

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephanie Micek	:	
	:	
v.	:	C-2022-3031526
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Stephanie Micek because she failed to satisfy her burden of proving that PECO Energy Company violated its tariff, the Public Utility Code, or a Commission Regulation or Order.

HISTORY OF THE PROCEEDING

On March 22, 2022, Stephanie Micek (Ms. Micek or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent) seeking the replacement of her PECO Advanced Metering Infrastructure (AMI) meter, also known as a “smart meter,” with a non-AMI meter, *i.e.* “analog meter.”

On April 6, 2022, PECO filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, PECO admitted in part and denied in part various material allegations of the Complaint. PECO averred that it is required to install AMI meters for the

Company's electric distribution customers subject to the requirements of Act 129.¹ PECO further averred that by Order entered November 4, 2020, the Commission ordered that any formal complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company's deployment of smart meter technology as being in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, was to be stayed until the Commission takes further action to lift the stay. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 4, 2020) (*November 4, 2020 Order*). In its New Matter, PECO reiterated its argument that this matter should be stayed.

On April 6, 2022, PECO filed a Motion for Stay pursuant to the *November 4, 2020 Order*.

On April 27, 2022, the Complainant filed a Reply to PECO's Answer, New Matter, and Motion for Stay.

By Hearing Notice dated May 6, 2022, an Initial Call-In Telephonic Hearing was scheduled for June 21, 2022, and the matter was assigned to me.

On May 11, 2022, an Order was issued staying this matter in accordance with the Commission's *November 4, 2020, Order* and cancelling the hearing scheduled for June 21, 2022.

On November 14, 2023, the Commission entered an order at Docket No. M-2009-209265 (*November 14, 2023 Order*) lifting the stay implemented by the *November 4, 2020 Order*.

By Hearing Notice dated January 22, 2024, an Initial Call-In Telephonic Hearing was scheduled for March 13, 2024.

A Prehearing Order was issued on February 9, 2024, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to the

¹ 66 Pa.C.S. §§ 2803, 2806.1, 2807, 2811, 2813-2815 (Act 129).

proceeding.

On February 29, 2024, PECO filed a Motion for Continuance due to expert witness unavailability, which was granted by Order issued on March 14, 2024.

By Cancelled/Rescheduled Hearing Notice dated March 6, 2024, an Initial Call-In Telephonic Hearing was rescheduled for May 22, 2024.

On May 22, 2024, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on her own behalf. The Complainant did not present any evidence at the hearing. Khadijah Scott, Esquire, appeared on behalf of PECO and moved to dismiss the Complaint for the Complainant's failure to prosecute.

The record closed on June 5, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Stephanie Micek.
2. The Respondent is PECO Energy Company, a utility under the jurisdiction of the Pennsylvania Public Utility Commission.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

In this matter, the Complainant is seeking the replacement of her smart meter with an analog meter. At the outset of the hearing, the Complainant requested a continuance in order to retain expert witnesses. Tr. 5-6. However, the Complainant was unaware of what experts she needed to retain. Tr. 6-7. Moreover, the Complainant confirmed that there was no point in granting the continuance because she would never accept the relocation of the smart meter, which is the only relief that may be granted.² Tr. 8. Thus, the hearing moved forward but the Complainant did not

² "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

present any evidence. Tr. 10-12. PECO moved to dismiss the Complaint for the Complainant's failure to prosecute. Tr. 12.

As the proponent of any request for relief, the Complainant bears the burden of proof. By failing to proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Thus, I find the Complainant failed to satisfy her burden of proving that PECO violated its tariff, the Public Utility Code, or a Commission Regulation or Order. Accordingly, the Complaint will be denied.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. An electric distribution company cannot be required to provide an accommodation without the finding of a Section 1501 violation. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022); 66 Pa.C.S. § 1505.

4. The Complainant has failed to satisfy her burden of proving that PECO violated its tariff, the Public Utility Code, or a Commission Regulation or Order. 66 Pa.C.S. §§ 332(a); 701.

allowed by Act 129 and a utility's tariff." *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975, 1014 (Pa. 2022) (*Povacz*) (emphasis added); 66 Pa.C.S. § 1505. Act 129 does not permit a customer to opt-out of the installation of a smart meter. The Pennsylvania Supreme Court held, "[Act 129] imposes a mandate on EDCs to furnish smart meter technology to all electric customers within an electric distribution service area, regardless of a customer's preference." *Povacz*, at 992. Accordingly, the only relief the Commission could grant Complainant is an accommodation as to the location of the smart meter.

