacz v. Pa. Pub. Util. Comm'n*, 241 A.3d 481 (Pa. Cmwlth. 2020).

<sup>3</sup> *Povacz I* at 495.

On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion in *Povacz v. Pennsylvania Public Utility Commission*,<sup>4</sup> (*Povacz II*), affirming 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 “[c]ustomers 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.”<sup>5</sup>

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.

In the instant case, no briefing schedule was established prior to the issuance of the order staying the proceeding. Significant time passed after the Commission entered an Order and Notice, at Docket No. M-2009-2092655, staying the proceeding, on November 4, 2020, and the Order of the Commission on November 9, 2023, lifting the stay.

Under the circumstances, an Interim Order was entered on November 27, 2024, providing the parties with a deadline to file briefs and to consider appropriate requests for relief, if any, on or before January 17, 2024. The order further provided that a copy of all briefs, documents or requests for relief must be sent to the legal assistant for the undersigned Presiding Officer, by email, and to every party.

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<sup>4</sup> *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

<sup>5</sup> *Id.* at 1014.

On January 16, 2023, Complainant provided an email to the legal assistant of the undersigned Presiding Officer along with a one-page letter and a two-page attachment. The one-page letter appeared to be a summary of the argument to support Complainant's Complaint. The two-page article attached to the letter appears to be a newspaper or magazine article entitled "EMF The Invisible Hazard." The documents did not indicate that the attachments were filed or that a copy was provided to counsel for Respondent.

On January 17, 2024, Respondent filed a main brief.

On January 17, 2024, an interim order was entered advising the parties of the receipt of the email and documentation from Complainant, providing counsel for Respondent with a copy of the documentation, advising that the one-page letter from Complainant would be treated as the main brief of Complainant, the two-page article would be considered as an attachment to the main brief and the email message would be treated as a cover letter from Complainant. The order set a deadline of February 5, 2024, for the filing of any objections to the main brief of Complainant. Complainant was provided a deadline of February 12, 2024, to file a response to any objection filed by Respondent. The parties were advised that no consideration would be given to any pleading or other communication that was not filed with the Commission Secretary and served upon the opposing party and the undersigned as directed in the order.

On February 5, 2024, Respondent filed a Motion To Strike The Complainant's Main Brief And Attachments Thereto. The Motion to Strike included a Notice to Plead directed to Complainant. Complainant did not file a response to the Motion to Strike.

On February 14, 2024, an interim order was entered granting in part and denying in part, the Motion to Strike filed by Respondent. Respondent's Motion to Strike the attachment to Complainant's main brief, in its entirety, was granted. To the extent the Motion sought to strike the one-page main brief filed by Complainant, it was granted inasmuch as it sought to strike any facts or evidence not previously admitted into the evidentiary record.

The record closed by Interim Order entered on June 3, 2024.

## FINDINGS OF FACT

1. Complainant is Darlene Shedlock, who resides at 226 Krayn Road, Windber, Pennsylvania (service location or service address).

2. Respondent is Pennsylvania Electric Company, an electrical distribution Company with more than 100,000 customers that provides residential electrical service to Complainant at the service address.

3. Complainant suffers from chronic late-stage Lyme disease and various other medical issues.<sup>6</sup>

4. Pennsylvania Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.<sup>7</sup>

5. Act 129 provides a list of required smart meter functionality.<sup>8</sup>

6. Respondent filed a Joint Petition for the approval of its meter Deployment for it and its sister companies on December 31, 2012.<sup>9</sup>

7. The Commission determined that Respondent's Smart Meter Deployment Plan, as revised, was compliant with Act 129 and ultimately approved the smart meter deployment plan on June 25, 2014.<sup>10</sup>

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<sup>6</sup> Tr. at 11-12.

<sup>7</sup> Tr. at 45-46

<sup>8</sup> *Id.*

<sup>9</sup> *Id* at 45-47.

<sup>10</sup> *Id.* at 46.

8. The Smart Meter Deployment Plan identifies Itron as Respondent's smart meter vendor and smart meter communication system.<sup>11</sup>

9. The Smart Meter Deployment Plan does not provide for an opt-out for customers.<sup>12</sup>

10. Respondent's smart meter deployment plan requires the Company to deploy smart meters at 100% of its customer service locations. The plan required installment of 98.5% of smart meters by mid-2019. The remaining 1.5% of smart meters, which are in hard-to-access locations, such as remote hunting cabins, were required to be installed by 2022.<sup>13</sup>

11. To date, Respondent has not installed a smart meter at the Complainant's service location.<sup>14</sup>

12. Complainant offered lay witness testimony of herself and Gary Sedlock at the hearing.

13. Respondent offered testimony by Company employee, John Ahr. Tr. 39.

14. The smart meters used by Respondent comply with the safety standards and requirements established by agencies such as the Federal Communications Commission; are developed and tested to meet the requirements of the American National Standards Institute; and are certified by Underwriters Laboratory.<sup>15</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Tr.47-48.*

<sup>13</sup> *Tr.at 45-46.*

<sup>14</sup> *Tr. 44, 48-49.*

<sup>15</sup> *Tr. 48-50.*

## DISCUSSION

### Legal Standards

Under Section 332(a) of the Public Utility Code,<sup>16</sup> “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.”<sup>17</sup> The preponderance of evidence standard requires proof by a greater weight of the evidence.<sup>18</sup> This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.<sup>19</sup>

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.<sup>20</sup> 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.<sup>21</sup>

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<sup>16</sup> 66 Pa.C.S. § 332(a)

<sup>17</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>18</sup> *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

<sup>19</sup> *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

<sup>20</sup> *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944).

<sup>21</sup> *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 County, Pa.*, Docket No. A-212285F0148, 2008 Pa.P.U.C. LEXIS 874 (Order entered Oct. 29, 2008).

Act 129 was enacted to reduce energy consumption and demand.<sup>22</sup> Act 129 addresses electric distribution and default service provider responsibilities, including smart meter technology.<sup>23</sup> In pertinent part, Act 129 imposes the following requirements concerning an electric distribution company'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:

(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.<sup>[24]</sup>

In *Povacz II*,<sup>25</sup> 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. 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

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<sup>22</sup> *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017).

<sup>23</sup> 66 Pa.C.S. § 2807(f); *Romeo*, 154 A.3d at 424.

<sup>24</sup> 66 Pa.C.S. § 2708(f).

<sup>25</sup> *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d at 1034-1038 (Pa. 2022) (*Povacz II*).

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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

## 1. Installation of Smart Meters

Complainant testified and provided testimony of her husband, Gary Shedlock, in support of her Complaint.<sup>29</sup> Complainant raised certain health and safety concerns related to smart meters and testified that she suffers from various symptoms including ringing in her ears, intense pressure in her chest, breathing difficulties and changes in her temper when exposed to “WiFi.”<sup>30</sup> Complainant further testified that she avoids situations where she may be exposed to smart meters and challenged Respondent’s position that smart meter installation is mandatory<sup>31</sup> and requested she be permitted to keep her analog meter.<sup>32</sup> As lay witnesses, Complainant and her husband testified to Complaint’s symptoms and health concerns. Complainant did not offer expert testimony regarding these issues.

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<sup>26</sup> *Povacz II* at 1004-1006.

<sup>27</sup> *Id.* at 1006.

<sup>28</sup> *Id.* at 1005.

<sup>29</sup> Complainant attempted to offer lay testimony from Tom Yewcic. Complainant stated, “he sees me in some of the situations that I get in, and I would like him to testify to them,” and to “explain Act 129.” Mr. Yewcic was never identified to Respondent as was ordered on October 15, 2018, or in discovery. Consequently, Respondent objected to Mr. Yewcic’s being called as a witness. Respondent’s objection to the testimony was sustained. *See* Tr. 21-28, 30-36.

<sup>30</sup> Tr. at 15.

<sup>31</sup> Tr. at 15-17.

<sup>32</sup> Tr. at 17-18, 58.

John Ahr, Pennsylvania Electric Company's Manager of Regulatory Compliance for Smart Meters, testified for Respondent regarding the mandates in Act 129, regulatory requirements for smart meter plans in Pennsylvania, Respondent's Smart Meter Deployment Plan, and the general features of Respondent's smart meters.<sup>33</sup>

### Smart Meter Mandate

In her Formal Complaint, Complainant averred, *inter alia*, that Respondent was threatening to terminate her electric service for her refusal to permit the installation of a smart meter. Complainant further averred that she wanted to keep her analog meter and that the service not be terminated. Complainant further objected to the installation of a smart meter because of health concerns and her belief that exposure to smart meters would subject her to harm, based upon her medical condition. As relief, Complainant requested that she be permitted to keep her safe and reliable analog meter.

Respondent argued that, under Act 129, it is required to install smart meters at all of its customers' service locations. Respondent asserted that neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to opt-out from smart meter installation.

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).<sup>34</sup> Act 129 required EDCs with at least 100,000 customers, such as Respondent, to file a smart meter technology procurement and installation plan (SMP Plan) with the Commission for approval.<sup>35</sup> 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

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<sup>33</sup> Tr. at 39-58.

<sup>34</sup> 66 Pa.C.S. § 101-3316.

<sup>35</sup> 66 Pa.C.S. § 2807(f).

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.<sup>36</sup>

On December 31, 2012, Respondent, along with FirstEnergy Corp.'s other EDCs in Pennsylvania (collectively, the Companies), filed their Joint Petition for Approval of their SMP Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.<sup>37</sup> The Companies' SMP Plan, as modified, was approved by the Commission on June 25, 2014.<sup>38</sup>

To the extent that Complainant asserted that Act 129 does not require the mandatory installation of smart meters for all customers, Commission precedent and caselaw is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to "opt-out."<sup>39</sup> As explained above, 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.<sup>40</sup>

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<sup>36</sup> 66 Pa.C.S. § 2807(f)(2) (emphasis added).

<sup>37</sup> Tr. 44-46; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, (Smart Meter Deployment Plan filed Dec. 31, 2012); see Respondent Exhibit JCA-1.

<sup>38</sup> Tr. 44-46; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Opinion and Order entered June 25, 2014); see Respondent Exhibit JCA-1.; P.D.-4.

<sup>39</sup> *Hoffman-Lorah v. PPL Elec. Utils. Corp.*, Docket No. C-2018-2644957 (Order entered May 23, 2019); *Povacz II* at 992.

<sup>40</sup> *Povacz II* at 992.

Complainant failed to demonstrate that Respondent violated any provision of the Public Utility Code, a Commission Order, or a Commission Regulation. Based upon the authority addressed above, this claim must fail.

2. Unsafe, Unreasonable or Inadequate Service under Section 1501

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.<sup>41</sup> The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Court further 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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> Once the parties have presented their evidence, the onus then falls

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<sup>41</sup> 66 Pa.C.S. § 1501.

<sup>42</sup> *Povacz II.* at 1005.

<sup>43</sup> *Id.* at 1008.

<sup>44</sup> *Id.*

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.<sup>45</sup> 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.<sup>46</sup>

Here, Complainant objected to the installation of a smart meter because of health concerns and her belief that exposure to smart meters would subject her to harm, based upon her medical condition. As relief, Complainant requested that she be permitted to keep her safe and reliable analog meter.

Although Complainant provided testimony and explained her concerns if a smart meter would be installed at her property, Complainant failed to present expert opinion evidence that radio frequency emissions from smart meters cause adverse health effects. Complainant also failed to present expert opinion evidence that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, was the cause of the harm claimed by Complainant.

Complainant's claim is based upon her personal interpretation of observations and beliefs. Personal opinions, no matter how strongly held, do not constitute evidence.<sup>47</sup> Even a *pro se* complainant must provide relevant and necessary evidence.<sup>48</sup> Complainant presented no competent evidence to support her claim that the proposed smart meter was unsafe or could cause the harm alleged. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>49</sup>

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<sup>45</sup> *Id.* at 1006.

<sup>46</sup> *Id.* at 1005.

<sup>47</sup> *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

<sup>48</sup> *Groch v. Unemployment Comp. Bd. of Rev.*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Rev.*, 494 A.2d 1081 (Pa. 1985).

<sup>49</sup> *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. 1960); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984); *Povacz II* at 992.

When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in [the] particular case, whether there is sufficient evidence to support a finding that Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.”<sup>50</sup> Therefore, a complainant in smart meter matters bears the burden to prove by a preponderance of the evidence that installation of a wireless smart meter constitutes unsafe *or* unreasonable service in violation of Section 1501 of the Public Utility Code.<sup>51</sup>

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.

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

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<sup>50</sup> *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Opinion and Order entered Jan. 28, 2016) (citing *Woodbourne-Heaton*, 1992 Pa. PUC Lexis 160, at \*12-13). *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 at 10 (Opinion and Order entered May 3, 2018).

<sup>51</sup> *Povacz II* at 992.

conformity with the regulations and orders of the commission.<sup>52</sup>

As discussed above, 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.<sup>53</sup> In this case, Complainant raised concerns primarily regarding health and safety, but these claims consisted of Complainant’s and her husband’s lay opinions and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence.<sup>54</sup> As such, there is no record evidence to support Complainant’s claim that installation of a smart meter at the service location would constitute a violation of Section 1501.

### 3. Whether Complainant is Entitled to An Accommodation

Complainant failed to present any credible or relevant evidence to support her allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code.

There is no dispute that, pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate, reasonable service and facilities, to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.<sup>55</sup>

Based upon the evidence of record, Complainant failed to meet her burden to demonstrate that the installation of a smart meter constitutes unreasonable or inadequate service.

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<sup>52</sup> 66 Pa.C.S. § 1501.

<sup>53</sup> *Povacz II*.

<sup>54</sup> *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

<sup>55</sup> 66 Pa.C.S. § 1501.

While the Complainant raised general concerns about the health and safety impacts of smart meters, these claims were unsupported by record evidence. Accordingly, these claims must be dismissed as Complainant failed to establish a *prima facie* case, and there is no basis to conclude that Respondent's installation of smart meters is in violation of Section 1501 of the Code.

The only relief or accommodation requested by Complainant was that Respondent grant her an exemption from the installation of a smart meter.

Since Act 129 mandates the installation of smart meter technology, the Court in *Povacz II* concluded that a customer may not elect to prevent the installation of a smart meter. However, the Court stated:

As in this case, a customer can file a claim under Section 1501 that smart meter technology service is unsafe and/or unreasonable. If the 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.<sup>[56]</sup>

Here, Complainant seeks the permanent removal of the smart meter as an accommodation. Be that as it may, the Pennsylvania Supreme Court has definitively held that Act 129 requires an EDC to install smart meters on all of its customers' properties.<sup>57</sup> Consequently, as Complainant has failed to establish a violation of Section 1501, the Commission is unable, under the circumstances, to provide her with her requested relief or an administrative remedy.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 701, 1501.

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<sup>56</sup> *Povacz II* at 1034-1038.

<sup>57</sup> *Povacz II*.

2. Under Section 332(a) of the Pennsylvania Public Utility Code, the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

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

4. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999). This 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, 614 n.14 (Pa. Cmwlth. 2008).

5. In smart meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Opinion and Order entered Sept. 3, 2015).

6. Section 701 of the Public Utility Code provides that “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. When presented with a challenge to a smart meter installation, the Commission has pronounced that “[t]he ALJ’s role . . . will be to determine based on the record in this particular case, whether there is sufficient evidence to support a finding that Complainant was adversely affected by the smart meter or whether [the utility’s] use of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in this case.” *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 23 (Opinion and Order entered Jan. 28, 2016) (citation omitted).

9. To satisfy his or her burden of proof, a complainant must demonstrate that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701.

10. The Pennsylvania Commonwealth Court clarified that a complainant’s burden of proof in certain smart meter cases, instructing, “[c]onsumers may establish a violation of that mandate by showing the wireless smart meter requirement is either unsafe *or* unreasonable.” *Povacz et. al. v. Pa. Pub. Util. Comm’n*, 241 A.3d 481 (Pa. Cmwlth. 2020). (emphasis in original).

11. 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 et. al. v. Pa. Pub. Util. Comm’n*, 241 A.3d 481 (Pa. Cmwlth. 2020).

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

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

14. Act 129 of 2008, 66 Pa.C.S. § 2806.1–2807, requires electric distribution companies to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa.C.S. § 2807(f).

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

16. The burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and radio frequency (RF) emissions: (1) 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; and (2) 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).

17. Complainant failed to carry the 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.

18. Complainant failed to carry the burden of proof establishing that Respondent provided unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

