

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrea Fenimore

v.

Pennsylvania Electric Company

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C-2022-3030605

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

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 Complainants' failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On January 12, 2022, Andrea Fenimore (Complainant) filed a Formal Complaint (Complaint) against Pennsylvania Electric Company (Penelec or Company). She checked the box noting that she is having reliability, safety or quality problems and alleged, among other things, that the smart meter installed at her home is causing her to have insomnia. As relief, she requested that Penelec remove the smart meter and restore her analog meter.

On November 4, 2020, in view of the appellate court litigation surrounding smart meters, the Commission issued a general stay of all pending smart meter proceedings. By letter dated February 11, 2022, Penelec stated that it would file an answer to the Complaint when the stay was lifted by the Commission.

On August 16, 2022, the Pennsylvania Supreme Court issued a decision in *Povacz v. Pa. Public Utility Commission*.¹ In *Povacz II*, the Pennsylvania Supreme Court resolved many of the outstanding legal issues in many smart meter cases.

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.

By notice dated November 17, 2023, the Office of Administrative Law Judge assigned this matter to me.

Penelec filed an answer to the Complaint on December 4, 2023. Penelec admitted that a smart meter was installed at the Complainant's service address. Penelec went on to state that it was required by law to install the smart meter and noted that it was willing to discuss an accommodation with the Complainant as provided for in its tariff.

I issued an interim order on December 12, 2024, which established an initial litigation schedule. That schedule directed the parties to identify their expert witnesses, if any, and to file a joint status report setting forth potential hearing dates when all parties and all witnesses were available for a hearing.

¹ *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

By letter dated February 8, 2024, the Company identified David Villao as its expert witness and on March 29, 2024, the Company filed a joint status report, as directed by the December 12, 2024, Interim Order. I issued a further interim order which reviewed the filings in the case and directed that a hearing be scheduled.

By hearing notice dated April 9, 2024, the Complaint was scheduled for a hearing by telephone on June 4, 2024. I also issued a prehearing order which explained the procedures that would apply to the conduct of the hearing.

The hearing convened as scheduled. Ms. Fennimore appeared along with her witness, Ian Fenimore. The Company was represented by James Meehan, Esquire. The Company presented the testimony of one witness, David Villao. No exhibits were offered for admission into the record by either party.

Following the receipt of the transcript, I issued an order closing the record on June 24, 2024.

FINDINGS OF FACT

1. The Complainant, Andrea Fenimore, resides at 604 Chestnut Street, Johnstown, PA. (Tr. 9).

2. The Respondent is FirstEnergy Electric Company, formerly known as Pennsylvania Electric Company (Penelec).²

² On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Pennsylvania

3. A smart meter is installed at Ms. Fenimore's residence, outside her bedroom window. (Tr. 10, 12).

4. The Company deploys Itron Openway Centron smart meters. (Tr. 44-45).

5. The Company's smart meters comply with all safety requirements and standards established by agencies such as the Federal Communications Commission. (Tr. 45).

6. The smart meter manufacturer, Itron, has certified personnel to perform American National Standards Institute testing on the meters deployed by the Company. (Tr. 45).

7. The Company's smart meters are Underwriters Laboratories' (UL) certified and are compliant with UL 2735. (Tr. 46)

DISCUSSION

Ms. Fenimore contends that the smart meter installed at her home is causing her to suffer from insomnia. Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about anything done or not done by a public utility which violates any laws which the Commission has the authority to

Electric Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company's tariff.

administer, or any regulation or order of the Commission.³ A person who wants the Commission to do something to resolve their complaint has the burden of proof.⁴

In this matter, Ms. Fenimore is the party asking for relief from the Commission; therefore, she has the burden of proof. This means, that Ms. Fenimore must present facts which support her claims and prove facts that show that the Company violated the Public Utility Code, a regulation or Commission order by a preponderance of the evidence.⁵ The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁶ Relief can only be granted if Ms. Fenimore proves facts by a preponderance of the evidence, which show that the Company violated the Public Utility Code or Commission regulations.

Ms. Fenimore testified that she believes that the smart meter that is installed in her home causes her insomnia.⁷ Ms. Fenimore admitted that she did not have medical records to support her claim.⁸ She did not offer any expert testimony which linked her insomnia to the operation of the smart meter installed at her home. As explained below, her complaint will be dismissed because she did not prove that the smart meter is harmful to her.

³ 66 Pa.C.S. § 701.

⁴ 66 Pa.C.S. § 332(a).

⁵ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁶ *Popowsky*.

⁷ *E.g.*, Tr. 11, 16

⁸ Tr. 16.

On August 16, 2022, the Pennsylvania Supreme Court issued a decision in *Povacz v. Pa. Public Utility Commission*.⁹ In *Povacz II*, the court resolved many of the outstanding legal issues regarding smart meter complaints filed before the Commission. Specifically, the Supreme Court held that customers do not have a right to refuse smart meter installation.¹⁰ However, the court also held that even though a customer cannot refuse a smart meter, a customer may claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code.¹¹

The court emphasized that the customer making a claim that a smart meter is unsafe has the burden of proof. This means that the customer must prove that it is more likely than not that a utility's service or equipment is the cause of the problem described in their complaint. This burden of proof is called the preponderance of evidence standard.¹²

Povacz II explained that a customer making a claim that a smart meter violates Section 1501 of the Public Utility Code must provide *expert* evidence:

Specific to smart meters and RF emissions, the burden is two-fold. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects and, second, 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. See PA SSJI (Civ) § 4.80 (“An expert witness gives his or her opinion, to a reasonable degree of professional certainty, based upon the assumption of certain facts.”). Once the customer

⁹ *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

¹⁰ *Id.* at 997.

¹¹ *Id.* at 999-1000 (citing 66 Pa.C.S. § 1501).

¹² *Id.* at 1006.

produces such evidence, the utility may then defend 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. The fact finder must then weigh the evidence and decide whether it is more likely than not that the smart meter causes harm to the customer.^[13]

The Supreme Court noted that “neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.”¹⁴

However, if a customer proves that a smart meter is unsafe and causes or contributes to harm to the customer, the Commission has the authority to direct the utility to offer an accommodation to the customer that is consistent with the utility’s tariff:

If the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violations Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility’s tariff.^[15]

The Commission is required to follow the directives of the Pennsylvania Supreme Court and cannot direct a utility to allow a customer to retain their analog meter as an accommodation.¹⁶

¹³ *Id.*

¹⁴ *Id.* at 1005.

¹⁵ *Id.* at 1014.

¹⁶ *Id.* at 1014 (“Pursuant to our interpretation of Act 129 as mandating the installation of smart meter technology, a customer may not prevent the installation of a smart meter.”).

In sum, in accordance with the Supreme Court’s directive in *Povacz II*, Ms. Fenimore must prove that the smart meter is harmful. Her testimony that her insomnia began after the smart meter was installed is not enough evidence. As explained above, her suspicions, feelings and fear are not enough to sustain her burden.

Even if Ms. Fenimore did prove that the smart meter caused her insomnia, I could not require the Company to remove the smart meter. The Company is required to install a smart meter but may offer a customer an “accommodation” to the extent permitted by its tariff. Mr. Villao testified that the Company’s tariff permits the relocation of the meter at the customer’s expense.¹⁷

Ms. Fenimore’s complaint must be dismissed because she did not prove that the Company’s smart meter causes her insomnia or is otherwise harmful to her.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject-matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. The Company is required to install smart meters in accordance with its Smart Meter Deployment Plan. *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022).

¹⁷ Mr. Villao also stated that he was willing to meet with Ms. Fenimore to provide her with information about relocating the meter. Tr. 51.

4. Customers cannot “opt out” of the installation of a smart meter. *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022).

5. Allegations that a smart meter would cause harm to a customer must be supported by expert scientific or medical testimony. *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022).

6. The Complainant failed to sustain her burden of proving that a smart meter would cause harm. *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Andrea Fennimore in *Andrea Fennimore v. Pennsylvania Electric Company* at Docket C-2023-3030605, is dismissed.

2. That the Secretary mark the docket closed.

Date: September 23, 2024

/s/
Mary D. Long
Administrative Law Judge