

200 Brook Hollow Road
Mount Pleasant, PA 15666

November 15, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Michael T. Jennings v. West Penn Power Company
Docket No. C-2018-3006031

Dear Secretary Chiavetta,

Attached please find my **Reply Brief of Complainant Michael T. Jennings** in the above-referenced matter. This document has been served on West Penn Power as shown in the Certificate of Service.

Please contact me if you have any questions.

Very Truly Yours,



Michael T. Jennings
724-613-4262
Lilmac2@zoominternet.net

ssj
Enclosures

CC: ALJ Chiodo
West Penn Power, as per Certificate of Service
Curtis Renner Esquire

200 Brook Hollow Road
Mount Pleasant, PA 15666

November 15, 2024

VIA E-FILING, ELECTRONIC MAIL, AND FIRST CLASS MAIL

Administrative Law Judge Gail Chiodo
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

**Re: Michael T. Jennings v. West Penn Power Company
Docket No. C-2018-3006031**

Dear Honorable Judge Chiodo,

Attached please find my **Reply Brief of Complainant Michael T. Jennings** in the above-referenced matter. This document has been served on West Penn Power as shown in the Certificate of Service.

Please contact me if you have any questions.

Respectfully Submitted,



Michael T. Jennings
Complainant

ssj

Cc: Rosemary Chiavetta, Esq. Public Utility Commission
As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL T. JENNINGS	:	
	:	
v.	:	Docket No. C-2018-3006031
	:	
WEST PENN POWER COMPANY	:	

REPLY BRIEF OF COMPLAINANT MICHAEL T. JENNINGS
Pro se

November 15, 2024

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HISTORY OF THE PROCEEDINGS

On November 14, 2018, the Complainant filed the above-captioned Formal Complaint with the Commission. West Penn was electronically served with the Formal Complaint on November 15, 2018.

On December 5, 2018, the Respondent filed an Answer and New Matter to the Formal Complaint.

On January 25, 2019, an Interim Order was entered which, in part, established a litigation schedule in this proceeding which included a requirement that the parties to identify any fact or expert witnesses they intended to call to testify on or before March 29, 2019.

On February 12, 2019, an Interim Order Revising the Litigation Schedule, and an Interim Order Cancelling the Prehearing Conference Scheduled for February 19, 2019 was entered. The Interim Order Revising the Litigation Schedule dated February 12, 2019, maintained the date on or before which the parties were required to identify witnesses as March 29, 2019.

On March 28, 2019, the Complainant filed a letter identifying his witnesses in this proceeding.

On March 29, 2019, Respondent provided notice and summaries of testimony for its factual and expert witnesses.

On May 26, 2019, the Complainant filed a Motion for Extension of Time to Provide Direct Testimony.

On May 31, 2019, the Complainant filed an Emergency Request revising his previously filed Motion for Extension of Time to Provide Direct Testimony.

On June 3, 2019, the Complainant filed answer Motion for Extension of Time to Secure a Replacement expert witness.

On June 6, 2019, the Complainant filed another Motion for Extension of Time to Provide Direct Testimony.

On July 2, 2019, an Interim Order Providing for Second Revised Initial Litigation Schedule was entered. This Interim Order, in part, revised the deadlines for the service of Complainant's direct testimony.

On August 12, 2019, a Third Revised Initial Litigation Schedule was entered.

On October 24, 2019, a Protective Order was issued.

On November 22, 2019, the Complainant submitted a Revised Identification of Factual and Expert Witnesses.

On November 25, 2019, the Complainant served his Direct Testimony and the testimony of his expert and factual witnesses.

On May 1, 2020, Respondent served its rebuttal testimony.

On July 2, 2020, the Complainant filed a Motion in Limine seeking to strike the rebuttal testimony of Respondent. The Motion in Limine contained a Notice to Plead directing Respondent to file a response within 20 days.

On July 7, 2020, an Interim Order Denying Complainant's Request for Subpoena was entered.

On July 7, 2020, an Interim Order Converting In-Person Hearings to Telephonic Hearings was entered.

On July 7, 2020, a Corrected Telephonic Hearing Notice was entered.

On July 15, 2020, Complainant filed a Certificate of Service.

On July 17, 2020, Respondent filed a Certificate of Service.

On July 22, 2020, Respondent filed an Answer to Motion in Limine.

On July 23, 2020, an Interim Order Denying Complainant's Request for Disqualification of the Undersigned Presiding Officer.

On July 23, 2020, a Notice of Appearance of Curtis S. Renner on behalf of West Penn Power Company is filed.

On July 23, 2020, a document, Commission email to Complainant re large exhibits was filed.

On August 25, 2020, the Transcript of Initial Call-In Telephonic Hearing held July 23, 2020, pages 1-261, was filed.

On August 27, 2020, the Transcript of Initial Call-In Telephonic Hearing held July 24, 2020, pages 1-108, was filed.

On September 3, 2020, hearing Transcript Exhibit July 24, 2020 was removed from Web.

On September 4, 2020, further Transcript with exhibits (Hearing July 24, 2020, pgs. 262-369) was filed.

On September 10, 2020, the Transcript Exhibit ALJ 4, exhibits from hearing date July 24, 2020, was filed.

On September 10, 2020, the Transcript Exhibits, from hearing date July 24, 2020, ALJ 1, 2, 3, 5, Interrogatories A, Photographs LL, were filed.

On September 11, 2020, the Revised Testimony with exhibits of Complainant was filed.

On October 9, 2020, the Complainant filed his Main Brief.

On October 12, 2020, the Respondent late filed its Main Brief.

On October 12, 2020, the Complainant filed a Petition for Extension of Time to File Reply Brief.

On November 4, 2020, the Commission filed Order 2092655 – 10-29-20 – Smart Meter Procurement and Installation.

On November 4, 2020, the Commission filed a Notice of Stay of Proceedings with a list of formal complaints in which the Stay applies.

On November 14, 2023, the Commission filed Order – 2092655 – Law – 11-9-23 – Smart Meter Implementation – Lifting Stay Order – Revised – Final.

On November 14, 2023, the Commission filed Smart Meter Notice 3006031 PDF.

On December 12, 2023, Judge Change Notice filed.

On December 12, 2023, Post-Hearing Conference Notice filed.

On December 13, 2023, Complainant filed First Amended Formal Complaint Notice.

On January 3, 2024, Respondent filed Preliminary Objection to the First Amended Formal Complaint of Michael Jennings.

On January 9, 2024, Complainant filed Withdrawal of Amended Complaint and Answer to New Matter.

On January 23, 2024, Complainant filed a Motion for Extension of Time.

On January 24, 2024, Post-Hearing Conference Cancellation and Rescheduling Notice was filed.

On March 29, 2024, Notice of Appearance Meehand and Garcia, FE PA FKA WPP.

On March 21, 2023, Order Following Post-Evidentiary Hearing Conference.

On April 11, 2024, Complainant filed his Status Report (Posted on 4-12-24).

On May 20, 2024, Complainant filed a Motion for Continuance.

On October 1, 2024, Order Permitting the Filing of Reply Briefs.

On November 15, 2024, Complainant filed his Reply Brief.

I. INTRODUCTION

Michael Jennings, pro se Complainant, brought his case against West Penn Power (WPP) in response to West Penn Power's insistence that the Complainant acquiesce to WPP's offer to install a digital meter on his home or to be subject to imminent loss of electricity. The Complainant was informed that prompt filing of a formal complaint with the PA PUC against WPP was the sole method by which he could retain electrical service while refusing to accept WPP's offer of installation of a digital meter.

The digital meter's wireless technology exacerbated the Complainant's son's neurological disability causing impairments in March of 2017 when a digital meter was deployed, between February and March 2017, on the Complainant's former home. **For further explanation, see Response to Proposed Conclusions of Law No. 1, No. 2, No. 3, and No. 4.**

The impairments the Complainant's son experienced were severe and relentless seizures, but also problems caring for himself, sitting, reaching, lifting, bending, speaking, learning, reading, concentrating, thinking, writing, communicating and interacting with others. His disabilities and impairments are confirmed by Dr. Keven Kelly, MD neurologist. **[Attachment RB1]** The Social Security Administration deemed the Complainant's son disabled in 2014 which is a **federal level** determination. **[Attachment RB-2]** The Complainant's son qualified for the Person/Family Directed Support Waiver (PFDS) in 2016 through Pennsylvania's Office of Developmental Programs (ODP), a **state level** determination of disability. Most recently, he received the Home and Community Based Waiver Program, also through ODP, on February 14, 2024 **[Attachment RB-3]**, which further validates his disabilities. There should be no question that the Complainant's son is disabled.

The heart of the Complainant's request is a reasonable Americans with Disabilities Act (ADA) accommodation whereby he is allowed to retain the non-electronic electromechanical analog meters for measuring power usage that do not contain a switched mode power supply and do not emit any form of electromagnetic radiation, including but not limited to radiofrequency wireless microwave radiation. The State of Pennsylvania has already dealt with any state and federal issues concerning accommodation through ODP's ICF/ID Level of Care qualification process in order to provide waiver funding. (See above.) Therefore, the position of the PA PUC and WPP, that the matter of an ADA accommodation has to be decided at the federal level, is moot. There is no question that the Complainant's son is disabled and is already receiving accommodations and should be receiving an accommodation from WPP.

The Complainant presently receives electric service through the electromechanical analog meters that are on his property without any problem and is clearly billed from the readings taken from these meters. This request is reasonable to both parties as it will not cause any undue burden on WPP as it has been the working solution for several years already. Other states still use the analog meters as opt-out options, so these are still readily available. FirstEnergy has customer service policies utilizing the analog meters in Ohio and New Jersey

which provide all customers the choice to opt-in or to opt-out of using a digital meter, thereby providing an inherent and reasonable accommodation.

To clarify, the Complainant's ADA accommodation request is for WPP to do nothing. WPP would simply leave the analog meters on the Complainant's property. Each member of the Complainant's family has disabilities and impairments that are covered by the ADA. A formal complaint, concerning the Complainant's property at 200 Brook Hollow Road, Mount Pleasant, PA, was filed with the PA Public Utility Commission on November 15, 2018.

The PA Supreme Court offers a second option for accommodation in their decision of *Povacz et al v. PUC*, no. 492, C.D. 2019, October 8, 2020,¹ at page 7, footnote 5. The footnote states "...This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy." Even if Act 129 was a mandate, the PA Supreme Court has decided to protect people with disabilities, regardless of proof of harm. A customer service policy is the second method by which WPP should accommodate the Complainant and his family, although the Complainant maintains that a customer service policy is actually not needed for an ADA accommodation. **See Response to Conclusions of Law No. 7(b) for more information.**

WPP is interfering with the doctor patient relationship and acting to prevent patients from following medical recommendations from licensed medical doctors. How does Mr. Ahr and WPP know the Complainant's family's medical needs better than their treating physicians? Why does WPP believe that the Complainant must ignore the medical advice of physicians the family trusts in favor of WPP's opinion from an electrical engineer? How did WPP determine that this satisfies Section 1501's requirements for "reasonable" service? How did WPP conclude that the advice from licensed medical doctors is incorrect? How did WPP conclude that the Complainant's family's safety is assured in light of their disabilities and impairments? Where are the safety studies on these "smart" meters? The Complainant only received irrelevant, outdated, decades old, industry-biased cell phone studies to "prove" biological safety for the "smart" meters, which are much more than a cell phone. **See Response to Findings of Fact No. 6.**

The Complainant is not relying solely upon his own assertions to establish his family's disabilities. The Complainant provided letters from licensed physicians and others which corroborate the disabilities. These 12 letters, all but 2 of the Complainant's exhibits, Dr. Semelka's testimony and appearance at the hearing were wrongfully expunged in prejudicial actions during the Complainant's hearing on July 24, 2020. Expunging and ignoring the explicit medical directives from licensed medical doctors is unreasonable. It is also unreasonable to prevent the Complainant from fairly arguing his case through prejudicial actions.

Another aspect of the Complainant's formal complaint is Act 129 and legislative intent. Controversy has arisen over the implementation of the Act in that the plain language was

¹ PA Supreme Court Dockets Povacz, M v. PUC, No. 34-45 MAP 2001, p. 7.

misinterpreted. See Response to Proposed Findings of Fact No. 2(1) and Response to Conclusions of Law No. 10 for more information on the subject of Act 129.

II. RESPONSE TO WEST PENN POWER'S MAIN BRIEF, PROPOSED FINDINGS OF FACT

1. Respondent's Statement: "West Penn's Commission-approved Smart Meter Deployment Plan called for 98.5% of the Company's smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022."

Complainant's Response: This is irrelevant to Complainant's formal complaint. This is a deadline missed by WPP and has no bearing on anything associated with Complainant's case. Complainant has nothing to do with a missed deadline and does not regulate WPP, as that is the function of the PA PUC.

2. Respondent's Statement: "On December 31, 2012, the 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."

Complainant's Responses:

(1) Quotes from former PA Representative Thomas F. Yewcic, during his wife's formal complaint hearing, *Sherry Yewcic v. Pennsylvania Electric Company*, C-2018-3001276², proves that the Deployment Plan *does not satisfy* the requirements of Act 129, as Act 129 *is not a mandate, but rather opt-in legislation*:

"...I don't recall anyone at any time stating that smart meters were a mandate, and they weren't. As I recall, there was language that talked about a customer, ratepayer or consumer may opt in. There was no other language." p. 48, lines 7-11

"There was no mention of mandate." p. 48, lines 15-16

"I made no agreement to change the meter on my house, but our objection is the ill health it causes my wife. If the law states that we have to do something that's harmful to somebody, then there is a problem with the law. I think common sense should prevail." p. 48, lines 22-25, p. 49, lines 1-2

² Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, Office of Administrative Law Judge, *Sherry Yewcic, Plaintiffs vs. Pennsylvania Electric Company, Defendants*, C-2018-3001276, Hearing Transcript, July 22, 2020, US Legal Support, pp. 48 – 51.

*"I voted for Act 129 in 2008 because as I stated, there was **no mandates. There was no suggestion of a mandate.**" P. 50, lines 9-11*

*"**Nobody stated there was a mandate to implement smart meters...I think in the senate, maybe Fumo, former senator or somebody stated there was **no mandate in the bill, and it was an opt in bill, not a mandate.** That's my recollection.**" P. 51, lines 4-1*

The forced Commission's "smart" meter installation, Implementation Order, in PA is untenable because it is a purposeful, deliberate manipulation and misinterpretation from its inception, especially considering how other states have provided their tax payers with options.

(2), (3) and (4): Irrelevant to Complainant's formal complaint.

3. Respondent's Statement: "On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which intra alia accelerated the smart meter deployment schedule laid out in their original Deployment Plan."

Complainant's Response: Irrelevant to Complainant's formal complaint.

4. Respondent's Statement: In this proceeding, West Penn presented the testimony of John C. Ahr.

Complainant's Response: The Complainant agrees Mr. Ahr provided Rebuttal Testimony, which is found in WPP Exhibit JCA-1. Mr. Ahr testified to the performance of the meters, but nothing about medical safety. Also, Mr. Ahr addressed an incorrect subject, opt-out. Mr. Ahr did not discuss ADA accommodation, which is the main issue of the Complainant's formal complaint. Also, as a second option, WPP is not precluded from providing the Complainant a reasonable accommodation which the PA Supreme Court decision clearly states, *"This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy."* Regardless of proof of harm. **See Response to Proposed Findings of Fact No. 5; Response to Conclusions of Law No. 1 and No. 15.**

5. Respondent's Statement: "Mr. Ahr has a degree in electrical engineering and has worked for FirstEnergy Corp. or its predecessor companies for over 36 years in various positions, including: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters."

Complainant's Response: The Complainant has no reason to dispute Mr. Ahr's titles which he enumerated. The Complainant believes it is safe to say that electrical engineers are not licensed medical doctors and are not experts in human health. Mr. Ahr did not identify any medical licenses or any experience in human health. Mr. Ahr obviously has no knowledge or expertise to

provide any insight into human health and is not qualified to make an acceptable ADA accommodation recommendation or any licensed medical directives.

Mr. John Ahr stated in an interrogatory (Set I, No. 11) that WPP is not a hospital or a licensed medical doctor. There is also no evidence at the PA PUC's or at FirstEnergy's website that WPP is a hospital or licensed medical doctor. There is no evidence anyone has taken the oath of "first, do no harm," nor do they have a staff of licensed medical doctors or any employee who has expertise in human health. Yet WPP has usurped the role of licensed medical doctor without consent and should not be making decisions that a licensed medical doctor should be making per 52 Pa. Code § 56.111: Emergency Provisions and per 66 Pa. C.S.A. § 1406 (f): **Responsible Utility Customer Protection**.³ Ignoring licensed medical doctors' explicit medical directives and not providing an appropriate ADA accommodation is **NOT** responsible consumer protection nor is it reasonable. Furthermore, Mr. Ahr is a paid employee of WPP, his engineering background is irrelevant to our case, and his medical statements are equally unqualified, unwarranted and prejudicial.

Mr. Ahr, and **anyone else** making medical decisions in the Complainant's case, is complicit, culpable, and liable (jointly and severally) as they are, in actuality, practicing medicine without a license.

Allowing Mr. Ahr to make medical and human health determinations in this case, and ignoring explicit medical directives from licensed medical doctors, is unreasonable and can have dire consequences for the Complainant's son and family. Is Mr. Ahr willing to be liable for these decisions? **See Response to Proposed Conclusions of Law No. 1, No. 15 and No. 16.**

6. Respondent's Statement: "West Penn's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL."

Complainant's Response: The Complainant cannot speak to whether WPP's digital meters comply with **all** safety requirements and "standards" established by various entities, including the FCC, ANSI and UL. WPP has deceitfully and deceptively substituted the word "standard" where the word "guideline" should be used for the FCC. Guidelines are less stringent than standards.

These entities are irrelevant as they only deal with thermal safety. None of these industry entities mentioned by Respondent are licensed medical doctors and are not focused on human health, medical safety, medical harm or the exacerbation of existing disabilities. Rather, these entities are focused on the performance and the technical nature of the meters. Standards and guidelines do not address medical or biological harm. Technical and performance guidelines from aforementioned entities are replacing the explicit medical directives of Complainant's licensed physicians which is absurdly unreasonable.

³ 52. Pa. Code § 56.111, Retrieved from:
<http://www.pacodeandbulletin.gov/Display/pacode?file=%2Fsecure%2Fpacode%2Fdata%2F052%2Fchapter56%2Fs56.111.html>

The burden of proof to show that the digital meters are safe falls upon the utility, not the customer, as per 66 PA.C.S. §315 (c), "*In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.*"⁴ [Emphasis added.] To allege that by virtue of the digital meters meeting FCC guidelines is insufficient as neither the FCC, nor the vendors, nor the utility have conducted studies on the short or long-term effects of smart meters on the general population to ascertain their safety.

Where are the studies to prove biological safety of the digital meters? ***There are no studies as the "smart" meters were never tested for biological safety.*** The only studies provided to Complainant in this proceeding were irrelevant, industry-biased, outdated decades old, cell phone studies. These meters are much more than a cell phone as they have two antennas co-located in one device which violates the FCC's Grant of Equipment Authorization for each antenna. ***The burden of proof is on the Respondent to show the Complainant studies on the "smart" meters which prove biological safety, not irrelevant cell phone research.***

Every provider of digital meters is provided with a Grant of Equipment Authorization by the FCC to which it must adhere. WPP's Itron Openway SK9AM17 Smart Meter⁵ with its 802.15.4 ZigBee Module⁶ do not fully comply with "all safety requirements and standards" within the FCC's Grant of Equipment Authorization. Each of these components of the digital meter has a ***separate grant of equipment authorization***, and in turn, they do not fully comply with 66 Pa. C.S. § 1501 and 52 Pa. Code § 57.194(a) for the following reasons:

- Antenna(s) must provide a separation of 20 cm from all persons
- End-users must be provided with antenna installation and transmitter operating conditions for satisfying RF exposure compliance
- Antenna(s) must not be co-located with any other antenna or transmitter
- Antenna(s) must not be operating in conjunction with any other antenna or transmitter
- The meters must be professionally installed

Wireless utility meters are connected to a poorly engineered power supply and are much more harmful than a cell phone. Other facts about these meters include⁷:

1. The way the radiation is transmitted is far more harmful to our bodies.⁸
2. Wireless utility meters adversely stimulate your nervous and muscular systems. Industry self-admitted in the ICNIRP Guidelines for limiting exposure to time-varying electric and

⁴ <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=66&div=0&chpt=3&sctn=15&subctn=0>

⁵ FCC ID SK9AM17 AMI7 Module by Itron, Inc. Retrieved from <https://fccid.io/SK9AM17>.

⁶ FCC ID 2.4GHz 802.15.4/ZigBee OEM-module Retrieved from <https://fccid.io/U6TZIGBIT-A2>

⁷ Presentation by Mary Bauer, RF Engineer, Virginians for Safe Technology to the National Call for Safe Technology, May 10, 2024, <https://who-knew.info/links>.

⁸ The EMF Medical Conference 2021, <https://emfconference2021.com>.

magnetic fields (1 HZ-100 kHz).⁹

3. These meters have a poorly designed switch mode (SMPS) that creates incidental noise or “dirty electricity” or DE (2 kHz- 50 kHz). This SMPS is absent in the analog meters, making it a safer meter. DE makes many customers extremely sick, could lead to “constructive eviction” and should be filtered out, but isn’t! There is NO utility oversight to protect customers; instead, health risks and electrical safety protection costs are all imputed and transferred to them without their consent.¹⁰
4. There is an adverse impact to the electrical grid as it was not designed to withstand Internet of Things (IoT), distributed energy resource loads, microwave energy and frequencies other than 60 Hz.¹¹
5. They gather and analyze behavioral data to profile you and your family for ANY legal, police and commercial data use. They cost more money by design of meter; and DE is main cost driver.¹²
6. Smart meters cannot be put in non-transmitting/airplane mode, nor can they be turned off. They are always on, transmitting approximately every 3 seconds.¹³

What’s more, wireless infrastructure can no longer be considered safe because of the D.C. Circuit Court’s ruling in *Environmental Health Trust, et al. v. FCC Trust, et al. v. FCC*¹⁴ on August 13, 2021. This decision, in effect, renders the FCC guidelines suspect at best. FCC and industry assurances of safety are also now questionable. There are 26 volumes¹⁵ that record evidence of biological harm and hundreds of testimonies that the FCC ignored in this case. The evidence record alone contains over 20,000 studies showing the harm of this radiation, and additional studies, many from IEEE, show the damage, especially neurological, from the SMPS of the meters. This massive, overwhelming scientific evidence demonstrates that wireless technology is harmful – not only to humans, but to animals and the environment as well.

Dr. De-Kun Li, MD, PhD, MPH is a senior researcher at the Division of Research at Kaiser Permanente in Northern California. Dr. Li’s opinion is:

Currently there are no national or international ‘standards’ for safety levels of radiofrequency (a range of 3 kHz to 300 GHz) devices. What FCC is currently using are ‘guidelines’ which have much lower certainty than a ‘standard’. One can go to many governmental agencies’ websites like NIOSH, EPA, FDA, etc. to verify this. Therefore, for

⁹ ICNIRP Guidelines for Limiting Exposure to Time-Varying Electric and Magnetic Fields (1Hz – 100 kHz), <https://icnirp.org/cms/upload/publications/ICNIRPLFgdl.pdf>

¹⁰ *Povacz et al. v. Pennsylvania Public Utility Commission, Brief of Children’s Health Defense, and Building Biology Institute, et al as Amici Curiae in Support of Appellees/Cross-Appellants “Customers,”* Engineer Report at pp. 168-183, https://img1.wsimg.com/blobby/go/560ca86e-e802-4adb-8733-b30528eacc28/downloads/Amicus%20Brief%2C%20filed%20by%20Children_s%20Health%20Defen.pdf?ver=1718049942876

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Court Judgement, United States Court of Appeals for the District of Columbia Circuit, *Environmental Health Trust, et al. v. FCC*, [https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/\\$file/20-1025-1910111.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/$file/20-1025-1910111.pdf).

¹⁵ **26 Volumes of Evidence of Harm:** Childrenshealthdefense.org. 2022. [online] Available at: <https://childrenshealthdefense.org/wp-content/uploads/Volume-27.pdf>

anyone to claim that they meet ‘FCC standards gives a false impression of safety certainty compared to ‘guidelines’ which implies that a lot is ‘unknown’...Hankin’s letter states ‘Therefore, the generalization by many that the guidelines protect human beings from harm by any or all mechanisms is not justified’...the current FCC guidelines only deal with thermal effect, which was also based on animal studies only. Meeting the current FCC guidelines, in the best-case scenario, only means that one won’t have heat damage from Smart Meter exposure. It says nothing about safety from the risk of many chronic diseases that the public is most concerned about such as cancer, miscarriage, birth defects, semen quality, autoimmune diseases, etc...FCC guidelines are irrelevant and cannot be used for any claims of Smart Meter safety unless we are addressing heat damage....The bottom line is that the safety level for RF exposure related to non-thermal effect is unknown at present and whoever claims that their device is safe regarding non-thermal effect is either ignorant or misleading.¹⁶ [Emphasis added.]

The US Department of State (DOS) medical expert panel concluded that Havana Syndrome employees were affected by pulsed RF energy that NASEM noted that RF effects have been documented by government authorities for over half a century. This establishes a precedent for one of several know mechanisms of injury from smart meters to warrant the right to consumer choice.

In turn, the DOS compensated employees with ‘Havana syndrome’¹⁷ up to \$187,000 after a panel of 19 medical experts concluded, “*many of the acute, sudden-onset, early phase signs, symptoms and observations reported by DOS employees are consistent with RF effects.*”¹⁸ The panel's findings expanded on a 2020 report by the National Academies of Sciences, Engineering, and Medicine, which also **found that pulsed RF energy was the most plausible culprit.** Smart meters pulse approximately every 3 seconds.

Harm was proven at the PA PUC formal complaint level. On October 19, 2018, ALJ Heep entered the Initial Decision in the case of *Alexia McKnight v. PECO Energy Company*, Docket No. C-2017-2621057. At page 30 ALJ Heep stated,

“8. There is sufficient evidence to support a finding that Mrs. McKnight will be adversely affected by reinstallation of the Landis + Gyr AMI meter #127832547 and that reinstallation of the Landis + Gyr AMI meter #127832547 would constitute unsafe or unreasonable service in violation of 66 Pa.C.S. § 1501. *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).*”¹⁹

ALJ Heep found **sufficient evidence that Dr. Alexia McKnight would be adversely affected by the reinstallation of the meter and it would create unsafe or unreasonable service which**

¹⁶ Letter from Dr. De-Kun Li, MD, PhD, MPH, Kaiser Permanente Division of Research 2000 Broadway Oakland, CA 94612, <https://ecfsapi.fcc.gov/file/7022311506.pdf>.

¹⁷ CNN, “Biden administration to compensate some ‘Havana syndrome’ victims up to \$187,000. June 24, 2022. <https://www.cnn.com/2022/06/23/politics/havana-syndrome-victims-compensation/index.html>

¹⁸ National Academies of Sciences, Engineering, and Medicine. 2020. An Assessment of Illness in U.S. Government Employees and Their Families at Overseas Embassies. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25889> p. 20.

¹⁹ PA PUC Docket No. C-2017-2621057, *Alexia and Lawrence McKnight v. PECO Energy Co.*, Initial Decision, p. 30, http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=C-2017-2621057.

would violate 66 Pa. C.S. § 1501. The Commission, on the other hand, *ignored the proof of harm* and her physicians' explicit medical directives and also said PECO could install a different brand of smart meter, as if that would make any difference. **This is a prejudicial action against a pro se complainant.** The PA Commonwealth Court ruled against the McKnights (pro se complainants) because of a formatting issue with the document, not even considering the content of their brief while also lumping their case with the Povacz Supreme Court Case, ignoring the vast difference in content and legal arguments between the two cases. And, it took the Court 16 months to render this non-decision.

One step further, FirstEnergy and WPP have acknowledged that threat of harm and liability are associated with the digital meter technology in FirstEnergy's *Customer Guide for Electric Service in PA*.²⁰ There are many mechanisms of harm with the wireless digital utility meters as is evidenced by the "Interruption and Liability" clause within the *Customer Guide*. What is printed in FirstEnergy's *Customer Guide for Electric Service in PA* is truth and cannot be refuted as it is on full display on the internet.

"3.6 Interruption & Liability"*

*The Company will endeavor, but does not guarantee, to furnish a continuous supply of electric energy and to maintain voltage and frequency within reasonable limits. **The Company shall not be liable for any loss, cost, damage or expense that the customer may sustain by reason of damage to or destruction of any property, including the loss of use thereof, arising out of, or in any manner connected with, interruptions in service, variations in service characteristics, high or low voltage, phase failure, phase reversal, the use of electrical appliances, or the presence of the Company's property on the customer's premises, whether such damages are caused by or involve any fault or failure of the Company or otherwise except such damages that are caused by or due to the willful and wanton misconduct of the Company. The Company shall not be liable for damage to any customer or to third persons resulting from the use of the service on the customer's premises or from the presence of the Company's appliances or equipment on the customer's premises.** [Emphasis added]*

** To the extent this provision contradicts any terms in the Company's current applicable Tariff, the Tariff provision shall govern. P. 15"*

The Complainant does not accept this technology which can obviously cause much property and bodily damage. The information in FirstEnergy's Interruption and Liability clause is validated by insurer Swiss Re Institute, one of the world's leading providers of reinsurance and insurance. Swiss Re labels electromagnetic field emissions a pollutant and does not provide coverage for it. *"Existing concerns regarding potential negative health effects from electromagnetic fields (EMF) are only likely to increase. An uptick in liability claims could be a potential long-term consequence."*²¹

- Why would the Complainant want to accept faulty "smart" digital meter equipment which could cause many issues on his property while FirstEnergy and WPP will never pay a cent for **property damage, destruction, or loss, even when they are at fault?**

²⁰ First Energy Customer Guide for Electric Service - PA, September 2021, <https://www.firstenergycorp.com/content/dam/customer/service%20requests/files/Customer-Guide-for-Electric-Service-PA.pdf>

²¹ Swiss Re, www.swissre.com/dam/jcr:5916802c-cf6b-4c67-9d42-39cf80c4b00d/SONAR%20Publication%202019_WEB_quality.pdf.

- Why would the Complainant accept this faulty “smart” digital meter equipment on his property **when FirstEnergy and WPP will not be liable for bodily damage to their customers or to third parties?**
- How can FirstEnergy, WPP force this faulty “smart” digital meter equipment on customers ***knowing there is this amount of liability?***
- **Why are Pennsylvanians being forced to accept faulty equipment with this much harm and liability?**
- **Shouldn’t this much harm and liability require consent?**
- If FirstEnergy and WPP are not liable, **does that make the PA PUC liable for said damages since they regulate the industry and have allowed this equipment to be deployed?**
- ***This is not reasonable nor is it safe. “Damage to any customer or third persons” equates to harm.***

Allowing the deployment of equipment with so much liability does not meet the needs of consumers, does not ensure safe and reliable utility service, nor does it protect the public interest. **The “smart” wireless digital utility meter is NOT safe or reasonable for the Complainant’s family, because of the admitted possibility and threat of harm and liability. See Response to Proposed Findings of Fact No. 7.**

7. Respondent’s Statement: “Itron, Inc., who is the smart meters’ manufacturer, enlisted certified personnel to perform the required testing. Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards.”

Complainant’s Response: Itron® “standards” are technical and performance related and do not address medical issues or exacerbation of disabilities. These “standards” refer to the fact that the meters are accurately and reliably delivering meter data to utilities. “Such personnel” are not Complainant’s trusted licensed medical doctors and do not hold medical degrees. The Respondent is putting their full faith and trust in marketing materials when it comes to safety and harm, which is preposterous. Absolutely no medical testing was performed by Itron.

*“While Itron® strives to make the content of its **marketing materials** as timely and accurate as possible, **Itron® makes no claims, promises, or guarantees about the accuracy, completeness, or adequacy of, and expressly disclaims liability for errors or omissions in, such materials...**”²² [Emphasis added.]*

Marketing materials are just that, tools companies develop to promote their products and services. The marketing materials give no opinion from licensed medical doctors or any

²² OpenWay® CENTRON® Meter
<https://www.itron.com/-/media/feature/products/documents/spec-sheet/openway-centron-meter.pdf>

medical information concerning biological safety. Plus, there is no continued compliance testing to ensure the meters comply with the outdated, decades old FCC guidelines. **See Response to Proposed Findings of Fact No. 6.**

8. Respondent’s Statement: “The Complainant refused, and continues to refuse, the Company’s installation of the smart meter at his Service Location.”

Complainant’s Response: Respondent is fully aware that a digital utility meter has not been deployed on the Complainant’s property as the Complainant filed a formal complaint on November 15, 2018. Since the Complainant is in the formal complaint process, WPP must comply with 52 Pa. Code § 56.92. Notice when dispute pending. It states, “A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, informal or **formal complaint** has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void.”²³

The Complainant does not want to change his contract with WPP. The Complainant has simply not accepted WPP’s offer to install a device which is far more than merely an electric meter and for which there is no reliable medical or scientific evidence upon which to conclude that chronic, long-term exposure to any or all of the electromagnetic emissions produced as a result of the installation of such metering devices could not, cannot, would not and will not cause, exacerbate or contribute to biological or adverse health effects.

Furthermore, it is still premature for WPP to be pushing for deployment as the Complainant’s formal complaint is still unresolved. The Complainant has the right to be in the formal complaint process and expects WPP to comply with § 56.92. Notice when dispute pending. WPP has had more than reasonable access to the Complainant’s meter for activities that are allowed when a formal complaint is unresolved.

See Response to Proposed Conclusions of Law No. 14, 18, No. 20, and No. 21.

III. RESPONSE TO WEST PENN POWER’S MAIN BRIEF, PROPOSED CONCLUSIONS OF LAW

1.Respondent’s Statement: “Under Section 332(a) of the Public Utility Code, the Complainant has the burden of proof in this proceeding.”

Complainant’s Response: WPP mischaracterized what transpired during the hearing by stating the Complainant did not meet his burden of proof, did not establish a prima facie case, had presented “mere bald assertions,” and did not provide a preponderance of evidence. The Complainant ***WAS NOT ALLOWED TO MAKE HIS CASE BY NUMEROUS PREJUDICIAL ACTIONS.***

²³ 52 Pa. Code § 56.92. Notice when dispute pending.
<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/052/chapter56/s56.92.html>

He was not allowed to enter into the record a preponderance of evidence as he was stripped of his exhibits, his testimony, his expert, and his due process rights. The Complainant provided 62 exhibits which constituted a 254:0 ratio of studies (including the references in studies provided) in comparison to Mr. Ahr. Mr. Ahr did not provide any research, only a "Smart Meter Deployment Plan."

The truth of the matter is that ALJ Watson prevented the Complainant from making his case through unreasonable and prejudicial actions, bias, and collusion. **ALJ Watson is guilty of violations of judicial conduct** which include 207.33 Code of Judicial Conduct. Subchapter A, Rules 2.2, 2.3, and 2.6. There was partiality, bias, prejudice, and a proceeding which impaired the fairness to the Complainant through prejudicial actions.

There are a plethora of examples of bias, collusion, and blatant prejudicial actions which are thoroughly discussed in Complainant's Main Brief, pp. 24-53. These blatant biases and prejudicial actions, which were unjustly and unjustifiably imposed by ALJ Watson, have profoundly and adversely affected the Complainant's ability to make his case in all proceedings and his due process rights were violated. Because of these prejudicial actions, the Complainant was specifically precluded from cross-examining the WPP's expert witnesses, from asserting any claim and from entering any evidence into the record that would support his claim and from making his case. Under the judicial code the judge shall ensure the right to be heard. However, Michael Jennings' voice, through his testimony and exhibits, was wrongfully expunged with the explicit intent to ensure his loss with the Commission.

Some of these prejudicial actions included omissions from the transcripts; many exhibits that had already been authenticated from previous hearings were not admitted into evidence; governmental reports were not admitted into evidence; research from the Institute of Electrical and Electronics Engineers (IEEE), the world's largest technical professional society, was not allowed to be entered into the record; violations of judicial conduct (Rule 2.2 Impartiality and Fairness, Rule 2.3 Bias, Prejudice, and Harassment; and Rule 2.6 Ensuring the Right to Be Heard), and much more.

Mr. Renner was admitted into the proceeding at 9:44 AM on the morning of the hearing, which was 16 minutes before the hearing was to start. Mr. Renner is a K Street lawyer which refers to the downtown area of Washington, D.C. where many lobbyists, lawyers, and advocacy groups used to be located. *"The term has become synonymous with the **lobbying industry itself**, representing the often close, sometimes **controversial, relationship between government and special interests.**"*²⁴ [Emphasis added.] Why did WPP hire a K Street attorney for a pro se complainant's formal complaint? We proffer it is because the Complainant has a damning case and this K Street lawyer was hired to obfuscate matters and have as much of the Complainant's testimony, exhibits, witnesses, etc. expunged from the record. Mr. Renner was

²⁴ Taegan Goddard is the creator of the Political Dictionary. He is also the founder of many popular political websites. (2023, November 26). *K street*. Political Dictionary. <https://politicaldictionary.com/words/k-street/>.

hired to prevent two parents, who were representing themselves pro se, to get an accommodation for their disabled son and for their own disabilities.

WPP was permitted to excuse two of three of Complainant's expert witnesses without the Complainant having the opportunity to cross-examine them. How is this due process?

The most egregious prejudicial action against the Complainant, who is pro se, was ALJ Watson's refusal to require WPP, with late filed objections, to honestly answer the simple, pertinent interrogatories. The late filed answers were word salads and overly broad non-answers. The Respondent answered each question with almost the exact same answer. The honest answers to these questions would have proven a wireless digital utility meter exacerbated the Complainant's son's epilepsy to the point of status epilepticus, which could have caused his death through Sudden Unexplained Death in Epilepsy (SUDEP). The Complainant was prevented from making his case by not being able to obtain the date the meter was deployed on the home at 905 Country Club Drive, Greensburg, from WPP. **See the Complainant's Main Brief, pp. 27-28²⁵ for a complete explanation.**

The simple questions included "What date was a smart meter deployed on this home?" and "What was the date the first smart meter was deployed in the Country Club Place Development?" No personal information was needed, just a date. The dates requested would have been during the time the Complainant owned the home, and thus answering these interrogatory questions was not only relevant, but instrumental to the present case.

Without question, there is a reason WPP would not answer such simple questions. It is an indication that a wireless digital meter was indeed deployed, that WPP does not want to admit to the damning information that a wireless digital meter caused such harm, and Judge Watson's complicity is also an implication of bias and collusion. **The refusal to answer this basic question is considered an affirmative admission that a wireless digital meter was deployed just prior to Complainant's son's sudden and severe seizure episodes in March of 2017.**

Certainly, if WPP had data to the contrary of a deployment date during the months of February or March 2017, they would have already presented that information and the Complainant's formal complaint would have been closed. The Complainant was not allowed to make his case with ALJ Watson's prejudicial action of shielding WPP and not requiring them to honestly answer this question, especially in light of the fact that WPP's objections were filed almost three months late.

It was most disturbing that Exhibit B - 12 letters from treating licensed physicians, and others that confirmed the Complainant's family's disabilities for ADA purposes; Dr. Semelka's testimony; and his appearance at the hearing – was allowed to be expunged from the record.

²⁵ PUC Docket No. C-2018-3006031, *Michael Jennings v. West Penn Power*, Motion to Compel Interrogatories, Set II, <http://www.puc.state.pa.us/pdocs/1623391.pdf>

Expunging these from the record does not negate their existence, nor does it negate the Complainant's family's disabilities, impairments or the right to an ADA accommodation. **Also see Response to Proposed Findings of Fact No. 6; Response to Conclusions of Law No. 2, No. 3, and No. 4.**

2. Respondent's Statement: "The first step in carrying the burden of proof is establishing a prima facie case that WPP violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a prima facie case does it become the responsibility of the Company to provide rebuttal evidence."

Complainant's Response: The Complainant was prevented from establishing a prima facie case as he was stripped of his exhibits, testimony, and his due process rights due to prejudicial actions, bias, and collusion. **See Response to Proposed Conclusions of Law No. 1, 3, 4.**

3. Respondent's Statement: "In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established."

Complainant's Response: There is more than a mere trace of evidence or a suspicion. The Complainant's son was harmed by a wireless digital meter that was deployed on his former home that exacerbated his epilepsy to the point of status epilepticus. 115 seizures in one day and 109 the next in the hospital is not a mere trace or a mere suspicion. **See Response to Proposed Conclusions of Law No. 1, No. 2, No. 4.**

4. Respondent's Statement: "Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence."

Complainant's Response: The Complainant was not "bald" in this proceeding; rather, he was stripped of his exhibits, his testimony and his due process rights as a result of prejudicial actions, bias and collusion. ALJ Watson aided in the suppression of the date of deployment as he did not require WPP to honestly answer the question with late filed objections. **See Response to Conclusions of Law No. 1, No. 2, and No. 3.**

5. Respondent's Statement: "A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence."

Complainant's Response: **See Response to Proposed Findings of Fact No. 6; Response to Conclusions of Law No. 1, No. 2, No. 3 and No. 4.**

6. Respondent's Statement: "A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party."

Complainant's Response: **See Response to Proposed Findings of Fact No. 6; Response to Proposed Conclusions of Law No. 1, No. 2, No. 3 and No. 4.**

7.Respondent’s Statement: “For the Commission to sustain a formal complaint, the complainant 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.’”

Complainant’s Response: Multiple violations were committed:

a. WPP is in violation of the FCC’s Grant of Equipment Authorization.

Every provider of wireless digital meters is provided with a Grant of Equipment Authorization by the FCC to which it must adhere. WPP’s Itron Openway SK9AM17²⁶ Smart Meter with its 802.15 2.4 GHz ZigBee Module²⁷ do not fully comply with “all safety requirements and standards” within the FCC’s Grant of Equipment Authorization. Each of these components of the wireless digital meter has a separate grant of authorization, and in turn, they do not fully comply with 66 Pa. C.S. § 1501 and 52 Pa. Code § 57.194(a) for the following reasons:

- Antenna(s) must provide a separation of 20 cm from all persons
- End-users must be provided with antenna installation and transmitter operating conditions for satisfying RF exposure compliance
- Antenna(s) must not be co-located with any other antenna or transmitter
- Antenna(s) must not be operating in conjunction with any other antenna or transmitter
- The meters must be professionally installed

b. The PA PUC and WPP are in violation of the ADA as they are ignoring Complainant’s request for a reasonable accommodation. The PA PUC and WPP (subsidiary of FirstEnergy) **MUST** comply with federal legislation such as the Americans with Disabilities Amendments Act, 42 U.S. Code § 12101 et seq.; the Rehabilitation Act of 1973 as Amended, 29 U.S.C. § 701 et seq.; and the Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq. (Public Record per 52 Pa. Code 5.406(a)(2)) **as both receive federal funding.**

US District Court, Middle District of Florida, Orlando Division found that

“Title II of the ADA makes it unlawful for a public entity such as OUC [Orlando Utilities Commission] to discriminate against disabled persons in the provision of benefits, services, programs, or activities. 42 U.S.C. § 12132.”²⁸

Therefore, Title II of the ADA also renders it unlawful for a public utility regulator, such as the PA PUC, to discriminate against disabled persons in the provision of services.

²⁶ Itron Openway SK9AM17 FCC Grant of Equipment Authorization, <https://fccid.io/SK9AM17>

²⁷ 802.15 2.4 GHz ZigBee Module Grant of Equipment Authorization, <https://fccid.io/U6TZIGBIT-A2>

²⁸ United States District Court, Middle District of Florida, Orlando Division, *William R. Metallo v. Orlando Utilities Commission*, 6:14-cv-1975-Orl-40KRS.

WPP is a business that provides the service of electricity and is therefore a public accommodation. **Title III** of the ADA prohibits discrimination on the basis of disability by a public accommodation. WPP is a private entity that owns and operates facilities whose operations affect commerce as it provides the service of electricity. The entity known as WPP is both a “public accommodation” and also a “place of public accommodation.”

The ADA prohibits discrimination in the provision of services by “*public accommodations*” and also by “*places of public accommodation...even if those services are accessed exclusively in the home.*” National Association of the Deaf, et al., Plaintiffs v. Netflix, Inc., Defendant (C.A. NO. 11-CV-30168-MAP, 869 F. Supp. 2d 196; 2012 U.S. Dist. LEXIS 84518; 26 Am. Disabilities Cas. (BNA) 1091). WPP is clearly subject to these federal laws because the wireless digital meter is the nexus point of the service they offer.²⁹

Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and **organizations that receive financial assistance from any Federal department or agency**, including the U.S. Department of Health and Human Services (DHHS).

The PA PUC’s website states that in 2023-24 it will receive \$5,538,000 in federal funds.³⁰ FirstEnergy received federal funding (\$57.470+ million) from the Dept. of Energy Recovery Act Smart Meter Grid Investment Grant Awards, “...with addtl. benefits in PA.”³¹

Receiving governmental grants requires recipients to follow federal laws such as the ADA. Grants.gov states, “*When you or your organization accepts a grant (i.e., by signing the grant agreement or by drawing down funds) you become legally obligated to carry out the full terms and conditions of the grant. As an award recipient, you are also subject to federal and possibly state statutory and regulatory requirements and policies.*”³²

In light of the Povacz PA Supreme Court decision³³ that an accommodation can be granted without showing harm, the Complainant sent fresh ADA accommodation letters to Stephen M. DeFrank, Chairman of the PUC and to WPP. **[Attachment RB-4]** Complainant has not received a response from either. Providing accommodation in

²⁹ National Federation of the Blind v. Target Corporation, 452 F. Supp. 2d 946 (N>D>Cal. 2006)

³⁰ <https://www.puc.pa.gov/about-the-puc>.

³¹ Recovery Act Selections for Smart Grid Investment Grand Awards – by Category, p. 8, First Energy, <https://www.energy.gov/sites/prod/files/SGIG%20Awards%20by%20Category%202011%2011%2015.pdf>

³² Award phase. Grants.gov. <https://www.grants.gov/learn-grants/grants-101/award-phase.html>.

³³ PA Supreme Court Dockets Povacz, M v. PUC, No. 34-45 MAP 2001.

the absence of a Section 1501 violation falls squarely in the purview of the PA PUC in order to ensure the safety of the customer. Therefore, the PA PUC should require the utilities to adhere to the ADA and provide ADA accommodations, since both have received federal funding.

The PA PUC is under the jurisdiction of the PA Supreme Court, and in turn, the PA PUC has jurisdiction over the utilities as their regulator. WPP has a second option to accommodate: a customer service policy, per the Povacz decision. Customer service policies could also be used to accommodate in the situation of “smart” wireless digital meters. FirstEnergy and WPP are well aware of customer service policies as they protect consumers in Ohio and New Jersey with such customer service policies which allow for an analog as an opt-out - ***just not in Pennsylvania.***

It is ironic and deceitful that this critical footnote from the PA Supreme Court decision was not only omitted in the PA PUC Order, Smart Meter Procurement and Installation No. M-2009-2092655,³⁴ but specifically denied that the footnote even exists by stating that no relief from smart meter deployment can ensue in accordance with the Povacz decision. Even if there was a mandate, the Supreme Court has decided to protect people with disabilities.

- c. **The PA PUC is in violation of its fiduciary duty.** The PA PUC has an explicit fiduciary duty to serve the People, and not the industry that funds it. The PA PUC is failing miserably to follow its own mission statement which clearly states they will balance the **needs of consumers** and utilities, **will ensure safe** and reliable utility service, **will protect the public interest**, and more.³⁵

The PA PUC’s website clearly shows that 93% of the PA PUC’s 2023-24 budget figure (\$82,296,000 million) is **TOTALLY** from utilities (electric, gas, water, sewer, public transport, pipeline). The balance of the budget is from federal funds amounting to \$5,538,000. This unquestionably shows that the PA PUC is a captured agency, which is diametrically opposed to its mission statement.

The PA PUC is a regulatory agency and thereby should regulate the utilities and provide public service to the People, and not the other way around. ***The “smart” wireless digital utility meter is NOT safe or reasonable for the Complainant’s son and the PA PUC should protect his interest.***

- d. **WPP is in violation of the U.S. Constitution and the Constitution of the Commonwealth of Pennsylvania.** WPP is in violation of the Pennsylvania Constitution and the U.S. Constitution by forcing a wireless digital meter on the Complainant’s property, which would expose the family to harmful emissions from

³⁴ Pennsylvania Public Utility Commission, Public Meeting held November 9, 2023, Smart Meter Procurement and Installation No. M-2009-2092655.

³⁵ <https://www.puc.pa.gov/about-the-puc/>

the meter. It is most evident the General Assembly did not intend to harm the health of any Pennsylvanian nor violate the Constitution of Pennsylvania or the United States:

“§ 1922. Presumptions in ascertaining legislative intent.

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

(5) That the General Assembly intends to favor the public interest as against any private interest.”³⁶

WPP is violating Article 1 of the Constitution of the Commonwealth of Pennsylvania:

“§ 1. Inherent rights of mankind. *All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and **defending life** and liberty, of acquiring, possessing and **protecting property** and reputation, and of **pursuing their own happiness.**”³⁷ [Emphasis added.]*

The Complainant will be stripped of his fundamental right of equal protection of the laws as guaranteed under the Fourteenth Amendment of the Constitution of the United States,

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”³⁸

The Complainant has made the **conscious decision to minimize exposure to wireless emissions by making many remediations to his home to accommodate** his son and the whole family: moved to get out of a neighborhood full of WiFi networks and wireless digital meters, no electric heat (electric igniter), no electric hot water tank (electric igniter), no electric stove (electric igniter), installed filters for computers, no WiFi (hard-wired connections, no Bluetooth, no hotspots, use airplane mode most of the time, no microwave oven, no cordless telephones, no satellite TV, use a land line, use battery operated clocks, remediated his son’s bedroom according to Building Biology protocols, and will continue to remediate as more is learned.

The Complainant’s son’s health and welfare are the Jennings’ first priority in life. His required 24/7 care is their mission from the Lord Jesus Christ. The Complainant and his wife are their son’s only advocates and they will continue to fight anything that will jeopardize his health, his safety and his life as the Complainant’s son has no voice

³⁶ Title 1, General Provisions, Part I. The Pennsylvania Consolidated Statutes, § 1922,

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=01>

³⁷ Constitution of the Commonwealth of Pennsylvania, § 1, Inherent rights of mankind,

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.001..HTM>

³⁸ <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/state-action%23fn1344amd14>

for himself. The PA PUC and WPP do not have the Complainant's family's best interest at heart as neither entity is a hospital nor a licensed medical provider.

The PA PUC must revoke such policy that is not only discriminatory to those who have electromagnetic sensitivity, but legally inconsistent with the Americans with Disabilities Act and Amendments, a federal law which supersedes PA PUC state regulatory law, and violates the US and PA Constitutions.

8. Respondent's Statement: "As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part, that 'every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.'"

Complainant's Response: In light of the fact that FirstEnergy and WPP have acknowledged harm and liability are associated with the "smart" wireless digital meter technology, which is admitted in FirstEnergy's *Customer Guide for Electric Service in PA*, it can be said with certainty that this is not adequate, safe nor is it reasonable.

Additionally, wireless infrastructure, can no longer be considered safe because of the D.C. Circuit Court's ruling in *Environmental Health Trust, et al. v. FCC*³⁹ on August 13, 2021. This decision, in effect, renders the FCC guidelines suspect at best. FCC and industry assurances of safety are also now questionable. There are 26 volumes⁴⁰ that record evidence of biological harm and hundreds of testimonies that the FCC ignored in this case. The evidence record in *Environmental Health Trust v FCC* alone contains over 20,000 studies showing the harm of this radiation, and additional studies, many from IEEE, show the damage, especially neurological, from the SMPS of the meters. This massive, overwhelming scientific evidence demonstrates that this microwave radiation is harmful – not only to humans, but to animals and the environment as well.

It is absurdly unreasonable that WPP would ignore licensed physicians' explicit medical directives, which violates Section 1501 and Section 1502 which allow for accommodation. The Complainant emphasizes again, the PA Supreme Court's decision states "*This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy,*" regardless of proof of harm. **See Response to Proposed Findings of Fact No. 6, No. 7; Response to Proposed Conclusions of Law No. 9 and No. 14.**

9. Respondent's Statement: "In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code."

³⁹ Court Judgement, United States Court of Appeals for the District of Columbia Circuit, *Environmental Health Trust, et al. v. FCC*, [https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/\\$file/20-1025-1910111.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/$file/20-1025-1910111.pdf).

⁴⁰ **26 Volumes of Evidence of Harm:** [Childrenshealthdefense.org](https://childrenshealthdefense.org). 2022. [online] Available at: <https://childrenshealthdefense.org/wp-content/uploads/Volume-27.pdf>

Complainant's Response: The Complainant highly doubts the Respondent has seen a case similar to the Complainant's case with the amount of extensive disabilities, impairments, and severe seizure activity following a "smart" meter deployment. **See Response to Findings of Fact No. 6, No. 7; Response to Conclusions of Law No. 8.**

10. Respondent's Statement: "Section 1502 of the Public Utility Code prohibits unreasonable discrimination of service 'as between localities or as between classes of service' within a single public utility's service territory."

Complainant's Response: By applying this mandate to affect only select customers, like the Complainant and his family who have disabilities, **is discrimination of service** under § 1502. This is not a true mandate since **not all** Pennsylvanians are required to have a "smart" meter. Those who are **not** required to have a "smart" wireless digital utility meter deployed (areas of <100,000 customers) are given a preference or an advantage in this situation of having an analog meter, thereby the Complainant's family is subjected to unreasonable prejudice, disadvantage and discrimination under § 1502, by not being allowed to have an analog meter.

Act 129, § 2807(f)(6) states that subsection (f) does not apply to EDCs with 100,000 or fewer customers. This allows small volume EDC's **not to furnish** "smart" wireless digital utility meters to its customers if that EDC services 100,000 or fewer customers. That is, if a customer is served by a small volume EDC, that EDC **does not have to furnish** a "smart" wireless digital utility meter to a customer upon the customer's request for a "smart" wireless digital utility meter or in new construction. Also, according to Mr. Ahr, *"The 1.5 % of the installations represent those installations that may require alternative communication solutions..."* (Rebuttal Testimony, p. 10, lines 25-26.)

The Complainant and his family are being discriminated against as there are people living in areas where small power companies who are serving less than 100,000 customers do not have to have a "smart" wireless digital utility meter deployed on their homes. Also take note, just because a power company has more than 100,000 customers still does not mandate "smart" wireless digital utility meters to all customers according to Act 129 of 2008, but is an erroneous part of the PA PUC's Implementation Order of June 2009.

Further to the point of analog meter usage, EDCs with 100,000 or fewer customers are not deploying "smart" wireless digital utility meters in these areas, but are allowing the continued use of analog meters. This is proof positive that the analog meters are a viable, accepted and approved alternative to the "smart" wireless digital utility meters. The analog meters are the perfect choice for ADA accommodations.

By applying this mandate to affect only select customers, like the Complainant whose 14-acre property is considered rural and his family has disabilities, is discrimination of service under § 1502. Those who are not required to have a "smart" wireless digital utility meter deployed are given a preference or an advantage in this situation, thereby the Complainant's family is subjected to unreasonable prejudice, disadvantage and discrimination under § 1502.

Even when not required by the PA PUC or by law to provide an opt-out, many utilities employ the socially responsible practice of providing consumers an analog opt-out. FirstEnergy is well aware of customer service policies as they allow consumers in Ohio and New Jersey to choose an analog opt-out, *just not in Pennsylvania*. See **Response to Proposed Conclusions of Law No. 11**.

11. Respondent’s Statement: By installing the smart meters for all of its customers, the Company is treating the Complainant the same as those other customers. Therefore, its installation of the smart meter would not violate Section 1502 of the Public Utility Code.

Complainant’s Response: *“Treating the Complainant the same as those other customers”* is the main issue the Respondent continues to misconstrue. The Complainant and his family **SHOULD NOT** be treated as “those other customers” as they have ADA recognized disabilities and **SHOULD BE** receiving a reasonable ADA accommodation per the PA Supreme Court decision. Therefore, deployment of the “smart” wireless digital utility meter does violate Section 1502 of the Public Utility Code. Even in the absence of a Section 1501 violation, WPP is not precluded from providing the Complainant a reasonable accommodation pursuant to a customer service policy, regardless of proof of harm. See **Response to Conclusions of Law No. 7(a)(b)(c), and No. 10**.

12. Respondent’s Statement: “Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to ‘opt-out’ from smart meter installation.”

Complainant’s Response: Respondent continues to discuss the inappropriate topic of “opt-out.” The Complainant has requested an ADA accommodation for disabilities since day one. WPP has confused an offer with accommodation. The Complainant rejected a WPP offer to deploy a wireless digital utility meter at the bottom of his driveway, which would cost an exorbitant amount of money, and chose to keep his analog meter as the offer was not in agreement with directives from his family’s trusted licensed medical doctors, nor is it an ADA accommodation.

Moving the meter off the house:

- is another admission of harm.
- does not take the harmful conductive emissions (dirty electricity) of the meter off the electric lines which run into the house as the emitting meter is still connected to them.
- constitutes constructive eviction as the Complainant and his family would still be impacted when they go to the part of the property where the wireless digital utility meter would be located.
- would make the Complainant responsible to maintain all of the wiring between the wireless digital utility meter and the house.

It is the Complainant's right to receive an ADA accommodation and not an offer. This offer of a new contract does not constitute an ADA accommodation. *"A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part."* 28 C.F.R. § 35.130(f). WPP would require the Complainant to cover the cost of the measure of moving the meter off his home which is discrimination against the Complainant.

See Response to Proposed Findings of Fact No. 6; Response to Conclusions of Law No. 7(b), No. 10 and No. 11.

13. Respondent's Statement: "The Complainants failed to establish that the Company's installation of a smart meter at the Complainant's Service Location would violate Act 129 or any related Commission orders."

Complainant's Response: The Company's proposed deployment of a "smart" wireless digital utility meter at the Complainant's service location would be in violation of 66 Pa. C.S. §1501 and § 1502 because of the admitted possibility and threat of harm and liability. **See Response to Finding of Facts No. 2(1) and No. 6; Response to Conclusions of Law No. 7, 10, 11.**

14. Respondent's Statement: "The Company owns, maintains, furnishes and installs its electric meters. It is within the Company's sole and exclusive discretion to install the meters and related equipment it deems reasonable and appropriate to provide service to customers."

Complainant's Response: The Company has already installed the meter that is reasonable and appropriate for this particular customer. No further action is needed. The solution is already in place. The Company can be rest assured they did a good job with that already.

15. Respondent's Statement: "A lay witness may only provide testimony related to his or her direct knowledge or experience."

Complainant's Response: The Complainant and his wife have a combined 60 years of *direct knowledge and experience* as the experts in the care of their son. They are the true experts in this formal complaint. The Complainant's direct knowledge and experience are relevant in his formal complaint as various forms of electromagnetic radiation *definitively exacerbate* the Complainant's son's seizure disorder. Furthermore, the Complainant is not relying upon his own assertions to establish the family's disabilities. The Complainant's testimony and the 12 letters he provided from physicians and others, which corroborate the disabilities, were wrongfully expunged during his hearing.

No one at WPP is a licensed medical doctor, and no one is qualified to diagnose or treat patients, nor do they have any personal experience caring for a person with so many disabilities

and Impairments. Because WPP employees are not licensed medical doctors, they cannot factor in the uniqueness, vulnerability, and susceptibility of the Complainant's son's conditions in relation to how a wireless digital utility meter has already adversely affected him and will affect him if another wireless digital utility meter is deployed on Complainant's home. It is absurdly unreasonable that WPP concludes this technology is safe and reasonable and will not harm the Complainant's family, especially his son, with no research or medical background to back up their claims. They only rely on a "Smart Meter Deployment Plan," which is not a medical document, and not written by a licensed medical physician.

Mr. Ahr is the true lay witness. Mr. Ahr giving an expert opinion in this case amounts to the unauthorized practice of medicine without a professional medical license as WPP opines the wireless digital utility meter technology is safe for Complainant's family who have numerous disabilities and impairments recognized by the Americans with Disabilities Act (ADA) and ***in light of licensed medical doctors' explicit medical directives to the contrary***. This is an unreasonable decision.

*"The unauthorized practice of medicine occurs when someone gives **medical advice** or treatment **without a professional license**. The prohibition against the unauthorized practice of medicine is a precaution against people who would try to treat others without the proper training, or by using unproven methods which could harm or even kill their supposed patients. As a result, all states make the unauthorized practice of medicine a **criminal offense with potentially serious penalties**."*⁴¹ [Emphasis added.]

The point of unauthorized practice of medicine is someone giving medical advice without a professional license and without a doctor-patient relationship. WPP employees do not have professional medical licenses and do not have a doctor-patient relationship with Complainant's family. However, WPP is indeed giving an expert opinion concerning medical safety, which amounts to medical advice without a professional license, by stating this technology is safe for Complainant's family's medical conditions while ***ignoring treating physicians' explicit medical directives***. WPP, therefore, has taken on the role of healthcare provider.

If a wireless digital utility meter is deployed on Complainant's property ***against explicit medical advice from the professionals who should be making this decision***, the Commission and others could be personally liable as this is *ultra vires* and constitutes professional negligence which could possibly result in a criminal offense with potentially serious penalties. **See Response to Conclusions of Law No. 16.**

16. Respondent's Statement: "Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight."

Complainant's Response: The Complainant, his wife, and their trusted, licensed treating physicians do have technical and specialized knowledge as experts in his son's medical

⁴¹ What is the Unauthorized Practice of Medicine? (2016, June 21). Retrieved from <https://healthcare.findlaw.com/patient-rights/what-is-the-unauthorized-practice-of-medicine.html>

conditions, in his disabilities, and in his care. No one from WPP can claim they have this technical or specialized knowledge. Therefore, the Complainant's technical and specialized knowledge should be included and given the most weight in this proceeding, along with licensed physician's explicit medical directives. **See Response to Conclusions of Law No. 15.**

17. Respondent's Statement: "The Complainant failed to sustain his burden of proof that the installation of a smart meter would violate the Public Utility Code, a Commission order, or a Commission regulation."

Complainant's Response: The issue that "...the Complainant has failed to sustain his burden of proof..." is a moot point with the PA Supreme Court decision. The PA Supreme Court's decision states *"This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy,"* regardless of proof of harm. Even in the absence of a Section 1501 violation, WPP is not precluded from providing the Complainant a reasonable accommodation pursuant to a customer service policy. **See Response to Proposed Finding of Fact No. 6; Response to Conclusions of Law No. 1, No. 2, No. 3, No. 4 and No. 7.**

18. Respondent's Statement: "Rule 9 of West Penn's Commission-approved tariff expressly states that the Company shall have reasonable access to the customer's premises for, among other reasons, 'removing or exchanging any or all equipment belonging to the Company,' such as the Company's meters."

Complainant's Response: The Respondent is purposefully misconstruing the facts. The Company has more than reasonable access to customer's premises. The Complainant is in the formal complaint process; hence, Respondent knows full well that WPP must comply with 52 Pa. Code § 56.92. Notice when dispute pending.

The Complainant has never refused WPP employees to have access to his electric meter. The Complainant has witnessed WPP meter readers taking the readings on numerous occasions since the Formal Complaint was filed. The Complainant has also witnessed WPP employees performing transformer checks. **See Response to Proposed Findings of Fact No. 8; and Response to Proposed Conclusions of Law No. 20, and No. 21.**

19. Respondent's Statement: Public utilities' tariffs have the force and effect of law and are binding on the utilities and their customers.

Complainant's Response: Evidence that an administrative order does not have full force and effect of law, rather only guidelines, is found in the PA PUC's Public Meeting held April 15, 2010 on page 10 of this document:

*"The ALJ found that the Implementation Order is **not a regulation and does not have the full force and effect of law.** Instead, it acts as a **policy to provide guidelines***

to EDCs regarding the Commission's expectations about smart meter plans." ⁴² [Emphasis added.]

The Respondent claims they must enforce the policies of an administrative agency as if it is law. Administrative policy is not legislation; therefore, it is not law. As administrative policy is enforced, rights protected by law are being violated. The US Supreme Court ruled in *West Virginia v. Environmental Protection Agency*⁴³ that regulatory agencies have no authority to write regulations and cannot exceed the scope of statutes. Even state agencies have to take notice. The law has implications in its hierarchy between federal and state levels.

The tendency of the courts to grant legal deference to administrative bureaucracies, has trickled all the way down to agencies such as the PA PUC. In *Loper Bright Enterprises, et al. v. Raimondo, Secretary of Commerce, et al.*⁴⁴, the US Supreme Court overturned the Chevron Deference and ruled that agencies are not supposed to act unless authorized to do so by the legislature (i.e. state legislatures at the state level). Agencies can no longer make the rules and change laws, such as Act 129's plain language, in the process.

Agencies, like the PA PUC, ***are supposed to work for the public***, but when they are ***captured by industry (with financial ties), as the PA PUC is, they always defer to the industry they should be regulating. The PA PUC lacks objectivity with respect to these industries.*** This is a huge thumb on the scale of justice and the PA PUC has made it impossible for complainants to win. As stated before, no complainant has won their formal complaint before the Commission to date. Act 129 is not ambiguous and the PA PUC's misinterpretation of Act 129 is arbitrary, capricious, blatant overreach, and medically unsound.

20. Under both the Public Utility Code and the Commission's regulations, West Penn is expressly permitted to terminate a customer's service if it is denied reasonable access to a customer's property and prevented from replacing its meter.

Complainant's Response: See Response to Proposed Findings of Fact No. 8; and Response to Proposed Conclusions of Law No. 18 and No. 21.

21. If the Complainant continues to deny West Penn reasonable access to the property for the purpose of replacing the Company's meter, West Penn is legally authorized to issue a termination notice to the Complainant.

Complainant's Response: See Response to Proposed Findings of Fact, No. 8; and Response to Proposed Conclusions of Law No. 18.

⁴² Docket No. M-2009-2123950, REWRITE OPINION & ORDER-2123950-OSA-0038-FIRST ENERGY SMART METER PLAN, <https://www.puc.pa.gov/docket/M-2009-2123950>.

⁴³ 20-1530 *West Virginia v. EPA* (06/30/2022). https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf

⁴⁴ *Loper Bright Enterprises v. Raimondo*, 603 U.S., Docket No. 22-451 (2024).

IV. CONCLUSIONS

1. Complainant has shown a reasonable ADA accommodation argument. Documentation confirming their disability claims has been provided. The Complainant's ask is for the Company to do nothing. This is both cost-effective and clearly technically feasible. Electrical usage and subsequent billing from the existing analog meters have been successful for the past seven years.
2. WPP is not precluded from providing a reasonable accommodation to Complainant through a second option per the PA Supreme Court's Decision which states "***This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy,***" regardless of proof of harm.
3. WPP has affirmatively admitted to deploying a "smart" meter at 905 Country Club Drive, Greensburg, PA in February or March of 2017, which exacerbated his son's epilepsy disability, by refusing to provide a date of deployment. Complainant's case would have been dismissed long ago if WPP had proven otherwise.
4. Additional harm has already been proven in PA PUC Docket No. C-2017-2621057, *Alexia and Lawrence McKnight v. PECO Energy Co.* ALJ Heep found **sufficient evidence that Dr. Alexia McKnight would be adversely affected** by the reinstallation of the meter and it **would create unsafe or unreasonable service which would violate 66 Pa. C.S. § 1501.**
5. Complainant proved that WPP will be subjecting their customers to much threat of harm and liability with the installation of a "smart" wireless digital meter on Complainant's property located at 200 Brook Hollow Road, Mount Pleasant, PA, which is admitted in FirstEnergy's *Customer Guide for Electric Service in PA.*
6. Complainant proved another threat of harm and liability which is the construction of the Itron Smart Meters themselves. With their collocated SK9AMI7 and 802.15.4 ZigBee Modules, these meters do not fully comply with their FCC Grants of Equipment Authorization, and as such, do not fully comply with 66 Pa. C.S. § 1501 and 52 Pa. Code § 57.194 (a).
7. WPP failed to prove with non-biased, independent, peer-reviewed biological research on "smart" meters, that the "smart" meter technology is as safe as the non-electronic electro-mechanical analog meters for measuring power usage that do not contain a switched mode power supply and do not emit any radiofrequency electromagnetic, wireless microwave radiation, used for 50+ years and currently on Complainant's property. ***WPP only provided outdated, industry-biased, decades old cell phone research which is totally irrelevant to the level of today's "smart" meter technology and an irrelevant Smart Meter Deployment Plan as it does not address biological safety.***

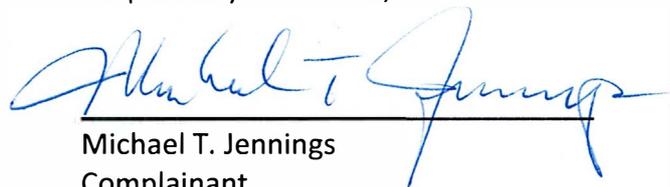
8. WPP failed to prove that the “smart” meter technology is **as reliable** as the non-electronic electro-mechanical analog meters for measuring power usage that do not contain a switched mode power supply and do not emit any radiofrequency electromagnetic, wireless microwave radiation, used for 50+ years and currently on Complainant’s property.
9. By applying this mandate to affect only select customers, and not every customer, like the Complainant and his family who have disabilities, WPP will be violating § 1502 as this is **discrimination of service**.

Wherefore, the Complainant respectfully requests ALJ Gail Chiodo to:

1. Grant the Complainant’s request for a reasonable Americans with Disabilities Act (ADA) accommodation, whereby he is allowed to retain the electromechanical analog meters for measuring power usage that do not contain a switched mode power supply and do not emit electromagnetic radiation of any kind. The Complainant presently receives electric service through non-electronic electro-mechanical analog meters for measuring power usage without any problem. This request is beyond reasonable.
2. Require WPP to cease and desist from deploying or attempting to deploy a “smart” wireless digital utility meters on the Complainant’s property, 200 Brook Hollow Road, Mount Pleasant, PA, per the PA Supreme Court’s decision, **“This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy,”** regardless of proof of harm. A customer service policy would provide the administrative permission to grant the Complainant the remedy he requests.
3. **Mark this matter closed in favor of the Complainant.**

Dated: November 15, 2024

Respectfully Submitted,


Michael T. Jennings
Complainant

Attachment RB-1

Letter from Dr. Kevin Kelly, MD

Allegheny Health Network Neurology

420 E NORTH AVENUE
EAST WING
SUITE 206
PITTSBURGH PA 15212-4746
Tel 412-359-8850
Fax 412-359-8878



McKenzie Jennings
200 Brook Hollow Rd
Mount Pleasant PA 15666

January 18, 2024

McKenzie Jennings has been under my care since 2017. I am familiar with his history and with the functional limitations imposed by his disabilities. McKenzie has both physical and mental impairments that substantially limit one or more of his major life activities. His impairments are neither transitory nor minor. McKenzie meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act and the Rehabilitation Act of 1973.

McKenzie's has multiple diagnoses which include: Epilepsy, Sturge-Weber Syndrome, Pervasive Developmental Disorder-NOS (PDD-NOS, an Autism spectrum disorder), Pediatric Acute-onset Neuropsychiatric Syndrome (PANS) with a mycoplasma coinfection, Intellectual and Developmental Disability (IDD), pes planus, Electromagnetic Sensitivity (EMS), per other professionals diagnosis, and hypothyroidism. McKenzie can also experience Sudden Unexpected Death in Epilepsy (SUDEP) during or immediately after a seizure which could cause him to stop breathing, to have a dangerous arrhythmia, to have cardiac arrest, or all of these. The combination and rarity of some of his conditions make him an anomalous case and a most vulnerable individual.

Per McKenzie's mother, his disabilities are unequivocally exacerbated in environments with wireless technologies. During one event, he suddenly dropped unconscious to the floor, fell backwards and hit his head. At subsequent dates in the same environment, his mobility worsened to the point that he could barely walk. His seizures become frequent and nearly uncontrollable. When McKenzie's disabilities are exacerbated, his major life activities that are substantially limited include, but not limited to:

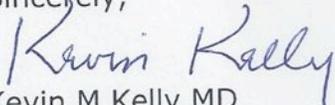
- caring for himself
- sitting
- reaching
- lifting
- bending
- speaking
- learning
- reading
- concentrating
- thinking
- writing
- communicating and interacting with others

Attachment RB-1

The major bodily functions which are affected are his immune, neurological, endocrine and urinary systems.

As a result of McKenzie's disabilities, per family's request, I request that West Penn Power does not install any transmitting device on his property. This accommodation is necessary for McKenzie to maintain his health and his life. Per Mackenzie's mother, this is the ADA accommodation recommendation.

Sincerely,


Kevin M Kelly MD

Attachment RB-2

Disability Letter from
Social Security Administration

SOCIAL SECURITY ADMINISTRATION

Date: December 2, 2014
Claim Number: XXX-XX-1717C1

MICHAEL T JENNINGS FOR
MCKENZIE S JENNINGS
905 COUNTRY CLUB DR
GREENSBURG PA 15601-1201

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Information About Current Social Security Benefits

Beginning December 2014, the full monthly
Social Security benefit before any deductions is.....\$ 799.10

We deduct \$104.90 for medical insurance premiums each month.

The regular monthly Social Security payment is.....\$ 694.00
(We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third Wednesday of each month.

Other Important Information

MCKENZIE JENNINGS HAD A DISABLED ADULT CHILDS MEDICAL DECISION AT AGE 16 TO CONTINUE HIS MOTHER'S BENEFITS. HIS DISABLED ADULT CHILDS BENEFITS CONTINUE PAST AGE 18 BASED ON THAT DECISION.

Medicare Information

You are entitled to hospital insurance under Medicare beginning October 2014.

You are entitled to medical insurance under Medicare beginning October 2014.

Type of Social Security Benefit Information

You are entitled to monthly benefits as a disabled dependent of the wage

earner.

Date: January 2, 2004
Claim Number: KAX-22-107187

MICHAEL J. BENTON FOR
MCKENZIE & PARTNERS
905 COUNTRY CLUB DR
GREENSBORO, NC 27409-1201

You asked us for information regarding your request. The information that you requested is set forth below. If you want anyone else to have this information, you may contact this office.

Information About Current Social Security Benefits

Beginning 4 weeks after the full month of January 2004, your Social Security benefits will be \$399.10.

The amount that you will receive for each month will be reduced if you have medical insurance premiums.

The amount of your Social Security benefits will be reduced if you have a Medicare Part B premium. The amount of your Social Security benefits will be reduced by \$39.10.

Social Security benefits for a given month are paid the following month. For example, Social Security benefits for March are paid in April.

Your Social Security benefits are based on your earnings record. If you have any questions about your Social Security benefits, you may contact this office.

Other Important Information

MICHAEL J. BENTON HAS A DISBURSED RIGHT LEG. THIS MEANS THAT HE IS NOT ELIGIBLE FOR SOCIAL SECURITY BENEFITS. HIS CLAIM IS BEING REVIEWED BY THE SOCIAL SECURITY ADMINISTRATION. HIS CLAIM IS BEING REVIEWED BY THE SOCIAL SECURITY ADMINISTRATION. HIS CLAIM IS BEING REVIEWED BY THE SOCIAL SECURITY ADMINISTRATION.

Medicare Information

You are eligible for Medicare benefits as a disabled recipient of the Social Security Act. You are eligible for Medicare benefits as a disabled recipient of the Social Security Act. You are eligible for Medicare benefits as a disabled recipient of the Social Security Act.

Right to Social Security General Information

You are eligible to apply for benefits as a disabled recipient of the Social Security Act. You are eligible to apply for benefits as a disabled recipient of the Social Security Act.

Attachment - RB-2

SUSPECT SOCIAL SECURITY FRAUD?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

IF YOU HAVE QUESTIONS

We invite you to visit our web site at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local office at 877-748-9768. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
122 W 3RD STREET
GREENSBURG, PA 15601

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

OFFICE MANAGER

GREENSBURG, PA

DEC 02 2014

223
SSA DISTRICT OFFICE

Attachment RB-3

Office of Developmental Programs (ODP)
Home and Community Based Waiver
Confirmation Letter



February 14, 2024

McKenzie Jennings
200 Brook Hollow Rd
Mt Pleasant, PA 15666

Dear McKenzie Jennings:

Regional Integrated Human Services (RIHS) on behalf of Westmoreland Behavioral Health/Development Services conducted a Level of Care re-evaluation to determine McKenzie Jennings' eligibility for participation in the Home and Community Based Waiver Program. This letter confirms that you have met the ICF/ID Level of Care requirements for an ODP Waiver.

A completed DP 251 titled *Annual Re-evaluation of Need for ICF/ID Level of Care* is enclosed with this correspondence. In addition, a copy of the Waiver evaluation tool using standard SIS scores or MA-51 is enclosed.

For your future reference, it is a requirement that a Level of Care determination be completed annually. The annual re-evaluation of need for an ICF/ID Level of Care is based on the completion of the waiver re-evaluation tool utilizing standard Supports Intensity Scale (SIS) scores, as well as a review of the benefit McKenzie Jennings is receiving from home and community-based services and supports or continued stay in an ICF/ID. Additionally, the County Assistance Office may request at any time financial information necessary to determine your ongoing eligibility for Medical Assistance. Failure to respond timely to these requests will result in a "not eligible" determination and termination from either the Waiver program and/or Medical Assistance. All termination notices will be sent from the County Assistance Office via a PA 162 Form.

Please sign and return the attached Release(s) for your Support Coordination Organization/Residential Service Provider so ongoing communication and release and distribution of necessary waiver documentation is possible.

Sincerely,

Gennifer Payne

Developmental Services Support Specialist

Enclosure: DP 251, Waiver Re-evaluation Tool, DP 458, "Fair Hearing Request Form", Notice of Privacy Practices, Recognizing Abuse & Neglect Brochure, Incident Management Brochure, Releases

cc: Individual's file
Tina Reid, WCSI Supports Coordinator
Jennifer Coffee, Westmoreland County BH/DS

ACCESS TO RESOURCES, ACCOUNTABILITY, COMPLIANCE

www.ontherihs.org

766 East Pittsburgh Street, STE. 206 | Greensburg, PA 15601 | Toll Free 1-800-267-7062 or 724-836-6215

Attachment RB-4

**Americans with Disabilities Request
Sent to Pennsylvania Public Utility Commission
And West Penn Power**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AND WEST PENN POWER

**ACCOMMODATION REQUEST PURSUANT TO THE SUPREME COURT'S DECISION IN *POVACZ ET AL. V. PUC*¹
WHICH CONCURS WITH THE COMMONWEALTH DECISION IN *POVACZ ET AL. V. PUC*, 492 CD 2019²**

[See Attachment 1 and Attachment 2]

"See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 "as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public") and 1501 (requiring utility to take remedial action "as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public"). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy. [J-77A-L-2021]-7"³ [Emphasis added.]

Date: February 26, 2024

To: Steven M. DeFrank, Chairman
Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120

Scott R. Wyman, President, Pennsylvania Operations
For West Penn Power
76 S. Main St.
Akron, OH 44306

Pursuant to the Pennsylvania Supreme Court Order, *Povacz, et al. v. PUC*, we are asking the Pennsylvania Public Utility Commission (PA PUC) to enforce an Americans With Disabilities Amendments Act (ADA), 42 U.S. Code § 12101 *et seq.*; the Rehabilitation Act of 1973 as Amended, 29 U.S.C. § 701 *et seq.*; and the Fair Housing Amendments Act, 42 U.S.C. § 3601 *et seq.* accommodation for Michael T., Susan, and McKenzie Jennings. We are asking West Penn Power (WPP) for a reasonable ADA accommodation for our disabilities.

The Supreme Court concurs with the Commonwealth Court's decision that Act 129 does not preclude accommodations of disabilities, regardless of proof of harm. (*Povacz et al v. PUC*, No. 492, C.D. 2019, October 8, 2020). In the Supreme Court decision, October 8, 2020, in the case of *Maria Povacz, Laura Sunstein Murphy, Cynthia Randall and Paul Albrecht vs. PA PUC*, No. 492 CD 2019, No. 616 CD 2019, No. 607 CD 2019, at page 7, footnote 5 reiterates the Commonwealth Court's decision by stating, as above, "...This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy." Even with a mandate, the Commonwealth and Supreme Courts have decided to protect people with disabilities, like our family, regardless of proof of harm.

We have enclosed separate ADA accommodation letters, a disability document from the Social Security Administration [Attachment 3], and letters from our physicians and other agencies in support of this ADA accommodation [Attachment 4]. We wish to continue to use the WPP analog meters which are non-electronic electromechanical analog meters (with no transmitting device installed) which have been on our property prior to our purchase of the home in May 2016. These meters do not exacerbate our disabilities or our impairments. WPP would not have to do anything except leave the existing meters on our property.

The ADA accommodation of retaining the analog meters, which is what we are requesting, is more than reasonable as this will not cause WPP to suffer in *any* way. Retaining the analog meters on our property has not caused WPP any inconvenience or disruption in service over the course of the past five years. We would be most willing to report our electric usage by sending a photo of our meter by email to WPP each month as we understand this method is currently used by other customers throughout the state.

¹ PA Supreme Court Dockets *Povacz, M v. PUC*, No. 34-45 MAP 2001.

² Pennsylvania Commonwealth Court Dockets, 492 CD 2019.

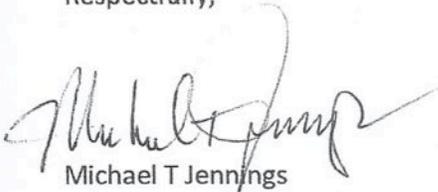
³ PA Supreme Court Dockets *Povacz, M v. PUC*, No. 34-45 MAP 2001, p. 7.

Further to the point of analog meter usage, EDCs with 100,000 or fewer customers are not deploying "smart" meters in these areas, but are allowing the continued use of analog meters. This is proof positive that the analog meters are a viable, accepted and approved alternative to the "smart" meters. The analog meters are the perfect choice for ADA accommodations.

For all of the reasons set forth above, and the information included in the attachments, Michael T., Susan and McKenzie Jennings request an Americans with Disabilities Amendments Act, 42 U.S. Code § 12101 *et seq.*; the Rehabilitation Act of 1973 as Amended, 29 U.S.C. § 701 *et seq.*; and the Fair Housing Amendments Act, 42 U.S.C. § 3601 *et seq.* accommodation. WPP and the Public Utility Commission are not precluded from "...providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy," such that we are permitted to simply retain the non-electronic electromechanical analog meters (with no transmitting device installed) that are presently installed on our property.

We would like a written response from you by March 8, 2024.

Respectfully,



Michael T Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666



Susan Jennings

Cc: Representative Eric Davanzo, in person delivery
Senator Kim Ward, via first class mail
Representative Guy Reschenthaler, via first class mail

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AND WEST PENN POWER COMPANY

ACCOMMODATION REQUEST PURSUANT TO THE SUPREME COURT'S DECISION IN *POVACZ ET AL. V. PUC*¹
 WHICH CONCURS WITH THE COMMONWEALTH OPINION IN *POVACZ ET AL. V. PUC*, 492 CD 2019²
 [See Attachment 1 and Attachment 2]

"See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy. [J-77A-L-2021]-7"³

[Emphasis added.]

Date: February 26, 2024

To: Mr. Steven M. DeFrank, Chairman
 Pennsylvania Public Utility Commission
 400 North Street
 Keystone Building
 Harrisburg, PA 17120

Scott R. Wyman, President, Pennsylvania Operations
 For West Penn Power
 76 S. Main St.
 Akron, OH 44306

I am requesting an accommodation under the Americans with Disabilities Amendments Act, 42 U.S. Code § 12101 *et seq.*; the Rehabilitation Act of 1973 as Amended, 29 U.S.C. § 701 *et seq.*; and the Fair Housing Amendments Act, 42 U.S.C. § 3601 *et seq.* because my numerous neurological disabilities are exacerbated by wireless technology. I am an individual who has been diagnosed with epilepsy, Sturge-Weber Syndrome, PDD-NOS (Autism), Pediatric Acute-onset Neuropsychiatric Syndrome (PANS), hypothyroidism, and Intellectual and Developmental Disability (IDD). These conditions make me more vulnerable to wireless emissions causing me to experience electromagnetic sensitivity (EMS). Attached please find documentation from the Social Security Administration [Attachment 3] and my medical providers and others to verify my disabilities and impairments [Attachment 4].

When my conditions are exacerbated by EMS, I can experience temporary or lingering confusion; involuntary, uncontrollable jerking movements of my arms and legs; loss of consciousness which causes me to abruptly collapse and fall to the ground; resulting head and/or bodily injuries from collapsing; difficulty speaking or total loss of speech; difficulty walking for short or long periods of time; sudden outbursts of anger; cannot feed myself; incontinence; possible Sudden Unexpected Death in Epilepsy if seizures don't stop; at times I cannot sit; loss of ability to interact with others; and more. My major life's activities that can be substantially limited are breathing, eating, walking, standing, speaking, caring for myself, concentrating and thinking, performing manual tasks, etc. Major bodily functions that are affected are my brain, neurological, endocrine, and bladder systems. My disabilities are permanent. My family has made a conscious decision to protect me by minimizing my exposure to wireless emissions by remediating our home, using a fully hard-wired internet system, and not using a microwave oven.

¹ Pennsylvania Supreme Court Dockets Povacz, M v. PUC, No. 34-45 MAP 2001.

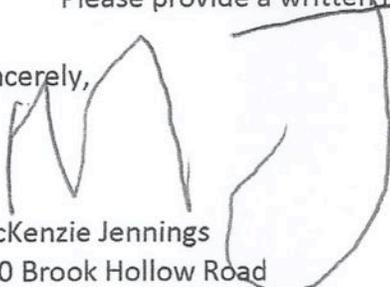
² Pennsylvania Commonwealth Court Dockets, 492 CD 2019

³ Ibid. p. 7.

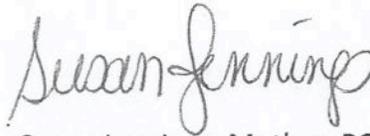
The Americans with Disabilities Amendments Act accommodation I am requesting is to continue to use the analog meters which are non-electronic electromechanical analog meters (with no transmitting device installed) which have been on our property prior to purchase of the home in May 2016. These meters do not exacerbate my disabilities or my impairments.

Please provide a written response by March 8, 2024.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'McKenzie Jennings'. The signature is written over a large, irregular white scribble that partially obscures the text below it.

McKenzie Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666

A handwritten signature in black ink that reads 'Susan Jennings'. The signature is written in a cursive style.

Susan Jennings, Mother, POA

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AND WEST PENN POWER COMPANY

ACCOMMODATION REQUEST PURSUANT TO THE SUPREME COURT'S DECISION IN *POVACZ ET AL. V. PUC*¹
WHICH CONCURS WITH THE COMMONWEALTH DECISION IN *POVACZ ET AL. V. PUC*, 492 CD 2019²
[See Attachment 1 and Attachment 2]

"See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy. [J-77A-L-2021]-7"³ [Emphasis added.]

Date: February 26, 2024

To: Mr. Steven M. DeFrank, Chairman
Pennsylvania Public Utility Commission
400 North Street
Keystone Building
Harrisburg, PA 17120

Scott R. Wyman, President, Pennsylvania Operations
For West Penn Power
76 S. Main St.
Akron, OH 44306

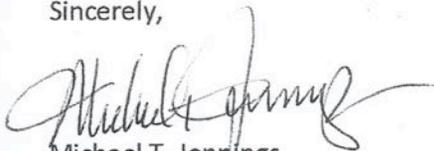
I am requesting an accommodation under the Americans with Disabilities Amendments Act, 42 U.S. Code § 12101 *et seq.*; the Rehabilitation Act of 1973 as Amended, 29 U.S.C. § 701 *et seq.*; and the Fair Housing Amendments Act, 42 U.S.C. § 3601 *et seq.* My disabilities include carcinoma of the colon (stage four colon cancer), hypothyroidism, thrombocytopenia, hypertension, ventral hernia, small bowel obstruction, premature ventricular contractions, heart murmur, edema and more. Attached please find documentation from my physicians to verify my disabilities. [Attachment 4.] My family has made the conscious decision to minimize our wireless radiation exposure by using fully hardwired internet systems. We do not use WIFI and we do not use a microwave oven.

My major life's activities that can be substantially limited are caring for myself, eating, performing manual tasks, sleeping, standing, walking, and at times, I have been totally incapacitated. My major bodily functions affected are immune, endocrine, cardiovascular, bowel, digestive, and normal cell growth. My carcinoma disability is considered permanent as there is no cure for cancer, and my other disabilities are chronic in nature.

The Americans With Disabilities Amendments Act accommodation I am requesting is to continue to use the analog meters which are non-electronic electromechanical analog meters (with no transmitting device installed) which have been on our property prior to purchase of the home in May 2016. These meters do not exacerbate my disabilities or my impairments.

Please provide a written response by March 8, 2024.

Sincerely,



Michael T. Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666

¹ PA Supreme Court Dockets Povacz, M v. PUC, No. 34-45 MAP 2001.

² Pennsylvania Commonwealth Court Dockets, 492 CD 2019.

³ *Ibid.* p. 7.

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AND WEST PENN POWER COMPANY

ACCOMMODATION REQUEST PURSUANT TO THE SUPREME COURT'S DECISION IN *POVACZ ET AL. V. PUC*¹
WHICH CONCURS WITH THE COMMONWEALTH DECISION IN *POVACZ ET AL. V. PUC*, 492 CD 2019²

[See Attachment 1 and Attachment 2]

"See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy. [J-77A-L-2021]-7"³ [Emphasis added.]

Date: February 26, 2024

To: Mr. Steven M. DeFrank, Chairman
Pennsylvania Public Utility Commission
400 North Street
Keystone Building
Harrisburg, PA 17120

Scott R. Wyman, President, Pennsylvania Operations
For West Penn Power
76 S. Main St.
Akron, OH 44306

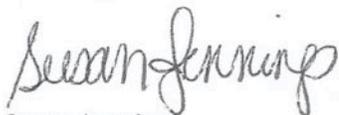
I am requesting an accommodation under the Americans with Disabilities Amendments Act, 42 U.S. Code § 12101 *et seq.*; the Rehabilitation Act of 1973 as Amended, 29 U.S.C. § 701 *et seq.*; and the Fair Housing Amendments Act, 42 U.S.C. § 3601 *et seq.* because my neurological disability, multiple sclerosis, and Hashimoto's thyroiditis makes me more vulnerable to wireless emissions, causing me to experience electromagnetic sensitivity (EMS). Attached please find documentation from my medical providers to verify my disabilities. [Attachment 4.] My family has made the conscious decision to minimize our exposure to wireless emissions by remediating our home. We do not use WIFI as we use a fully hard-wired internet system, and we do not use a microwave oven.

Impairments I have already experienced include extreme fatigue, brain fog, sleep disturbances, changes in my vision, and tinnitus. When my disability is exacerbated, I may experience difficulty caring for myself, performing manual tasks, sitting, eating, sleeping, standing, walking, and have at times been totally incapacitated. My major bodily functions that are affected are my brain, immune, endocrine, and neurological systems. My disability is permanent as there is no cure for MS.

The Americans with Disabilities Amendments Act accommodation I am requesting is to continue to use the analog meters which are non-electronic electromechanical analog meters (with no transmitting device installed) which have been on our property prior to purchase of the home in May 2016. These meters do not exacerbate my disabilities or my impairments.

Please provide a written response by March 8, 2024.

Sincerely,



Susan Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666

¹ PA Supreme Court Dockets *Povacz, M v. PUC*, No. 34-45 MAP 2001.

² Pennsylvania Commonwealth Court Dockets, 492 CD 2019.

³ *Ibid.* p. 7.

Attachment 1

Supreme Court's Decision in *Povacz et al. v. PUC*
No. 34-45 MAP 2001.

[Highlighting added.]

MARIA POVACZ	:	No. 37 MAP 2021
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court at No. 492 CD
	:	2019 dated October 8, 2020 which
	:	Affirmed/Reversed/Remanded the
PENNSYLVANIA PUBLIC UTILITY	:	Order of the PUC at No. C-2015-
COMMISSION	:	2475023 dated March 28, 2019
	:	
	:	ARGUED: December 7, 2021
APPEAL OF: PECO ENERGY	:	
COMPANY	:	
	:	
LAURA SUNSTEIN MURPHY	:	No. 38 MAP 2021
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court at No. 606 CD
	:	2019 dated October 8, 2020 which
	:	Affirmed/Reversed/Remanded the
PENNSYLVANIA PUBLIC UTILITY	:	Order of the PUC at No. C-2015-
COMMISSION	:	2475726 dated May 9, 2019
	:	
	:	ARGUED: December 7, 2021
APPEAL OF: PECO ENERGY	:	
COMPANY	:	
	:	
CYNTHIA RANDALL AND PAUL	:	No. 39 MAP 2021
ALBRECHT	:	
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court at No. 607 CD
	:	2019 dated October 8, 2020 which
	:	Affirmed/Reversed/Remanded the
PENNSYLVANIA PUBLIC UTILITY	:	Order of the PUC at No. C-2016-
COMMISSION	:	2537666 dated March 28, 2019
	:	
	:	ARGUED: December 7, 2021
APPEAL OF: PECO ENERGY COMPANY	:	
	:	
MARIA POVACZ,	:	No. 40 MAP 2021
	:	
	:	Appeal from the Order of the
Cross Appellant	:	Commonwealth Court at No. 492 CD
	:	2019 dated October 8, 2020 which
v.	:	Affirmed/Reversed/Remanded the

PENNSYLVANIA PUBLIC UTILITY COMMISSION,	Appellee	: Order of the PUC at No. C-2015- : 2475023 dated March 28, 2019 : : ARGUED: December 7, 2021 : :
LAURA SUNSTEIN MURPHY,	Cross Appellant	: No. 41 MAP 2021 : : Appeal from the Order of the : Commonwealth Court at No. 606 CD : 2019 dated October 8, 2020 which : Affirmed/Reversed/Remanded the : Order of the PUC at No. C-2015- : 2475726 dated May 9, 2019
v.		
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	Appellee	: ARGUED: December 7, 2021 : :
CYNTHIA RANDALL AND PAUL ALBRECHT,	Cross Appellants	: No. 42 MAP 2021 : : Appeal from the Order of the : Commonwealth Court at No. 607 CD : 2019 dated October 8, 2020 which : Affirmed/Reversed/Remanded the : Order of the PUC at No. C-2016- : 2537666 dated May 9, 2019
v.		
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	Appellee	: ARGUED: December 7, 2021 : :
MARIA POVACZ,	Cross Appellant	: No. 43 MAP 2021 : : Appeal from the Order of the : Commonwealth Court at No. 492 CD : 2019 dated October 8, 2020 which : Affirmed/Reversed/Remanded the : Order of the PUC at No. C-2015- : 2475023 dated March 28, 2019
v.		
PENNSYLVANIA PUBLIC UTILITY COMMISSION, PECO ENERGY COMPANY		: ARGUED: December 7, 2021 : :

(“EE&C”) program in Pennsylvania.³ This case centers around the following provision in Act 129 that directs electric distribution companies (“EDCs”)⁴ in Pennsylvania to “furnish” smart electric technology to their customers:

(f) Smart meter technology and time of use rates.--

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f)(2).

Act 129 defines “smart meter technology” as follows:

[T]he term “smart meter technology” means technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the

³ Pennsylvania’s EE&C program is codified at 66 Pa.C.S. § 2806.1 and applies to electric distribution companies with more than 100,000 customers. 66 Pa.C.S. § 2806.1(l).

⁴ An electric distribution company

is responsible for delivering the electricity to those customers who choose to buy from an EGS [electricity generation supplier]. Additionally, the EDC is responsible for both acquiring and delivering electricity for those customers who do not shop or buy their electricity from an EGS or where an EGS fails to provide the promised electricity. When an EDC acquires electricity for customers not served by an EGS, the EDC is functioning as the “default service provider” (DSP).

In re Implementation of Act 129 of October 15, 2008, L-2009-2095604 (Pa. P.U.C. Sept. 22, 2011), at 1.

technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology shall also:

(1) Directly provide customers with information on their hourly consumption.

(2) Enable time-of-use rates and real-time price programs.

(3) Effectively support the automatic control of the customer's electricity consumption by one or more of the following as selected by the customer:

(i) the customer;

(ii) the customer's utility; or

(iii) a third party engaged by the customer or the customer's utility.

66 Pa.C.S. § 2807(g). Relevant to this case, smart meter technology includes advanced metering infrastructure meters, also known as wireless smart meters ("smart meters").

Several electric customers have instituted legal action against the Public Utility Commission ("PUC") to prevent the installation of smart meters at their homes. It is their contention that a customer has the ability to opt-out of the installation of smart meters by EDCs. They also claim that smart meters cause health problems and their installation constitutes unsafe or unreasonable service under Section 1501 of the Public Utility Code ("Code"), which provides that

[e]very 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... .

66 Pa.C.S. § 1501 ("Section 1501").

For the reasons set forth herein, we conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed. An electric customer with concerns about smart meters may seek an accommodation from the PUC or EDC,⁵ but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501. In this case, the electric customers did not prove that installation of a smart meter at their premises violates Section 1501; therefore, the PUC was not required to prescribe any remedial action. Having so concluded, we reverse the Commonwealth Court's ruling that Act 129 does not mandate the installation of smart meters. Additionally, we clarify the use of the conclusive causal connection standard for proving a violation under Section 1501 and hold that a preponderance of the evidence is the standard that applies to claims brought under Section 1501. Finally, we reverse the Commonwealth Court's remand of the case to the PUC.

I. BACKGROUND

In 2009, the PUC articulated its belief "that it was the intent of the General Assembly [in Act 129] to require all covered EDCs to deploy smart meters system-wide." Implementation Order, 104 Pa.P.U.C. 263 (Pa. P.U.C. June 24, 2009), at 14. The PUC derived this interpretation from the requirement in Section 2807(f)(2)(iii) that EDCs "shall

⁵ See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 "as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public") and 1501 (requiring utility to take remedial action "as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public"). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.

furnish smart meter technology ... in accordance with a depreciation schedule not to exceed 15 years.” *Id.* Accordingly, the PUC ordered Pennsylvania’s EDCs to develop smart meter technology procurement and installation plans and to furnish smart meter technology to all electric customers, including smart meters, with no option to “opt-out” of the installation. *Id.* at 34. The PUC has maintained its position regarding the system-wide installation of smart meters since entering the Implementation Order. See, e.g., *Theresa Gavin v. PECO Energy Co.*, C-2012-2325258, 2012 WL 6641346, at *1 (Pa. P.U.C. Nov. 26, 2012) (interpreting 66 Pa.C.S. § 2807(f)(2) “as requiring large electric companies to employ smart meters system-wide, and as providing no option for customers to ‘opt out’ of this installation”); *Frompovich v. PECO*, C-2017-2474602, 2018 WL 2149249 (Pa. P.U.C. May 3, 2018) (same); *Jon Allen Hribal v. West Penn Power Co.*, C-2019-3008050, 2020 WL 5877004 (Pa. P.U.C. Sept. 22, 2020) (same).

PECO Energy Company (“PECO,” formerly the Philadelphia Electric Company) is a privately owned utility that distributes electricity and is the default service provider to Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall and Paul Albrecht (collectively, “Customers”). Following entry of the Implementation Order, PECO informed Customers that it would be replacing their automatic meter reading meters, also known as Legacy meters, with smart meters. Customers notified PECO that they would not allow installation of a smart meter, claiming that they are hypersensitive to the radiofrequency electromagnetic energy that smart meters emit (“RF emissions”). In response, PECO advised Customers that their electricity would be shut off unless they allowed the installation of a smart meter.

Customers filed separate complaints with the PUC, invoking the “safe and reasonable standard” of Section 1501 and seeking exemption from the installation of smart meters. They presented scientific research studies on RF emissions and evidence from their physicians demonstrating that they had health issues that could be exacerbated by exposure to RF emissions. PECO filed preliminary objections to the complaints. An administrative law judge (“ALJ”) sustained PECO’s preliminary objections in part, finding that opting out of the smart meter installation was not an available legal remedy. However, the ALJ advanced Customers’ complaints for determinations of whether, in light of their purported health issues, they were entitled to accommodations under Section 1501. After a series of hearings, the ALJ found that Maria Povacz had failed to show that RF emissions from a smart meter “will cause or is causing” her health problems; however, the ALJ opined, the preponderance of the evidence suggests that some aspect of the smart meter other than RF emissions “is inimitably perceptible by and contrary to the health and well-being” of Povacz. Povacz Initial Decision, No. C-2015-2475023, at 28. Thus, the ALJ ordered PECO, at PECO’s expense, to move Povacz’s smart meter away from her house. The ALJ denied relief to the other complainants.

Customers filed exceptions to the ALJ’s evidentiary rulings with the PUC, and PECO filed one exception related to the ALJ’s determination that “some other aspect” of the smart meter affected Povacz’s health. In three lengthy decisions,⁶ largely centered on the expert evidence introduced by Customers regarding the harm purportedly caused

⁶ *Maria Povacz v. PECO Energy Co.*, No. C-2015-2475023 (Pa. P.U.C. Mar. 28, 2019); *Laura Sunstein Murphy v. PECO Energy Co.*, No. C-2015-2475726 (Pa. P.U.C. May 9, 2019); *Cynthia Randall and Paul Albrecht v. PECO Energy Co.*, No. C-2016-2537666 (Pa. P.U.C. May 9, 2019).

by RF emissions that is discussed at length in Section C infra, the PUC overruled Customers' exceptions and granted PECO's exception, thereby denying relief to Customers.⁷ Customers and the PUC appealed to the Commonwealth Court, and PECO intervened.

Upon consideration of the consolidated petitions for review, the Commonwealth Court affirmed in part, reversed and remanded in part, and vacated and remanded in part. *Povacz v. Pa. Pub. Util. Comm'n*, 241 A.3d 481 (Pa. Commw. 2020).⁸ In doing so, the Commonwealth Court was persuaded by Customers' initial claims that, contrary to the PUC's interpretation, Act 129 does not mandate the universal installation of smart meters, regardless of customers' wishes, and that the PUC had incorrectly concluded that it lacked authority to grant Customers an accommodation based on their health concerns.

The Commonwealth Court acknowledged that "Act 129 mandates that an electric distribution company, such as PECO, shall furnish smart meter technology ... in accordance with a depreciation schedule not to exceed 15 years." *Povacz*, 241 A.3d at

⁷ On November 4, 2020, the PUC "ordered that any formal complaint filed ... on or after November 4, 2020, challenging an [EDC's] deployment of smart meter technology as being in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, is to be stayed until the Commission takes further action to lift the stay." *White v. PPL Elec. Utils. Corp.*, C-2021-3024463 (Pa. P.U.C. Apr. 12, 2021) (citing *Order re Smart Meter Procurement and Installation*, No. M-2009-2092655 (Nov. 4, 2020)).

⁸ The Commonwealth Court rejected Customers' constitutional arguments, persuaded by the reasoning of *Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp.3d 830 (N.D. Ill. 2014) ("*Naperville II*"). Therein, a federal district court rejected the customers' "Fourteenth Amendment bodily integrity argument because their complaint failed to identify an arbitrary deprivation of a recognized liberty or property interest" and to aver that the city's decision to employ smart meters was arbitrary. *Id.* at 839 (internal quotation marks omitted).

This Court denied allocatur as to any constitutional claims.

488 (quoting 66 Pa.C.S. § 2807(f)(2)(iii)). The court noted, however, that nothing in Act 129 “affirmatively mandates that customers must allow installation of wireless smart meters” and “wireless meters are not mentioned at all in the statute.” *Id.* at 488 & n.11 (internal quotation marks omitted). Resorting to the dictionary definition of “furnish,” which means “to provide with what is needed; ... supply, give,” the court determined that the definition of “furnish” does not imply that a recipient is forced to accept that which is offered. *Id.* at 488 (quoting WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 499 (1985)). In short, the court opined that, although Act 129 requires an EDC to furnish a smart meter, nothing in the language of Act 129 requires a customer to accept the smart meter and, thereby endure involuntary exposure to RF emissions. Therefore, the court concluded, “Act 129 does not preclude either PECO or the PUC from accommodating a customer’s request to have RF emissions from that customer’s meter turned off, to have a smart meter relocated to a point remote from the customer’s house,^[9] or some other reasonable accommodation.” *Id.* at 490. Rather than grant Customers relief in the form of a system-wide “opt-out,” the Commonwealth Court reversed that portion of the PUC’s decisions in which it purportedly found that it lacked authority to accommodate a request to avoid RF emissions. The court remanded to the PUC “to allow consideration of [Customers’] requests for accommodations, and a determination of what, if any, accommodations are appropriate[.]” *Id.*

⁹ The Commonwealth Court cited *Benlian v. PECO Energy Corp.*, No. 15-1218, 2016 WL 3951664, at *2 (E.D. Pa. July 20, 2016), as precedent for such an accommodation, as PECO installed a smart meter on a pole away from the customer’s house to alleviate his concerns about RF emission.

Turning to Customers' contentions that electricity service must be both safe and reasonable pursuant to Section 1501 of the Code and that the PUC erred in requiring Customers to prove that smart meters were both unsafe and unreasonable, the Commonwealth Court opined that the PUC had not set forth a consistent standard. The court highlighted that, at one point in its decisions, the PUC recognized the ALJ's role as determining "whether use of a smart meter...will constitute unsafe **or** unreasonable service." *Povacz*, 241 A.3d at 490-91 (citing *Maria Povacz v. PECO Energy Co.*, No. C-2015-2475023, at 15, 27 (Pa. P.U.C. Mar. 28, 2019)) (emphasis in original). Elsewhere in its decisions, however, the PUC required proof by a preponderance of the evidence that installation of a smart meter constitutes "unsafe **and** unreasonable service." *Id.* at 491 (citing *Povacz*, No. C-2015-2475023, at 15, 27) (emphasis in original). Given what the court perceived as a possible error by the PUC in applying a conjunctive burden of proof, the Commonwealth Court vacated and remanded for application of the "correct disjunctive burden of proof." *Id.*

The Commonwealth Court next addressed Customers' claim that mandatory installation of smart meters at their homes is unreasonable considering their fears concerning their health, and because no compelling reason exists to mandate that they be exposed involuntarily to RF emissions. Initially, the court repeated its conclusion that Act 129 does not mandate Customers' acceptance of smart meters, and thus, does not bar accommodations for Customers' health concerns. Then, the court noted that the record contained no evidence that PECO would incur unreasonable costs in accommodating Customers' requests and that, if Customers were granted relief, "it was difficult to imagine that large numbers of other PECO customers" would approach the

utility with requests to avoid RF emissions by refusing installation of a smart meter. *Povacz*, 241 A.3d at 492. According to the court, even if the actual risk to their health was uncertain, Customers' averment that the burden of forced exposure to RF emissions was greater than the burden on PECO in providing accommodation was "well taken." *Id.* As such, the court instructed the PUC to consider on remand that "[l]ogic, safety concerns, and fairness require some balancing of the parties' interests." *Id.*

Regarding Customers' claim that the PUC improperly required them to prove by a preponderance of the evidence that exposure to RF emissions would "cause, contribute to, or exacerbate their health conditions," the Commonwealth Court found persuasive the reasoning of *Naperville Smart Meter Awareness v. City of Naperville*, No. 11 C 9299, 2013 WL 1196580 (N.D. Ill. 2013) (*Naperville I*). In *Naperville I*, the Illinois district court addressed the same issue Customers raise here and found that the plaintiffs' claims would not have been viable because, like Customers, the *Naperville I* plaintiffs based their claims on a theory that RF emissions "have the potential to be harmful." *Povacz*, 241 A.3d at 493 (quoting *Naperville I*, 2013 WL 1196580, at *11). The *Naperville I* court opined that, even assuming as true that smart meter RF emissions could cause harm, "the bare allegation that it is unknown whether plaintiffs are actually being harmed by the level of RF waves emitted from one smart meter is insufficient to raise a claim for relief." *Id.* at 494 (quoting *Naperville I*, 2013 WL 1196580, at *11).

Echoing *Naperville I*, the Commonwealth Court determined that the PUC applied an appropriate burden in requiring Customers to prove a "conclusive causal connection between RF exposure and those adverse health effects—a burden that cannot be satisfied by research and studies that are inconclusive." *Povacz*, 241 A.3d at 493. The

court explained that this burden of proof extends to claims seeking to prevent harm, requiring proponents of such claims to demonstrate “by a preponderance of the evidence that the utility’s proposed conduct would create a proven exposure to harm.” *Id.* (internal quotation marks omitted). Having endorsed the PUC’s “conclusive causal connection” standard, the Commonwealth Court was unwilling to revisit the PUC’s findings of fact regarding Customers’ claims of adverse health conditions, which the court found were based on substantial evidence. Thus, the court affirmed the PUC’s finding that Customers failed to prove that PECO’s smart meter installation constitutes unsafe service, i.e., Customers did not prove a conclusive causal connection between RF emissions and adverse human health effects or demonstrate by a preponderance of the evidence that the utility’s conduct creates a proven exposure to harm.

Judge Crompton filed a concurring and dissenting opinion, challenging only the majority’s conclusion that Act 129 does not require every customer to accept a smart meter.¹⁰ Judge Crompton opined that, simply because Act 129 gives customers a degree of control over, *inter alia*, pricing options and meter data, it “does not mean the installation of smart meters may be interpreted to be optional.” *Povacz*, 241 A.3d at 497 (Crompton, J., concurring and dissenting). He concluded that the General Assembly unambiguously intended for mandatory installation of smart meters based upon the absence of an opt-out provision in the Act. Also, he observed that the electric utilities had expended “substantial resources” for over a decade “in reliance on the certainty of the meaning of the Act to fulfill the State mandate” and in the absence of any action by the General Assembly to correct it. *Id.*

¹⁰ Judge Fizzano Cannon joined in the concurring and dissenting opinion.

Noting that it is not the court's role to insert an opt-out provision in Act 129 where none existed, Judge Crompton nevertheless agreed with the majority that a remand was appropriate to allow Customers the opportunity to request accommodation by demonstrating that mandatory smart meter installation was unreasonable because of the uncertainty of the PUC's application of the standard in Section 1501. *Cf. Povacz*, 241 A.3d at 499 (Crompton, J., concurring and dissenting) (suggesting that the "PUC was not confused about the standard by which it should measure whether the smart meter fulfills the requirement of Section 1501," but it is unclear whether it properly applied the standard). On remand, he opined, the PUC should consider only the evidence of record in determining whether the installation of a smart meter would be unreasonable as to Customers under Section 1501.

All parties petitioned for allowance of appeal, and we granted review of the following questions:

619-621 MAL 2020 / 34-36 MAP 2021 (PUC's Appeal)

- (a) Did the Commonwealth Court commit an error of law by concluding that the statute does not mandate universal deployment of smart meters, which is contrary to the plain and unambiguous statutory language of Section 2807(f)(2) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 2807(f)(2)?
- (b) On a question of first impression involving Act 129's smart meter deployment mandate, did the Commonwealth Court abuse its discretion by interpreting the Public Utility Code in a manner that violated the rules of statutory construction and disregarded the legislative intent of the General Assembly?
- (c) Did the Commonwealth Court commit an error of law by articulating a burden of proof under Section 1501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1501, that

could result in a utility being found in violation of the Code without evidence of harm?

622-624 MAL 2020 / 37-39 MAP 2021 (PECO's Appeal)

- (d) Did the Court err when it concluded that Act 129 allows individual [Customers] to reject or “opt-out” of smart meter technology, on the grounds that Act 129 requires that “Electric distribution companies shall furnish smart meter technology,” Webster’s Dictionary defines “furnish” as meaning “to provide with what is needed; . . . supply, give,” and that this definition of “furnish” does not imply that the recipient is forced to accept that which is offered?

663-668 MAL 2020 / 40-45 MAP 2021 ([Customers'] Cross-Appeals)

- (e) Did the lower court err as a matter of law by upholding the PUC’s interpretation of Section 1501 of the Public Utility Code as requiring as to issues of safety proof of a “conclusive causal connection” between RF exposure from smart meters and harm to Petitioners, when this heavy and unprecedented burden is not compelled by the language of the statute, where the statutory and dictionary definition of the word “safe” includes protection from the possibility of harm, not just the conclusively proven certainty of harm, and where imposition of this burden would render it impossible for Petitioners to prove their cases?

Povacz v. Pa. Pub. Util. Comm’n, 253 A.3d 220 (Pa. 2021) (per curiam). Issues (a), (b), and (d) collapse into one straightforward question: Does Act 129 mandate the system-wide installation of smart meters? Issues (c) and (e) relate to the burden of proof for establishing a violation of Section 1501.

II. Does Act 129 Mandate the Systemwide Installation of Smart Meters?

A. Arguments of the Parties

Designated as appellants, the PUC and PECO (“PUC-PECO”)¹¹ assert that the Commonwealth Court erred in holding that Act 129 does not mandate the system-wide installation of smart meters. PUC-PECO describe the Commonwealth Court’s ruling as contrary to the plain and unambiguous statutory language of Act 129. As statutory support for their claim that the General Assembly intended for the mandatory, system-wide installation of smart meters, PUC- PECO cite the language of Act 129: “Electric distribution companies shall furnish smart meter technology... .” 66 Pa.C.S. § 2807(f)(2) (emphasis supplied). According to PUC-PECO, the Commonwealth Court took the word “furnish” out of context and ignored the mandatory nature of the word “shall.”¹² PUC Brief at 18. More specifically, they fault the court for sua sponte construing the term “furnish” to mean “offer,” which is subject to a customer’s right to refuse that which is offered. *Id.* at 39. In support, they argue that the meaning of “furnish” is discernable from the use of that term elsewhere in the Code. PECO Brief at 42–46 (citing definitions of “facilities,”

¹¹ Although the PUC’s and PECO’s positions generally align, they address different issues and raise different arguments in their respective briefs. Similarly, Customers present unique arguments on the various issues in their respective briefs. Thus, although we refer to the opposing parties collectively, for the most part, we refer to the source brief for the particular argument presented.

¹² As amicus of the PUC and PECO, the Energy Association of Pennsylvania (“EAP”) emphasizes that, pursuant to Pennsylvania case law, “shall” means “must.” EAP Brief at 14–15 & n.15 (citing appellate court decisions). In EAP’s view, interpreting “shall furnish” as requiring the mandatory provision of smart meter technology distinguishes the General Assembly’s use of other words in the Code, like “offer,” “render,” and “supply.” *Id.* at 15–17. If “furnish” carried the same meaning, the General Assembly would not have used the separate repetitive words in the statute. *Id.* EAP cautions that upholding the Commonwealth Court’s interpretation of Act 129 would open the door for electric customers to dictate individual terms, forcing EDCs to incur additional costs for customized service. *Id.* at 17–19. According to EAP, EDCs act within their sole discretion outside of the authority of the PUC, and administrative agencies, municipalities, and customers do not have authority to impose burdens or compel regulated companies to alter lawful conduct. *Id.* at 20, 24–25.

“rates,” and “service” in 66 Pa.C.S. § 102,¹³ and 66 Pa.C.S. §§ 1101, 1102, 1501, 1507).¹⁴

Consequently, they continue, the court improperly inserted a blanket opt-out exemption that the General Assembly did not include in Section 2807(f).

¹³ The Code includes the term “furnish” in the following definitions:

“Facilities.” All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, **furnished**, or supplied for, by, or in connection with, the business of any public utility.

“Rate.” Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or **furnished** by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things **furnished** or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or any thing furnished or supplied, or any facility used, furnished or supplied by public utilities or contract carriers by motor vehicle in the transportation of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or in the transportation of any injured, ill or dead person, or in the transportation by towing of wrecked or disabled motor vehicles, or in the transportation of pulpwood or chemical wood from woodlots.

(continued...)

66 Pa.C.S. § 102 (internal emphasis supplied).

¹⁴ The Code also uses the term “furnish” in the following sections:

Upon the application of any proposed public utility and the approval of such application by the commission evidenced by its certificate of public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, **furnish**, or supply service within this Commonwealth... .

66 Pa.C.S. § 1101.

(a) General rule.--Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, **furnish** or supply within this Commonwealth service of a different nature or to a different territory than that authorized by:

(i) A certificate of public convenience granted under this part or under the former provisions of the act of July 26, 1913 (P.L. 1374, No. 854), known as “The Public Service Company Law,” or the act of May 28, 1937 (P.L. 1053, No. 286), known as the “Public Utility Law.”

(ii) An unregistered right, power or privilege preserved by section 103 (relating to prior rights preserved).

66 Pa.C.S. § 1102 (emphasis supplied; footnotes omitted).

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... .

(continued...)

PUC-PECO further contend that the Commonwealth Court’s interpretation of Act 129 violates the rules of statutory construction by failing to give effect to all provisions of Act 129, and it leads to an absurd result given the facts that Act 129 contemplates the use of smart meter technology to reduce electric consumption in the Commonwealth and that allowing customer choice would result in significant additional costs to electric customers. Specifically, PUC-PECO claim that the Commonwealth Court failed to give effect to the language in subsection (f)(2)(iii), which requires EDCs to furnish smart meter technology “[i]n accordance with a depreciation schedule not to exceed 15 years.” PUC Brief at 34 (quoting 66 Pa.C.S. § 2807(f)(2)(iii)). According to PUC-PECO, subsection (f)(2)(iii) indicates a clear desire by the General Assembly that every customer not encompassed by subsections (f)(2)(i) (consumers who request and pay for a smart meter in advance of the installation of smart meters within their service area) and (f)(2)(ii) (new building construction) shall receive a smart meter. *Id.* at 35–36 (citing Implementation Order, 104 Pa.P.U.C. 263, at 9 (providing grace period for smart meter network design, development, and installation after which EDCs must initiate system-wide deployment of

66 Pa.C.S. § 1501 (emphasis supplied).

Every public utility, **furnishing** service upon meter or other similar measurement, shall provide, and keep in and upon the premises of such public utility, suitable and proper apparatus, to be approved from time to time and stamped or marked by the commission, for testing and proving the accuracy of meters furnished by such public utility for use; and by which apparatus every meter may be tested, upon the written request of the consumer to whom the same shall be **furnished**, and in the presence of the consumer, if he shall so desire... .

66 Pa.C.S. § 1507 (emphasis supplied).

smart meters)). Complaining that the Commonwealth Court abused its discretion by ignoring the use of “furnish” in other parts of the Code; adding language to Act 129; imputing statutory language unrelated to smart meter deployment; and citing irrelevant extra-record material, PUC-PECO fault the court for reaching an erroneous conclusion that electric customers do not have to accept smart meter technology. PUC Brief at 37–46; PECO Brief at 42–50.

In contrast, Customers agree with the Commonwealth Court’s determination that the language of Act 129 does not facially require every customer to accept a smart meter and endure involuntary exposure to RF emissions. Randall/Albrecht Brief at 37; Povacz/Murphy Brief at 11. They reason that, taken together, the three subsections of Section 2807(f)(2) simply require EDCs to make smart meter technology available on a fifteen-year depreciation schedule to customers who request and pay for a smart meter and to new building construction customers. Randall/Albrecht at 38–39; Povacz/Murphy at 13–14. As for the phrase “shall furnish” used in Section 2807(f)(2), Customers argue that “shall” refers only to the three methods listed in (f)(2)(i)–(iii) by which EDCs are to furnish smart meter technology and that “furnish” implies an ability to reject a smart meter rather than be forced to have one installed against their will. Randall/Albrecht Brief at 38, 40–41; Povacz/Murphy Brief at 14, 16.

B. Analysis

When interpreting a statute, we strive to ascertain the intent of the General Assembly in enacting the law under review. 1 Pa.C.S. § 1921(a); *Phila. Gas Works v. Pa. Pub. Util. Comm’n*, 249 A.3d 963, 970 (Pa. 2021), *reargument granted in part*, 256 A.3d 1092 (Pa. 2021). The plain language of a statute is the best indication of the General

Assembly's intent, and where the statutory language is clear and unambiguous, we must give effect to the plain language thereof. 1 Pa.C.S. § 1921(b); *Phila. Gas Works*, 249 A.3d at 970. A statute is ambiguous when there are at least two reasonable interpretations of the text. *A.S. v. Pa. State Police*, 143 A.3d 896, 903 (Pa. 2016). We read the words of a statute in context, not in isolation, and in a manner that gives meaning to every provision. *Phila. Gas Works*, 249 A.3d at 970. Adding words or phrases to a statute in a way that changes its scope and operation is prohibited. 1 Pa.C.S. § 1923(c); *Pa. Sch. Bds. Ass'n, Inc. v. Pub. Sch. Emps. Ret. Bd.*, 863 A.2d 432, 439 (Pa. 2004).

Inconsistently, the Commonwealth Court reasoned that, although Act 129 mandates the installation of smart meters, “nothing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters.” *Povacz*, 241 A.3d at 488. Thus, the Commonwealth Court concluded that the PUC erred in finding that PECO may not or need not offer an accommodation to Customers in the form of relocating the smart meter, providing a wired smart meter, or turning off a smart meter's the RF emissions. *Id.* at 490, 492. Our comprehensive reading of Act 129 leads us to conclude that the statute is not ambiguous and that Section 2807(f)(2) imposes a mandate on EDCs to furnish smart meter technology to all electric customers within an electric distribution service area, regardless of a customer's preference. In reaching this conclusion, we have considered Section 2807(f)(2) in its context as the implementation provision of Act 129.

We reiterate that Act 129 was an amendment to the Electricity Generation Customer Choice and Competition Act (“Competition Act”). According to the General Assembly, the purpose of the Competition Act was to deregulate the electric industry and

to establish “standards and procedures” to create “direct access by retail customers” to “a competitive market for the generation and sale or purchase of electricity” as of January 1, 2001. 66 Pa.C.S. §§ 2802(12), (13), and 2806(a). Because reliable electric service “is of the utmost importance to the health, safety and welfare of the citizens” of Pennsylvania, the General Assembly stated that restructuring the electric industry “should ensure the reliability of the interconnected electric system by maintaining the efficiency of the transmission and distribution system.” *Id.* § 2802(12). To that end, the General Assembly declared:

It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the [PUC]. [EDCs] should continue to be the provider of last resort in order to ensure the availability of **universal electric service in this Commonwealth** unless another provider of last resort is approved by the Commission.

Id. § 2802(16) (emphasis supplied). In short, enactment of the Competition Act was an expression of the General Assembly’s two-fold intent. First, the General Assembly wanted to allow customers to choose their electric generation vendor. Second, it wanted to keep Pennsylvania’s electric transmission and distribution system subject to the PUC’s jurisdiction and supervision to promote the public purpose by “continuing universal service and energy conservations policies, protections and services,” and permitting “full recovery of such costs ... through a nonbypassable rate mechanism.” *Id.* § 2802(17).

On the tails of deregulating electric generation through the Competition Act, the General Assembly sought “to reduce energy demand and consumption within the service territory of each electric distribution company” in Pennsylvania. 66 Pa.C.S. § 2806.1(a). To that end, the General Assembly amended the Competition Act with Act 129. Act 129

directed the PUC to “adopt an energy efficiency and conservation [“EE&C”] program to require [EDCs] to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption” within their service territories. *Id.* Accordingly, EDCs developed and filed for PUC-approval plans that included a variety of EE&C measures¹⁵ that met the requirements of the EE&C program, including the requirements for the reduction in consumption and demand set forth in subsections (c) and (d) of Section 2806.1. *Id.* § 2806.1(a)(5), (b)(1). Pursuant to a PUC-approved plan, the electric consumption “of the retail customers of each electric distribution company” was to be reduced by a minimum of three percent by May 31, 2013, and the demand “of the retail customers of each electric distribution company” was to be reduced by a minimum of 4.5 percent by May 31, 2013. *Id.* § 2806.1(c), (d). As to reducing demand, the General Assembly defined “peak demand” as “[t]he highest electrical requirement occurring during a specified period. For an electric distribution company, the term shall mean **the sum of the metered consumption for all retail customers** over that period.” *Id.* § 2806.1(m) (emphasis supplied). Moreover, the EE&C program allowed EDCs to

¹⁵ Energy efficiency and conservation measures shall include

solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission.

66 Pa.C.S. § 2806.1(m).

“recover on a full and current basis from customers ... all reasonable and prudent costs incurred in the provision or management” of an EE&C plan. *Id.* § 2806.1(k).

Section 2806.1 expresses the General Assembly’s intent to create the EE&C program to include electric customers; hence the need for a plan based on a fixed existing customer base. See 66 Pa.C.S. § 2807(f)(1) (requiring EDCs to develop plan for implementation and deployment of smart meter technology). If, as argued by Customers, retail customers could choose the type of EE&C measures they prefer, including the type of electric meter, then EDCs could not comply with the requirements of the EE&C program or their individual PUC-approved plans,¹⁶ and the General Assembly’s goal of reducing energy consumption and demand in Pennsylvania would not be realized.

In support of the EE&C program created by Section 2806.1 of Act 129, the General Assembly authorized the PUC to assign specific duties to EDCs. See 66 Pa.C.S. § 2807 (Duties of electric distribution companies). The PUC first directed EDCs to “provide safe and reliable service to all customers connected to the [distribution] system.” *Id.* § 2807(a). The fact that a customer must be connected to the distribution system to obtain electric service confirms that EDCs operate on a universal basis in Pennsylvania. Although EDCs provide electric service to individual homes, they do not tailor electric service to an individual’s preferences. Rather, subject to the PUC’s approval, EDCs retain control over the distribution of electric service to all retail customers within a distribution service area.¹⁷

¹⁶ In fact, if an electric distribution company fails to achieve the reductions required under Section 2806.1 subsections (c) or (d), it is “subject to a civil penalty not less than \$1,000,000 and not to exceed \$20,000,000.” 66 Pa.C.S. § 2806.1(f)(2)(i).

¹⁷ Notably, twice within Act 129, the General Assembly not only anticipated that EDCs would install smart meter technology system-wide, but also gave EDCs authority to (continued...)

Indeed, pursuant to PECO's tariff,¹⁸ a consumer who wants electric service contractually agrees to the installation of a meter that is designed to capture their electricity usage. See Tariff (Electric) No. 4, 1/1/2010, §§ 1.3 (Application); 1.5 (Rules and Regulations); 4.2 (Service Contract); 3.2 (Meter Location). PECO chooses the type of meter, owns the meters it installs, and has a right to access private property to test, maintain, and replace its meters. See *id.* §§ 6.4 (Meters and Transformers); 10.1 (Company Maintenance); 14.1 (Supply of Meters). PECO may terminate electric service to customers who refuse access to an electric meter. *Id.* § 18.3 (TERMINATION FOR CAUSE).¹⁹ In short, the authority to select and install a certain type of electric meter rests

require a customer to upgrade the technology by providing (1) that a distribution "may require that the customer install, at the customer's expense, enhanced metering capability sufficient to match the energy delivered by the electric generation suppliers with consumption by the customer," 66 Pa.C.S. § 2807(a); and (2) that nothing in Chapter 28 of the PUC Code "shall prevent the electric distribution company from upgrading its system to meet changing customer requirements... ." *Id.* § 2807(b).

¹⁸ The PUC defines "tariff" as "[a]ll schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates, including contracts for interchange of service[.]" 66 Pa.C.S. § 102. In other words, a tariff is the document that governs how an energy provider, such as PECO, charges a customer for their energy usage. Utility vendors submit their tariff to the government, i.e., the PUC, for approval. A PUC-approved tariff is prima facie reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Lynch v. Pa. Pub. Util. Comm'n*, 594 A.2d 816 (Pa. Commw. 1991), *appeal denied*, 605 A.2d 335 (Pa. 1992).

¹⁹ Relatedly, the PUC's regulations provide that

[a] public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91-56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer ... failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

(continued...)

solely with EDCs, in this case PECO, not the customer. In compliance with Act 129, PECO selected smart meters. Thus, Customers' suggestion that the installation of smart meters is subject to customer choice is not supported by the statute.

The PUC also directed EDCs to "file a smart meter technology procurement and installation plan" ("Procurement and Installation Plan") "[w]ithin nine months after the effective date" of Act 129, i.e., by September 14, 2009, for approval by the PUC. 66 Pa.C.S. §§ 2806.1(a), 2807(f)(1). It is apparent that in order to develop and file its Procurement and Installation plan, an EDC would need to rely on its existing customer base, not parts of it.²⁰

A Procurement and Installation Plan had to "describe the smart meter technologies the [EDC] propose[d] to install in accordance with paragraph [(f)(2)]." 66 Pa.C.S.

52 Pa. Code § 56.81(3).

²⁰ Consumer advocate groups, licensed electric generation suppliers, and other interested entities participated in negotiations regarding the Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan. Initial Decision (M-2009-2123944), 1/19/2010, at 2. These participants were aware of PECO's plan for the system-wide installation of smart meters pursuant to Act 129 and approved of it. For example, the Office of Small Business Advocate acknowledged that "the General Assembly mandated the deployment of smart meters to all customers over a 15-year period of time, regardless of how many of those customers will actually be able to save money by using those smart meters to adjust their consumption profile." Reply Exceptions, 3/1/2010, at 9. The Commonwealth of Pennsylvania, Department of Environmental Protection expressed that its "primary interests in this matter relate to the timeframe in which the metering infrastructure will be developed and installed, the timeframe in which smart meters will be deployed system-wide, and the functions the proposed smart meters and infrastructure will perform and support." Statement of the Commonwealth of Pennsylvania, Department of Environmental Protection in Support of Joint Petition for Partial Settlement, 11/23/2009, at 1. See *also* Settlement Agreement, 11/25/2009 (approving modified version of PECO's universal deployment and installation plan).

§ 2807(f)(1). Paragraph (f)(2) is the provision at the center of this controversy, and it provides:

(2) Electric distribution companies shall furnish smart meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f)(2). Reading subsections (f)(1) and (2) together, it is clear that (f)(2) sets forth the protocols for furnishing smart meters to the universe of customers considered in the Procurement and Installation Plan.

Customers' opt-out argument erroneously focuses on (f)(2)(i), which references customers who request a smart meter and agree to pay for it on request ("early technology adopters"), thereby divorcing that clause from the preceding requirement to develop and file a Procurement and Installation Plan.²¹ Customers' preferred reading, that only those customers who agree to pay for a smart meter would receive a smart meter, flies in the face of the development and filing of a plan for procurement and installation. It ignores the magnitude of the infrastructure required for utilization of smart meter technology and

²¹ Although a customer who requests a smart meter pursuant to Section 2807(f)(2)(i) agrees to pay for the meter upon request, smart meter technology is not free to anyone. See 66 Pa.C.S. § 2807(f)(7) ("An electric distribution company may recover smart meter technology costs: (i) through base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the commission; or (ii) on a full and current basis through a reconcilable automatic adjustment clause under section 1307.").

requires an EDC to have a crystal ball to conjure up the number of customers desiring a smart meter.²²

A separate protocol for new building construction is contained in Section 2807(f)(2)(ii). Contrary to Customers' claim that this provision evidences the intent that smart meter installation is limited to new building construction, this provision ensures that new buildings are not equipped with old-style meters that would then have to be replaced pursuant to a distribution company's PUC-approved plan. Indeed, the PUC recognized that replacing meters before the end of their useful life prevents EDCs from taking advantage of the full depreciation of that meter or requires customers to pay an increased rate to cover the cost of the Legacy meters and smart meters. Implementation Order,

²² PECO's tariff explains the operation of (f)(1), as follows:

Once all necessary infrastructure is complete but not later than October 2012 a customer may request that PECO install a smart meter ahead of the planned schedule for their property[;] however the customer must pay the incremental cost of installing the meter outside of the normal installation schedule.

Tariff (Electric) No. 4 at § 14.10 (Provisions for Customer Requested Smart Meters). We note that Section 14.10 was added to Tariff (Electric) No. 4 following negotiations with and approval by consumer advocate groups, licensed electricity generation suppliers, and other interested entities. See *supra* note 17. Section 14.10 indicates that EDCs would need several years to complete the smart meter technology infrastructure mandated by Act 129. After completion of the smart meter technology infrastructure — but before the universal deployment of smart meter technology — EDCs could install smart meter technology at the request of an electric customer who requested a smart meter, i.e., early technology adopters. 66 Pa.C.S. § 2807(f)(2)(i); Tariff (Electric) No. 4 § 14.10; 66 Pa.C.S. § 2807(f)(2)(i). The associated provisions of Section 2807(f)(2)(i) and Section 14.10 of Tariff (Electric) No. 4 make sense only in the context of allowing early technology adopters to move to the head of the line, before the system-wide deployment and installation of smart meter technology pursuant to the schedule in a PUC-approved plan.

104 Pa.P.U.C. 263, at 12. Requiring smart meters in new building not originally considered in the approved plan avoids both waste and added expense.

As with requests by early technology adopters, the General Assembly streamlined the process for furnishing smart meter technology by also moving smart meters for new building construction to the front of the line. Absent a mandate for the system-wide deployment and installation of smart meter technology pursuant to a PUC-approved plan, the General Assembly would have no reason to segregate these two customer categories from all electric customers in Pennsylvania.

Finally, Customers and their amicus argue that the term “depreciation” found in subsection (f)(2)(iii) does not equate with the universal deployment of smart meters, because depreciation is an accounting term and, therefore, relates to the useful life of smart meters furnished pursuant to (f)(2)(i) (upon customer request) and (f)(2)(ii) (new construction) only.²³ Povacz/Murphy Brief at 14–15; Randall/Albrecht Brief at 39. We agree with Customers that the accounting term “depreciation schedule” used in (f)(2)(iii) does not mean “deployment.” However, although not optimally worded, we interpret this subsection in context as allowing EDCs to depreciate fully the existing Legacy meters while simultaneously furnishing smart meter technology to customers at little to no additional cost. In fact, the inclusion of a depreciation schedule makes sense only in the context of a mandatory system-wide replacement of Legacy meters with smart meters pursuant to Act 129. Otherwise, EDCs would incur the financial burden and stranded

²³ See, e.g., Wes Zimmerman Amicus Brief at 9–11 (arguing that the PUC conflates the meaning of “depreciation schedule” in Section 2807(f)(2)(iii) with “deployment” schedule, explaining that the term “depreciation” is used for accounting and tax purposes when determining the useful life of an asset).

costs associated with EDCs having to take Legacy meters that still have a useful life out of service and to replace them with smart meters upon customer demand or in new building construction, thereby defeating the economies of a full-scale smart meter technology deployment and installation. Section 2807(f)(2)(iii) alleviates that burden by allowing EDCs to recover the balance of their investment in Legacy meters while they are simultaneously deploying smart meter technology, first to early technology adopters and new building construction and then to all other customers. Pursuant to (f)(2)(iii), the length of that depreciation period may not exceed fifteen years.²⁴ If the General Assembly

²⁴ As stated earlier, although PECO originally requested a ten-year period in which to replace Legacy meters with smart meters, it reduced that period by five years based on its cost-benefit analysis of expediting the deployment process. Petition of PECO Energy Company for Approval of its Smart Meter Universal Deployment Plan, M-2009-2123944, 1/18/2013, ¶¶ 23–26, PECO Statement No. 2 (Direct Testimony of Michael J. Trzaska, Principal Regulatory and Rates Specialist for PECO). According to PECO,

[t]he single largest benefit from early deployment is to enable PECO to cease paying fees to Landis+Gyr for services that company is providing to operate PECO's existing [Legacy] meters. The second largest benefit is derived from the lower costs PECO will incur to acquire and install smart meters under the shorter deployment schedule, which will enable PECO to achieve economies of scale in meter procurement, avoid future inflation-related increases in the price of meters and capture synergies in the install of meters generated by a more compressed implementation schedule. The third largest benefit is the greater operational savings PECO will achieve by early deployment of smart meters. In addition to these three major sources of savings, further savings will be achieved in the IT area from shortening the implementation schedule, and greater customer/societal benefits will be achieved from advancing the date when customers can begin to take advantage of smart meter functionality.

Id. ¶ 24, PECO Statement Nos. 1 (Direct Testimony of Michael Innocenzo, PECO Senior Vice President, Operations) and 2 (Direct Testimony of Michael J. Trzaska, Principal Regulatory and Rates Specialist for PECO).

envisioned a customer-choice EE&C program — rather than the system-wide replacement of Legacy meters with smart meters — there would be no reason to provide economic relief to EDCs by including a depreciation schedule in Section 2807(f)(2)(iii). By providing a depreciation schedule, the General Assembly ensured that EDCs could operate in a cost and time effective manner by deducting from taxable income the unrecovered balance of their investment in the Legacy meters over several years, as the value of the Legacy meters decreased, while simultaneously incurring costs to procure and install smart meters to all electric customers pursuant to the requirements of Act 129.

As suggested by PUC-PECO, further support for our interpretation of Section 2807(f)(2) as mandating the universal installation of smart meters is found in two subsequent sections of Act 129. The first reads as follows:

(5) By January 1, 2020, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the [PUC] one or more proposed time-of-use rates and real-time price plans. The [PUC] shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider **shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing.** The default service provider shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

66 Pa.C.S. § 2807(f)(5) (emphasis supplied). Contrary to Customers' claim that this provision supports their notion of customer opt-out, providing a customer with optional money-saving services makes sense only in the context of the mandatory system-wide installation of smart meter technology. The language highlighted above indicates that

time-of-use rates and real-time price plans are optional services available to all customers whose Legacy meters have been replaced with smart meters. If (f)(2)(iii) applies only to smart meters furnished to early technology adopters and new construction customers, then all other customers connected to the electric distribution system would not have smart meters and, therefore, could not elect to participate in the optional services. That result conflicts with the purpose of the EE&C program to reduce electric consumption and demand across the Commonwealth.

The second provision that supports our interpretation of Section 2807(f)(2) reads, in relevant part, as follows: “(7) An electric distribution company **may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) and (iii)**, as determined by the [PUC].” 66 Pa.C.S. § 2807(f)(7). The recovery of costs by EDCs makes sense only in the context of a mandatory system-wide installation of smart meter technology, as one such cost would include the removal and depreciation of Legacy meters. The lack of a reference in (f)(7) to early technology adopters identified in (f)(2)(i) is obvious — a customer who requests the installation of smart meter technology in advance of the schedule in a PUC-approved plan must pay for the smart meter at the time of request. Thus, there is no cost for EDCs that furnish smart meters to early technology adopters to recover. 66 Pa.C.S. § 2807(f)(2)(i). If (f)(2)(iii) applies only to smart meters furnished to new building construction, then the reference to (f)(2)(ii) in (f)(7) is superfluous.

According to the Commonwealth Court, Act 129 mandates a distribution company to “furnish smart meter technology, but [it] does not require every customer to avail himself of every aspect of that technology.” *Povacz*, 241 A.3d at 488. This phrasing suggests

that the installation of smart meter technology is required, but only if a customer wants the technology. We disagree. In doing so, we acknowledge that smart meter technology is required to provide customers with accurate usage and pricing information and to “support the automatic control of a customer’s consumption” by the customer, the customer’s utility, or a third party. 66 Pa.C.S. § 2807(g)(3)(i)–(iii). Nonetheless, while it is true that a customer need not avail himself of all aspects of smart meter technology, i.e., the time-of-use rates and pricing plans offered in Section 2807(f)(5) are optional, that fact does not negate the plain language of Act 129, which, taken as a whole, indicates that the installation of smart meters is mandatory. It is not dependent on customer choice, other than allowing pre-scheduled installation at the request of an early technology adopter. 66 Pa.C.S. § 2807(f)(2)(i). At bottom, a customer may choose what to do with smart meter technology, but they may not choose whether to have a smart meter installed.

We note that PUC-PECO and Customers focus uniquely on what Act 129 does not say about smart meter technology. Specifically, PECO-PUC argue that the General Assembly could have explicitly included in Act 129 — but did not — an opt-out provision to electric customers. *Accord Povacz*, 241 A.3d at 497 (Crompton, J., concurring and dissenting). In turn, Customers argue that the General Assembly could have explicitly stated in Act 129 — but did not — that the system-wide installation of smart meters is mandated. We consider this purported conflict easily resolved by the General Assembly’s use of the phrase “shall furnish smart meter technology,” which, as we have explained, expresses the General Assembly’s intention that EDCs create and implement plans for the development and system-wide installation of smart meter technology as part of the Commonwealth’s EE&C program. 66 Pa.C.S. §§ 2807(f)(2), 2806.1. Whereas the

mandatory furnishing of smart meters serves the EE&C program, the optional services, e.g., time of use rates, serve individual customers looking to have greater control over their electric consumption.

Considering the overall goal of Act 129 to promote energy efficiency and conservation in Pennsylvania, the plain language of Section 2807(f)(2) mandates the system-wide installation of smart meter technology, including smart meters, with no opt-out provision. We reject the Commonwealth Court's contrary holding that, although EDCs are required to furnish smart meters, customers may choose to reject one. The Commonwealth Court erred in bolstering its customer opt-out position with editorial comments to the definition of smart meter technology:

[T]he terms “smart meter technology” means technology **including** [(not necessarily limited to)] metering technology and network communications technology **capable of** [(not “requiring”)] bidirectional communication, that **records** [(not “transmits”)] electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct **access to and use of** [(not mandatory use of)] price and consumption information... .

Povacz, 241 A.3d at 489 (quoting 66 Pa.C.S. § 2807(g)). The fact that the General Assembly allowed customer choice regarding some aspects of the mandated smart meter technology, e.g., time-of-use rates and real-time price programs, does not negate its intention that EDCs furnish smart meters to all customers in furtherance of the EE&C program. If the General Assembly had intended to provide electric customers the ability to opt-out of smart meter installation, it would have used the same customer-choice language it used for the optional time-of-use rates and real-time price programs offered in Section 2807(f)(5). Neither the Commonwealth Court nor this Court has the power to

insert words into statutory provisions where the General Assembly failed to supply them. 1 Pa.C.S. § 1923(c); *Pa. Sch. Bds. Ass'n, Inc.*, 863 A.2d at 439. Moreover, the General Assembly has had decades during which it could have changed the language of Act 129 to include an opt-out provision. Its silence speaks volumes in support of our conclusion that the PUC's interpretation of Act 129 has been and is consistent with the legislative intent to impose a mandate.

III. Customer Burden of Proof for Establishing a Violation of Section 1501's Safe and Reasonable Service Requirements

A customer seeking affirmative relief from the PUC must prove by a preponderance of the evidence²⁵ that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a PUC regulation or Order, or a violation of a PUC-approved tariff. 66 Pa.C.S. §§ 332(a), 701; *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992).

Although Act 129 does not provide an electric customer with the right to opt-out of the installation of a smart meter at their residence, they may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code. Relevant to this matter, Section 1501 provides as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions,

²⁵ To establish a claim by a preponderance of the evidence means to offer evidence that outweighs or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the opposing party. *Stacey Weaver v. PPL Electric Utilities Corp.*, No. C-2018-3005382, 2020 WL 5876967 (Pa. P.U.C. Sept. 17, 2020); *see also Popowsky v. Pa. Util. Comm'n*, 937 A.2d 1040, 1057 (Pa. 2007) (acknowledging that “the PUC properly applies a preponderance of the evidence standard to make factually-based determinations”).

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.

66 Pa.C.S. § 1501. Pursuant to this section, an EDC (as a public utility) must provide service that is, inter alia, both safe and reasonable. To carry their burden of proof on a Section 1501 claim, a smart meter challenger may be required to present medical documentation and/or expert testimony demonstrating that the furnishing of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 under the circumstances presented. *Susan Kreider v. PECO Energy Co.*, P-2015-2495064, 2016 WL 406549, at *14 (Pa. P.U.C. Jan. 28, 2016).

A. Unsafe Service

In their complaints, Customers averred that PECO was responsible or accountable for harm to their health caused by RF emissions from smart meters and that the furnishing of smart meters was unsafe and/or unreasonable service in violation of Section 1501. See e.g., Povacz Amended Complaint, 4/8/2016, ¶¶ 10–13, 15, 17; Murphy Complaint, 7/28/2015, ¶¶ 11–12, 14, 34–35, 37; Randall Complaint, 4/1/2016, ¶¶ 9–14, 16, 19–20, 24, 26, 28–29. In support of their Section 1501 claims, Customers presented their own self-reporting testimony of adverse effects from exposure to RF emissions,²⁶ medical

²⁶ Ms. Povacz testified that, after installation of the smart meter, she experienced buzzing in the ears, sleeplessness, fatigue, headaches, heart palpitations, chest pain, body aches, dizziness, and memory loss. Povacz Statement 2, 4/27/2016, at 10–21, 27; Povacz ALJ Initial Decision, C-2015-2475023, at 5, 12 (Pa. P.U.C. Jan. 26, 2018). Ms. Murphy claimed that the installation of smart meter exacerbated her existing medical conditions, which included two pre-existing genetic diseases, sensitivity to smells, fluorescent lights, electric pulsations, and most pharmaceutical drugs. After installation of the smart meter, she suffered from, inter alia, constipation, abdominal pain, hypothyroidism, diverticulitis, weight gain, atrial fibrillation, aortic valve regurgitation, detached retina, and leg pain. (continued...)

testimony from their treating physicians,²⁷ and expert testimony from Dr. Andrew Marino, a retired professor of the Louisiana State Medical School with a B.S. in physics and a Ph.D. in biophysics, who, during his thirty-three year career, focused on the biological effects of electromagnetic energy and the electrical properties of tissue as they are influenced by that energy. N.T., 9/15/2016, at 565–66. Dr. Marino relied on various scientific studies in support of the two conclusions he reached: (1) established science

Murphy Statement 2, 4/29/2016, at 3, 14, 16–17, 24–29; Murphy ALJ Initial Decision, C-2015-2475726, at 9, 24 (Pa. P.U.C. Feb. 21, 2018). Ms. Randall averred that, given her long and complex medical history of multiple cancers, the installation of a smart meter increased her susceptibility to additional cancers by increasing the radiation levels in her home. N.T., 9/15/2016, at 50, 52-60; Randall/Albrecht ALJ Initial Decision, C-2016-2537666, 16–17 (Pa. P.U.C. Feb. 21, 2018).

²⁷ Ms. Povacz’s treating physician, Hanoch Talmor, M.D., testified that her self-reported symptoms were fully consistent with electromagnetic hypersensitivity syndrome (“EHS”) and that they were worse when she was exposed to electromagnetic and RF emissions. Written Direct Testimony of Dr. Talmor, 4/27/2016, at 3-4. Dr. Talmor’s holistic medical practice is in Florida, and his treatment of Ms. Povacz consisted of two telephone consultations with her about EHS. *Id.* at 1; N.T., 6/7/2016, at 102. He recommended that Ms. Povacz avoid all sources of RF emissions, and that PECO abstain from installing a smart meter at her home because of the negative health effects such a device would have on her. Written Direct Testimony of Dr. Talmor, 4/27/2016, at 5. Ms. Murphy’s treating physician, Peter J. Prociuk, M.D., opined that, although there could be a connection between smart meter RF emissions and electromagnetic hypersensitivity, he was “very mindful of the fact that the clinical science is not well established.” N.T., 12/5/2016, at 82. Ms. Randall’s treating physician, Ann L. Honebrink, M.D., could not offer an opinion as to whether RF emissions can cause cancer, as she has “not studied the PECO fields” or whether RF emissions from smart meters can cause or exacerbate cancer. N.T., 9/27/2016, at 29. Given the inconclusiveness of their testimony, none of the treating physicians was offered as an expert on causation. *Povacz*, No. C-2015-2475023, at 60, n.19 (“The Complainant submitted that she did not offer Dr. Talmor’s testimony on the issue of causation.”) (citing *Povacz* Reply Brief at 18); *Murphy*, No. C-2015-2475726, at 64, n.21 (“The Complainant submitted that she did not offer Dr. Prociuk’s testimony on the issue of causation.”) (citing *Murphy* Reply Brief at 18); *Randall/Albrecht*, No. C-2016-2537666, at 59, n.20 (“Importantly, the Complainant submitted that she did not offer Dr. Honebrink’s testimony on the issue of causation.”) (citing *Randall* Reply Brief at 18).

provides a basis on which to conclude that RF emissions from smart meters could expose Customers to harm, and (2) because smart meters have not been proven to be safe, it is unreasonable to impose on Customers forced exposure to RF emissions from smart meters. N.T., 9/15/2016, at 578–79, 594, 596–97, 601–23, 625, 628–29, 723–32; N.T., 1/25/2017, at 1854–56, 1860–61).

PECO challenged Customers' evidence with expert testimony from Christopher Davis, Ph.D., a professor of electrical and computer engineering at the University of Maryland in College Park with a Ph.D. in Physics; Mark Israel, M.D., and PECO engineer, Mr. Glenn Pritchard, who was a principal in analyzing and selecting the smart meter technology adopted by PECO. Dr. Davis concluded, to a reasonable degree of scientific certainty, that there is no reliable scientific basis to conclude that exposure to RF emissions from a smart meter can cause any adverse biological effects in people, including Customers. N.T., 5/18/2016, at 25. Similarly, based upon his own evaluation of whether RF emissions from smart meters can cause, contribute to, or exacerbate the conditions described by Customers, Dr. Israel concluded, to a reasonable degree of medical certainty, that there is no reliable medical basis on which to conclude that RF emissions from smart meters caused, contributed to, or exacerbated or will cause, contribute to, or exacerbate any of their self-reported symptoms or conditions. N.T., 5/18/2016, at 26.

The PUC concluded that Customers did not sustain their "initial burden of proof in demonstrating that RF exposure from a PECO smart meter will cause harm" to their health, and PECO satisfied its burden of production, thereby shifting the burden of production back to Customers. Povacz, No. C-2015-2475023, at 70. However, the PUC

found, Customers “failed to submit any additional evidence to demonstrate that RF emissions from a smart meter will adversely affect [their] health and therefore failed to carry [their] burden of proof” as to the safety of smart meters. *Id.* at 70–71.

The Commonwealth Court agreed with the PUC that Customers generally failed to prove, by a preponderance of the evidence, a conclusive causal connection between exposure to RF emissions from smart meters and adverse human health effects. *Povacz*, 241 A.3d at 493, 494 (citing *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties*, No. A-110550F0055, 1993 WL 855896 (Pa. P.U.C. Nov. 12, 1993) (“*Woodbourne-Heaton II*”). Customers do not challenge the finding that they failed to prove that RF emissions from smart meters are unsafe. Rather, they challenge the Commonwealth Court’s application of the “conclusive causal connection” standard of proof to their individual circumstances. *Povacz/Murphy Brief* at 36; *Randall/Albrecht Brief* at 59.

1. Arguments of the Parties

Customers reason that the Commonwealth Court erred in requiring proof of a conclusive causal connection to support their specific claims under Section 1501 that smart meters are unsafe because, given current medical research and studies, that is an impossible burden to meet. *Randall/Albrecht Brief* at 59. Customers disagree with the Commonwealth Court’s reliance on *Woodbourne-Heaton II*, claiming that decision is irrelevant because it involved a community’s concerns about overhead power lines; it did not involve any threat of service termination; and customers could move their residences to escape the electromagnetic field generated by the power line. *Povacz/Murphy Brief* at

36. In contrast, Customers contend this case involves RF emissions from smart meters; the threat of service termination if a smart meter is not accepted; and the inability of customers to move anywhere in Pennsylvania to avoid the smart meter mandate. Customers also consider *Woodbourne-Heaton II* to be outdated because it was decided twenty-eight years ago, when “neither cell phones, iPads, microwaves, big screen T.V.s nor computers were used the way they are today creating a steady burst of RF emissions[.]” *Id.* at 37. Moreover, they assert, the *Woodbourne-Heaton II* decision was limited to the facts of that specific case. *Id.* (citing *Woodbourne-Heaton II*, No. A-110550F055, 1993 WL 855896, at *15 (Hanger, Comm’r, concurring and dissenting)).

Customers also distinguish *Naperville I*, upon which the Commonwealth Court relied in articulating the standard of proof for a Section 1501 safety violation.²⁸ According to Customers, the federal *Naperville I* decision is not controlling authority before this Court, especially on a question of Pennsylvania law, and it did not concern any issue regarding the appropriate standard of proof in an administrative agency setting. Randall/Albrecht Brief at 63; Randall/Albrecht Reply Brief at 4, 9. They contend that *Naperville I* is further distinguishable because it involved, inter alia, the issue of whether the collection of consumer energy-consumption data every fifteen minutes and storage of that data for three years by the City of Naperville’s public utility was reasonable under the Fourth Amendment of the United States Constitution and Article 1, § 6 of the Illinois Constitution. Povacz/Murphy Brief at 38. On appeal from the district court’s ruling in *Naperville I*, the Seventh Circuit concluded that the data collection was a warrantless

²⁸ PUC-PECO do not discuss the *Naperville* cases in their filings before this Court.

search but reasonable “because of the significant government interests in [the modernization of the electric grid] and the diminished privacy interests at stake.” *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521, 527–29 (7th Cir. 2018) (“*Naperville*”).²⁹

Having distinguished the above authority, Customers now suggest that the correct standard of proof under Section 1501 for their claims that smart meters are unsafe is evidence demonstrating that a utility’s action “poses a risk of harm.” Povacz/Murphy Brief at 39, 41. In support, they rely on the Commonwealth Court’s holding in *West Penn Power v. Pa. Pub. Util. Comm’n*, 219 A.3d 716, 2019 WL 5801716 (Pa. Commw. 2019) (non-precedential decision), which involved a landowner’s allegation that the utility’s plan to spray pesticides near his shallow well was unsafe and unreasonable, as it threatened to compromise his water supply. According to Customers, the Commonwealth Court used a correct standard of proof in *West Penn Power* when it held that the complainant had to present substantial evidence to demonstrate that the utility’s plan to spray pesticides near his shallow well “posed a risk of harm” to him. Povacz/Murphy Brief at 39.

Next, Customers argue that medical evidence from a treating physician, e.g., a medical certification, is sufficient to meet their proposed “risk of harm” standard of proof.

²⁹ Customers highlight two statements by the Seventh Circuit which, they claim, support their position: the circuit court stated that if a city were “to collect data at shorter intervals, its conclusion could change,” and that the electric utility “could have avoided this controversy ... by giving residents a genuine opportunity to consent to the installation of smart meters, as many other utilities have.” Povacz/Murphy Brief at 38 (citing *Naperville*, 900 F.3d at 529).

We consider Customers’ reliance on dicta in *Naperville* about what the circuit court might have held under different facts unavailing, as the circuit court’s analysis was limited to determining if the collection of smart meter data violated the Fourth Amendment. *Naperville*, 900 F.3d at 527–29.

In support, they point to a provision in the Code that prohibits a public utility from terminating service to a premises when a licensed medical professional “has certified that the customer ... or a member of the customer’s ... household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service.” 52 Pa.C.S. § 56.111.³⁰ They argue further that treating physicians are in the best position to protect human health, not the PUC or PECO, which rely on outdated science and research at the expense of individual electric customers with complicated medical concerns. Povacz/Murphy Brief at 43–44.

As an alternative to medical certification being sufficient proof to support a claim under Section 1501, Customers generally argue against the safety of EF emission generating devices and argue that the Federal Communication Commission (“FCC”) guidelines regarding wireless technology and non-thermal harms relied on by PECO’s experts are outdated and unreliable. Povacz/Murphy Brief at 45. In support, they cite *Environmental Health Trust v. FCC*, 9 F.4th 893 (D.C. Cir. 2021). Therein, the circuit court reviewed an FCC order “terminating a notice of inquiry regarding the adequacy of the [FCC’s] guidelines for exposure to radiofrequency radiation,” addressing claims that the FCC failed to respond to significant comments regarding “whether the [FCC] should initiate a rulemaking to modify its guidelines.” *Env’t Health Tr.*, 9 F.4th at 900. Customers describe *Environmental Health Trust* as “a significant legal development” and “a game

³⁰ According to Customers, if the PUC had followed the procedures regarding medical certifications in 52 Pa.C.S. §§ 56.111 and 56.118, the burden would have shifted to PECO to show, by a preponderance of the evidence, that Customers’ medical certifications were invalid. Povacz/Murphy Brief at 45. However, as the application of Code provisions regarding medical certifications is not within the scope of our grant of review, we will not address that issue.

changer” because, in their view, it calls into question the sufficiency of PECO’s expert testimony to rebut Customers’ prima facie case of adverse reactions to the smart meters installed at their homes. Albrecht/Randall Brief at 18 n.3; Povacz/Murphy Brief at 46, 48.

PUC-PECO maintain that the Commonwealth Court’s use of the conclusive causal connection standard of proof as articulated in *Woodbourne-Heaton II* was correct. In response to Customers’ attack on *Woodbourne-Heaton II*, PUC-PECO argue that the focus of that case was “the evidentiary standard for weighing scientific research and studies in the context of the preponderance of the evidence standard” applied by the PUC. PUC Responsive Brief at 26. According to PUC-PECO,

[a]t its core, the *Woodbourne-Heaton* standard ... is based on the unremarkable principle that, when the evidence of record is inconclusive and, therefore, will not support a finding that [RF emissions] can cause, contribute to, or exacerbate the medical conditions reported by [Customers], they have not satisfied the burden of proof the Code imposes for granting their requested relief.

PECO Second Brief at 46–47. See 66 Pa.C.S. § 332 (providing that proponent of a rule or order has the burden of proof). PUC-PECO suggest that, because an evidentiary standard is an objective legal mechanism independent of the facts under review, Customers’ complaint that *Woodbourne-Heaton II* is irrelevant and out-of-date is an attempt to alter a standard of proof that they failed to meet. PUC Responsive Brief at 27.

As for Customers’ medical certification argument, PUC-PECO explain that medical certifications are meant to prevent termination of service to a customer whose physician certifies that the customer suffers from a medical condition that would be “aggravated by cessation of service.” PECO Second Brief at 50 (citing 66 Pa.C.S. § 1406(f); 52 Pa. Code §§ 56.11, 56.2). Here, PUC-PECO point out, Customers have not alleged that termination

would aggravate any of their medical conditions; rather they claim the continuation of their electric service with smart meters would aggravate their medical condition. *Id.* at 51.

Nor do PUC-PECO agree that *Environmental Health Trust* supports Customers' position. PUC Reply Brief at 32–35; PECO Second Brief at 56–60. In fact, they argue, Customers have mischaracterized the holding in that case. Specifically, PUC-PECO assert that the two-judge majority in *Environmental Health Trust* held, “To be clear, we take no position in the scientific debate regarding the health and environmental effects of RF [emissions] — we merely concluded that the [FCC’s] cursory analysis of material record evidence was insufficient as a matter of law.” *Env’t Health Tr.*, 9 F.4th at 914. Thus, PUC-PECO explain, although the court recognized that the record before the FCC may have been more than sufficient to justify the FCC’s conclusion, the FCC did not provide any reasoning to which the court could defer or that satisfied the procedural requirements of the Administrative Procedure Act. PECO Second Brief at 58–59 (citing *Env’t Health Tr.*, 9 F.4th at 914). PUC-PECO point out that the FCC’s existing guidelines for RF emissions are still in effect. *Id.* at 59. Moreover, PUC-PECO surmise, because the RF emissions of smart meters are “far below” the existing FCC standards, it is “unfathomable” that the FCC would alter its guidelines “in a way that affects this dispute.” *Id.*

2. Analysis

In applying the preponderance of the evidence burden of proof, the PUC has used the evidentiary standard of “conclusive causal connection” for scientific evidence proffered to establish that RF emissions result in adverse human health effects for almost three decades. In the early 1990s, protesters to the proposed energization of a former

railroad transmission line cautioned that electro-magnetic field emissions created “an unreasonable risk of danger.” *Re Phila. Elec. Co.*, No. A-110550F0055, 1993 WL 383052 (Pa. P.U.C. Mar. 26, 1993) (*Woodbourne-Heaton I*) (citing Protestants Reply Exceptions pp. 1–3). The ALJ found there was no conclusive proof of causality between the emissions and adverse human health effects. Even so, the ALJ opined, the protesters’ fear, which arose from the inconclusiveness of whether exposure to electro-magnetic emissions results in adverse health effects, was reasonable. “[M]otivated by a compelling sense of fairness to consider all recent data from the scientific community,” the PUC remanded for the purpose of, inter alia, “receiving evidence and comment regarding all studies of the health effects of magnetic fields which are available on or before the hearings on that evidence commence... .” *Woodbourne-Heaton II*, 1993 WL 855896, at *1. On remand, the ALJ concluded that the record evidence did “not support a finding or conclusion that there is a causal connection between exposure to EMFs and adverse human health effects because of the continued inconclusiveness of the scientific research and studies.” *Id.* at *3 (citing ALJ Initial Decision, 7/23/1393, at Conclusion of Law #2).

The PUC agreed,

by reason of the fact that the additional scientific research and studies presented of record at the hearing in the remanded proceedings do not support a finding or conclusion that there is a conclusive causal connection between exposure to [RF emissions] and adverse human health effects because of the inconclusive nature of said research and studies, when viewed in totality[.]

Id. at *13.

Today, we address the similar question of the causality between RF emissions from a smart meter and adverse human health effects. In the almost three decades since

the *Woodbourne-Heaton* litigation, fear about the potentially harmful effects of RF emissions and the inconclusiveness of scientific research and studies have remained constant. To the extent Customers challenge the safety of smart meters based on their individualized concerns about adverse effects, we conclude that neither fear nor inconclusive scientific research is sufficient to prove that smart meter technology constitutes unsafe service under Section 1501.³¹ Allowing fear — however reasonable given the inconclusiveness of scientific research and studies — to support a finding or conclusion that smart meter technology is unsafe, in the absence of substantial evidence of causality between RF emissions and adverse human health effects, eliminates the requirement that a customer prove the utility is responsible or accountable for the problem described in the complaint. See 66 Pa.C.S. § 332(a) (imposing burden of proof on proponent of rule or order).

We reiterate that the burden of proof in PUC cases is preponderance of the evidence, which is the standard applied in civil suits, e.g., for negligence or for medical malpractice. *Samuel J. Lansberry, Inc.*, 578 A.2d at 602 (“It is clear . . . that the degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, *i.e.*, a preponderance of the evidence.”). In such cases, because the issue of causality typically “involves explanations and inferences not within the range of ordinary training, knowledge, intelligence and experience,” *Commonwealth v. Nasuti*, 123 A.2d 435, 438 (Pa. 1956), the parties submit expert

³¹ Albrecht and Randall concede that their sincerely held beliefs about smart meters and their desire not to be exposed to RF emissions would not be sufficient to demonstrate that smart meter technology is unsafe or unreasonable. Randall/Albrecht Reply Brief at 56.

testimony to support their theory of liability or their defense. *Accord Smith v. German*, 434 Pa. 47, 52, 253 A.2d 107, 109 (1969) (“Just as the plaintiff was required to offer expert testimony in order to establish the medical connection between the injuries arising from the accident and the personality change, so too is such expert testimony required by the party seeking to establish that it was not the injury but some other factor which caused the change.”). This standard of proof and supporting evidence is routinely applied by the PUC in the context of a Section 1501 claim. See *Kreider*, 2016 WL 406549, at *14 (“The Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that PECO is responsible or accountable for the problem described in the Complaint. In order to carry this burden of proof, the Complainant may be required to present evidence in the form of medical documentation and/or expert testimony.”); *Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 430 (Pa. Commw. 2017) (explaining that complainant may prove Section 1501 claim through complainant’s own personal testimony and/or “testimony of others as well as other evidence that goes to that issue”); *Atuahene v. PECO Energy Company*, No. C-2019-3012904, 2021 WL 3032744, at *3, *5 (Pa. P.U.C. May 21, 2020) (“To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. ... At the hearing, a complainant may prove his/her claim through the complainant’s own personal testimony and/or ‘the testimony of others as well as other evidence that goes to that issue.’”).

The preponderance burden requires a customer to prove that a service or facility is — more likely than not — the cause of the problem described in their complaint. See

Popowsky v. Pa. Pub. Util. Comm'n, 937 A.2d 1040, 1055 n.18 (Pa. 2007) (“This Court has characterized a preponderance of the evidence as tantamount to a ‘more likely than not’ inquiry[.]”). Specific to smart meters and RF emissions, the burden is two-fold. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects and, second, expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. See PA SSJI (Civ) § 4.80 (“An expert witness gives his or her *opinion*, to a reasonable degree of professional certainty, based upon the assumption of certain facts.”). Once the customer produces such evidence, the utility may then defend by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. The fact finder must then weigh the evidence and decide whether it is more likely than not that the smart meter causes harm to the customer.

Drawing on the ALJ’s wording in the *Woodbourne-Heaton II* matter that there was “no conclusive proof” and that the evidence “did not support a finding or conclusion that there is a causal connection,” ALJ Initial Decision, 7/23/1993, at Conclusion of Law #2, the PUC uses the phrase “conclusive causal connection.” “Conclusive causal connection” means that the proffered evidence must support the conclusion that a causal connection existed between a service or facility and the alleged harm. It is not possible for evidence that is inconclusive to be sufficient to meet the preponderance of the evidence standard. Inconclusive means that the evidence does not lead to a conclusion of a definite result one way or the other. While the preponderance of the evidence standard is not stringent,

it does require that the plaintiff's evidence ever so slightly (like, with the weight of a feather) supports the plaintiff's contention. Evidence that does not support a conclusion (or is inconclusive) cannot meet that minimal burden. *Accord Ethan Habrial v. Metropolitan Edison Company*, No. C-2018-3005907, 2020 WL 3840469, at *3 (Pa. P.U.C. June 29, 2020) ("The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. 'Substantial evidence' is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established."). Thus, where scientific evidence is required to establish the safety of a service or facility, use of the evidentiary standard of "conclusive causal connection" to assess the evidence is correct.

A customer's evidence certainly need not be based on absolute certainty, thereby removing all doubt that a factual assertion is correct. However, evidence of a mere possibility that harm could result is never sufficient to meet a preponderance of the evidence standard. For example, *Woodbourne-Heaton II* addressed the concept of harm from RF emissions in a general sense because the protestors therein alleged that they had been adversely affected by reason of the potential for exposure to RF emissions, not that they had personally experienced any harmful effects from reductoring the transmission line. Here, in contrast, Customers challenge the safety of smart meters supported by their own testimony and documented by evidence of their unique medical conditions from their treating physicians.³² Ms. Povacz and Ms. Murphy averred that

³² By way of example, both Maria Povacz and Laura Murphy self-reported electromagnetic hypersensitivity syndrome ("EHS"), which reports their treating (continued...)

exposure to RF emissions will cause them harm. *Povacz*, No. C-2015-2475023, at 5 (citing *Provacz Amended Complaint* ¶¶ 10–13, 15, 17); *Murphy*, No. C-2015-2475726, at 7 (citing *Murphy Second Amended Complaint* ¶¶ 11–12, 14, 34–35, 37). Ms. Randall averred that the installation of a smart meter would present a health risk. *Randall/Albrecht*, No. C-2016-2537666, at 4 (citing *Randall Complaint* ¶ 6).³³ The generic versus specific nature of a claim does not diminish the need to prove, by a preponderance of the evidence — with expert opinion within a reasonable degree of certainty — that the service or facility is unsafe and that a causal connection exists between the allegedly unsafe service or facility and harm, either to the public at large or to specific individuals.

Whether a causal connection exists between RF emissions and adverse health effects “involves explanations and inferences not within the range of ordinary training, knowledge, intelligence and experience.” *Nasuti*, 123 A.2d at 438. Thus, the parties presented competing expert testimony. Customers’ expert, Dr. Marino, testified that “a person’s subjective self-diagnosis of [EHS] is not sufficient to establish that the person

physicians confirmed without conducting any independent diagnostic testing. N.T., 9/15/2016, at 641–42; N.T., 6/7/2016, at 105.

³³ Although Customers now argue that their claims are based on the contention that smart meters are unsafe because they “pose a risk of harm,” *Povacz/Murphy Brief* at 39, 41, after review of the record, their specific challenges developed before the PUC are not so classified. Ms. *Provacz’s* physician testified that RF emissions caused her self-reported symptoms. *Written Direct Testimony of Dr. Talmor*, 4/27/2016, at 3-4. Ms. *Murphy’s* physician testified that RF emissions may have been a significant contributing factor to the exacerbation of her existing health issues. N.T., 12/5/2016, at 80. Ms. *Randall’s* physician opined that, because of her history of cancer, radiation exposure of any kind, including RF emissions, should be avoided because of its potential to pose a risk of harm. N.T., 9/27/2016, at 25–26. None of the physicians testified within any degree of certainty and, as noted, Customers did not offer these witnesses as experts on causation. See note 27, *supra*.

has [EHS].” N.T., 9/16/2016, at 787. He further stated that, although the studies he relied upon provide a basis to conclude that exposure to RF emissions from smart meters could cause danger or pose a risk of harm to an electric customer, he could not say that exposure would cause harm to Customers’ health because “[t]here’s no evidence that could warrant that statement.” N.T., 9/15/2016, at 643–44. Although Customers claimed individualized injury based on exposure to RF emissions, their expert evidence fell short of proving by the preponderance of the evidence that PECO was responsible or accountable for the problem described in their complaints. 66 Pa.C.S. § 332(a).

In contrast, one of PECO’s expert witnesses, Dr. Christopher Davis, concluded to a reasonable degree of scientific certainty there is no reliable scientific basis to conclude that exposure to RF fields from PECO’s smart meters can cause adverse biological effects in people. Written Rebuttal Testimony of Christopher Davis, 5/18/2016, at 24–25. PECO’s other expert, Dr. Marc Israel, testified to a reasonable degree of medical certainty there was no reliable medical basis to conclude that RF emissions from PECO’s electric smart meter caused, contributed to, or exacerbated, or will cause, contribute to, or exacerbate, any of the symptoms identified by Maria Povacz and that exposure to electromagnetic fields from PECO’s smart meters have not been and will not be harmful to her health. Written Rebuttal Testimony of Dr. Marc Israel, 5/18/2016, at 11–26.

Even if Customers’ expert testimony was sufficient to meet the preponderance of the evidence burden of proof, the PUC was free to conclude that the contrary evidence was more weighty. That said, we find no error in the PUC’s conclusion and the Commonwealth Court’s affirmance that Customers failed to demonstrate that the installation of smart meters was unsafe. They simply failed to carry their burden of proving

that PECO's installation of smart meters at their homes was — more likely than not — responsible or accountable for the problems described in their complaints and the PUC proceedings.

Customers rely on *Environmental Health Trust* as supporting their argument that smart meters are unsafe because FCC standards for RF emissions are outdated. We conclude that *Environmental Health Trust* provides no guidance on the matter at hand because the circuit court did not reach the merits of the question before it, i.e., whether the 1996 FCC limits for RF radiation exposure adequately protect against purported negative effects unrelated to cancer caused by exposure to RF radiation. Rather, the circuit court found that the FCC violated the requirements of the ADA by failing “to respond to record evidence that exposure to RF radiation at levels below the [FCC’s] current limits may cause negative health effects unrelated to cancer” with a reasoned explanation for its contrary conclusion. *Env’t Health Tr.*, 9 F.4th at 903, 905. Opining that the FCC’s “factual premise — the non-existence of non-thermal biological effects — underlying the current RF guidelines may no longer be accurate[,]” the circuit court chastised the FCC for its silence as to why it determined, “in light of evidence suggesting the contrary, that exposure to RF radiation at levels below [the 1996 limits] does not cause negative health effects unrelated to cancer.” *Id.* at 906. According to the circuit court, that silence deprived the court of a “basis on which to review the reasonableness of the [FCC’s] decision” that its guidelines remain adequate. *Id.* The court explained that, because an agency’s rulemaking decision must have a reasoned basis, an agency cannot, in rendering a written decision, ignore evidence suggesting that a major factual premise of its position may no longer be correct. *Id.* at 907. At most, therefore, *Environmental Health*

Trust suggests that the science regarding a causal connection between RF emissions and adverse human health effects has evolved since 1996, the last year FCC limits for RF emissions were updated. However, it does not support a claim that RF emissions at or below the 1996 FCC limits cause adverse human health effects and in no way overcomes the record facts that Customers failed to adduce sufficient evidence to meet the preponderance of the evidence standard.³⁴

B. Reasonable Service

As an alternative argument, Customers claimed that their forced exposure to smart meters constitutes unreasonable service. *Povacz*, 241 A.3d at 490. In support, they relied on the same scientific studies, expert opinion, personal testimonies, and physician testimonies that they used in asserting that smart meters are unsafe. They specifically argued that the PUC has no authority to second-guess the medical judgment of their treating physicians, who recommended that Customers avoid exposure to RF emissions. PECO countered that it offers customers a reasonable alternative regarding smart meter installation. Specifically, “the customer has the option of relocating the smart meter to a different location because the customer has the right under the tariff to choose the location of the meter board and socket (while PECO chooses the type of meter).” *Povacz*, No. C-2015-2475023, at 91.

The PUC concluded that PECO did not act unreasonably by installing smart meters pursuant to Act 129, as Customers did not meet their burden of proof in demonstrating that they were medically sensitive customers or that RF emissions from a smart meter

³⁴ For the same reasons, we do not consider *Environmental Health Trust* to be a game changer in the context of Customers’ Section 1501 claim that smart meter technology is not reasonable.

will adversely affect their health. *Povacz*, No. C-2015-2475023, at 91. Having failed to demonstrate that smart meters are unsafe, the PUC continued, Customers’ “request to not receive [a smart] meter as part of receiving electric service from PECO is essentially the same as any other opt out request based on customer preference.” *Id.* at 94. The PUC reasoned that, because Act 129 does not provide for a customer opt-out and the General Assembly did not intend “for EDCs to invest in and maintain two sets of meter systems based on customer preference...as part of furnishing” service consistent with Section 1501, reasonable service does not require an exception to the mandatory installation of smart meters.

Uncertain that the PUC applied the correct disjunctive “safe or unreasonable” standard in addressing Customers’ Section 1501 claims, the Commonwealth Court remanded to the PUC for consideration of “whether accommodations are appropriate *without* proof of harm.” *Povacz*, 241 A.3d at 492 (emphasis in original). The suggested accommodations included “wired smart meters” and “if wireless meters must be installed, turning off the emissions upon a customer’s request.” *Id.* at 492–93. In remanding, the court did not address whether the installation of smart meters was reasonable service, but it did recognize the competing interests of Customers’ desire to avoid RF emissions and PECO’s desire to avoid having to provide accommodations based on Customers’ fears where medical research has not determined the degree of risk posed by the level of exposure to RF emissions. *Id.* at 492.

1. Arguments of the Parties

Customers argue that the correct standard of proof for demonstrating unreasonableness under Section 1501 is evidence that the utility service poses a risk of

harm to a customer with unique medical conditions. In support, Customers cite *Branagh v. PECO Energy Co.*, No. C-2016-2576738 (PUC Initial Decision, 12/27/2017), in which a pro se electric and gas customer claimed that PECO violated Section 1501 by installing smart meters on her home. According to Customers, the PUC upheld the ALJ's decision that, under Section 1501, PECO's service was unreasonable as to the customer because it installed the gas smart meter against her physician's advice. Povacz/Murphy Brief at 40; Povacz/Murphy Second Brief at 23.³⁵ In further support, Customers cite 52 Pa.C.S. § 56-111, which prevents the termination of utility service to a customer who has a valid medical certificate establishing that the customer has a medical condition that would be aggravated by the lack of electric service. Customers reason that, because a customer's physician is in the best position to treat health-related concerns, medical opinion should be sufficient to demonstrate that a utility service poses a risk of harm; thereafter, the burden of proving reasonableness shifts to the utility. Povacz/Murphy Brief at 41–45.³⁶

³⁵ PUC-PECO refute this interpretation of *Branagh*, explaining that, when the ALJ and PUC “considered the merits of Branagh’s complaint, they applied the *Woodbourne-Heaton* standard; determined that Branagh did not establish that her alleged health effects were causally connected to smart meter RF [emissions]; and, therefore, installing electric or gas smart meters does not violate the safe and unreasonable service standards of Section 1501.” PECO Second Brief at 53.

³⁶ PUC–PECO complain that Povacz and Murphy have raised this argument for the first time in this appeal, denying them the opportunity to address the regulations. PECO Second Brief at 49; PUC Reply Brief at 37. Therefore, they contend, Povacz and Murphy have waived the argument that they do not have the burden of proving a violation of Section 1501; moreover, that argument is outside the scope of this Court’s grant of review. PECO Second Brief at 49–50; PUC Reply Brief at 37.

As to the merits of the argument, PUC–PECO observe that Customers have not alleged the termination of their electric service would aggravate any of their unique medical symptoms; rather, they complain that the continuation of service with smart meters will aggravate their medical conditions. Therefore, they conclude, this case does not warrant (continued...)

Customers appear to support a remand to the PUC for a determination of whether the installation of smart meters subject to accommodations would be unreasonable service under Section 1501 given their individual medical concerns.³⁷

PUC-PECO submit multiple reasons why the Commonwealth Court erred in remanding with the instruction that the PUC take into consideration “[l]ogic, safety concerns, and fairness” in determining the reasonableness of smart meter technology under Section 1501, without requiring proof of harm. PUC Brief at 52 (citing *Povacz*, 241 A.3d at 485, 491, 494). First, they claim that the Commonwealth Court’s evidentiary approach ignores the “substantial evidence” standard applied to adjudications by administrative agencies. *Id.* In short, by allowing electric customers in a PUC proceeding to allege health concerns based on a belief that they will be harmed by smart meter technology, without proof by a preponderance of the evidence that a utility’s service is unreasonable, the Commonwealth Court has ensured that the PUC’s decisions will not be supported by substantial evidence. *Id.* at 52–53. Second, the Commonwealth Court’s ruling violates the due process rights of utilities. *Id.* at 54. In other words, by requiring the PUC to direct a utility to provide accommodations without substantial evidence of a Section 1501 violation, the Commonwealth Court has placed utilities that have not

invoking the protection provided by the medical certification process. PECO Second Brief at 50; PUC Reply Brief at 38–40.

³⁷ The tentativeness of this argument reflects the contradictory conclusions of the Commonwealth Court. If the installation of smart meters is not mandatory as the Commonwealth Court concluded, then a customer could merely opt-out without need for establishing a violation of Section 1501. Despite holding that the installation of smart meters was at the customer’s option, the Commonwealth Court also concluded that Customers should be given the opportunity to establish that smart meters were unreasonable in their specific circumstances.

committed a violation of Section 1501 in the untenable situation of being unable to defend against complaints alleging harm. *Id.* at 54–55. Third, “[a]lthough [Customers] tried to articulate separate violations of, respectively, the ‘safe’ and ‘reasonable’ elements of Section 1501, the alleged violations have a common origin[:]” a unique “sensitivity” or “susceptibility” to RF emissions. PECO Brief at 51. Fourth, having failed to prove that their unique sensitivity makes smart meter technology unsafe and then relying on the same health concerns, Customers failed to prove that smart meter technology is unreasonable. *Id.* at 52. Fifth, the Commonwealth Court erred by using the “guise of a remand” to substitute its judgment for that of the PUC and allow electric customers to compel an accommodation based on a sincere belief, despite the lack of substantial evidence that RF emissions have adverse health effects. *Id.* at 53. Sixth, by directing the PUC to consider non-smart-meter accommodations, the Commonwealth Court has created a second “opt-out exemption,” the first being “the categorical and unconditional right of refusal it inserted in Section 2807(f)(2) by interpreting ‘furnish’ to mean ‘offer.’” *Id.* at 54. Seventh, the Commonwealth Court’s remand and instruction usurp the PUC’s authority to determine what constitutes reasonable service under Section 1501, which authority the PUC exercised consistently with its decision in *West Penn Power*, 2019 WL 5801716. Therein, PUC-PECO explain, the complainant failed to meet his burden of proof by offering only his opinion that West Penn’s proposed herbicide would cause harm to his property and, therefore, was unreasonable. PECO Brief at 56. Thus, they conclude, Customers’ concerns about the effect of RF emissions on their medical conditions are not sufficient to prove that smart meter service is unreasonable, making this case indistinguishable from *West Penn Power Co.*

2. Analysis

Initially, we disagree with the Commonwealth Court's assertion that the PUC's denial of accommodations was based on its "erroneous conclusion that Act 129 does not allow accommodations," *Povacz*, 241 A.3d at 492, for three reasons. First, the court's implied suggestion that Act 129 allows accommodations is inaccurate; Act 129 does not even speak to accommodations. Second, the PUC denied accommodations because Act 129 does not provide a customer the ability to opt-out of receiving smart meter technology, which is essentially what Customers were requesting. *Povacz*, No. C-2015-2475023, at 94. Third, the PUC denied accommodations because it found that Customers failed to establish a violation of Section 1501 that would have entitled them to an administrative remedy. *Id.*

We also disagree with the Commonwealth Court that a remand is necessary because the panel was unsure if the PUC had incorrectly applied a conjunctive interpretation of Section 1501, rather than the proper disjunctive interpretation. Granted, confusion in this regard is natural given the potential for overlap between an "unsafe" inquiry and an "unreasonable" inquiry. For example, we can say with certainty that it would always be unreasonable to provide electric service that is unsafe. On the other hand, it is easy to imagine situations where safe service could be unreasonable. For example, requiring a smart meter could be safe but unreasonable service if the smart meter were so large that it filled a consumer's entire basement or was to be installed on the front door of a house, detracting from the property's curb appeal.³⁸

³⁸ Or, as in *Branagh*, where PECO's failure to coordinate properly its notices to and communication with the customer regarding the installation of a smart meter. On that (continued...)

Nonetheless, on the record before us, we find no evidence of a misunderstanding by the PUC as to the proper, disjunctive standard for determining a violation of Section 1501. When considered in the context of the PUC's whole opinion, the standard-of-proof language challenged by the Commonwealth Court appears to be more of a misstatement by the PUC than a misapplication of Section 1501. Notably, the ALJ applied the correct standard in reviewing Customers' claim. *Accord Povacz*, 241 A.3d at 498 (Crompton, J., concurring and dissenting) (observing that ALJ "clearly enunciated, as conclusions of law, that utility companies are required to furnish safe and reasonable service"). Upon review, the PUC accepted the ALJ's determinations and even referred to the correct standard in discussing its decision in *Kreider*, 2016 WL 406549. *Accord Povacz*, 241 A.3d at 499 (Crompton, J., concurring and dissenting) (citing *Povacz*, No. C-2015-2475023). Thus, we discern no basis to remand to the PUC for application of the correct disjunctive standard under Section 1501. We reiterate the applicable standard of proof under Section 1501 requires a customer to demonstrate by a preponderance of the evidence based on the totality of the circumstances that the furnishing of a service or facility is unsafe or unreasonable. This was the standard applied by the PUC here.

Next, we observe that Customers' Section 1501 reasonableness claims are also based exclusively on their personal medical conditions. As support for their unreasonableness argument, they relied on the same inconclusive research and studies regarding the effects of RF emissions on human health that they relied on in attempting

point, we note our disapproval of Customers' self-serving misrepresentation of the *Branagh* holding. *Povacz/Murphy* Brief at 40. *In Branagh*, the PUC deemed PECO's service unreasonable because of how PECO mishandled the installation of a gas smart meter at the customer's property, not because the utility failed to defer to the medical opinion of the customer's physician. *Branagh*, 2017 WL 6988946, at *10.

to establish a violation of the safety standard, as well as Dr. Marino's expert testimony, their personal testimonies, and the medical opinions of their treating physicians regarding their unique sensitivities to RF emissions. Their claims were sufficient to warrant a hearing before the PUC. *Accord Kreider*, 2016 WL 406549, at *6 (affording hearing to complainant who made averments particular to her that smart meter has caused or will cause health problems because it would enable PUC to closely evaluate her claims based on fully developed evidentiary record). However, the PUC determined that reasonable service did not require accommodating Customers, as they could not prove by a preponderance of the evidence that PECO was responsible or accountable for the health problems described in their complaints. *Povacz*, No. C-2015-2475023, at 28; *Murphy*, No. C-2015-2475023, at 31; *Randall & Albrecht*, No. C-2016-2537666, at 27.

Our review of the record reveals that the PUC considered all of Customers' evidence, finding that it did not overcome PECO's evidence regarding the inconclusiveness of whether RF emissions affect human health.³⁹ Nor did Customers offer any non-health related evidence that the furnishing of smart meters was unreasonable. Thus, we discern no basis on which to challenge the PUC's conclusion that Customers failed to establish a violation of Section 1501 based on unreasonable service.

IV. ACCOMMODATIONS

Upon finding a violation of Section 1501, the PUC is authorized to prescribe a remedy pursuant to Section 1505(a) of the Code:

³⁹ As discussed, reference to a preponderance of the evidence burden of proof and a "conclusive casual connection" evidentiary standard to assess whether expert testimony meets that burden is not inconsistent. See pp. 47–50, *supra*.

(a) General rule.--Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.

66 Pa.C.S. § 1505(a).

On one hand, Customers rely on the argument (which we reject) that, because the installation of smart meters is not mandated by Act 129, an accommodation is not necessary. An electric customer can simply reject the installation of a smart meter, as Customers attempted to do. Povacz/Murphy Brief at 33. On the other hand, Customers explain that, regardless of which interpretation of Section 2807(f)(2) prevails, this matter is about the PUC's authority to consider a request for accommodation to a customer who demonstrates that smart meter service violates Section 1501. Randall/Albrecht Brief at 27–32. Claiming an unfettered right to avoid RF emissions, Customers request accommodation based on their medical histories and demonstrated desire to avoid or minimize exposure to RF emissions. They consider the appropriate relief to be the removal of wireless smart meters installed on their properties and the installation of an alternative meter. *Id.*⁴⁰ In response, PUC-PECO object to having to provide Customers with accommodations absent a finding that smart meter technology violates Section 1501.

⁴⁰ On behalf of Customers, Lawrence and Alexia McKnight argue that, because the PUC and courts are not medical authorities, mandating potentially negative health exposure of (continued...)

Pursuant to our interpretation of Act 129 as mandating the installation of smart meter technology, a customer may not prevent the installation of a smart meter. That said, a customer is not without recourse, as the provision of accommodations is a function of Section 1501, not of Act 129. Indeed, absent a mandate, there would be no need for the complaint procedure provided in the Code to electric customers who oppose installation of a smart meter. 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. Thus, by operation of the statute, an EDC cannot be required to provide accommodation without the finding of a Section 1501 violation.

CONCLUSION

Act 129 is mandatory, requiring the system-wide installation of smart meter technology by EDCs, including smart meters. Although electric customers are not entitled to opt out of having a smart meter installed at their home, the PUC is authorized to

RF emissions to medically vulnerable customers without an accommodation would lead to an absurd result, as well as a violation of federal laws, such as the Americans with Disabilities Act. McKnight Brief at 10–22, 22–26.

Similarly, the Jennings Family supports Customers with a federal anti-discrimination legal framework. Jennings Brief at 4–5. Citing the Americans with Disabilities Act, the Rehabilitation Act, and the Fair Housing Amendment Act, they argue that Act 129 should be interpreted along anti-discrimination lines. *Id.* at 5–9.

We decline to address these arguments because, as observed by PUC-PECO, issues related to federal disability and discrimination laws are outside the scope of the review granted in this case. PECO Second Brief at 53.

determine and prescribe a remedy to individual customers who establish a violation of Section 1501 by a preponderance of the evidence that furnishing smart meter technology to them is unsafe or unreasonable. Reference to a preponderance of the evidence burden of proof and a “conclusive causal connection” evidentiary standard to assess whether expert evidence meets that burden is not inconsistent. The burden for proving a safety or reasonableness violation under Section 1501 is the same, where the challenge is based on the effect on the health of the customer.

Accordingly, we reverse the Commonwealth Court’s ruling that Act 129 does not mandate the installation of smart meters. We affirm the Commonwealth Court’s conclusion that the PUC did not err in finding that Customers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between RF emissions from smart meters and adverse human health effects. We reverse the Commonwealth Court’s remand to the PUC for consideration of whether Customers established that smart meter service is unreasonable under Section 1501. The PUC has already made the determination that smart meter service is not unreasonable based on the same evidence supporting the finding that no safety violation was proven.

Chief Justice Baer and Justices Todd, Wecht and Mundy join the opinion.

Justice Dougherty files a concurring and dissenting opinion.

Former Justice Saylor did not participate in the consideration or decision of this matter.

Attachment 2

Commonwealth Court's Opinion in *Povacz et al. v. PUC*
Pennsylvania Commonwealth Court Dockets, 492 CD 2019
[Highlighting added.]

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria Povacz,	:	
Petitioner	:	
	:	
v.	:	No. 492 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	
	:	
Laura Sunstein Murphy,	:	
Petitioner	:	
	:	
v.	:	No. 606 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	
	:	
Cynthia Randall and Paul Albrecht,	:	
Petitioners	:	
	:	
v.	:	No. 607 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	ARGUED: June 10, 2020

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE J. ANDREW CROMPTON, Judge

OPINION BY JUDGE CEISLER

FILED: October 8, 2020

Petitioners, Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall and Paul Albrecht (collectively, Consumers) are individual electricity consumers

receiving electricity distribution services from PECO Energy Company, formerly the Philadelphia Electric Company (PECO). In these consolidated petitions for review, Consumers seek review of denials by Respondent, the Pennsylvania Public Utility Commission (PUC), of Consumers' requests to be exempted from installation by PECO of wireless smart electric meters in or on their homes. PECO has intervened in the action. After thorough review, we affirm the PUC's decisions in part, reverse and remand in part, and vacate and remand in part.

I. Background

Consumers are customers in PECO's electricity service area. They claim they are hypersensitive to emissions of radiofrequency electromagnetic energy (RF).^{1,2} They have health issues they contend are or may be worsened by RF exposure. They have taken extraordinary measures to eliminate RF in their home environments and to minimize their RF exposure elsewhere. They provided expert medical evidence from their treating physicians that their exposure to RF should be minimized in order to avoid risks of harm to their health. They also offered expert testimony that emerging research indicates health risks at much lower levels of RF exposure than current federal regulations allow.

Consumers currently have automatic meter reading (AMR) meters at their homes. Consumers received notices from PECO that wireless smart meters³ would be installed in or on their homes to replace their current electric meters. They

¹ The Federal Communications Commission has a radiofrequency electromagnetic energy (RF) Safety FAQ web page here: <https://www.fcc.gov/engineering-technology/electromagnetic-compatibility-division/radio-frequency-safety/faq/rf-safety#Q5> (last visited October 7, 2020). The web page contains information about potential effects of RF exposure.

² As the Public Utility Commission (PUC) explained in its decisions, the term "electromagnetic field" (EMF), which also appears in the record, is synonymous with RF.

³ Wireless smart meters are also known as advanced metering infrastructure (AMI) meters.

informed PECO that they would not allow installation of the replacement meters because of the RF emitted by wireless smart meters. PECO notified them that their electricity would be cut off entirely unless they allowed installation of wireless smart meters. Consumers then filed complaints with the PUC seeking to avoid forced installation of wireless smart meters in or on their homes.

An administrative law judge (ALJ) sustained, in part, PECO's preliminary objections to the complaints. The ALJ found that opting out of smart meter installation was not an available remedy under the law. However, the ALJ allowed the complaints to go forward for determinations of whether the individual Consumers were entitled to accommodations in light of their health issues.

After several omnibus hearings, the ALJ found one of the Consumers, Maria Povacz, had demonstrated a *prima facie* case that attaching a smart meter to her home would exacerbate her health condition. The ALJ ordered PECO to move Ms. Povacz's meter socket away from her house⁴ and absorb the cost of moving it. The ALJ otherwise denied relief to Ms. Povacz. The ALJ denied all relief to the other Consumers.

Consumers filed exceptions with the PUC. PECO filed exceptions to the portion of the ALJ's decision regarding Ms. Povacz that required relocation of her

⁴ PECO has, albeit reluctantly, accommodated at least one other customer with health concerns by moving his smart meter away from his home. *See, e.g., Benlian v. PECO Energy Corp.* (E.D. Pa., No. 15-1218, filed July 20, 2016), slip op. at ___, 2016 U.S. Dist. LEXIS 95082, at *10. In *Benlian*, a disabled veteran, after prior notice to PECO, removed a smart meter from his home and replaced it with an analog meter because he claimed he began suffering from additional health issues after installation of the smart meter. Although PECO allegedly agreed to install a smart meter on a pole away from the house, it did not do so. Instead, PECO shut off the electricity to the home, notwithstanding the plaintiff's known, medically documented dependence on breathing equipment that required electricity, because he would not allow reinstallation of the smart meter on the house. Following the intervention of a Veterans' Administration social worker and a township supervisor, PECO eventually installed a smart meter on a pole away from the house, after leaving the home without power for several weeks.

meter. The PUC overruled Consumers' exceptions, granted PECO's exception, and denied all relief to Consumers. Consumers then filed petitions for review in this Court.

II. Issues

Consumers raise six interrelated issues on appeal,⁵ all of which relate to Consumers' desire to avoid RF emissions that would result from having wireless smart meters installed in or on their homes. Their arguments on appeal are summarized as follows:

- A. The PUC's interpretation of the 2008 amendment to the PUC Code, known as Act 129,⁶ as precluding opt-outs from installation of wireless smart meters violates Consumers' constitutional liberty interest in their personal bodily integrity.
- B. Contrary to the PUC's interpretation, Act 129 does not mandate installation of wireless smart meters in all homes and does not preclude the PUC from granting Consumers appropriate relief.
- C. Because electrical service must, by law, be both reasonable and safe, the PUC erred by requiring Consumers to prove wireless smart meters would be both unreasonable and unsafe, in that proving either in the disjunctive would entitle Consumers to relief.
- D. Regarding reasonableness, Consumers proved mandatory installations of wireless smart meters in their homes would be unreasonable in light of their sincere and medically supported concerns and in the absence of any

⁵ This Court's review is limited to determining whether the Commission violated constitutional rights, committed an error of law, rendered a decision not supported by substantial evidence, or violated its rules of practice. *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017).

⁶ Act of October 15, 2008, P.L. 1592, No. 129, 66 Pa. C.S. § 2807.

compelling reason to impose the wireless meter requirement without exceptions.

- E. Regarding safety, the PUC applied an incorrect burden of proof by requiring Consumers to show a conclusive causal connection between RF exposure and adverse health effects, rather than simply showing a risk of harm.
- F. Had the PUC applied the correct burden of proof, it would have been compelled to find the installation of wireless smart meters would be unsafe for Consumers.

III. Discussion

Act 129

Act 129 was enacted to reduce energy consumption and demand. *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422 (Pa. Cmwlth. 2017). Act 129 addresses electric distribution and default service provider responsibilities, including smart meter technology. 66 Pa. C.S. § 2807(f); *Romeo*, 154 A.3d at 424. PECO is a privately owned utility and functions as a distribution and default service provider in its service area. Thus, Act 129 applies to PECO.

In pertinent part, Act 129 imposes the following requirements concerning an electric distribution company's obligations 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 a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f) (emphasis added).

Act 129 defines “smart meter technology” as follows:

(g) *Definition.*--As used in this section, the term “smart meter technology” means technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct access to and use of price and consumption information. The technology shall also:

(1) Directly provide customers with information on their hourly consumption.

(2) Enable time-of-use rates and real-time price programs.

66 Pa.C.S. § 2807(g).

A. Constitutional Interest in Bodily Integrity

The Fourteenth Amendment provides, in pertinent part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law. . . .” U.S. CONST. amend. XIV, § 1. Consumers contend they have a constitutional liberty interest in their personal bodily integrity under the Fourteenth Amendment’s due process clause. They argue this is a fundamental right which the government violates when its own actions create the violative condition.

RF is a measurable physical force. Consumers reason that forcing them to endure involuntary exposure to such a force implicates their fundamental liberty interest in personal bodily integrity. Forgoing electricity service completely is not a

feasible option.⁷ Also, very few states other than Pennsylvania have precluded opt-outs from smart meter installation.⁸ Therefore, Consumers assert that this Court should interpret Act 129 so as to avoid the constitutional issue they claim is raised by the PUC's interpretation.⁹

The PUC's decision gave comparatively little attention to this issue. It observed that Fourteenth Amendment due process requires only notice and an opportunity to be heard. Then, based on its conclusion that Consumers failed to prove they would suffer adverse health effects from installation of wireless smart meters in their homes, the PUC found Consumers failed to show that forced RF exposure from the meters would violate "basic principles of respect for bodily integrity." *Povacz v. PECO Energy Co.* (Pa. P.U.C., No. C-2015-2475023, filed Mar. 28, 2019), slip op. at 99-100.

⁷ Nonetheless, it is notable that along with Consumers' complaints to the PUC, a fourth complaint was initially filed by Stephen and Diane Van Schoyck. However, the Van Schoycks later removed their home completely from the electric grid and withdrew their complaint against PECO.

⁸ Exhibit F to the *amicus* brief of Friends of Merrymeeting Bay* (Merrymeeting) contained a listing, with citations of authority, of the 40 states that have so far approved consumer opt-outs from wireless smart meter requirements. PECO moved to exclude portions of the *amicus* brief that relied on information not part of the agency record. This Court granted PECO's request with regard to issues raised by Merrymeeting that were not preserved before the PUC, including the information in Exhibit F to its *amicus* brief.

* Merrymeeting is a conservation organization with a mission "[t]o preserve, protect, and improve the unique ecosystems of Merrymeeting Bay," a "[m]id-coast Maine riverine delta consisting of the Kennebec, Androscoggin, Cathance, Muddy, Eastern and Abagadasset Rivers and surrounding towns." See <http://www.friendsofmerrymeetingbay.org/> (last visited October 7, 2020). What, if any, interest this organization has in this litigation is not clear.

⁹ Constitutional protections apply against state actors. PECO is not a state actor in relation to its installation of smart meters and provision of electricity to its customers. *Benlian*, slip op. at ___, 2016 U.S. Dist. LEXIS 95082, at *16-*19. Hence, Consumers assert their constitutional argument only against the PUC.

In *Naperville Smart Meter Awareness v. City of Naperville*, 69 F. Supp. 3d 830 (N.D. Ill. 2014) (*Naperville II*), a federal court addressed the same issue Consumers raise here. The federal court explained the right at issue as follows:

The Fourteenth Amendment provides that the government shall not “deprive any person of life, liberty, or property without due process of law.” U.S. [CONST.] [a]mend. XIV. But “there can be no claim of a denial of due process, either substantive or procedural, absent deprivation of either a liberty or a property right.” *Eichman v. Ind. State Univ. Bd. of Tr[ustee]s*[], 597 F.2d 1104, 1109 (7th Cir. 1979). Furthermore, the right to “substantive due process is ‘very limited,’” *Viehweg v. City of Mount Olive*, 559 F. App’x 550, 552 (7th Cir. 2014) (quoting *Tun v. Whitticker*, 398 F.3d 899, 900 (7th Cir. 2005)), and the Due Process Clause “does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society.” *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115 . . . (1992) (internal citations omitted). Furthermore, to survive a motion to dismiss a claim for deprivation of substantive due process, a plaintiff must allege facts tending to suggest that the government’s action was arbitrary. See *Jeffries v. Turkey Run Consol. Sch. Dist.*, 492 F.2d 1, 3-4 (7th Cir. 1974).

Id. at 839.

The *Naperville II* court rejected the plaintiffs’ Fourteenth Amendment bodily integrity argument because their complaint failed to “identify an arbitrary deprivation of a recognized liberty or property interest.” *Id.*

First, the court found: “even assuming as true that [RF] waves emitted by smart meters are capable of causing harm, [plaintiffs’] allegations suggest only that the [c]ity negligently increased a risk of injury. Allegations of such risk exposure are insufficient to state a claim for deprivation of bodily integrity under the Fourteenth Amendment.” *Id.* (citing *Upsher v. Grosse Pointe Pub. Sch. Sys.*, 285 F.3d 448, 453-54 (6th Cir. 2002) (asbestos under carpeting did not violate rights of bodily integrity); *Hood v. Suffolk City Sch. Bd.*, 469 F. App’x 154, 159 (4th Cir. 2012) (liberty interest in bodily integrity not violated by dangerous conditions in

school caused by excessive mold and bacteria); *Lewellen v. Metro. Gov't of Nashville & Davidson Cty., Tenn.*, 34 F.3d 345 (6th Cir. 1994) (construction of school beneath dangerous high-voltage conductor line was not a constitutional violation of bodily integrity); *Goss ex rel. Goss v. Alloway Twp. Sch.*, 790 F. Supp. 2d 221, 227-28 (D.N.J. 2011) (design of cement playground, rather than safer non-cement playground, was not a deprivation of the liberty interest in bodily integrity)).

Second, the *Naperville II* court found that even assuming the plaintiffs' complaint had identified a cognizable liberty interest in their bodily integrity, their constitutional claim still was not viable, because they also failed to plead facts showing that the decision to implement the installation of smart meters was arbitrary. Rather, the court found, the plan was "part of a nationwide effort to modernize the electrical power grid, and the program's goals include increasing energy efficiency, reducing emissions, and lowering electricity consumption costs." *Id.* at 839-40. As such, it was not arbitrary, but rather, was "rationally and appropriately based on energy policy decisions within the purview of local government. . . ." *Id.* at 840.

The *Naperville II* court's analysis is persuasive, and we follow it here. We decline to recognize a viable claim by Consumers regarding a violation of their Fourteenth Amendment liberty interests in bodily integrity. We therefore affirm the PUC's decision on this issue.

B. Act 129's Requirements

Consumers next challenge the PUC's conclusion that Act 129 mandates installation of wireless smart meters in all customers' homes. Consumers assert that the language of Act 129 does not require universal installation of wireless smart meters regardless of consumers' wishes. Therefore, the PUC is also incorrect in its

conclusion that it lacks authority to grant the appropriate relief Consumers seek.¹⁰ This argument by Consumers is persuasive.

Act 129 mandates that an electric distribution company, such as PECO, “shall furnish smart meter technology . . . in accordance with a depreciation schedule not to exceed 15 years.” 66 Pa.C.S. §2807(f)(2)(iii). However, nothing in the statutory language affirmatively mandates that customers must allow installation of wireless smart meters.¹¹

To “furnish” means “to provide with what is needed; . . . supply, give.” Webster’s Ninth New Collegiate Dictionary 499 (1985). The definition does not imply that the recipient is forced to accept that which is offered. Therefore, we find the PUC is incorrect in concluding that Act 129 facially precludes any customer refusal of installation of smart meters.

Act 129 requires an electric distribution company to “furnish smart meter technology,” 66 Pa.C.S. § 2807(f)(2)(iii), but does not require every customer to avail himself of every aspect of that technology. Notably, several provisions of Act 129 seem to contemplate customer choice in the degree to which the smart meter technology is used.

For example, Act 129 requires the *customer’s consent* in order for the electric distribution company to allow either direct meter access or electronic access to the customer’s meter data by third parties such as electric generation suppliers or providers of conservation and load management services. 66 Pa.C.S. § 2807(f)(3).

¹⁰ In *Benlian*, a federal district court stated, without elaboration, that “Act 129 does not permit customers to opt out of the installation of smart meters and mandates that “[e]lectric distribution companies shall furnish smart meter technology.” Slip op. at ___, 2016 U.S. Dist. LEXIS 95082, at *3-*4. This Court, however, is not bound by a federal district court’s interpretation of a Pennsylvania statute. *In re Stevenson*, 40 A.3d 1212 (Pa. 2012).

¹¹ Notably, “wireless” meters are not mentioned at all in the statute.

Accommodation of a customer's request to deactivate the meter's RF emissions would not be inconsistent with this provision, since information could not be shared with third parties without the customer's consent in any event.

Similarly, Act 129 requires an electric distribution company to develop time-of-use rates and real-time price plans and to “*offer* the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii).” 66 Pa.C.S. § 2807(f)(5) (emphasis added). “Residential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing.” *Id.* (emphasis added). *They are not required to do so.* Again, accommodating a customer's request to avoid RF emissions would not violate the requirement to offer time-of-use rates and real-time price plans, since customers are not required to participate in such plans.

In addition, as Consumers correctly argue, Act 129's definition of “smart meter technology” leaves the door open for accommodations of customer requests to avoid RF emissions from smart meters. The language of the definition is consistently couched in permissive terms, as it relates to customers' use of the available smart meter technology:

[T]he term “smart meter technology” means technology, *including* [(not necessarily limited to)] metering technology and network communications technology *capable of* [(not “requiring”)] bidirectional communication, that *records* [(not “transmits”)] electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology. The technology shall provide customers with direct *access to and use of* [(not mandatory use of)] price and consumption information. The technology shall also:

- (1) Directly provide customers with information on their hourly consumption.

(2) **Enable** time-of-use rates and real-time price programs. [(As discussed above, customer is not required to participate.)]

(3) Effectively **support** [(not require)] the automatic control of the customer's electricity consumption by one or more of the following **as selected by the customer**:

- (i) the customer [(the customer retains control)];
- (ii) the customer's utility; or
- (iii) a third party engaged by the customer or the customer's utility.

66 Pa.C.S. § 2807(g) (emphasis added).

Notably, the PUC's own internet consumer information page concerning Act 129 repeatedly speaks in permissive language. For example, it provides: "Act 129 of 2008 provides Pennsylvania electric utility consumers **opportunities** to take energy efficiency and conservation to the next level." "Energy Efficiency & Conservation Information for your Home," http://www.puc.state.pa.us/General/consumer_ed/pdf/EEC_Home-FS.pdf (last visited October 7, 2020) (emphasis added). "In creating [energy efficiency and conservation programs (EE&C)], the [PUC] recognized **a 'one-size-fits-all' approach would not be the best** approach. The [PUC] **balances the needs of consumers** with those of the [electric distribution companies (EDCs)]. . . ." *Id.* (emphasis added). "The PUC's program standards provided each EDC with the ability to tailor its energy efficiency and conservation plan to its service territory and consumers." *Id.* The EDCs' plans include "**incentive programs**" to "**encourage**" residential consumers to purchase energy-efficient products. *Id.* (emphasis added). EDCs must provide consumers with specific information "on the money-saving EE&C programs **available** to them because of Act 129. *Id.* (emphasis added). These programs are **designed to help consumers** use electricity efficiently, curb

consumption and reduce overall demand for electricity. Many of these programs include subsidies from the EDC to *encourage* the use and employment of energy efficiency measures.” *Id.* (emphasis added).

Moreover, nothing in the language of Act 129 appears to preclude either PECO or the PUC from granting an accommodation to a customer who desires to avoid RF emissions from a wireless smart meter. In *Benlian v. PECO Energy Corp.* (E.D. Pa., No. 15-1218, filed July 20, 2016), 2016 U.S. Dist. LEXIS 95082, for example, PECO installed a smart meter on a pole some distance from the plaintiff’s home in accommodation of his claim that the prior installation of the meter on his home had caused new or exacerbated health problems. *Id.*, slip op. at ___, 2016 U.S. Dist. LEXIS 95082, at *10.

Thus, although Act 129 does appear to anticipate installation of smart meters on customers’ premises, nothing in the language of Act 129 facially *requires* every customer to endure involuntary exposure to RF emissions from a smart meter. Rather, the language of Act 129 seems calculated to support customer *choice* in the use of smart meter technology. Therefore, we conclude that Act 129 does not preclude either PECO or the PUC from accommodating a customer’s request to have RF emissions from that customer’s meter turned off, to have a smart meter relocated to a point remote from the customer’s house, or some other reasonable accommodation. We reverse that portion of the PUC’s decisions finding it lacked authority for accommodations of customers’ requests to avoid RF emissions. We remand to the PUC to allow consideration of Consumers’ requests for accommodations, and determination of what, if any, accommodations are appropriate, in light of this Court’s conclusion that Act 129 does not forbid such accommodations.

C. Burden of Proof – Conjunctive vs. Disjunctive

Consumers argue they are not seeking relief in the form of a system-wide “opt-out” provision based merely on their “preference,” but rather, an administrative remedy for a proven violation of the safety and reasonableness requirement of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501 (Section 1501),¹² in their individual cases. They insist that nothing in Act 129 limits the Commission’s authority to grant such relief.

Consumers assert that because the law requires electricity service to be both reasonable and safe, the PUC erred in requiring Consumers to prove that requiring wireless meters in their homes would be both unreasonable and unsafe in order to establish a violation of Section 1501. That is, because the statute requires, in the conjunctive, both safety and reasonableness, Consumers could disprove either, in the disjunctive, to prove a violation. Therefore, the PUC erred in requiring Consumers to prove “conclusively” that wireless smart meters would cause medical harm, *i.e.*, lack of safety, while ignoring whether requiring wireless smart meters would be unreasonable under all the circumstances, regardless of whether medical harm was shown. Consumers assert that requiring wireless smart meters in their homes is unsafe and unreasonable, but those are alternative arguments.

The PUC’s position on the burden of proof issue is inconsistent. At one point, the PUC appears to concede the correctness of Consumers’ position. The PUC states the ALJ’s role is to determine whether ““use of a smart meter . . . will constitute unsafe *or* unreasonable service”” *Povacz* (Pa. P.U.C., No. C-2015-2475023,

¹² “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” 66 Pa. C.S. § 1501 (emphasis added).

filed Mar. 28, 2019), slip op. at 15 (quoting *Kreider v. PECO Energy Co.* (Pa. P.U.C., No. P-2015-2495064, filed Jan. 28, 2016), slip op. at 21-23) (emphasis added).

Elsewhere in its opinion, however, the PUC posits that Consumers “must prove, by a preponderance of the evidence, that [their] exposure to the RF fields from the wireless smart meter that PECO plans to install . . . will ‘exacerbate’ or ‘adversely affect’ [their] health and, therefore, constitute unsafe *and* unreasonable service” *Povacz* (Pa. P.U.C., No. C-2015-2475023, filed Mar. 28, 2019), slip op. at 27 (emphasis added).

We infer from its inconsistent language that the PUC did not recognize this distinction in the context of Consumers’ claims. In fact, a review of the PUC’s decision does not indicate whether the distinction was significant to the PUC’s reasoning. The PUC’s decision does not clearly purport to require Consumers to prove the meter installation is both unsafe and unreasonable as applied to them. However, Consumers are logically correct that because PECO has a mandate to provide safe *and* reasonable service, Consumers may establish a violation of that mandate by showing the wireless smart meter requirement is either unsafe *or* unreasonable.

To the extent, if any, that the PUC applied a conjunctive burden of proof, we vacate and remand its decision for reconsideration expressly applying the correct disjunctive burden of proof.

D. Reasonableness of Mandatory Installations

Next, Consumers contend they established that mandatory installations of wireless smart meters in their homes would be unreasonable under the circumstances as to all of the individual Consumers. They contend RF is unquestionably a physical

force, and mandating exposure is unreasonable in light of Consumers' sincere concerns, supported by their medical experts and an expert witness concerning RF, and in the absence of some compelling reason to mandate their exposure.

Consumers assert that neither the PUC nor PECO identified any compelling reason to impose wireless smart meters on every customer without exceptions for health or safety considerations. PECO and the PUC simply assert – incorrectly, according to Consumers – that Act 129 compels it.

Moreover, Consumers insist their concerns are reasonable in light of their health conditions and their doctors' recommendations, and demonstrably sincere in light of the comprehensive, lengthy, and expensive actions they have undertaken in order to minimize their RF exposure. Finally, they contend that scientific studies, including comprehensive government studies, even if not yet universally accepted, support the reasonableness of Consumers' concerns about the health risks of RF exposure, as well as the safety hazards of installing wireless smart meters that create such exposure.¹³

¹³ Evidence presented before the ALJ indicated the RF emissions from wireless smart meters are less than 1% of the level adjudged safe by the Federal Communications Commission (FCC), and moving a wireless smart meter 20 feet from a home would reduce even that minute level of emission by an additional 99%. Consumers respond that the FCC relies on outdated studies and that a safe level of exposure to RF emissions is actually exponentially lower than the level approved decades ago by the FCC.

In that regard, we note that on January 9, 2020, the PUC filed a letter notice, pursuant to Pa. R.A.P. 2501(b), of an order entered by the FCC on November 27, 2019, declining to propose amendments to its existing limits on RF emissions. The FCC's order is available on its website: <https://www.fcc.gov/document/fcc-maintains-current-rf-exposure-safety-standards> (last visited October 7, 2020).

Consumers filed applications for relief pursuant to Pa. R.A.P. 123 in the form of motions to strike the PUC's letter notice. Consumers asserted the notice did not relate to new legal authority, as contemplated by Rule 2501(b), because the FCC's RF emission limits were referenced only as part of the background facts of this case. The PUC responded that the FCC standards have the force of law and that Rule 2501(b) mandated the letter notice by the PUC.

As discussed above, the PUC's position that Act 129 requires installation of wireless smart meters in all consumer residences is incorrect. Accordingly, the PUC is also incorrect in finding that PECO may not or need not offer any accommodation to Consumers.

Because this portion of the PUC's decision is dependent on its erroneous conclusion that Act 129 does not allow accommodations, we vacate this portion of the PUC's decision and remand for further consideration.

However, as discussed in the next section, we affirm the PUC's application of the correct burden of proof concerning the risk of harm from RF emissions. Therefore, in considering accommodations to Consumers on remand, the PUC should consider whether accommodations are appropriate *without* proof of harm, so that Consumers may choose to avoid RF emissions from wireless smart meters, while allowing PECO to comply with Act 129's mandate concerning availability of smart meter technology.

The question here is much murkier than simply stating the correct burden of proof. What is the proper course when RF emissions *do have known dangers*, but research has not yet determined the extent of those dangers? Should Consumers bear the risk that RF emissions are more harmful to them than to others because of their sensitivity and underlying health conditions? Conversely, should PECO be required to accommodate Consumers' fears even though medical research has not yet definitively determined the degree of risk posed by the level of RF exposure at issue?

This Court directed submission of the applications for relief and any responses thereto along with the merits of Consumers' petitions for review. In our disposition of the petitions for review, we have not relied on either the FCC standards or the FCC's recent order declining to propose amendments to those standards. We therefore dismiss the applications for relief as moot.

Logic, safety concerns, and fairness require some balancing of the parties' interests. Consumers argue the burden to PECO of accommodating their desire to avoid RF emissions is minimal, and they claim they are willing to pay any additional cost of the accommodations.

The record does not contain evidence from PECO that it would incur any extreme costs by accommodating Consumers' desires to avoid RF emissions in three homes in PECO's service area. Even if Consumers obtain the relief they seek, it is difficult to imagine that large numbers of other PECO customers will then flood the utility with requests to avoid RF emissions at increased cost. Thus, even though the actual risk to Consumers' health is uncertain, their suggestion that the burden to them of forced exposure to additional RF emissions outweighs any minimal burden to PECO is well taken.

Consumers argue that wired smart meters exist. They also suggest that if wireless meters must be installed, turning off the emissions upon a customer's request should be allowed. Notably, in *Naperville Smart Meter Awareness v. City of Naperville* (N.D. Ill., No. 11 C 9299, filed Mar. 22, 2013), U.S. Dist. LEXIS 40432 (*Naperville I*), a city ordinance concerning installation of smart meters allowed customers with health concerns to have the meters' RF emissions turned off. Here, the PUC and PECO offer no such option. Further, the parties' briefs do not offer any substantial discussion of the viability of the option of allowing RF emissions to be turned off.

The PUC should consider all these issues on remand.

E. Burden of Proof – Conclusive vs. Potential Harm

Consumers' next theory of recovery asserts that the PUC erred in requiring them to prove a "conclusive causal connection" between RF exposure and adverse

human health effects. They argue the PUC should have considered the *potential* for harm, rather than imposing a tort-like burden of proving causation. They insist safety includes freedom from *risk* of harm, not merely freedom from the harm itself. They suggest the plain language of Section 1501 requires neither proof of actual harm nor proof of proximate causation in order to show lack of safety.

PECO argues Consumers had to prove by a preponderance of the evidence that exposing them to RF from smart meters would cause, contribute to, or exacerbate their health conditions. Consumers failed to meet this standard of proof. Consumers' proposed standard of proof would essentially shift the burden of proof to PECO to show the smart meters could not harm Consumers. PECO has spent \$750 million to install the smart meter system throughout its territory as required by Act 129 and the PUC, and Consumers' standard of proof would effectively convey veto power over the system to any customer with a sincere belief that there was any risk of harm. Moreover, the PUC already articulated the standard of proof, *i.e.*, that a customer complainant alleging adverse health effects must prove "a conclusive causal connection" between RF exposure and those adverse health effects – a burden that cannot be satisfied by research and studies that are inconclusive.¹⁴

The PUC found the ALJ correctly imposed a burden of proof requiring Consumers to demonstrate adverse health effects by a preponderance of the

¹⁴ PECO cites: *Kreider; Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties* (Pa. P.U.C., No. A-110550F0055, filed Mar. 26, 1993), slip op. at ___, 1992 Pa. P.U.C., Lexis 160, at *7-*8; *Letter of Notification of Philadelphia Electric Company Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Counties* (Pa. P.U.C., No. 110550F0055, filed Nov. 12, 1993), 1993 WL 855896. **Notably, these authorities are at least 27 years old, and any research on which they relied is necessarily even older**, a fact which tends to lend support to Consumers' point that PECO and its expert witness relied on outdated information concerning the danger from RF emissions.

evidence. This required Consumers to prove that there was a “conclusive causal connection” between RF exposure from smart meters and adverse human health effects.

The PUC concedes Consumers were not required to prove harm had actually occurred; the PUC’s authority extends to claims seeking to prevent harm. However, where prevention of harm was Consumers’ aim, the burden of proof still required demonstration by a preponderance of the evidence that the utility’s proposed conduct would create a “proven exposure to harm.” *Povacz* (Pa. P.U.C., No. C-2015-2475023, filed Mar. 28, 2019), slip op. at 29. The PUC argues that although the occurrence of harm need not be certain, or even probable, Consumers incorrectly equated any hazard, however slight, with exposure to harm. The *Naperville I* court considered this issue and found that even without an option to deactivate the radio transmitters in the smart meters, the plaintiffs’ claim would not have been viable. Like Consumers here, the *Naperville I* plaintiffs based their claim on “a theory that the radio waves emitted from the smart meters, together with other RF-wave-emitting devices in the environment, have the *potential* to be harmful.” *Id.*, slip op. at ___, 2013 U.S. Dist. LEXIS 40432, at *28-*29 (emphasis added). The court in *Naperville I* acknowledged the plaintiffs’ contention that “certain doctors believe that over time the public’s cumulative exposure to low-level RF from devices such as cell phones, radio towers, and smart meters *may* pose health risks, such that more accurate guidelines and standards regarding the safety of RF exposure are necessary.” *Id.*, slip op. at ___, 2013 U.S. Dist. LEXIS 40432, at *29 (emphasis added). Nonetheless, the court concluded “[t]he bare allegation that it is unknown whether [p]laintiffs are actually being harmed by the level of RF waves emitted from one smart meter is insufficient” to raise a claim for relief that is more than

speculative. *Id.*, slip op. at ___, 2013 U.S. Dist. LEXIS 40432, at *29 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

The reasoning of *Naperville I* concerning the applicable burden of proof is persuasive. We therefore affirm the burden applied by the PUC concerning proof of harm from RF emissions.

However, as discussed above, the PUC appears to have based its decision largely on its conclusion that Act 129 mandated installation of wireless smart meters on every residence and did not permit the PUC to grant *any* form of relief to Consumers to accommodate their desire to avoid RF emissions. On remand, the PUC should consider whether reasonable accommodations should be provided in light of the conclusion that **Act 129 does not preclude such accommodations of customers' health concerns, regardless of proof of harm.**

F. Risk of Harm – Sufficiency of Evidence

Finally, Consumers insist the correct burden of proof would compel the PUC to find the use of wireless smart meters would be unsafe for the individual Consumers. They also argue their evidence demonstrated a risk of harm, and the PUC should not have disregarded that evidence, including the testimony of Consumers' expert witness and the federal government study on which that witness relied. Consumers further contend the PUC should not have relied on the testimony of PECO's expert that "conclusive" proof of harm is impossible; rather, the correct standard was whether there was proof of a *risk* of harm. Further, Consumers assert PECO's expert relied on outdated FCC findings from 1986;¹⁵ the study cited by Consumers' expert is the most recent study and should not have been disregarded by either PECO or the PUC.

¹⁵ See discussion in note 13 above.

This argument is closely related to the previous argument. To the extent Consumers are arguing there was not substantial evidence to support the PUC's decision, this Court will not revisit the PUC's findings of fact. To the extent Consumers contend the burden of proof should have been different, that issue is addressed in the previous section. We affirm the PUC's findings of fact as based on substantial evidence.

IV. Conclusion

Based on the foregoing discussion, we affirm the PUC's rejection of Consumers' constitutional challenge. We reverse the PUC's conclusion that it lacks authority to accommodate Consumers' desire to avoid RF emissions from smart meters and vacate the PUC's determination that such accommodation would not be reasonable. We affirm the PUC's determination of the burden of proving harm. We affirm the PUC's findings of fact. We remand this matter to the PUC for determinations of whether accommodations are appropriate for each of the Consumers, and if so, what those accommodations should be. On remand, the PUC should consider all reasonable accommodations, including, but not limited to, deactivation of the RF emitting functions of the smart meters; installation of the smart meters at locations remote from Consumers' homes; and installation of wired rather than wireless smart meters, if (as Consumers contend) such technology is available.



ELLEN CEISLER, Judge

Judge Covey did not participate in the decision of this case.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria Povacz,	:	
Petitioner	:	
	:	
v.	:	No. 492 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	
	:	
Laura Sunstein Murphy,	:	
Petitioner	:	
	:	
v.	:	No. 606 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	
	:	
Cynthia Randall and Paul Albrecht,	:	
Petitioners	:	
	:	
v.	:	No. 607 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	

ORDER

AND NOW, this 8th day of October, 2020, the orders of the Pennsylvania Public Utility Commission (PUC) are AFFIRMED in part, REVERSED in part, and VACATED in part, as follows:

1. The PUC's rejection of the constitutional challenge of Maria Povacz, Laura Sunstein Murphy, Cynthia Randall, and Paul Albrecht (jointly, Consumers) is AFFIRMED.

2. The PUC's conclusion that it lacks authority to accommodate Consumers' desire to avoid radiofrequency (RF) emissions from smart meters is REVERSED. This matter is REMANDED to the PUC for consideration of Consumers' requests for accommodations and determinations of what, if any, accommodations are appropriate for each individual Consumer. The PUC on remand may consider all reasonable accommodations, including deactivation of the RF emitting functions of smart meters at Consumers' homes; installation of the smart meters at locations remote from Consumers' homes; or installation of wired rather than wireless smart meters, if (as Consumers contend) such technology is available.

3. The PUC's determination that Consumers' requested accommodations would not be reasonable is VACATED, and this matter is REMANDED for application of the correct burden of proof. On remand, Consumers need not prove that mandatory installation of smart meters is both unsafe and unreasonable; rather, Consumers need only prove that mandatory installation of smart meters is either unsafe or unreasonable.

4. The PUC's determination that Consumers failed to meet their burden to prove unreasonableness is VACATED. Because the PUC's determination was based on its conclusion that the 2008 amendment to the Public Utility Code, known as Act 129, Act of October 15, 2008, P.L. 1592, 66 Pa. C.S. § 2807, does not allow accommodations, this issue is REMANDED for further consideration. Further, on remand, the PUC should balance the parties' interests and

consider whether refusal of accommodations was unreasonable without proof of actual harm to Consumers.

5. The PUC's determination that in order to prove lack of safety of the smart meters (as opposed to lack of reasonableness in refusal of accommodations by PECO Energy Company (formerly the Philadelphia Electric Company)), Consumers had to show a conclusive causal connection between RF exposure and adverse health effects is **AFFIRMED**.

6. The PUC's findings of fact on the safety of smart meters are **AFFIRMED**.

Consumers' applications for relief in the form of motions to strike the PUC's letter notice of the Federal Communications Commission's November 27, 2019 order declining to propose amendment of its RF emission standards are **DENIED** as moot.

Jurisdiction is relinquished.



ELLEN CEISLER, Judge

Certified from the Record

OCT - 8 2020

And Order Exit

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria Povacz,	:	
	Petitioner	:
	:	
v.	:	No. 492 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
	Respondent	:
	:	
Laura Sunstein Murphy,	:	
	Petitioner	:
	:	
v.	:	No. 606 C.D. 2019
	:	
Pennsylvania Public Utility	:	
Commission,	:	
	Respondent	:
	:	
Cynthia Randall and Paul Albrecht,	:	
	Petitioners	:
	:	
v.	:	No. 607 C.D. 2019
	:	Argued: June 10, 2020
	:	
Pennsylvania Public Utility	:	
Commission,	:	
	Respondent	:

BEFORE: HONORABLE MARY HANNAH LEAVITT, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE J. ANDREW CROMPTON, Judge

CONCURRING AND
DISSENTING OPINION
BY JUDGE CROMPTON

FILED: October 8, 2020

Respectfully, I concur in part and dissent in part. I concur in the result to the extent the majority has determined (1) the Consumers'¹ constitutional rights were not violated, (2) the Public Utility Commission's (PUC) findings of fact regarding the safety of smart meters were based on the substantial competent evidence of record, (3) the PUC properly concluded the Consumers were required to show a conclusive causal connection between radio frequency (RF) exposure and adverse health effects, and (4) that the matter should be remanded to the PUC, albeit for a limited purpose as described herein. I do, however, diverge from the majority in its view that Act 129 (Act)² requires an electric distribution company to "furnish smart meter technology," per 66 Pa.C.S. §2807(f)(2)(iii), but does not necessarily require every customer to accept same.

Section 2807(f) of the Public Utility Code reads, in pertinent part, as follows:

(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 a customer that agrees to pay the cost of the smart meter at the time of the request.

(ii) In new building construction.

¹ The Consumers in this matter are Petitioners Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall and Paul Albrecht.

² 66 Pa.C.S. §2807.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

(3) Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

....

(5) By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the [PUC] one or more proposed time-of-use rates and real-time price plans. The [PUC] shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing.

....

66 Pa.C.S. §2807(f) (emphasis added).

The majority interprets 66 Pa.C.S. §2807(f)(3) and (f)(5) to suggest an overall reading of the Act that does not comport with its plain meaning or well-established intent. Simply because customers are provided pricing options and control over the use of their meter data does not mean the installation of smart meters may be interpreted to be optional. If it was, the General Assembly would have said as much. Instead, the General Assembly chose the word “shall” in requiring electric distribution companies to furnish smart meter technology. At no point did the General Assembly add in the words “which the consumer may or may not choose to

accept,” or other words to that effect, and it is not our role to read in such language now.³

The intent of the General Assembly was not ambiguous. Smart meters are mandatory in the Commonwealth. There is no opt-out provision. In the 12 years since the passage of Act 129, several utilities, including PECO (Intervenor), have invested substantial resources and relied on the certainty of the meaning of the Act to fulfill the State mandate. If the General Assembly had wished to provide an exception to the mandate, it could have done so in 2008, or in any year since that

³ If the plain reading of the Act is not enough, I note here that, in 2008, when Governor Rendell announced the signing of the legislation into law, the following was reported:

Governor Edward G. Rendell, Harrisburg, PA, U.S.A. — (METERING.COM) — October 16, 2008 — Pennsylvania’s Energy Conservation Bill, including provisions for smart metering, was signed into law yesterday by state governor Edward G. Rendell.

In terms of the bill, **state electric distributors are required to file their smart meter technology procurement and installation plan with the Public Utility Commission (PUC) within nine months. Within 15 years all homes and businesses in the state are to be equipped with smart meters.**

Energy saving targets that have been set includes cuts of 1 percent by 2011 and 3 percent by 2013, as well as a 4.5 percent reduction of peak demand by 2013. **Utilities that fail to meet these requirements will face steep penalties.**

(Emphasis added.) See <https://www.smart-energy.com/regional-news/north-america/pennsylvania-energy-bill-signed/> (last visited on October 7, 2020).

time. However, it has not, and it is not this Court's role to create an opt-out provision where none exists statutorily.⁴

This does not mean, however, that the Consumers should not have an opportunity to request accommodation. Section 1501 states, in pertinent part, that “[e]very public utility shall furnish and maintain adequate, efficient, *safe, and reasonable service* and facilities.” 66 Pa.C.S. §1501 (emphasis added). I agree with the majority's position that the Consumers were not required to prove that the use of smart meters is both unreasonable *and* unsafe. In other words, it is an either-or proposition. The Consumers would have to demonstrate only that the smart meter was either unsafe *or* unreasonable as provided to them to show a violation of the mandate, not that the smart meter is both unsafe *and* unreasonable. The majority writes:

The PUC states the [Administrative Law Judge (ALJ)] ALJ's role is to determine whether “use of a smart meter . . . will constitute unsafe *or* unreasonable service . . .” *Povacz v. PECO Energy Co.*, (Pa. P.U.C. No. C-2015-2475023, filed Mar. 28, 2019), slip op. at 15 (quoting *Kreider v. PECO Energy Co.*, (Pa. P.U.C. No. P-2015-2495064, filed Jan. 28, 2019), slip op. at 21-23 (emphasis added). Elsewhere in its opinion, however, the PUC posits that [the] Consumers “must prove, by a

⁴ In an August 20, 2019 article from the National Conference of State Legislatures (NCSL) titled “Smart Meter Opt-Out Policies,” NCSL provides an overview of state laws governing the use of smart meters. In each of the states that had smart meter laws as of August 20, 2019, many had some kind of opt-out or opt-in provision. However, in each state where options were offered, they were offered through statute or regulation, at the option of the utility, or as required by the state's public utility commission or similar entity. I have seen no evidence that the options were imposed by the courts, and I do not believe we should do so here in Pennsylvania. Daniel Shea and Kate Bell, *Smart Meter Opt-Out Policies*, <https://www.ncsl.org/research/energy/smart-meter-opt-out-policies.aspx> (last visited on October 7, 2020).

preponderance of the evidence, that [their] exposure to the RF fields from the wireless smart meter that PECO plans to install. . . will ‘exacerbate’ or ‘adversely affect’ [their] health and, therefore, constitute unsafe **and** unreasonable service” *Povacz*, slip op. at 27 (emphasis added). We infer from its inconsistent language that the PUC did not recognize this distinction in the context of [the] Consumers’ claims. In fact, a review of the PUC’s decision does not indicate whether the distinction was significant to the PUC’s reasoning. The PUC’s decision does not clearly purport to require [the] Consumers to prove the meter installation is both unsafe and unreasonable as applied to them. However, [the] Consumers are logically correct that because PECO has a mandate to provide safe **and** reasonable service, [the] 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 (Pa. Cmwlth. No. 492 C.D. 2019, filed October 8, 2020), slip op. at 14.

The majority focuses on the PUC’s *Povacz* opinion to suggest that the PUC may have incorrectly applied “a conjunctive burden of proof,” rather than a “disjunctive burden of proof.” It is, however, unclear in this matter whether the PUC applied the correct standard and merely stated it incorrectly in its opinion or whether the wrong standard was in fact applied. Interestingly, the PUC’s Administrative Law Judge’s (ALJ) decisions in the two companion cases (*i.e.*, *Murphy v. Public Utility Commission* and *Randall and Albrecht v. Public Utility Commission*, as identified in the caption above), clearly enunciated, as conclusions of law, that utility companies are required to furnish safe and reasonable service and that, in the case of *Murphy*, there was “no evidence that a PECO smart meter was unsafe **or** unreasonable.” Reproduced Record (R.R.) at 87a-120a; *Murphy v. PECO Energy Co.* (Pa. P.U.C. No. C-2015-2475726, filed Feb. 21, 2018) (emphasis added). In the *Randall and Albrecht* matter, the ALJ determined that the consumers had not met

their burden of showing a violation of the Public Utility Code,⁵ which includes the requirement to demonstrate the smart meter was unsafe *or* unreasonable. R.R. at 121a-45a; *Randall and Albrecht v. PECO Energy Co.* (Pa. P.U.C. No. C-2016-2537666, filed Feb. 21, 2018) (emphasis added). Further, in the very *Povacz* opinion referenced by the majority, and as noted above, the PUC stated:

In reaching our conclusion in *Kreider*[, *Kreider v. PECO Energy Co.*, (Pa. P.U.C. No. P-2015-2495064, filed Jan. 28, 2019)] that we could hear and adjudicate a complainant's allegation(s) of unsafe service and facilities related to a . . . smart meter, we did not modify the standard or burden of proof that applies to a complainant in a formal complaint proceeding under Section 1501 before the [PUC]

Because the complainant in that case had alleged that her health was “adversely affected” by the smart meter installed outside of her bedroom and that PECO’s use of a smart meter would violate Code § 1501, **we explained that it would be the role of the ALJ to determine** whether there is sufficient evidence to support a finding that **the [c]omplainant was adversely affected by the smart meter or whether PECO’s use of a smart meter to measure this [c]omplainant’s usage would constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances in that case. Those statements appearing in *Kreider*, in our opinion, are an accurate summary of applicable law**

Povacz v. PECO Energy Co. (Pa. P.U.C. No. C-2015-2475023, filed Mar. 28, 2019) (2019 *Povacz* Order), slip op., at 26-27 (emphasis added).

This statement suggests that perhaps the PUC was not confused about the standard by which it should measure whether the smart meter fulfills the requirement of Section 1501. Nonetheless, because it is unclear in the instant matter,

⁵ 66 Pa.C.S. §§101-3316.

and the PUC may have utilized a conjunctive burden of proof, improperly requiring the Consumers to prove that the smart meters are both unsafe *and* unreasonable, I would remand for the PUC to re-examine the existing record to ensure application of the correct standard without taking additional evidence.

While I maintain that Section 1501 must be given its due weight and the *utility*, in this case PECO, is mandated by the Act to provide a smart meter to each of its customers, there is no language in the Act that precludes the PUC from directing the utility to explore a reasonable alternative where a customer successfully demonstrates the smart meter is unsafe or unreasonable.

I disagree with the majority's suggestion that the PUC determined the Consumers failed to meet their burden of proving unreasonableness based on the erroneous conclusion that Act 129 does not allow accommodations. While the statute does not provide an opt-out provision, and the utility is required to provide smart meters thereunder, there is nothing in the statute that suggests an accommodation cannot be provided when the provision to the individual is either unsafe or unreasonable. The Consumers here properly sought relief under Section 1501 of the Public Utility Code, 66 Pa.C.S. §1501, arguing for an alternative to smart meters on the grounds that the meters were either unsafe or unreasonable in their particular circumstances. Here, the Consumers, in light of their respective medical conditions, rightly focused on the safety of the meters. While I do not think that the Consumers should be permitted to re-litigate the issue of safety and reasonableness, I believe the Consumers are entitled to have the PUC review the existing record to

determine whether it reflects that the installation of a smart meter is, or would be, unsafe *or* unreasonable, per Section 1501.

For the foregoing reasons, I would affirm the PUC's order, in part, but remand solely for the PUC to review the existing record to determine whether it applied the correct standard, as addressed above, and to issue a new decision and order accordingly.



J. ANDREW CROMPTON, Judge

Judge Fizzano Cannon joins in this concurring and dissenting opinion.

Attachment 3

Disability Letter from
Social Security Administration

SOCIAL SECURITY ADMINISTRATION

Date: December 2, 2014
Claim Number: XXX-XX-1717C1

MICHAEL T JENNINGS FOR
MCKENZIE S JENNINGS
905 COUNTRY CLUB DR
GREENSBURG PA 15601-1201

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Information About Current Social Security Benefits

Beginning December 2014, the full monthly
Social Security benefit before any deductions is.....\$ 799.10

We deduct \$104.90 for medical insurance premiums each month.

The regular monthly Social Security payment is.....\$ 694.00
(We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third Wednesday of each month.

Other Important Information

MCKENZIE JENNINGS HAD A DISABLED ADULT CHILDS MEDICAL DECISION AT AGE 16 TO CONTINUE HIS MOTHER'S BENEFITS. HIS DISABLED ADULT CHILDS BENEFITS CONTINUE PAST AGE 18 BASED ON THAT DECISION.

Medicare Information

You are entitled to hospital insurance under Medicare beginning October 2014.

You are entitled to medical insurance under Medicare beginning October 2014.

Type of Social Security Benefit Information

You are entitled to monthly benefits as a disabled dependent of the wage

earner.

Date: January 2, 2004
Claim Number: KAX-22-107187

MICHAEL J. BENTON FOR
MCKENZIE & PARTNERS
905 COUNTRY CLUB DR
GREENSBORO, NC 27409-1201

You asked us for information regarding your request. The information that you requested is set forth below. If you want anyone else to have this information, you must notify us in writing.

Information About Current Social Security Benefits

Beginning in 2002, we will mail you a Social Security Statement (SSS) each year. The SSS shows the amount of Social Security benefits you are entitled to receive based on your earnings record.

The SSS also shows the amount of Social Security benefits you are entitled to receive based on the earnings of your spouse or former spouse. The SSS also shows the amount of Social Security benefits you are entitled to receive based on the earnings of your dependent child.

Social Security benefits for a given month are paid the following month. For example, Social Security benefits for March are paid in April.

Your Social Security benefits are based on the total amount of Social Security taxes you have paid.

Other Important Information

MICHAEL J. BENTON HAS A DISABILITY. MICHAEL J. BENTON HAS A DISABILITY.

Medicare Information

You are eligible for Medicare benefits as a disabled dependent of the wage earner.

Right to Social Security General Information

You are entitled to receive benefits as a disabled dependent of the wage earner.

SUSPECT SOCIAL SECURITY FRAUD?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

IF YOU HAVE QUESTIONS

We invite you to visit our web site at www.socialsecurity.gov on the Internet to find general information about Social Security. If you have any specific questions, you may call us toll-free at 1-800-772-1213, or call your local office at 877-748-9768. We can answer most questions over the phone. If you are deaf or hard of hearing, you may call our TTY number, 1-800-325-0778. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
122 W 3RD STREET
GREENSBURG, PA 15601

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

OFFICE MANAGER

GREENSBURG, PA

DEC 02 2014

223
SSA DISTRICT OFFICE

Attachment 4

Letters from Physicians and Others

Allegheny Health Network Neurology

420 E NORTH AVENUE
EAST WING
SUITE 206
PITTSBURGH PA 15212-4746
Tel 412-359-8850
Fax 412-359-8878



Allegheny
Health Network

McKenzie Jennings
200 Brook Hollow Rd
Mount Pleasant PA 15666

January 18, 2024

McKenzie Jennings has been under my care since 2017. I am familiar with his history and with the functional limitations imposed by his disabilities. McKenzie has both physical and mental impairments that substantially limit one or more of his major life activities. His impairments are neither transitory nor minor. McKenzie meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act and the Rehabilitation Act of 1973.

McKenzie's has multiple diagnoses which include: Epilepsy, Sturge-Weber Syndrome, Pervasive Developmental Disorder-NOS (PDD-NOS, an Autism spectrum disorder), Pediatric Acute-onset Neuropsychiatric Syndrome (PANS) with a mycoplasma coinfection, Intellectual and Developmental Disability (IDD), pes planus, Electromagnetic Sensitivity (EMS), per other professionals diagnosis, and hypothyroidism. McKenzie can also experience Sudden Unexpected Death in Epilepsy (SUDEP) during or immediately after a seizure which could cause him to stop breathing, to have a dangerous arrhythmia, to have cardiac arrest, or all of these. The combination and rarity of some of his conditions make him an anomalous case and a most vulnerable individual.

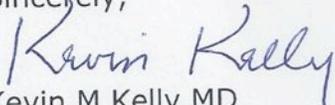
Per McKenzie's mother, his disabilities are unequivocally exacerbated in environments with wireless technologies. During one event, he suddenly dropped unconscious to the floor, fell backwards and hit his head. At subsequent dates in the same environment, his mobility worsened to the point that he could barely walk. His seizures become frequent and nearly uncontrollable. When McKenzie's disabilities are exacerbated, his major life activities that are substantially limited include, but not limited to:

- caring for himself
- sitting
- reaching
- lifting
- bending
- speaking
- learning
- reading
- concentrating
- thinking
- writing
- communicating and interacting with others

The major bodily functions which are affected are his immune, neurological, endocrine and urinary systems.

As a result of McKenzie's disabilities, per family's request, I request that West Penn Power does not install any transmitting device on his property. This accommodation is necessary for McKenzie to maintain his health and his life. Per Mackenzie's mother, this is the ADA accommodation recommendation.

Sincerely,


Kevin M Kelly MD

Highlands Hospital Family Health & Wellness Center

Dr. Gil Perez, M.D.
Board Certified In Family Medicine
Allopathic & Integrative Medicine

Ann Shipley, C.R.N.P.

260 Laurel Drive,
Connellsville, Pennsylvania 15425

724.603.3202

November 5, 2018

Re: McKenzie Jennings

To Whom It May Concern,

This letter is written on behalf of McKenzie in relation to his health and possible risks associated with exposure to electromagnetic frequencies (EMFs) from smart meters.

McKenzie has multiple diagnoses: Sturge-Weber Syndrome, Pervasive Developmental Disorder-NOS (autism spectrum disorder), epilepsy, PANS (Pediatric Acute-onset Neuropsychiatric Syndrome) with a mycoplasma coinfection, Intellectual and Developmental Disability, and hypothyroidism. Three of McKenzie's conditions are rare, making him an extremely unique individual who is affected by many things in his environment.

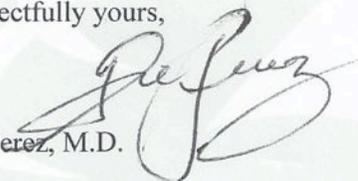
Unfortunately, McKenzie's multiple diagnoses lower his threshold for being negatively affected by the world around him. More specifically, as it relates to smart meters, McKenzie will be a lot more vulnerable than the average person to experience untoward effects from the EMFs smart meters emit, including seizures.

As you may be aware, exposure to EMFs can cause many debilitating symptoms, including anxiety, headache, fatigue, and body pain, to name a few. What you may not be aware of is the studies showing EMFs from smart meters can also lower people's threshold for symptom development. Relating this back to McKenzie, the EMFs emitted by a smart meter could directly or indirectly cause McKenzie to experience a seizure, which is a problem he has already; directly from lowering the threshold and indirectly from causing a stress-induced seizure.

In summary, it is my professional medical opinion that a smart meter not be installed at the residence where McKenzie lives for reasonable fear the EMFs may cause a worsening of his medical conditions. His parents, the owners of the residence, are agreeable to this recommendation and would like to be offered an alternative option.

Thank you for your consideration. Please call me at the above number if you have any questions.

Respectfully yours,


Gil Perez, M.D.



EHMG Norvelt Family Medicine - Back
3888 Route 981 PO Box 387
Norvelt, PA 15674
(724) 423-4051

Patient: MCKENZIE S. JENNINGS
Age/DOB: 24/Oct 03, 1994

EMRN: 271201
Encounter Date: 10/16/2018

To Whom it May Concern:

SOAP

I am writing in support of McKenzie Jenning's parents' wishes to not have a Smart Meter placed on or in their house due to concerns about it potentially exacerbating McKenzie's severe seizure disorder.

Sincerely,

Signatures

Electronically signed by : Michael Semelka, D.O.; Oct 16 2018 12:52PM EST

EH Neurology - GBG - Pod C
540 South Street Medical Commons Two, Suite 302
Greensburg, PA 15601
(724) 261-5610

Patient: MCKENZIE S. JENNINGS
Age/DOB: 24/Oct 03, 1994

EMRN: 271201
Encounter Date: 04/12/2019

SOAP

To Whom It May Concern,

Mckenzie Jennings (10-3-1994) has been under the care of neurology for ongoing neurological condition including uncontrolled seizure disorder. As the patient is unable to provide guardianship for himself, he is well cared for under his parents who are concerned about the placement of a smart meter. The first several articles and research studies including data gathering cohort studies have revealed the potential ability of smart meters to stimulate the brain waves of an epileptic individual. Please take into consideration the neurological deficits that a seizure can create to an individual and refrain from placing a smart meter on the home-property ¹ of this patient. It would best serve the patient if their ~~are~~¹ home would remain from further potential stimulus which could aggravate the patient's seizures.

Thank you for your consideration into this matter.

Sincerely,
Beth Schmidle, NP-C
EHMG Neurology

¹ Amended By: Schmidle, Beth Ann; Apr 23 2019 11:52 AM EST

Signatures

Electronically signed by : Beth Ann Schmidle, CRNP; Apr 12 2019 4:51PM EST
Electronically signed by : Beth Ann Schmidle, CRNP; Apr 23 2019 11:52AM EST

(Author)
(Author)



Cortex

Chiropractic & Clinical Neuroscience

Regarding: **McKenzie Jennings**

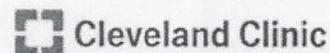
Due to the ongoing complex nature of McKenzie Jennings' health status, it is not recommended to increase his exposure to electromagnetic fields in or around the home. The installation of a smart-meter for this individual could have negative effects on the health outcomes and is not recommended at this time.

Respectfully,



Date: 4/6/2019

John W. Farabaugh DC, MS, DACNB, FACFN, FABES



Center for Functional Medicine
9500 Euclid Avenue Q2-1
Cleveland, OH 44195
Phone: (216) 445-6900
Fax: (216) 636-3074

2/27/2019

Susan M Jennings
200 Brook Hollow Rd
Mt Pleasant PA 15666

DOB: 12/27/1959

To whom it may concern:

The above named is my patient. I also care for her son, McKenzie Jennings and husband, Michael Jennings, both of whom also live in the home at the above address. Based on multiple chronic autoimmune, cancerous and neurologic conditions in multiple family members, there is a concern that current Smart Meter technology would pose additional risks to multiple family members due to radio-frequency radiation.

Mrs. Jennings has autoimmune diseases which include Hashimoto's Thyroiditis and Relapsing-Remitting Multiple Sclerosis. Her son has a seizure disorder, pediatric acute onset neuropsychiatric syndrome, and hypothyroidism and Mr. Jennings has been diagnosed and treated for Stage 4 colon cancer.

The primary concern arises from the declaration by the International Agency for Research on Cancer which has classified electromagnetic fields associated with radiofrequencies as "possibly carcinogenic". Until further study by the World Health Organization has been conducted to assess the risks from RF exposure, especially in medically vulnerable populations, it is my professional opinion that the Jennings household be exempted from the requirement of Smart Meter usage.

We thank you for your consideration in this matter. If you have any questions, please do not hesitate to contact my office or the Jennings family, directly.

Sincerely,

A handwritten signature in cursive script that reads 'Lyla Blake Gumbs, MD, MPH'.

Lyla Blake Gumbs, MD



WCSI
Westmoreland
Casemanagement
and Supports Inc.

June 10, 2019

McKenzie Jennings
200 Brook Hollow Rd.
Mt Pleasant, PA 15666

To Whom it May Concern,

I am writing to inform you that McKenzie has been under my caseload supervision since 2013. He receives PFDS waiver supports to provide him with the services he requires due to his Intellectual Disability, Autism, Sturge-Weber Syndrome, PANDAS and epilepsy diagnosis. McKenzie's physical and mental health state are extremely fragile and he requires constant care and supervision from various supports including doctors, specialists and support staff. Many of which have advised that the interference from a smart meter would negatively impact his health.

He is supported through various federal and state funding sources. The ADA states that disability rights should be acknowledged and honored. The ADA requires various accommodations for individuals with disabilities. I am hopeful that you are respectful of his disability rights and considerate of his family's wishes for accommodations regarding the smart meter on their property to preserve their son's health.

If there are any questions that I can answer for you feel free to contact me at (724) 610-7310 or at cgriffin@wcsi.org.

Sincerely,

Carissa D. Griffin, M.A.
WCSI, IDD Supports Coordinator

CC:
Chart

INTEGRITY, ACCOUNTABILITY, RESPECT, QUALITY, COMMITMENT.

www.wcsi.org



University of Pittsburgh

School of Medicine

*Departments of Hematology/Oncology and
Microbiology and Molecular Genetics*

Clinical office:

*UPMC Cancer Pavilion
5150 Centre Avenue, 5th Floor
Pittsburgh, PA 15232
412-864-7764
Fax: 412-648-6579*

October 23, 2019

To whom it may concern,
Michael Jennings (8/16/41) is under my care for treatment of his cancer. Mr. Jennings also has several other comorbidities including: atrial fibrillation, history of pulmonary embolism, and liver disorders for which he requires care. Please do not hesitate to call our office at 412-692-4724 with any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nathan Bahary".

Nathan Bahary M.D., Ph.D.

Associate Professor

Medical Director, Pancreatic Cancer Program

Co-Director, UPMC Pancreatic Cancer of Excellence

University of Pittsburgh School of Medicine

-Division of Oncology, Department of Medicine

- Department of Microbiology and Molecular Genetics

Diagnostic Associates Latrobe - Pod C
1 Mellon Way
Latrobe, PA 15650
(724) 804-1294

Patient: MICHAEL T. JENNINGS
Age/DOB: 78/Aug 16, 1941

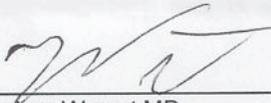
EMRN: 15721*257
Encounter Date: 10/21/2019

SOAP

To whom it may concern

Mr Michael Jennings (DOB 08/16/1941) is a current patient of mine, he has struggled with multiple medical conditions in the past including Cancer. At this time he does not wish to have a smart meter put in his home due to worries it could possible complicate his previous diagnosis.

Thank you,



Stephen Wynert MD.

Signatures

Electronically signed by : Stephen Wynert, M.D.; Oct 21 2019 4:20PM EST

(Author)

EHMG Norvelt Family Medicine - Back
3888 Route 981 PO Box 387
Norvelt, PA 15674
(724) 423-4051

Patient: SUSAN JENNINGS
Age/DOB: 59/Dec 27, 1959

EMRN: 12073*257
Encounter Date: 01/10/2019

To Whom it May Concern:

SOAP

I am writing in support of Susan Jennings' wishes to not have a Smart Meter placed on or in her house due to concerns about it potentially exacerbating Susan's Multiple Sclerosis.

Sincerely,

Signatures

Electronically signed by : Michael Semelka, D.O.; Jan 10 2019 1:46PM EST

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL T. JENNINGS,
Complainant**

v.

**WEST PENN POWER COMPANY
Defendant**

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:
:
:
:
:
:

Docket No. C-2018-3006031

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of my **Reply Brief of Michael T. Jennings** upon the individuals listed below, in accordance with the requirement of 52 Pa. Code § 1.54 (relating to service by a participant.)

Service by e-filing and e-mail:

Administrative Law Judge Gail Chiodo
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
gchiodo@pa.gov

Lauren M. Lepkoski Esquire
Tori Giesler Esquire
James Meehan Esquire*
FirstEnergy Services Company
2800 Pottsville Pike, PO Box 16001
Reading, PA 19612-6001
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com
jameehan@firstenergycorp.com
Accepts eService
**Served via email and first-class mail*

Curtis S. Renner
1910 Pennsylvania Ave. NW
Suite 1005-ENS
Washington, DC 20006
crenner@w-r.com
Accepts eService

Daniel A. Garcia
FirstEnergy
800 Cabin Hill Drive
Greensburg, PA 15601
dagarcia@firstenergycorp.com
Accepts eService

Dated: November 15, 2024



Michael T. Jennings, Complainant
200 Brook Hollow Road, Mount Pleasant, PA 15666
724-613-4262 Lilmac2@zoominternet.net