

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Larry R. Kramer and	:	
Ellen M. Kramer	:	
	:	
v.	:	C-2017-2630621
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

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

BACKGROUND

Larry R. Kramer and Ellen M. Kramer (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent, Met-Ed or Company) alleging, *inter alia*, that Respondent threatened to shut off their service and objecting to the installation of a smart meter at their home. Complainants averred that smart meters are unsafe, present privacy concerns, are vulnerable to cyber threats and hacking, are inferior in

quality to analog meters and present serious health concerns. Complainants further averred that they have concerns including radio frequency exposure from the smart meters, reliability issues, billing concerns and that the smart meter plan is being applied in a discriminatory manner. Complainants alleged a violation of their Constitutional rights and raise service concerns averring they have been bullied, harassed and bureaucratically terrorized by Respondent. Complainants averred there are legislative remedies available to them and complain about the shut-off notice and the communication from Respondent regarding the threat to terminate their service. As relief, Complainants requested that the Commission order Respondent to forego installation of a smart meter at their residence, allow Complainants to seek legislative relief, refrain from harassing and intimidating customers and refrain from charging customers for smart meters where the smart meters have not been installed.

On November 13, 2017, Respondent filed an Answer and New Matter to the Complaint, essentially arguing that Complainants' service is subject to termination for refusing to permit the exchange of their meter and denying the material allegations set forth in the Complaint. Respondent averred that Complainants have refused to permit technicians to install a smart meter in their home. Respondent further averred it is required by Act 129 of 2008,¹ to install a smart meter at Complainant's residence.

On November 13, 2017, Respondent also filed Preliminary Objections to the Complaint. Respondent essentially averred that Complainants' request to forego installation of a smart meter is not legally recoverable in this proceeding. Respondent also averred that holding a hearing in this proceeding is not in the public interest. Respondent averred that it is required by statute to install a smart meter at the service location. Finally, Respondent averred that Complainants failed to allege that Respondent has violated the Code, Commission regulations or orders that can be the basis of any

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

finding against the Company, and therefore should be dismissed as being legally insufficient under 52 Pa.Code Section 5.101(a)(4).

Complainants filed a response to the Preliminary Objections on November 27, 2017.

A Motion Judge Assignment Notice issued on December 6, 2017, was received by the undersigned presiding officer on December 14, 2017, and assigned the undersigned presiding officer to this proceeding.

Respondent's Preliminary Objections were denied by Interim Order entered on December 26, 2017, and this matter was referred for mediation review.

On June 14, 2018, Respondent filed a Motion to Compel Responses to Interrogatories and Requests for Production of Documents. This motion included a notice to plead, requiring Complainants to file a written response to the Motion within five days from the service of the notice dated June 14, 2018. The Motion to Compel averred that interrogatories and requests for production of documents were served upon Complainants on January 23, 2018. The Motion further averred that Complainants did not serve responses to the discovery requests and objected that the discovery requests were not mailed to Complainants timely.

On June 27, 2018, the undersigned received a letter and two-page attachment from Complainants dated June 25, 2018, requesting a reasonable extension of time to respond to the Motion to Compel. On July 18, 2018, an Interim Order was entered granting Complainants' Request for Additional Time to Respond to Respondent's Motion to Compel. On July 30, 2018, the undersigned presiding officer received a cover letter dated July 20, 2018, and Complainants' Response to Met-Ed's Motion to Compel.

On August 30, 2018, an Interim Order was entered granting the Company's Motion to Compel and ordering the Complainants to provide full, complete objections and/or responses to the Company's Discovery Requests on or before September 14, 2018. The Interim Order further provided that the discovery requests propounded by Respondent to Complainants were proper under the circumstances and ordered Complainants to serve full and complete responses to the discovery requests.

In a letter dated September 13, 2018, Complainants responded to the Interim Order and essentially restated their prior objections, which were already rejected in the Interim Order granting the Company's August 30, 2018 Motion to Compel.

On October 30, 2018, Respondent filed a Motion to Dismiss the Complaint for the failure of Complainants to comply with the Interim Order issued in this proceeding. In the Motion to Dismiss, Respondent asserted that Complainants' failure to provide any response to the Company's discovery requests demonstrates their lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. Respondent argued the Formal Complaint in this proceeding should be dismissed in its entirety.

On November 7, 2018, the undersigned presiding officer received a "Response to Motion to Dismiss" from Complainants dated November 5, 2018. Complainants argued, in part, that Respondent incorrectly asserted that the undersigned presiding officer denied Complainants objections to Respondents discovery requests and restated their argument that a resolution conference was not held in this proceeding.

On December 5, 2018, an Interim Order was entered again denying Complainants objections to Respondents discovery requests and requiring Complainants to serve full and complete responses to the interrogatories and requests for production of documents forwarded by Respondent to Complainants on January 23, 2018, and file and

serve a certificate of service regarding said service, on or before December 27, 2018. The Parties were further permitted to request the scheduling of a prehearing conference in this proceeding, in writing. The Parties were also directed to comply with the terms and provisions of the interim orders previously entered in this case.

On December 27, 2018, Complainants filed a cover letter dated December 27, 2018, indicating that their Answers to Interrogatories and Requests for Documents (Set I) were attached. The letter did not indicate that a copy of the letter was provided to the undersigned Presiding Officer and a copy of the letter was not provided to the undersigned Presiding Officer.

In addition, on that date, Complainants filed a Certificate of Service certifying that on December 27, 2018, Complainants served a true copy of the “Response to Met-Ed’s Interrogatories and Request for Documents (Set I) of Larry R. Kramer and Ellen M. Kramer and a Stipulated Protective Agreement upon the individuals listed below, in accordance with the requirements of 52 Pa.Code § 1.54.” The undersigned Presiding Officer was listed as one of the individuals to whom copies of the documents were sent. The undersigned Presiding Officer was provided with a copy of the “Stipulated Protective Agreement” and an “Acknowledgement Of Stipulated Protective Agreement,” however the undersigned Presiding Officer was *not* provided with a copy of the cover letter from Complainants dated December 27, 2018, nor Complainant’s “Response to Met-Ed’s Interrogatories and Request for Documents (Set I) of Larry R. Kramer and Ellen M. Kramer,” which is inconsistent with Complainants’ representation in the certificate of service.

Based upon Complainants’ representations that discovery responses were served upon Respondent on December 27, 2018, an Interim Order was entered on February 6, 2019, denying the Motion to Dismiss filed by Respondent for Complainants’ failure to provide responses to the discovery requests propounded by Respondent.

On January 25, 2019, the undersigned Presiding Officer received correspondence from Complainants dated January 23, 2019, and a Request for an Extension of Time to the Initial Litigation Schedule. The request stated, *inter alia*, that Complainants began researching and writing a book in April of 2015 regarding the 250th anniversary of the founding of Myerstown, Pennsylvania and that they needed approximately two more months to complete the book. Complainants also indicated that they lost information stored on their computer.

An Interim Order was entered on October 15, 2018, establishing a litigation schedule, and requiring the Parties to exchange the identity and written summary of the expected fact and expert witnesses not later than January 25, 2019. Furthermore, the Order required the Parties to conclude discovery by April 25, 2019.

On January 31, 2019, an Interim Order was entered denying the Request for an Extension of Time to the Initial Litigation Schedule filed by Complainants and dated January 23, 2019.

Complainants forwarded a letter to the undersigned Presiding Officer dated February 6, 2019, once again requesting an extension of time, of at least 120 or 150 days, and further stated, “could we please have the time and opportunity to submit our expert witnesses and their summary of testimony.” No other specifics were provided regarding the requests for relief by Complainants. Complainants essentially raised the same arguments as were stated in their Request for an Extension of Time to the Initial Litigation Schedule filed by Complainants and dated January 23, 2019. This request had already been denied by Interim Order entered on January 31, 2019.

On February 15, 2019, an Interim Order was entered denying Complainants' Second Request for an Extension of Time to the Initial Litigation Schedule.

On May 13, 2019, the Company filed a Status Report and, on or about May 20, 2019, the Complainants submitted a Status Report pursuant to the Interim Order entered October 15, 2019.

On May 25, 2019, the Complainants served their Set IV Interrogatories and Request for Production of Documents (Set IV Discovery Requests). On June 6, 2019, the Company filed its objections to Interrogatory Numbers 1, 6-7, 15-17, 26-29, 36-37, 39, 41-42, 44 and 46 of the Set IV Discovery Requests. On June 17, 2019, the Complainants filed a Motion to Compel all responses related to the Set IV Discovery Requests. On June 25, 2019, Respondent filed its response to Complainants' Motion to Compel Responses to Interrogatories and Document Requests.

An Interim Order was entered on December 6, 2019, denying Complainants' Motion to Compel.

On December 20, 2019, the undersigned Presiding Officer received a cover letter from Complainants dated December 18, 2019, along with a document entitled "Reconsideration of Motion to Compel Met-Ed to Answer Complainants' Interrogatories and Request for Production of Documents (Set IV)." The document was directed to the Commission's Secretary and did not include a Notice to Plead directed to Respondent. The document appeared to request the same relief that was denied by Interim Order entered on December 6, 2019, and was treated as a request for reconsideration of the Interim Order entered on December 6, 2019.

On March 6, 2020, an Interim Order was entered denying the Request for Reconsideration of Motion to Compel Met-Ed to Answer Complainants' Interrogatories and Request for Production of Documents (Set IV).

On March 6, 2020, an Interim Order was entered requiring the Parties to provide status reports, no later than March 18, 2020, which were to include dates when the Parties and their witnesses would be available and proposed locations for an evidentiary hearing anticipated to be held in June 2020.

On March 18, 2020, the Parties filed their status reports. The Complainants' status report failed to provide any proposed dates for an evidentiary hearing. Accordingly, on May 26, 2020, a Hearing Notice was issued scheduling a telephonic evidentiary hearing for June 29, 2020. That same day, a Prehearing Order was entered setting forth various procedural rules and requirements for the proceeding and information about participating in the telephonic hearing. In addition, the Parties were advised that if they intended to present any documents or exhibits for my consideration at the hearing, or if they intended to have a witness refer to or rely upon any material of any kind, document or proposed exhibit, they must exchange copies on or before Friday, June 15, 2020.

On May 26, 2020, Complainants filed a Response to Interim Order of May 26, 2020.

On June 5, 2020, Complainants filed a Response to Interim Order (Motion) wherein Complainants alleged that: (1) Respondent and Mediator Cynthia Lehman participated in *ex parte* communications; (2) Respondent failed to reach out to the Complainants to set a resolution conference in accordance with the Interim Order dated January 12, 2018; (3) that the undersigned presiding officer should recuse himself from

this case; and (4) the June 29, 2020 hearing should be continued. On June 11, 2020, Respondent filed an Answer to Complainants' June 5, 2020 Response to Interim Order.

On June 15, 2020, Complainants filed a Motion dated June 14, 2020, essentially averring that they wanted Respondent to comply with the resolution conference as ordered on January 12, 2018; that the deadline to submit their exhibits be extended until on or after September 20, 2020; that the hearing be delayed based upon vague references to a family member being in the hospital and a child having surgery; that a different administrative law judge be assigned to the proceeding; that Complainants list of witnesses be accepted although they were not identified; and that the hearing be delayed until after September 20, 2020 when at least four of their witnesses would be available.

On June 16, 2020, an Interim Order was entered denying Complainants request for disqualification of the undersigned presiding officer; denying the request to require Respondent to participate in a resolution conference; denying the request to continue the evidentiary hearing in this proceeding; and providing that any requests to permit testimony from witnesses or to admit evidence into the record would be addressed at the evidentiary hearing.

A Telephonic Evidentiary hearing was held in this matter on June 29, 2020. Complainants were present and participated in the hearing. Respondent was present and was represented by counsel. At the hearing, the Parties were advised that they may, but were not required to submit briefs, and a deadline to submit briefs of September 30, 2020, was established.

On September 21, 2020, Complainants submitted an email requesting an extension of the briefing schedule.

On September 30, 2020, an Interim Order was entered extending the deadline to submit briefs from September 30, 2020, until November 9, 2020. In addition, the Parties were excused from including proposed findings of fact, conclusions of law or proposed ordering paragraphs, or references to the testimony or exhibits from the evidentiary hearing.

Povacz I, Povacz II, and The Commission's Stay Order

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pa. Pub. Util. Comm'n*,² (*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 March 28, 2019 and May 9, 2019 Orders addressing the complaints of Maria Povacz and related cases.³

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 electric distribution companies (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Code⁴ (*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

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

³ *Povacz I* at 495.

⁴ 66 Pa.C.S. § 1501.

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.

Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court’s disposition of *Povacz II*.

On August 16, 2022, the Supreme Court issued its Opinion in *Povacz II*, affirming the Commission’s determinations in all respects.⁵ While the Supreme Court affirmed 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;⁶ the Supreme Court reversed the Commonwealth Court’s determination that Act 129 was not mandatory. Instead, the Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs.⁷

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.

⁵ *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

⁶ *Povacz II* at 1014.

⁷ *Povacz II* at 992.

The Instant Case

In the instant case, the deadline to file briefs was extended by the undersigned presiding officer at Complainant's request, until November 9, 2020. However, on November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, staying the proceeding. The stay was lifted by Order of the Commission on November 9, 2023. Under the circumstances, an Interim Order was entered on November 27, 2023, extending the deadline to file briefs to January 10, 2024.

On November 27, 2023, Complainants provided the undersigned presiding officer with a request to extend the briefing deadline, requesting an additional extension of 120 days. On December 13, 2023, the undersigned presiding officer received a response from counsel for Respondent objecting to Complainant's latest request for an additional extension.

On December 20, 2023, an Interim Order was entered requiring that the Parties file their briefs and any other appropriate requests for relief, on or before February 1, 2024. The Parties were not required to include proposed findings of fact, conclusions of law or proposed ordering paragraphs, or to include specific references to the testimony or exhibits from the evidentiary hearing. The Parties were advised that no further extensions to file briefs would be granted.

On February 1, 2024, Respondent filed its main brief. On February 6, 2024, Complainant's filed a request for an extension of the briefing schedule. Complainants explained that Mrs. Kramer was suffering from medical issues and requested an extension of 180 days to file their brief.

On June 4, 2024, an Interim Order was entered extending the deadline for Complainants to file their brief until July 1, 2024. The Order provided that Respondent may file a reply brief not later than July 31, 2024, and that no further extensions to file briefs would be granted. No brief was filed by Complainants.

An Interim Order was entered on August 19, 2024, closing the evidentiary record in this proceeding.

FINDINGS OF FACT

1. Complainants are Larry R. Kramer and Ellen M. Kramer who reside at 101 South College Street, Myerstown, Pennsylvania. (Service Location or Service Address).

2. Respondent is Metropolitan Edison Company, an electrical distribution company that provides residential electrical service to Complainants at the Service Address.

3. Act 129 requires electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.⁸

4. Act 129 provides a list of required smart meter functionality, which was supplemented by Commission order.⁹

⁸ Met-Ed Exh. PD-1.

⁹ Met-Ed Exh. PD-2.

5. The Company's Smart Meter Technology Procurement and Installation Plan was filed on August 10, 2009.¹⁰

6. The Commission ultimately approved the Company's Smart Meter Deployment Plan, with modifications, on June 9, 2010.¹¹

7. On December 31, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (Companies) filed their Joint Petition for Approval of their Smart Meter Deployment 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.¹²

¹⁰. *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Petition dated Aug. 10, 2009).

¹¹. *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).

¹² *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed Dec. 31, 2012).

8. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *inter alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.¹³

9. The Company presented one witness in this proceeding, Mr. John C. Ahr. Mr. Ahr was employed by FirstEnergy Service Company with the title Advisor, Regulatory Compliance – Smart Meters.¹⁴

10. Mr. Ahr's testimony explained the Company's Smart Meter Deployment Plan¹⁵ and smart meter safety.¹⁶

11. Customers are not permitted to opt-out of the installation of smart meters under Act 129.¹⁷

12. The Company's smart meters comply with applicable requirements and standards for smart meters adopted by the Federal Communications Commission and the American National Standards Institute Tests.¹⁸

¹³ *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Revised Plan filed June 16, 2014).

¹⁴ Tr. 170.

¹⁵ Tr. 191-194.

¹⁶ *Id.*

¹⁷ Tr. 195.

¹⁸ Tr. 206.

13. The Company's smart meters are Underwriters Laboratories (UL) certified, which means the meters were tested for Compliant UL standard 2735.¹⁹

14. The Complainants did not offer substantive testimony on any issues relating to the health, safety, or reasonableness of the Company's smart meters or the deployment thereof.

15. The Complainants did not offer expert testimony on any of the issues raised in the Complaint.

16. Complainant did not present any evidence to establish that the Respondent has violated any Commission order, statute or regulation.²⁰

DISCUSSION

Legal Standards

Under Section 332(a) of the Public Utility Code, the proponent of a rule or order has the burden of proof.²¹ 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.”²² The preponderance of evidence standard requires proof by a greater weight of the

¹⁹ Tr. 227.

²⁰ Tr. 218.

²¹ 66 Pa.C.S. § 332(a).

²² *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

evidence.²³ This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.²⁴

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.²⁵ 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.²⁶

In order for the Commission to sustain a formal complaint, the Complainants must demonstrate that an “act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”²⁷ Section 1501 of the Public Utility Code states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”²⁸ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is

²³ *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

²⁴ *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

²⁵ *MacDonald v. Pa. R.R. Co.*, 36 A.2d 492 (Pa. 1944).

²⁶ *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 County, Pa.*, Docket No. A-212285F0148 (Order entered Oct. 29, 2008).

²⁷ 66 Pa.C.S. § 701.

²⁸ 66 Pa.C.S. § 1501 (Section 1501).

whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.²⁹ The Court in *Povacz II* made clear that Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, and that Complainants seeking smart meter related relief must carry a two-fold burden of proof for Section 1501 claims involving the safety of smart meters and radio-frequency (RF) emissions.³⁰

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 meter, 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 the smart meter did not cause the alleged harm.³¹

Once the parties have presented their evidence, the onus then falls on the administrative law judge (ALJ) to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm.³² The Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.³³ Further, the Supreme Court held that if a customer establishes by a preponderance of the evidence,

²⁹ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016).

³⁰ *See Povacz II.*

³¹ *Id.* at 1008.

³² *Id.* at 1006.

³³ *Id.* at 1005.

based on the totality of the circumstances, that smart meter service violates Section 1501, they may be entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff.³⁴

The Commission has exclusive jurisdiction to adjudicate “issues involving the reasonableness, adequacy, and sufficiency” of a public utility’s facilities and services.³⁵

Smart Meter Mandate

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (Code).³⁶ Act 129 requires 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.³⁷ 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.³⁸

Complainants requested that the Commission order Respondent to forego installation of a smart meter at their residence, allow Complainants to seek legislative relief, refrain from harassing and intimidating customers and refrain from charging customers for smart meters where the smart meters have not been installed.

³⁴ *Id.* at 1015.

³⁵ *See Elkin v. Bell of Pa.*, 420 A.2d 371, 374 (Pa. 1980) (citations omitted).

³⁶ 66 Pa.C.S. § 101–1316.

³⁷ 66 Pa.C.S. § 2807(f).

³⁸ 66 Pa.C.S. § 2807(f)(2)

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.³⁹

Complainants failed to present any evidence or cite any authority to support their averment that Respondent was not required to install a smart meter at their residence. In addition, Complainants 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.

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. 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.⁴⁰

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

³⁹ *Povacz II* at 992.

⁴⁰ *Povacz II* at 1005.

of a smart meter will constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances [of the] case.”⁴¹ 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.”⁴² 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.

Complainants alleged various vague health, safety, and privacy concerns related to smart meters, but failed to provide any reliable evidence in support of these allegations at the evidentiary hearing.

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

⁴¹ *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064 at 23 (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).

⁴² *Povacz I* at 491 (emphasis in original).

interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.⁴³

The Complainants presented no expert testimony to corroborate their health, safety, or privacy allegations contained in the Complaint. In addition, the Complainants presented no evidence that they are qualified to offer expert testimony as an engineer, doctor or other medical professional. To the extent Complainants relied upon hearsay or other inadmissible evidence to attempt to support their claims, this evidence was properly objected to upon hearsay and relevance grounds and cannot support a finding of fact.

As such, the Complainants failed to demonstrate that the installation of a smart meter at the Service Location would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code.

Complainants also raised several other issues during their testimony, which were not relevant to the material issues in this case or were not supported by the record evidence. Specifically, Complaints raised vague allegations concerning service issues, violations of their Constitutional rights (presumably that requiring Respondent to install a smart meter at the Service Address may violate the Fourth and Fourteenth Amendments to the United States Constitution and Article I of the Pennsylvania Constitution.⁴⁴) and claims that they had been bullied, harassed and bureaucratically terrorized by Respondent. None of these allegations were supported by the record evidence.

⁴³ 66 Pa.C.S. § 1501.

⁴⁴ Tr. at 113, 118-19.

Whether Complainant Is Nevertheless Entitled to an Accommodation

The Supreme Court held that if a 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.⁴⁵ However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id.* at 1015.

Complainants filed their Complaint objecting to the installation of a smart meter at their residence. The only relief or accommodation requested by Complainant was that they be permitted to opt-out of the planned smart meter installation.

Complainants were provided a full and fair hearing and an opportunity to present evidence regarding their requests for relief as well as their claims, including whether the installation of a smart meter would be unsafe or unreasonable under Section 1501. Since Complainants failed to prove any Section 1501 violation, Complainants' request for an accommodation must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. § 701.
2. The proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

⁴⁵ *Povacz II* at 1014.

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*, 557 Pa. 207 (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. 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. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

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

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

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

9. Neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

10. Act 129 mandates the systemwide installation of smart meters. *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

11. 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 66 Pa.C.S. § 1501. *Povacz v. Pa. Pub. Util. Comm’n*, 280 A.3d 975 (Pa. 2022).

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

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

14. Complainants failed to carry their burden of proof establishing that Respondent provided unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Larry R. Kramer and Ellen M. Kramer filed against Metropolitan Edison Company at Docket No. C-2017-2630621 is dismissed.
2. That Docket No. C-2017-2630621 be marked closed.

Date: November 4, 2024

_____/s/
Jeffrey A. Watson
Administrative Law Judge