

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pamela Scott

v.

Duquesne Light Company

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C-2018-3004042

**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 August 16, 2018, Pamela R. Scott (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light, Respondent or Company) alleging that Respondent was threatening to shut off electric service because she does not want a smart meter installed on her house. Complainant averred that she does not agree to the installation of a smart meter on her home and requested an exemption because smart meters cause her adverse health conditions.

As relief, Complainant requested that the Commission not allow Respondent to terminate her service until this dispute is resolved due to the misinterpretation of state law or until a state law is specifically passed to specifically allow opt-out from smart meter programs.

On September 5, 2018, Respondent filed an Answer and New Matter to the Complaint. Respondent essentially denied the material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008,<sup>1</sup> to install a smart meter on Complainant's home.

On September 5, 2018, Respondent also filed preliminary objections to the Complaint.

On September 15, 2018, Complainant filed a response to the preliminary objections. On September 24, 2018, Complainant filed a response to Respondent's answer and new matter.

On September 24, 2018, Respondent filed a motion for a prehearing conference.

A Motion Judge Assignment Notice was issued on September 28, 2018, and the undersigned presiding officer was assigned to this proceeding.

On October 15, 2018, an interim order was entered denying Respondent's preliminary objections. In addition, a litigation schedule was established for the Parties by a second interim order entered on October 15, 2018.

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

A prehearing conference was held November 8, 2018. By interim order entered on November 8, 2018, the undersigned required the parties to provide information about anticipated witnesses and testimony, conclude discovery, and file a status report by April 15, 2019.

On April 13, 2019, Complainant filed her Status Report and on April 15, 2019, Respondent filed its Status Report. It appeared from the Respondent's Status Report that the Complainant had not identified her fact or expert witnesses. Accordingly, Complainant's deadline to identify her fact and expert witnesses was extended to August 16, 2019, by interim order entered on July 23, 2019.

The same Interim Order entered on July 23, 2019, also revised the litigation schedule in this proceeding. Ordering paragraph number 3 of that order provided for the filing of a Status Report in anticipation of a hearing in this matter to be scheduled for November of 2019.

On September 25, 2019, an Interim Order was entered revising the litigation schedule. The order provided, in part, that discovery would be completed on or before October 1, 2019. Additionally, the order informed the parties that the evidentiary hearing would be scheduled for two consecutive days in January of 2020.

On September 30, 2019, Respondent filed a Motion to Compel Discovery Responses (Motion to Compel) and a Motion to Preclude Witnesses Identified in Complainants List of Potential Witnesses from Testifying (Motion to Preclude Witnesses).

On October 10, 2019, Complainant filed a Certificate of Service certifying service upon Respondent of Complainants Supplemental Answers to Duquesne Light

Company's First set of Discovery Requests directed to Complainant on September 26, 2019.

On October 16, 2019, an Interim Order was entered denying Motion to Compel as moot based upon the Certificate of Service filed by Complainant on October 10, 2019. The order further provided that, in the event Complainant failed to provide Respondent with full and complete responses to its Discovery Requests, Respondent may file a new or Supplemental Motion to Compel on or before October 31, 2019, and any response from Complainant shall be filed on or before November 7, 2019.

On October 30, 2019, Respondent filed a second Motion To Compel Discovery Responses (October 30<sup>th</sup> Motion to Compel), seeking an order compelling Complainant to provide full and complete responses to Respondent's Discovery Request Nos. 22, 23, and 24. Complainant did not file a response to the October 30<sup>th</sup> Motion to Compel.

On December 20, 2019, an interim order was entered granting the October 30<sup>th</sup> Motion to Compel. Complainant was directed to serve full and complete responses to Respondent's Discovery Request Nos. 22, 23, and 24, as more fully described in the October 30<sup>th</sup> Motion to Compel, and to file a Certificate of Service regarding service of the discovery responses on or before January 13, 2020. The order further directed the Parties, on or before January 20, 2020, to file status reports detailing the compliance with the requirements set forth in the order and submitting dates when the Parties and their witnesses are available for two consecutive days for a telephonic hearing in March of 2020.

On January 24, 2020, Respondent filed a Motion In Limine To Preclude Joshua Hart From Testifying As An Expert Witness. Respondent averred that Mr. Hart was not qualified to offer expert testimony about alleged "adverse health effects from

smart meter installations,” that Complainant failed to provide a copy of his curriculum vitae or to provide an expert report setting forth the subject matter, facts and opinions to which he is expected to testify and a summary of the grounds for each expert opinion. Respondent averred that this information was requested through discovery on September 24, 2018. Respondent further averred that Complainant did provide a two page email that Mr. Hart sent to the California Council on Science and Technology on January 27, 2011, in response to Respondent’s request for Mr. Hart’s expert report. The Motion in Limine included a Notice to Plead requiring any written response from Complainant to be filed within 20 days of service of the Motion in Limine.

No response to the January 24, 2020, Motion in Limine was filed by Complainant.

On February 24, 2020, an interim order was entered granting in part and denying in part, Respondent’s Motion in Limine. Complainant was precluded from presenting testimony from Joshua Hart, beyond the fair scope of the email communication from Mr. Hart to the California Council on Science and Technology dated January 27, 2011, as provided by Complainant in her discovery responses provided to Respondent. Complainant was further ordered to provide an up-to-date curriculum vitae of Joshua Hart to Respondent and file an affidavit of service with the Commission evidencing service of that document not later than March 5, 2020. It was further ordered that any other Motions in Limine or restrictions on the evidence to be presented at the evidentiary hearing could be timely raised prior to or at the evidentiary hearing in this proceeding.

On January 30, 2020, a Telephone Hearing Notice was issued scheduling the telephonic evidentiary hearing in this proceeding for Thursday March 12, 2020, at 10:00 a.m. On March 4, 2020, an interim order was entered requiring the Parties to

exchange documents and proposed exhibits at least five business days before the hearing, as previously provided in the Telephone Hearing Notice.

On March 12, 2020, the Parties participated in a telephonic hearing. Upon conclusion of the hearing, the Parties were advised that a briefing schedule would be established.

On June 11, 2020, an interim order was entered permitting the Parties to file briefs on or before July 24, 2020.

Complainant and Respondent each filed briefs on July 24, 2020.

On September 24, 2020, an interim order was entered closing the evidentiary hearing record in this proceeding.

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*), 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 Orders in Maria Povacz, and related cases.<sup>3</sup>

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

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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.

electric distribution company (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 apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. *The November 4, 2020, Stay Order* applied to and was docketed at the instant case.

The Commission, as well as all other parties in *Povacz I* subsequently sought and were granted review of the Commonwealth Court’s *Povacz I* decision by the Supreme Court of Pennsylvania.

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.<sup>5</sup> 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>6</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

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

<sup>5</sup> *Povacz II*; 66 Pa.C.S. § 1501.

<sup>6</sup> *Id.* at 1014.

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.

Under the circumstances, an interim order was entered on December 1, 2023 in the instant matter, re-opening the evidentiary record and providing the parties with an extension of time to file briefs or to supplement briefs filed and to consider appropriate requests for relief, if any, on or before January 8, 2024.

On January 8, 2024, supplemental briefs were filed by both Parties.

The record closed by interim order entered on June 3, 2024.

#### FINDINGS OF FACT

1. Complainant Pamela Scott resides at 134 Markham Drive, Pittsburgh, PA 15228 (Service Address or Service Location). Tr. at 101.
2. Respondent Duquesne Light Company is an electric distribution company that provides electric utility service to Complainant.
3. The electric meter currently installed at the Service Address is an Automated Meter Reading (AMR) meter. Tr. at 327.
4. The meter contains an electronic device called an encoder receiver transmitter (ERT) that transmits readings to Duquesne Light via radiofrequency (RF) on the Company's automated meter reading fixed network when that network was operational. Tr. at 327-28.

5. Duquesne Light's AMR fixed network has been discontinued in favor of its smart meter mesh network. Tr. at 327-28.

6. Complainant fact witness Joshua Hart is the Director of the advocacy group "Stopsmartmeters.org." Tr. at 40, 76-79.

7. Mr. Hart is not a medical doctor, epidemiologist, public health professional, certified electrician, or electrical engineer and has never met Complainant. Tr. at 54-56.

8. Mr. Hart has never seen any medical records regarding the health symptoms identified by Complainant, including electro-hypersensitivity syndrome, and has never talked to her treating physicians. Tr. at 62.

9. Complainant testified as a fact witness on her own behalf. Tr. at 99-182.

10. Complainant testified that smart meters emit RF continuously and cause adverse health effects on all living things, including people who have electro-hypersensitivity syndrome (EHS). Tr. at 106, 138.

11. Complainant has never been diagnosed with EHS by a medical professional or doctor. Tr. at 174-75.

12. Complainant offered no medical records into evidence at the hearing.

13. Complainant presented no evidence that she is a certified fire investigator.

14. Complainant testified that Duquesne Light's smart meters are a fire hazard but presented no evidence that Duquesne Light's smart meters have caused a fire. Tr. at 166-67.

15. Duquesne Light presented the testimony of two expert witnesses: Dr. Benjamin Cotts and Dr. Gabor Mezei. Tr. at 228, 288.

16. Dr. Cotts is a Registered Professional Engineer, which is the legal licensure required to perform engineering work and includes a strict code of ethics. He currently works as a Senior Managing Engineer for Exponent, Inc. Tr. at 231-33; DLC Ex. G-2.

17. Dr. Cotts has specific work experience relating to electromagnetic frequency and RF; these are his specialties and the subject upon which he performed his doctoral and post-graduate work. Tr. at 234.

18. Duquesne Light offered Dr. Cotts as an expert witness and Dr. Cotts was accepted as an expert in the field of electrical engineering, physics, and electromagnetics, with an emphasis on the field effects of electromagnetic frequency and RF. Tr. at 234-35.

19. Duquesne Light offered Dr. Gabor Mezei as an expert witness at the hearing. Tr. at 295.

20. Dr. Mezei received a Medical Degree from the Semmelweis University of Medicine and a Ph.D., in Epidemiology from the University of California, Los Angeles and is a Senior Managing Scientist at Exponent, Inc. Tr. at 289-92; DLC Ex. G-1.

21. Dr. Mezei has published approximately 60 peer-reviewed articles in scientific literature, many of which deal with the potential health effects of RF fields. Tr. at 294.

22. Duquesne Light offered Dr. Mezei and he was accepted as an expert witness in the fields of epidemiology, health sciences, and research, specifically with respect to electromagnetic fields and RF fields. Tr. at 293-205.

23. Duquesne Light presented testimony from four fact witnesses at the hearing: Michael Belanger, Steve Wright, Michael Secchiutti, and Ronald Dornin. Tr. at 183-208; 211-27; 324-37; 339-47.

24. Michael Belanger is employed by Itron, Inc. as a Senior Project Line Manager. Tr. at 183-84.

25. Mr. Belanger received an electrical engineering degree and has personal knowledge of the design, operation, and communication technology associated with the Itron smart meters being deployed by Duquesne Light; he has personal knowledge of the testing and compliance standards set forth by the Federal Communications Commission (FCC) for this type of meter. *Id.* at 184-185.

26. Steve Wright is employed by Itron, Inc. as a Senior Product Manager. Tr. at 212.

27. Mr. Wright has worked in the electric metering industry for 32 years, including 23 years as an Itron employee and has personal knowledge of the type of smart meter that Duquesne Light is deploying throughout its service territory. Tr. at 213.

28. Mr. Wright performed job duties for Itron relating to the construction, design, and operation of that meter. Tr. at 212-13.

29. Michael Secchiutti has been employed by Duquesne Light for roughly 20 years and currently serves as the Manager of Advanced Metering Infrastructure (AMI) Operations and earned a Bachelor of Science in Electrical Engineering Technology. Tr. at 324-25.

30. Mr. Secchiutti manages Duquesne Light's smart meter operations center, which monitors the Company's smart meters to ensure they operate properly and manages the Company's meter data analytics group, which handles meter data that is being prepared for billing. Tr. at 325.

31. Ronald Dornin serves as Duquesne Light's Interim Manager of Maintenance Program Planning; previously, he was the Company's Manager of Metering Systems and has been employed by Duquesne Light for about five years and received a Bachelor of Science degree in electrical engineering. Tr. at 338-340.

32. Mr. Dornin provided testimony about the quality control and safety measures that Duquesne Light takes to ensure that its meters are safely installed. Tr. at 338-48.

33. 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. C; Tr. at 333-34.

34. 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. C; Tr. at 333-34.

35. Rule 22 of the Company's Tariff authorizes Company representatives to access the Company's equipment for several enumerated reasons, including to read Company meters and remove Company property. DLC Ex. C.

36. Rule 33 of the Company's Tariff states that the Company can terminate a customer's service if the customer prevents Duquesne Light from accessing its equipment. DLC Ex. C.

37. Duquesne Light's AMI network uses RF to transmit information on a two-way communication system. Tr. at 185-86.

38. Duquesne Light's smart meters send communications through the Company's "mesh network" to a collection point, which is a field area router mounted on a pole. Tr. at 187.

39. At the collection point, a cellular modem communicates back to the utility's head-end system. Tr. at 187.

40. RF transmissions also travel in the opposite direction (from utility to meter) because the network allows for two-way communications, as required by Act 129. 66 Pa. C.S.A. § 2807; Tr. at 185-86.

41. Duquesne Light is deploying Itron's OpenWay Centron smart meter throughout its service territory; it has an FCC identification number of SK9AMI7. Tr. at 185, 213; DLC Ex. F-6.

42. The Company's smart meter contains two radios: the Local Area Network (LAN) radio and the ZigBee radio. Tr. at 186-87.

43. The LAN radio transmits at 900 megahertz and communicates with nearby smart meters to form a mesh network. Tr. at 186-87.

44. Each communication from a LAN radio lasts just 20-150 milliseconds and occurs at a power of 0.69 watts. Tr. at 190, 249; DLC Ex. F-6.

45. The LAN radio provides the Company with consumption data, which is the amount of electricity consumed by the residence. Tr. at 189-90.

46. The LAN radio also provides the Company with "on-demand" reads to troubleshoot problems, and it provides network control synchronization and network security messages to establish and maintain the mesh network. Tr. at 189-90.

47. 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. at 186-87.

48. The ZigBee radio is not automatically paired with any devices in 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. at 187-88.

49. Duquesne Light's smart meter contains surge or overvoltage protection to protect the meter's electric components. Tr. at 223.

50. The surge or overvoltage protection protects two times overvoltage, meaning that it protects up to 480 volts on a typical residential service. Tr. at 223.

51. If a power surge exceeds the overvoltage protection, then the meter's metal oxide varistor electronically opens and the meter powers down. Tr. at 223.

52. The American National Standards Institute (ANSI) and Underwriters Laboratory (UL) tested the smart meter's surge protection feature, and these features meet both standards. Tr. at 224.

53. The Federal Communications Commission (FCC) established safe levels, or maximum permissible exposure limits (MPE), for RF transmissions in the United States. Tr. at 256-57; DLC Ex. G-2 and G-3.

54. To set its MPE limits, the FCC relied on input from several health agencies such as the National Council for Radiation Protection, the Institute of Electrical and Electronics Engineers (IEEE), the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the Environmental Protection Agency, and the Food and Drug Administration (FDA). Tr. at 303.

55. The FCC considered both the thermal and non-thermal effects of smart meters in setting its MPE limits. Tr. at 304.

56. The FCC's standards are based on a comprehensive evaluation of the available body of scientific literature and protect against all known and established health effects, including those against potentially vulnerable groups. Tr. at 302-03.

57. In 2019, the FCC concluded after a six-year review that its MPE limits are still valid and do not need to be revised. Tr. at 303-04.

58. The FCC's regulations establish that the MPE to RF fields emitted by the LAN radio is 0.61 milliwatts per square centimeter. Tr. at 195.

59. The FCC's regulations establish that the MPE to RF fields emitted by the ZigBee radio is 1.0 milowatt per square centimeter. Tr. at 195-96.

60. 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. Tr. at 258-59; DLC Ex. G-2, G-3.

61. ICNIRP is a non-governmental agency that is formally recognized by the World Health Organization for establishing standards on electric and magnetic field exposure, including RF exposure, that reviewed the entire available body of scientific research on non-ionizing electromagnetic waves and developed exposure standards through weight-of-the-evidence reviews. Tr. at 258-59, 306.

62. Both radios in the Company's smart meters comply with the exposure limits set by the FCC, IEEE, and ICNIRP, even if the radios operated all day long (which they do not). Tr. at 195, 198, 200, 259-60.

63. 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. at 188-89, 302-03; DLC Ex. G-2, G-3.

64. Complainant would be exposed to much higher levels of RF from many other existing sources, such as her phone, wireless router, and local broadcast stations. DLC Ex. G-2, G-3.

65. In 2011, the FCC issued a “Grant of Equipment Authorization,” which is the agency’s official verification that the radios in the Company’s smart meters meet the FCC’s requirements. DLC Ex. F-6; Tr. at 199.

66. The FCC’s Grant of Equipment Authorization remains in effect today. Tr. at 199.

67. Comprehensive weight of the evidence reviews evaluating the potential health effects of RF were conducted by ICNIRP in 2009, the Health Protection Agency of the United Kingdom in 2012, the International Agency for Research on Cancer (IARC) in 2013, and the European Union Scientific Committee on Non-Emerging and Newly-Identified Health Risks (SCENIHR) in 2015, and the FDA in 2020. Tr. at 299, 305-06; DLC Ex. G-1.

68. All of these studies concluded that the scientific evidence does not establish a cause-and-effect relationship between RF exposure below currently existing, scientifically-based exposure guidelines and any adverse health effects, including cancer and non-cancer outcomes. Tr. at 307-308; DLC Ex. G-1.

69. The World Health Organization (WHO) also found that the existing scientific evidence does not confirm the existence of any adverse health effects below established guideline-level values. Tr. at 295-96, 309; DLC Ex. G-1.

70. 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 analyzing the deployment of roughly 13,000 OpenWay smart meters, which are being deployed by Duquesne Light. Tr. at 192-93; DLC Ex. E-2.

71. The study found that the average duty cycle of the LAN radio is just 0.21%, meaning 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. at 193-94, 197; DLC Ex. E-2, G-2, G-3.

72. 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. DLC Ex. G-2, G-3.

73. 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. DLC Ex. G-2, G-3.

74. 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. DLC Ex. G-2, G-3.

75. A smart meter's duty cycle is very low compared to other RF-emitting devices such as television and radio broadcast stations, which have 100 percent duty cycles. Tr. at 252.

76. Because smart meters communicate with other nearby meters, their RF communications are purposefully directed through the front of the meter and away from the customer's home; this is known as propagation. Tr. at 188-89.

77. RF emitted from the back of a smart meter is roughly 10 times lower than the amount transmitted through the front. Tr. at 189.

78. The smart meter also sits in a metal box, which further limits the amount of RF directed towards the home. Tr. at 189.

79. The principle of attenuation establishes that a person's RF exposure rapidly decreases as their distance from a smart meter increases. Tr. at 252-54.

80. Because the smart meter sends out a finite amount of power, as the distance from the smart meter increases, the total power becomes distributed over a larger area and loses force. For example, a person standing 10 yards from a smart meter receives about 100 times less RF exposure than someone standing one yard away. Tr. at 253-54.

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

82. ANSI C12.1 and ANSI C12.20 establish safety and performance criteria for electric revenue meters. Tr. at 215.

83. 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. at 219-20; DLC Ex. F-1.

84. Itron also submitted the Company's smart meter to UL for testing under UL 2735 (Standards for Safety for Electric Utility Meters). Tr. at 215.

85. UL 2735 is a certification standard that applies to electric utility meters, including smart meters. Tr. at 216.

86. If a meter is UL-certified, it means that it has undergone extensive testing by UL and meets UL's certification standards. Tr. at 216.

87. UL certified that Duquesne Light's smart meter complies with UL 2735, which validates that it is safe and that the meter has passed UL's flammability tests. Tr. at 216, 220-21; DLC Ex. F-2.

88. Itron performed its own flammability tests on the smart meter being deployed by Duquesne Light. Specifically, Itron injected a "glow wire" into the base of a smart meter for 30 seconds at a temperature of 1,760 degrees Fahrenheit to ensure that the meter did not catch on fire. Tr. at 221.

89. Duquesne Light's smart meter passed Itron's flammability tests. Tr. at 221.

90. Duquesne Light has installed roughly 620,000 smart meters throughout its service territory. Tr. at 326.

91. The Company's smart meters have not caused any fires. Tr. at 326.

92. The type of Itron smart meter being deployed by Duquesne Light has never caused a fire since it has been deployed by Itron and has never been recalled from the field for safety, quality, or reliability purposes. Tr. at 222-24.

93. Analog and smart meters measure electric consumption in the same way, and the electronics in both types of meters are connected on the Company's side of the meter. The energy used to power the meter's electronics is not included as part of the customer's metered electric consumption. Tr. at 329-30.

94. Complainant presented no evidence to support her claim that smart meters consume more energy than analog meters.

95. Complainant placed a lock on the meter at the Service Address; the lock was in place when Duquesne Light personnel visited the Service Address on August 10, 2018. Tr. at 170-71.

96. Complainant was not present when Duquesne Light's personnel visited the Service Address on August 10, 2018. Tr. at 169-70.

97. Duquesne Light did not remove the lock that was on the meter on August 10, 2018, and did not attempt to install a smart meter at the Service Address on that date. Tr. at 170-71.

## DISCUSSION

### Legal Standards

Under Section 332(a) of the Public Utility Code,<sup>7</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>8</sup> The preponderance of evidence standard requires proof by a greater weight of the evidence.<sup>9</sup> This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.<sup>10</sup>

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<sup>7</sup> 66 Pa.C.S. § 332(a).

<sup>8</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

<sup>9</sup> *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

<sup>10</sup> *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008).

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>11</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 sufficiently rebutted, 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>12</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.

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<sup>11</sup> *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944).

<sup>12</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 Pa.-Am. 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 (Order entered Oct. 29, 2008).

- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.<sup>[13]</sup>

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 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.<sup>14</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>15</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>16</sup>

The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services.<sup>17</sup>

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<sup>13</sup> 66 Pa.C.S. § 2708(f).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1006.

<sup>16</sup> *Id.* at 1005.

<sup>17</sup> *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).<sup>18</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>19</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 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>20</sup>

In this proceeding, Complainant has argued that a smart meter should not be installed, or installation delayed, at her Service Location. This argument was based primarily upon the Complainant's personal beliefs, including that smart meters present health and safety issues.

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>21</sup>

Complainant failed to present any evidence or cite any authority to support her averment that Respondent was not required to install a smart meter at her residence or that she was permitted to opt-out from the smart meter program. In addition, 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.

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<sup>18</sup> 66 Pa.C.S. §§ 101–3316.

<sup>19</sup> 66 Pa.C.S. § 2807(f).

<sup>20</sup> 66 Pa.C.S. § 2807(f)(2).

<sup>21</sup> *Povacz II* at 992.

## 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>22</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 Supreme Court explained that inconclusive evidence, evidence that does not lead to a conclusion of a definite result one way or the other, does not meet even the minimal requirements of the preponderance of the evidence standard.<sup>23</sup>

Complainant presented Joshua Hart, the director of the advocacy group “Stopsmartmeters.org” as a witness. Tr. at 40. Complainant offered Mr. Hart as an expert witness on the public health effects of smart meter installations, although he is not a medical doctor, epidemiologist, public health professional, certified electrician, or electrical engineer. Tr. at 46-47, 54-55. Mr. Hart testified that he has never met Complainant, has never seen any medical records regarding her alleged health symptoms, including electro-hypersensitivity syndrome, and has never talked to her treating physicians. Tr. at 56, 61-62.

Due to his lack of qualifications, Duquesne Light moved to preclude Mr. Hart from testifying as an expert witness (Tr. at 64, 77) and Mr. Hart was not accepted as an expert witness but was allowed to testify as a fact witness.<sup>24</sup> Tr. at 76-79.

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<sup>22</sup> 66 Pa.C.S. § 1501.

<sup>23</sup> *Povacz II* at 1005.

<sup>24</sup> A person qualifies as an expert witness if, through education, occupation, or practical experience, the witness has a “reasonable pretension to specialized knowledge” on the matter at issue. *Ruzzi v. Butler Petroleum Co.*, 588 A.2d 1, 10 (Pa. 1991); *Kursis*

After Mr. Hart's testimony, Complainant testified as a fact witness, claiming that smart meters emit RF "24/7" and have adverse health effects on "all living things," especially people who suffer from electro hypersensitivity syndrome (EHS). Tr. at 138. Complainant believes she suffers from EHS,<sup>25</sup> although no doctor has ever diagnosed her with this condition, and Dr. Mezei explained that EHS is not a recognized medical diagnosis.<sup>26</sup> Complainant also produced no medical records at the hearing, nor any records establishing a link between RF and her alleged health problems.<sup>27</sup>

As for safety concerns, Complainant contended that Duquesne Light's smart meters "catch on fire in ways that analog meters do not."<sup>28</sup> However, Complainant presented no evidence to support this claim, nor did she offer any evidence that Duquesne Light's smart meters have ever caused a fire.<sup>29</sup>

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*v. Baldwin-Lima-Hamilton Corp.*, 319 A.2d 914, 924 (Pa. 1974). Pennsylvania courts have long held that testimony regarding the existence or nonexistence of a disease or disorder requires the training and experience of a medical expert. *Travellers Ins. Co. v. Heppenstall Co.*, 61 A.2d 809 (Pa. 1948) (matters involving the existence or nonexistence of a disease require the training and experience of a medical expert); *Collins v. Cooper*, 746 A.2d 615 (Pa. Super. Ct. 2000) (same). The testimony at the hearing established that Mr. Hart possessed no medical training or experience and thus was not qualified to testify as an expert about the alleged public health effects of smart meter installations. Specifically, Mr. Hart testified that he was not a medical doctor, epidemiologist, or public health professional. Tr. at 54-55. He also had little knowledge of Complainant's alleged medical issues because he has never met Complainant or spoke to her treating physicians and has never reviewed her medical records. Tr. at 56, 61-62. For these reasons, Mr. Hart was excluded from testifying as an expert witness.

<sup>25</sup> Tr. at 176.

<sup>26</sup> Tr. at 174-76, 316-17.

<sup>27</sup> Tr. at 174-75, 180-81.

<sup>28</sup> Tr. at 160.

<sup>29</sup> Tr. at 166-67.

Since Respondent must install a smart meter at the Service Address, the only remaining issue is whether the Company’s smart meter practices are adequate, efficient, safe, and reasonable, as required by Section 1501 of the Public Utility Code.<sup>30</sup> The evidence establishes that Respondent has provided adequate, efficient, safe, and reasonable service to Complainant. Complainant’s health and safety claims must be rejected because she presented no credible evidence to support her allegations. Moreover, Respondent presented overwhelming evidence that its smart meters comply with all health and safety standards and that it provided reasonable service to Complainant.

Complainant also raised several other issues during her testimony, which were not relevant to the material issues in this case or were contradicted by the record evidence. Complainant asserted that Act 129 does not require Duquesne Light to install a smart meter at the Service Address and suggested that it may violate the Fourth and Fourteenth Amendments to the United States Constitution and Article I of the Pennsylvania Constitution.<sup>31</sup> She also claimed that the FCC’s RF safety standards are too high.<sup>32</sup> Complainant further alleged that “smart meters actually consume energy unlike analog meters,” and that the ZigBee radio violates Act 129 because it can communicate with devices in her home.<sup>33</sup> Complainant also asserted that Duquesne Light tried to install a smart meter at the Service Address during a “heavy rainstorm” on August 10, 2018, although she later admitted that she was not even home at the time.<sup>34</sup>

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<sup>30</sup> 66 Pa.C.S. § 1501.

<sup>31</sup> Tr. at 113, 118-19.

<sup>32</sup> Tr. at 134.

<sup>33</sup> Tr. at 141, 144, 171-72.

<sup>34</sup> Tr. at 158-59, 169-70.

Duquesne Light presented testimony from two expert witnesses: Dr. Benjamin Cotts and Dr. Gabor Mezei.<sup>35</sup> Duquesne Light also presented testimony from four fact witnesses: Michael Belanger (Product Manager for Itron); Steve Wright (Senior Product Manager for Electricity Metering for Itron); Michael Secchiutti (Senior Manager of Smart Meter Operations for Duquesne Light); and Ronald Dornin (Interim Manager of Maintenance Program Planning for Duquesne Light).<sup>36</sup>

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>37</sup> The Commonwealth Court has clarified a complainant’s burden of proof, instructing, “[c]onsumers may establish a violation of that mandate by showing the wireless smart meter requirement is either unsafe *or* unreasonable.”<sup>38</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.

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<sup>35</sup> The Presiding ALJ accepted Dr. Cotts 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. Tr. at 234-35. The Presiding ALJ accepted Dr. Mezei as an expert witness in the field of epidemiology, health sciences, and research with an emphasis on electromagnetic fields and radiofrequency fields. Tr. at 295.

<sup>36</sup> Tr. at 183-210; 211-228; 324-338; 339-347.

<sup>37</sup> *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (Order entered Jan. 28, 2016) (internal citation omitted). *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, at 10 (Opinion and Order entered May 3, 2018).

<sup>38</sup> *Povacz I* at 491 (emphasis in original).

Complainant presented no expert testimony to corroborate her health or 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.

Despite failing to support her allegations with any reliable expert evidence, Respondent still rebutted the Complainant's allegations related to the Company's smart meters. The Complainant failed to demonstrate that the installation of a smart meter at her service location would constitute unsafe, unreasonable or inadequate service under Section 1501 of the Code.

Complainant raised concerns about health, safety, and privacy, but these claims consisted solely of Complainant's lay opinions and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence.<sup>39</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.

#### Whether Complainant is Nevertheless Entitled to An Accommodation

Complainant filed her Complaint objecting to the installation of a smart meter at her residence. The only relief or accommodation requested by Complainant was that the Commission not allow Respondent to terminate her service until this dispute is resolved due to the misinterpretation of state law or until a state law is specifically passed to specifically allow opt-out from smart meter programs.

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<sup>39</sup> *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Given its interpretation of Act 129 as mandating 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>[40]</sup>

Here, Complainant failed to present substantial evidence that the installation of a smart meter would be unsafe or unreasonable under Section 1501. As Complainant failed to establish a violation of Section 1501, the Commission is unable, under the circumstances, to provide her with an administrative remedy.

#### Termination Of Service For Failure To Provide Meter Access

Respondent's Tariff Rule 22 authorizes Company representatives to access the Company's equipment for a host of enumerated reasons:

**22. ACCESS TO PREMISES** Company representatives, who are properly identified, **shall have full and free access to the customer's premises at all reasonable times for the purpose of reading Company meters, for inspection and repairs, for removal of Company property, or for any other purpose incident to the service. The Company shall have the right to access customer owned facilities and equipment at all hours for the purposes of responding to an emergency, restoring electric service, rendering the electric facilities safe and reliable, or for the purpose of reducing the likelihood of damage to the Company's facilities or equipment.** The customer should

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<sup>40</sup> *Povacz II* at 1034-38.

immediately communicate with the Company in case of any question as to the authority or credentials of Company representatives. A customer's failure to provide access may be grounds for service termination pursuant to Rule No. 33 herein.<sup>[41]</sup>

Rule 33 authorizes Duquesne Light to terminate service and remove its equipment from the customer's property if the Company is blocked proper access to its equipment:

**33. INACCESSIBILITY The Company may terminate electric service and remove its equipment from the premises upon reasonable notice in case meter readers or other authorized representatives of the Company cannot gain admittance or are refused admittance to the premises for the purposes of reading Company meters, inspection and repairs, removal of Company property, responding to an emergency, restoring electric service, rendering the electric facilities safe and reliable, or for any other purpose incident to the service or in case the customer interferes with Company representatives in the performance of their duties.** When a residential customer or a residence is involved, the Company will comply with the provisions of 52 Pa. Code Chapter 56, "Standards and Billing Practices for Residential Utility Service" and 66 Pa.C.S. § 1406, "Termination of Utility Service."<sup>[42]</sup>

The Commission has recognized that a utility can terminate a customer's service if the customer prevents the utility from accessing its equipment.<sup>43</sup> The evidence established that Complainant prevented the Company from exchanging the meter on

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<sup>41</sup> DLC Ex. C (emphasis added).

<sup>42</sup> DLC Ex. C (emphasis added).

<sup>43</sup> 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *Landis v. PPL Elec. Utils. Corp.*, Docket No. C-2018-3002142 (Opinion and Order entered May 21, 2020); *Beglin v. Pa. Elec. Co.*, Docket No. C-2018-3005272 (Final Order entered Aug. 13, 2020).

Complainant's premises. If Complainant continues to prevent the meter exchange, then Respondent may terminate Complainant's service subject to applicable law and Respondent's Tariffs.

### Conclusion

Complainant was provided a full and fair hearing and an opportunity to present evidence regarding her request for relief as well as her claims, including whether the installation of a smart meter would be unsafe or unreasonable under Section 1501. After the conclusion of the hearing, the Commonwealth Court decided the *Povacz I* case and ultimately the Pennsylvania Supreme Court issued its opinion in *Povacz II*. Subsequently, the record was reopened, and the parties were provided with an extension of time to file briefs or to supplement briefs already filed in this proceeding and to advance any appropriate requests for relief.

The record in the instant case is complete and Complainant failed to establish a claim under Section 1501. Under the circumstances, the Commission is unable to provide an accommodation to Complainant.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. §§ 701, 1501.
2. 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 (Pa. Cmwlth. 2008) (citation omitted).

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. 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 (Order entered Jan. 28, 2016) (citation omitted).

7. 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.

8. Consumers may establish a violation of that mandate by showing the wireless smart meter requirement is either unsafe *or* unreasonable. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

9. 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, 1014 (Pa. 2022).

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

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

12. 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).

13. Complainant failed to carry her burden of proof establishing that Duquesne Light Company 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.

14. Complainant failed to carry her burden of proof establishing that Duquesne Light Company provided unsafe or unreasonable service. 66 Pa.C.S. §§ 332(a), 1501.

