

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Siddhartha Banerjee	:	
	:	
v.	:	F-2022-3032337
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision denies and dismisses the Formal Complaint of an electric service customer who seeks the removal of a smart meter at his residence. After a hearing held, the customer did not meet his burden of proof evidencing any violation of a Commission statute, regulation, or order on the part of the utility, or that the customer is entitled to the relief requested.

HISTORY OF THE PROCEEDING

On May 2, 2022, Siddhartha Banerjee (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (Respondent, PECO or Company) with the Pennsylvania Public Utility Commission (Commission or PUC). The Complainant seeks to have the Company remove the smart meter from his residential property in Chester County, Pennsylvania (service location or property). Mr. Banerjee

alleges that smart meters are unsafe and unhealthy, and that since its installation, his and his wife's health have deteriorated, their computers have malfunctioned, and several of their household appliances stopped working. Mr. Banerjee also alleges that the Company unreasonably provided notice of its intent to terminate service if the Complainant did not allow access to its equipment, and customer service was rude.¹

As relief, Mr. Banerjee seeks to have PECO be required to replace the smart meter at the service location with an analog meter, or alternatively, to have PECO or the PUC provide in writing that a smart meter will cause no more ill health effects to him and his spouse or any damage to their appliances and computers. (Complaint ¶ 5).

On May 25, 2022, the Company filed an Answer and New Matter. In its Answer, the Company denied the material allegations of the Complaint and by way of further answer, averred all the following:

- that a smart meter was installed at the service location on June 27, 2019;
- that on August 21, 2021, the Company discovered the smart meter was not sending readings;
- that thereafter, the Company gave notice to the Complainant of PECO's intent to replace the smart meter with another one and made multiple phone calls and personal attempts to reach the Complainant to schedule a date for doing so but received no response;
- that on November 13, 2021, PECO left a 72-Hour Shut Off Notice at the property for Complainant's failure to allow access to the service location;

¹ The Complaint is a timely appeal from the decision of the Commission's Bureau of Consumer Services (BCS) which denied the Complainant's informal complaint at BCS No. 3818611. Review of a BCS decision is *de novo*, meaning anew or based on the evidentiary record created at the hearing. 52 Pa. Code § 56.173(a).

- that on November 15, 2021, the Complainant made an appointment for installation in December 2021, but later cancelled it; and
- that on January 3, 2022, a PECO technician arrived at the service location to conduct the meter exchange but the Complainant told the technician that he did not want a new smart meter installed.

(Answer ¶ 4).

In its New Matter, the Company avers that pursuant to Act 129,² PECO is required to install smart meters for the Company's electric distribution. Next, noting that requirements of Act 129 were currently on appeal with the Pennsylvania Supreme Court, it requested this proceeding be stayed. Consistent with this request, the Company also filed a Motion for Stay of the Proceedings on May 25, 2022.

On June 28, 2022, I was assigned to preside over this matter. On June 29, 2022, my Stay of Proceeding Order was issued which stayed this matter pursuant to the Commission's Order issued in 2020, which instituted a stay of proceedings before the Commission challenging smart meter deployment as being in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501. *Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered Nov. 4, 2020) (*Stay Order*). On November 14, 2023, the *Stay Order* was lifted by the Commission. M-2009-2092655 (Order entered Nov. 14, 2023).

On December 14, 2023, a Prehearing Conference Notice was issued scheduling a prehearing conference for February 20, 2024. On December 18, 2023, a Prehearing Conference Order was issued.

² Referring to Act 129 of 2008 (Act 129) of the Public Utility Code, 66 Pa.C.S. § 2806.1-2807.

On February 20, 2024, a prehearing conference was held. The Complainant appeared and represented himself. The Company was represented by Khadijah Scott, Esquire. During the prehearing conference, the parties requested to hold this matter in abeyance for approximately two months to allow them time to possibly resolve this matter. Attorney Scott explained that PECO intended to have a design construction consultant reach out to the Complainants to discuss possibly relocating the meter at the service location at the Complainant's expense, as well as providing more information to the Complainant regarding the type of meter PECO installs. (Tr. at 7-9).

On February 23, 2024, a Prehearing Order was issued which held in abeyance this proceeding to allow time for the parties to engage in settlement discussions and exchange information on an informal basis. The Company was also directed to provide informally to me via email, on or before April 19, 2024, a case status update.

On March 8, 2024, I received an email from the Company's attorney, copying the Complainant, suggesting that another prehearing conference be held to discuss the Complainant's request which came up during their settlement discussions. PECO indicated that the Complainant wished to have PECO turn over to him the smart meter PECO removed on March 6, 2024, from his service location so that the Complainant could have it independently tested to support his position that smart meters cause adverse health effects. PECO did not object to the Complainant's request to have it independently examined by an expert of his choice, but expressed concern that PECO does not release its equipment for customers to hold in their possession as the Complainant requested.

After an exchange of emails with the parties to establish a mutually agreeable date, a further prehearing conference was scheduled for April 29, 2024. Further, the Complainant was directed to be prepared to discuss at this conference

whether he obtained an expert to independently examine or test the meter, and any other details that would be helpful to discuss an orderly process to accomplish his request.

On April 25, 2024, the Complainant requested to continue the April 29, 2024 prehearing conference, which request PECO did not oppose. I granted the Complainant's continuance request. Subsequent attempts to reach a mutually agreeable date to schedule this matter were not successful and it appeared that this matter was unable to be resolved by the parties.

Therefore, in the interests of moving this matter forward, by a separate hearing notice dated August 9, 2024, this matter was scheduled for an evidentiary hearing for October 1, 2024, at 10:00 a.m. That same day, I issued a Scheduling Order which provided various procedures that would apply to the evidentiary hearing. Of note, the Complainant was directed that if he still wished to have the meter at issue independently examined, he must make such a request in writing by filing a written motion with the Secretary's Bureau and served on PECO and the undersigned no later than August 19, 2024. The Scheduling Order also provided that if such a motion were timely filed, then a prehearing conference would be scheduled to discuss the orderly process of this request to maintain a proper chain of custody. (Scheduling Order, Ordering paragraph No. 12).

Further, the Scheduling Order provided that if the Complainant intended to present any expert testimony at the hearing, including but not limited to medical or technical testimony, he must provide to the Company in writing the name and business address of that expert and a written summary of the expected testimony of that expert no later than September 3, 2024; and if no expert testimony would be presented, the Complainant needed to provide that in writing to the Company by September 3, 2024. The Company was also directed to provide similar information to the Complainant of any expert it intended to present. (Scheduling Order ¶ 13).

The Complainant did not file a written motion for an independent meter test by the deadline, August 19, 2024. Rather, by email dated August 19, 2024, the Complainant informally emailed me and counsel for PECO stating only that he still wanted the removed smart meter independently tested. However, this request did not comply with the Scheduling Order in that it was not a written filed motion and did not contain the name and business address of the expert who would conduct the meter examination. Therefore, in a response email to the parties, I referred Mr. Banerjee to the requirements of the Scheduling Order, and advised the parties that *sua sponte*, I would extend the deadline for the Complainant to file a written motion in compliance with the Scheduling Order to no later than September 5, 2024. This modification was memorialized in my Amended Scheduling Order dated August 27, 2024. (Amended Scheduling Order).

The Complainant did not file a motion requesting an independent meter examination. Further, the Complainant did not provide the name and business address of any expert he intended to present at the hearing.

On October 1, 2024, a telephonic evidentiary hearing was held. The Complainant represented himself and PECO was represented by Attorney Scott. At the outset of the hearing, PECO made an oral motion to dismiss the Complaint on the basis that Mr. Banerjee would not be presenting expert medical testimony, without which he would not be able to sustain his burden of proof as required by the Pennsylvania Supreme Court. (*See Tr.* at 30-31). I denied this motion, noting that the Complainant also complained of customer service issues including inadequate notice of shut-off and rude customer service. (*Id.* at 31).

At the hearing, Mr. Banerjee presented the testimony of his wife, Padmini Banerjee, and himself. Mr. Banerjee offered several exhibits in the form of video or photograph. Four photographs were admitted into the record over the objection of

PECO, as “C-1.” Two of the photographs are a screenshot of a blank computer screen, another photograph is a picture of the Complainant’s broken insinkerator in his kitchen sink, and the other is a picture of a new microwave still in the box.³ PECO did not offer any testimony or exhibits.

At the conclusion of the testimony, the parties were given the option of making a closing argument or providing a written brief. PECO objected to this choice, arguing that closing arguments from both parties should be sufficient. I overruled PECO’s objection and stated that I would allow the parties to choose and neither would be prejudiced by their choice. (Tr. 76-78). PECO opted to make a closing argument, which it did. (Tr. at 79-80). The Complainant opted to file a written brief, and requested one and one-half months to do so, which request was granted. (Tr. at 82-83). By Order dated October 2, 2024, I memorialized my ruling that the Complainant was permitted to file a brief, but was not required to do so, no later than November 15, 2024. (Briefing Order).

On October 21, 2024, an 85-page hearing transcript was filed and on October 23, 2024, the hearing exhibits were filed with the Commission.

On November 15, 2024, Mr. Banerjee submitted to me via email, copying PECO, a two-page largely single-spaced document entitled “Closing Statement” which I am treating as the Complainant’s Brief. The Complainant’s Brief was not filed with the

³ The Complainant’s other proposed exhibits were not admitted and included: (a) two short videos which were unable to be opened by myself and PECO’s counsel which purportedly showed a PECO technician at the property to change the meter (Tr. at 52-55); (b) a photo of the Complainant’s feet while in a hospital bed in September 2022 (Tr. 60-62); (c) a receipt for a new refrigerator which the Complainant claims he had to buy in 2016 because the smart meter caused his old refrigerator to break (Tr. at 67-68); and (d) a photo or video of a broken microwave which the Complainant claims the smart meter broke (Tr. at 70-71).

Secretary's Bureau, as instructed in the Briefing Order. Therefore, in the interests of completeness and accuracy of the record, I have forwarded the Brief to the Secretary's Bureau requesting that it be filed of record, which it has been. The record also closed on this date.

For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Siddhartha Banerjee, who receives electric service from the Company at his residence in Chester County, Pennsylvania (service location or property). (Tr. at 27).
2. The Respondent is PECO Energy Company, a jurisdictional public utility providing electric service to the Complainant.
3. The Complainant resides at the service location with his spouse, Padmini Banerjee. (Tr. at 33, 34).
4. Mr. and Mrs. Banerjee moved into the service location sometime in 2002 and began their electric service with the Company. (Tr. at 33, 34).
5. Mrs. Banerjee has a Ph.D. in Human Development and Family Studies, which is an interdisciplinary area involving psychology, sociology, and anthropology, and teaches as a professor at Delaware State University, and has been in academia for the last 35-40 years. (Tr. at 38-39).
6. Mrs. Banerjee has conducted research for the National Institute of Health and has consulted for schools and nonprofits in her areas of expertise above. (Tr. 39).

7. Mrs. Banerjee does not have any medical background to offer a medical expert opinion whether there is a medical correlation between the smart meter and any alleged health problems experienced by the Banerjees. (Tr. at 42-44).

8. Mrs. Banerjee testified that since 2014, she noticed their emails and bank account statements were being hacked, some electronic devices stopped working, both she and Mr. Banerjee have experienced ringing in their ears, and they have had increasing joint aches, and Mr. Banerjee has experienced visual difficulty now and then. (Tr. at 34-35).

9. Mr. and Mrs. Banerjee believe PECO installed a smart meter on their property in 2014. (Tr. at 45, 47, 68).

10. On June 27, 2019, the Company changed the meter at the service location with a smart meter. (Tr. at 36, 71; *also see* Answer ¶ 2).

11. On August 21, 2021, the Company discovered the smart meter was not sending readings. (Tr. at 36-37, 40, 69).

12. After the August 2021 discovery above, the Company gave notice to the Complainant of PECO's intent to replace the smart meter with another smart meter and made multiple phone calls and personal attempts to reach the Complainant to schedule a date for doing so but received no response. (Tr. at 67).

13. On November 13, 2021, PECO posted a 72-Hour Shut Off Notice at the property for Complainant's failure to allow access to its equipment at the service location. (Tr. at 37, 52, 54).

14. Sometime in November 2021, Mr. and Ms. Banerjee saw something "fluttering" on the lawn; it was "pouring rain," "monsoon-like rains" and a "very windy

day” and discovered it was a 72-hour disconnect notice for failure to allow PECO access to their equipment. (Tr. at 37, 68).

15. On November 15, 2021, the Complainant called PECO about the termination notice and made an appointment for installation in December 2021, but later cancelled it. (Tr. at 37, 83).

16. On March 6, 2024, the Company replaced the malfunctioning smart meter at the service location with another smart meter. (Tr. at 54).

17. Mrs. Banerjee testified that she believed she had “a little bit of respite” from her ailments when PECO discovered the smart meter was not sending readings to PECO in August 2021 but that they are back since March 2024. (Tr. 40-41).

18. Mr. and Ms. Banerjee never had an electrician come to their property to determine whether any electrical issues might be causing their appliances to malfunction. (Tr. at 4).

19. Exhibit C-1 consists of four photographs that can be described as follows:

(a) Two photographs are screenshots of a blank laptop computer screen, one purportedly taken on June 23, 2024, and the other on September 24, 2024, which the Complainant claims the smart meter caused the computer screens to go blank. (Tr. at 57-60);⁴

(b) One photograph is a picture of the Complainant’s insinkerator in his kitchen sink, which the Complainant

⁴ For the record, PECO’s counsel wished to note that although the photographs were allegedly taken on different dates, the photographs appear identical including the mouse marker in the exact same position. (Tr. at 60-61).

said was broken by the smart meter about a year prior to the hearing; (Tr. at 63-64); and

(c) One photograph is a picture of a new microwave still in the box which the Complainant claims he had to purchase because the smart meter broke their other microwave about a year prior to the hearing. (Tr. at 65-67).

20. The Complainant did not present any expert medical, engineering, or technical testimony that a smart meter affects his or his wife's individual personal health or safety, or caused his appliance and/or electronic devices to malfunction or not work.

DISCUSSION

Legal Standards

General Burden of Proof

As the party seeking affirmative relief from the Commission, a complainant has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail and that the offense is a violation of the Code, the Commission's regulations, or order. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990); 66 Pa.C.S. § 701.

The burden of proof is comprised of two distinct burdens: (1) the burden of production and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the

evidence, determines which party must come forward with evidence to support a particular claim or defense. *Moore v. Nat'l Fuel Gas Distrib.*, No. C-2014-2458555 (Final Order entered Aug. 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See, Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See, Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See, Milkie*, 768 A.2d at 1220; *see also, Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982) (*Burleson*).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See, Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See, Milkie*, 768 A.2d at 1220; *see also, Riedel v. Cnty. of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or

in part, and may accept or reject inferences from the evidence. *See, Moore* (citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005)).

Additionally, any decision of the Commission must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980). As the Commission explained, “[O]pinions and conclusions cannot be relied upon as substantial evidence in a decision by this agency.” *Norman v. Phila. Gas Works*, No. C-2018-2640719, at 30 (Opinion and Order entered Oct. 7, 2021) (*Norman*).

Burden of Proof Applied to Section 1501 Challenging Smart Meter Installation

In *Povacz II*,⁵ which dealt with consolidated appeals involving the deployment of smart meters by PECO Energy Company, the Supreme Court of Pennsylvania (Supreme Court) reversed the Commonwealth Court’s October 8, 2020 decision in *Povacz I*,⁶ and thereby affirmed the Commission’s March 28, 2019 and May 9, 2019 Orders in *Povacz v. PECO Energy Co.*, C-2015-2475023 (Opinion and Order entered Mar. 28, 2019) (*Povacz 2019 Order*), *Murphy v. PECO Energy Co.*, C-2015-2475726, and *Randall v. PECO Energy Co.*, C-2016-2537666. In *Povacz II*, the Supreme Court affirmatively established that there is no “opt-out” provision for installation of a smart meter pursuant to Act 129 and that to raise a viable challenge to smart meter installation, a customer must satisfy the preponderance of evidence standard for a violation of Section 1501 of the Code. *Povacz II*, 280 A.3d at 983-984.

⁵ *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

⁶ *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*).

Pursuant to Section 1501 of the Code, all public utilities have a duty to maintain “adequate, efficient, safe, and reasonable service and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501. Specifically, Section 1501 of the Code, provides, in pertinent part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

As previously noted, in *Povacz II*, the Supreme Court also confirmed that challenges to smart meter installation, other than an “opt-out,” may arise under Section 1501 of the Code. Therein, the Supreme Court stated:

[W]e conclude that Act 129 does mandate that EDCs^[7] 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, but to obtain one the customer must establish by a preponderance of the evidence that installation of a smart meter violates Section 1501 [of the Code].

⁷ Electric distribution companies.

Povacz II, at 983-984; *see, Povacz 2013 Order*; *see also, Frompovich v. PECO Energy Co.*, No. C-2015-2474602 (Opinion and Order entered May 3, 2018) (*Frompovich*).

In applying Section 1501 to a complaint challenging the installation of smart meter technology, the Supreme Court affirmed the Commission's Opinion and Order in the *Povacz 2019 Order*, stating:

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 [sic] may file a complaint raising a claim that installation of a smart meter violates Section 1501 of the Code.

...
Pursuant to [S]ection [1501 of the Code], 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 [of the Code] 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 [of the Code] 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).

Povacz II, 280 A.3d at 999-1000 (footnote omitted).

In applying the standard of proof to scientific or expert medical evidence in support of alleged adverse health effects, the Commission ruled in the *Povacz 2019 Order*, and was subsequently affirmed by the Supreme Court in *Povacz II*, that in order to prevail in a Section 1501 claim against an EDC alleging that an AMI meter caused or will cause adverse health effects or harm to human health, the Complainant must demonstrate

by a preponderance of the evidence a “conclusive causal connection” between the harm to human health and the radio frequency fields (RFs)⁸ from the AMI meter.⁹

Parties’ positions

At the outset, the Complainant acknowledges that the Supreme Court ruled that Act 129 does not provide electric customers with the ability to opt out of having a smart meter installed. (*See* Complainant Brief at 1). Therefore, to the extent that the Complainant had requested to opt out of a smart meter installation in his Complaint and prior to Supreme Court’s decision, that claim is denied since the Supreme Court’s ruling is controlling that Act 129 does not provide electric customers such as the Complainant the ability to opt out of smart meter installation. *Povacz II*.

Next, the Complainant focuses his argument on his claims that the smart meter has caused his and his wife’s health to deteriorate, and certain electronic devices and appliances to stop working. The Complainant also addresses his lack of presenting expert testimony by contending that none is needed because “expert” testimony was rejected in the Pennsylvania courts in other litigants’ cases; and they do not need expert testimony because they have described what they are experiencing since the smart meter installation.¹⁰ (Complainant Brief at 1). Additionally, the Complainant also complains

⁸ “RF” is an abbreviation for radio frequency and is also used here to denote RF fields or RF signals.

⁹ *See, Povacz 2019 Order* slip op., at 28-29 (citing *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*, 1993 WL 855896 (Pa. P.U.C. 1993), No. A-110550F0055 (Final Order entered November 12, 1993)).

¹⁰ Mrs. Banerjee testified that their health problems occurred since 2014, when they believe PECO installed their first smart meter. (Tr. at 35, 36). While PECO presented no testimony, it stipulated that on March 6, 2024, it replaced the smart meter installed in 2019 with another smart meter since the 2019 smart meter was not sending readings since August 21, 2021 and bills had been estimated since then. (Tr. at 54; *also*

that had they not found the termination notice fluttering in their yard, they would not have known that PECO intended to terminate their service, and that customer service representatives during phone calls were rude. (Tr. at 28, 37).

The Company argues that the Complainant has not met his burden of proof to show any violation of the Public Utility Code, Commission Regulation, or Commission Order. The Company contends that the Complainant failed to present required expert testimony and medical documentation demonstrating that the furnishing of PECO's smart meter is unsafe or unreasonable service. (Tr. at 79). Further, PECO argues that no testimony was presented which shows any causal connection between the smart meter and adverse health effect as required by the Supreme Court, that the burden has not shifted to PECO to defend against such evidence. (Tr. at 80).

Disposition

After a careful review of the evidence presented at the hearing, it must be concluded that record evidence shows that the Complainant failed to establish a *prima facie* case evidencing that the Company's installation of a smart meter constitutes a violation of Section 1501. Mr. Banerjee did not present any reliable or credible evidence on any of the issues raised in the Complaint including expert testimony demonstrating that smart meters are unhealthy or unsafe.

It is clear that the Complainant must demonstrate, by a preponderance of the evidence, a "conclusive causal connection" between the harm to human health and the RFs from the smart meter. *See, Povacz II*, 280 A.3d at 1006. The Supreme Court further

see PECO's Answer ¶ 2). Assuming *arguendo*, that the first smart meter was installed in 2014, it would not change the outcome of this decision in light of no testimony presented providing any causal link between the smart meter to the Banjerees' alleged health concerns.

instructed that the burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. The utility may then refute the customer's evidence by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. *Id.* Once the parties have presented their evidence, the onus then falls on the fact finder to weigh the evidence and determine whether it is more likely than not that the smart meter caused the customer harm. *Id.* at 1006.

In the instant case, in addition to the absence of expert testimony presented by the Complainant, there is no evidence that the Complainant is qualified to offer expert testimony as an engineer, or doctor or other medical professional. While Mrs. Banerjee testified to adverse health effects, there was no expert medical testimony to explain a causal connection between their health and any alleged harmful effects of a smart meter. Without expert testimony and credible evidence, Mr. Banerjee's claims are reduced to unsubstantiated opinions. Assertions, personal opinions or perceptions do not constitute factual evidence. As the Commission explained, "[O]pinions and conclusions cannot be relied upon as substantial evidence in a decision by this agency." *Norman* at 30. The Supreme Court further explained:

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. 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.

Povacz II, 280 A.3d at 1005.

Further, I give no weight to the photographs admitted into evidence. The Complainant argues that the smart meter caused his computer screens to go blank on occasions, and broke his insinkerator, microwave, and refrigerator during the course of the past several years. However, there is simply no reliable or credible evidence of any link between the smart meter and the broken appliances or blank computer screens. Photographs of broken appliances and blank computer screens do not establish the necessary causal link.

Next, the Complainant claims that PECO provided inadequate notice of its intent to terminate service for lack of access to its equipment because, had they not found the termination notice fluttering in their yard, their service could have been terminated without their knowledge. However, I find that the Complainant has not met his *prima facie* burden of proof that PECO violated the Public Utility Code, Commission Regulation or Order.

A utility may threaten service termination to a customer if a customer does not permit access to meters, service connections, or other property of the public utility for the purpose of replacement, maintenance, repair, or meter reading, including the installation of a smart meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3). The Banerjees seem to imply that PECO purposefully left or threw the notice in their yard. (*See, e.g.*, Tr. at 68). However, both Mr. and Mrs. Banerjee's own testimony acknowledged that the day they found the notice, which may not even be the same day it

was placed there, was “very windy” with “monsoon-like rains,” thereby making it entirely plausible that the notice may have been placed on their door and then was blown away in the very inclement weather. Further, at no relevant time was the Complainant’s service terminated.

Finally, the Complainant testified that he believes when he called PECO about not wanting a smart meter at his residence, he was treated rudely by customer service. (*See, e.g.*, Tr. at 29). However, other than this assertion, the Complainant presented no factual testimony to support this claim including any dates, what was allegedly said by customer service representatives, or otherwise why he asserted he was treated rudely. Accordingly, there is no evidence to find that PECO provided unreasonable service during the Complainant’s contacts with PECO.

In conclusion, Mr. Banerjee failed to provide any reliable, credible evidence in support of his health and safety concerns related to smart meters. Mr. Banerjee also failed to demonstrate that the installation of a smart meter at the service location constitutes unreasonable or inadequate service under Section 1501 of the Code. Thus, he did not carry his burden of proof to establish that he is entitled to the relief requested from the Commission. *See Fenimore v. Pa. Elec. Co.*, No. C-2022-3030605, (Final Order entered Oct. 22, 2024) (finding that the complainant’s testimony that her insomnia began after the smart meter was installed is insufficient evidence to prove the smart meter caused her insomnia).

Accordingly, for all the reasons discussed above, having found that the Complainant did not meet his burden of proof, in the ordering paragraphs below, the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. Any decision of the Commission must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).
5. Assertions, personal opinions and conclusions cannot be relied upon as substantial evidence in a Commission decision. *Norman v. Phila. Gas Works*, No. C-2018-2640719 (Opinion and Order entered Oct. 7, 2021).
6. The Public Utility Code mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501.

7. When a complainant challenges the installation of a smart meter, there must be sufficient evidence to support a finding that complainant would be adversely affected by the smart meter or that the utility's use of a smart meter would constitute unsafe or unreasonable service in violation of Section 1501 under the circumstances of the case. *Kreider v. PECO Energy Co.*, No. P-2015-2495064 (Order entered Jan. 28, 2016).

8. Specific to smart meters and RF emissions, the burden of proof 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. *Povacz v. Pa. PUC*, 280 A.3d 975 (Pa. 2022).

9. Act 129 of 2008 mandates that electric distribution companies 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. *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020).

10. A utility may threaten service termination to a customer if a customer does not permit access to meters, service connections, or other property of the public utility for the purpose of replacement, maintenance, repair, or meter reading, including the installation of a smart meter. 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

11. The Complainant failed to carry his burden of proof establishing that the Company violated the Code or a regulation or order of the Commission.

