

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Orpheus and Kimberly Hanley	:	
	:	
v.	:	C-2024-3051044
	:	
FirstEnergy Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of customers of an electric distribution company objecting to the installation of a smart meter at their residence. This Decision dismisses the Formal Complaint due to the customers failing to meet their burden of proof.

HISTORY OF THE PROCEEDING

On September 5, 2024, Orpheus and Kimberly Hanley (“Complainants”) filed a Formal Complaint (“Complaint”) against FirstEnergy Pennsylvania Electric Company (“Respondent” or “the Company”) with the Pennsylvania Public Utility Commission (“Commission”). In their Complaint, Complainants alleged that Respondent was threatening to terminate their service for their refusal of smart meter installation at their residence. Complainants alleged that they have appealed a prior smart meter case to

the Commonwealth Court of Pennsylvania (“Commonwealth Court”) and argued that Respondent should not be attempting to install a smart meter at their residence during the pendency of the appeal. Complainants also alleged that Respondent was attempting to install a smart meter at their residence despite them never contacting Respondent for such an installation, and despite them never agreeing to pay for such an installation, “per the federal PURPA, EPAC regulatory guidelines and per the state regulatory Electricity Generation Customer Choice and Competition Act.” Complaint ¶4.

On September 26, 2024, Respondent filed an Answer with New Matter to the Complaint, properly endorsed with a Notice to Plead. In its Answer, Respondent argued that it is legally required to install a smart meter at Complainants’ residence and that Complainants could not “opt-out” of smart meter installation. In its New Matter, Respondent argued that the Pennsylvania Supreme Court’s decision in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (“*Povacz II*”) rendered the Complaint moot, as the Pennsylvania Supreme Court definitively ruled that customers cannot “opt-out” of smart meter installation and that accommodations are only available to the extent allowed by Respondent’s tariff. Respondent concluded its Answer and New Matter by requesting dismissal of the Complaint.

Complainants did not file a Reply to the New Matter.

On November 6, 2024, the Commission issued a Telephonic Evidentiary Hearing Notice scheduling an evidentiary hearing for this matter on January 9, 2025, and assigning this matter to me as Presiding Officer.

On November 20, 2024, the Commission issued my Prehearing Order which explained the procedural rules that would govern the evidentiary hearing.

On December 30, 2024, Complainants filed a Motion for Continuance, wherein they sought continuance of the January 9, 2025, hearing.

On January 3, 2025, the Commission issued my Order Denying Motion for Continuance, wherein I denied Complainants request to continue the January 9, 2025, hearing.

On January 9, 2025, the evidentiary hearing was held as scheduled. Both parties were present and participated in the hearing. Ms. Hanley testified in support of the Complaint and sponsored one exhibit (Hanleys Exhibit 1) that was admitted into the record. Respondent presented the testimony of John C. Ahr, an independent contractor supporting the FirstEnergy smart meter program (Tr. 35, 36), who sponsored one exhibit (FE PA-2) that was admitted into the record.

During the hearing, pursuant to Section 5.408 of the Commission's regulations,¹ I took official notice of the public record and the appeal of *Hanley v. Pennsylvania Public Utility Commission*, 865 C.D. 2024 before the Commonwealth Court ("Hanley Appeal"). Tr. 30, 31.

On January 21, 2025, a 68-page electronic transcript was filed with the Commission. The evidentiary record was closed on this date.

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

¹ Official notice or judicial notice of facts may be taken by the Commission or the presiding officer. 52 Pa. Code § 5.408(a).

FINDINGS OF FACT

1. Complainants in this proceeding are Orpheus and Kimberly Hanley.
2. Respondent in this proceeding is the FirstEnergy Pennsylvania Electric Company.
3. In the Commission's Opinion and Order at *Hanley v. Pennsylvania Power Co.*, Docket No. C-2023-3041147 (Opinion and Order entered May 9, 2024) the Commission adopted the Initial Decision issued at that docket and dismissed the Complainants' complaint seeking to refuse the installation of a smart meter at their address.
4. Complainants did not petition for a stay or supersedeas of the Commission's Opinion and Order in *Hanley v. Pennsylvania Power Co.*, Docket No. C-2023-3041147.
5. Complainants did not file an application for a stay or supersedeas of the Commission's Opinion and Order in *Hanley v. Pennsylvania Power Co.*, Docket No. C-2023-3041147 with the Commonwealth Court of Pennsylvania.
6. Concerning the Company's process of pursuing smart meter installation for formal complaints that have been dismissed by a Commission Opinion and Order, the Company does not initiate the installation or termination activities until 10 days after such an order has been issued to ensure that the Complainants are in receipt of the Order issued by the Commission. Tr. 38.
7. If the Company's smart meter team receives notice that the Complainant intends to appeal the Commission decision, installation or any termination activities will not commence until 30 days after the Opinion and Order has been issued to

account for the appeal period for decisions of the administrative agency before the Commonwealth Court. Tr. 38.

8. The Company is not required to wait before commencing installation or termination activities after an Opinion and Order has been issued by the Commission. Tr. 38-39.

9. On June 12, 2024, Respondent sent Complainants a letter informing them that the Company has been unable to install a smart meter at Complainants' residence and that it is required by Act 129² to install a smart meter. Hanleys Exhibit 1, p. 2.

10. On July 2 and July 15, 2024, Respondent sent Complainants shut off notices for their refusal to grant Respondent access to their meter for smart meter installation. Hanleys Exhibit 1, pp. 3-4.

11. Respondent has not shut off service at Complainants' residence for their refusal of smart meter installation, as termination efforts were stayed upon receipt of the Complaint. Tr. 38.

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*

² 66 Pa.C.S. §§ 2803, 2806.1, 2807, 2811, 2813-2815 (“Act 129”).

J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlt. 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 Public Utility Code (“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.*, Docket. 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. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlt. 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* at 1220; *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlt. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983) (“*Burlison*”).

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* at 1220; *see also, Riedel v. Cnty. of Allegheny*, 633 A.2d 1325 (Pa. Cmwlth. 1993); *Burleson* 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. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Smart meters

In *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (“*Povacz I*”), the first of several appeals involving PECO Energy Company’s deployment of smart meter technology pursuant to Act 129, codified at 66 Pa.C.S. § 2807(f), the Commonwealth Court partially affirmed, and partially reversed and remanded, the Commission’s March 28, 2019, and May 9, 2019, Orders in Maria Povacz and related cases. *Povacz I* at 495. Specifically, the Commonwealth Court held that Act 129 does not mandate the installation of smart meters, and that the Commission had the authority to grant customers accommodations based on their health concerns. *Id.* at 490.

However, the Commonwealth Court affirmed: (1) the Commission’s application of the preponderance of evidence standard; (2) the Commission’s finding that the customers in those cases failed to sustain their burden of proof; and (3) that the Commission’s findings of fact were supported by substantial evidence. *Id.* at 490-491, 493-495. The Commonwealth Court also declined to find that the deployment of smart meters violated the customers’ Fourteenth Amendment liberty interests in bodily integrity. *Id.* at 487-488.

In *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975, 992 (Pa. 2022) (*Povacz II*), the Pennsylvania Supreme Court affirmed the Commission’s determinations in all respects. The Pennsylvania Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by electric distribution companies (“EDCs”). *Id.* at 992. The Pennsylvania Supreme Court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides instructions for furnishing smart meters to all customers. In summary, the Pennsylvania Supreme Court found that under Act 129, customers have no right to refuse smart meter installation. *Id.* at 997. Accordingly, the Pennsylvania Supreme Court reversed the Commonwealth Court and affirmed the Commission’s interpretation that Act 129 mandates universal smart meter installation. *Id.*

Analysis

In this matter, Complainants seek to prevent the installation of a smart meter at their residence and raised two arguments in support of their Complaint. First, Complainants argued that smart meter installation is not mandatory and that customers may refuse to have a smart meter installed at their residence. Second, Complainants argued that Respondent should not be attempting to install a smart meter at their

residence during the pendency of the Hanley Appeal. Both arguments will be addressed, and rejected, below.³

Smart meter mandate

As stated, Complainants' first argument was that PPL is not mandated to install a smart meter at their residence and that customers such as themselves can refuse smart meter installation. At the hearing, Ms. Hanley made several legal arguments in support of this claim. Ms. Hanley first cited Section 57.253(b)(1) of the Commission's regulations (Tr. 7), which states the following:

§ 57.253. Approval of advanced meters.

(b) Customers or EGSs, or both, shall be responsible for any net incremental costs incurred by the EDC as a result of using a qualified advanced meter or meter-related device.

(1) Customers using a qualified advanced meter or meter-related device may be assessed a bill surcharge by the EDC to cover any net incremental cost associated with the choice to use an advanced meter.

52 Pa. Code § 57.253(b)(1).

Ms. Hanley focused on the regulation's use of the word "choice," stating that "we have not made any choice to use it, but we've made the choice not to use it." Tr. 7-8.

³ I note that, at the evidentiary hearing, Ms. Hanley also made brief arguments relating to the health (Tr. 16), safety (Tr. 13), and privacy (Tr. 12) of smart meters. These issues were not raised in the Complaint and therefore will not be addressed in this Initial Decision.

Upon review, 52 Pa. Code § 57.253 was enacted on December 26, 1998. Act 129 was enacted on November 14, 2008. Therefore, the provisions of Act 129 supersede that of Section 57.253 of the Commission’s regulations. Act 129 is the prevailing statutory authority governing smart metering technology for Respondent’s customers. *See* 66 Pa.C.S. § 2807(f). Therefore, Ms. Hanley’s reliance on 52 Pa. Code § 57.253(b)(1) to support her position is without merit.

Ms. Hanley then cited to the Energy Policy Act of 2005 (“Energy Policy Act”) and the Public Utility Regulatory Policies Act of 1978 (“PURPA”) in support of her position that smart meter installation is not mandatory and that customers have a choice to have a smart meter installed at their residence. Tr. 8-9. Specifically, Ms. Hanley cited language contained in Sections 1251 and 1252 of the Energy Policy Act and Section 111(d) of PURPA. The portions of the Energy Policy Act cited by Ms. Hanley state the following:

SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(11) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ‘net metering service’ means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.”

SEC. 1252. SMART METERING.

- (a) **IN GENERAL.**—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(14) **TIME-BASED METERING AND COMMUNICATIONS.**—(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

Pub. L. No. 109-58, 119 Stat. 594 (2005).

The portions of PURPA cited by Ms. Hanley state the following:

§ 2621. Consideration and determination respecting certain ratemaking standards

(d) Establishment

(11) Net metering

“Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.”

(14) Time-based metering and communications

(A) Not later than 18 months after August 8, 2005, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

16 U.S.C. § 2621(d)(11), (14)(A).

The Commonwealth Court addressed the relationship between PURPA, the Energy Policy Act, and Act 129 in *Romeo v. Pennsylvania Public Utility Commission*, 154 A.3d 422 (Pa. Cmwlth. 2017) (“*Romeo*”). In *Romeo*, the Commonwealth Court held that “[b]ecause federal standards are a supplement to the state standards, and the state is only required to consider the federal standards, the federal and state standards are not and cannot be in conflict.” *Romeo* at 428. Thus, the Commonwealth Court went on to hold that PURPA and the Energy Policy Act do not preempt the smart meter provisions of the Code or of Act 129. *Id.* Thus, consistent with the Commonwealth Court’s holding in *Romeo*, the smart meter provisions of Act 129 are controlling in this matter, not the smart meter provisions contained in PURPA⁴ and the Energy Policy Act.

⁴ Further, PURPA expressly allows state regulatory authorities, such as the Commission, to adopt, pursuant to state law, standards or rules affecting electric utilities that are different from the standards set forth in 16 U.S.C. §§ 2621–2627. 16 U.S.C. § 2627(b).

Next, Ms. Hanley cited the language of Act 129 itself in support of her argument that Act 129 does not mandate smart meter installation. Ms. Hanley interpreted the language of Act 129 as providing customers with a choice in whether to have a smart meter installed at their residence. Tr. 9-12.

The Pennsylvania Supreme Court has definitely resolved the question of whether Act 129 mandates smart meter installation. In *Povacz II*, the Pennsylvania Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, such as Respondent. *Povacz II* at 992. Specifically, the Pennsylvania Supreme Court found that Section 2807(f)(1), when read in conjunction with Section 2807(f)(2), provides instructions for furnishing smart meters to all customers. In short, the Pennsylvania Supreme Court affirmed the Commission's determination that Act 129 mandates universal smart meter installation and that customers have no right to refuse smart meter installation. *Id* at 997. The Pennsylvania Supreme Court's holding in *Povacz II* is settled law and is binding on the Commission. Ms. Hanley's argument that Act 129 does not mandate smart meter installation must therefore be rejected.

Ms. Hanley's final legal argument in support of her position that she and her husband can refuse smart meter installation was, essentially, that the installation of a smart meter would be in violation of her rights under the Fourth Amendment. Tr. 12.

The Fourth Amendment, which is applicable to the states through the Fourteenth Amendment,⁵ protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. The Fourth Amendment's protection against unlawful searches and seizures

⁵ The Due Process Clause of the Fourteenth Amendment provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV.

applies to “only governmental action.” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). As stated by the Supreme Court, “the mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment.” *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974). Respondent is not a “state actor” but is a privately owned corporation that is highly regulated by the Commission. Respondent’s compliance with Act 129 in installing smart meters across its territory does not make it an agent of the state government. There was no evidence presented in this case that would lead to a finding that the Pennsylvania government controls the operations of Respondent or that Respondent acts as an agent of the government. Accordingly, Ms. Hanley’s argument that installation of a smart meter would violate Complainants’ constitutional rights under the Fourth Amendment must be rejected.

In conclusion, Complainants’ argument that smart meter installation is not mandatory and that customers have a choice in whether to have a smart meter installed must be rejected. The smart meter provisions of Act 129, which mandate smart meter installation, are controlling in this matter.

The Hanley Appeal

The second argument presented by Complainants in this proceeding is that Respondent erred in attempting to shut off their service for their refusal of smart meter installation during the pendency of the Hanley Appeal.

At the hearing, Ms. Hanley testified that she and her husband had been receiving shut off notices from Respondent despite being in the middle of a case before the Commonwealth Court. Tr. 7, 15-17. On June 12, 2024, Respondent sent Complainants a letter informing them that the Company has been unable to install a smart meter at Complainants’ residence and that it is required by Act 129 to install a smart meter.

Hanleys Exhibit 1, p. 2. On July 3 and 16, 2024, Respondent sent Complainants shut off notices for their refusal to grant Respondent access to their meter for smart meter installation. Hanleys Exhibit 1, pp. 3, 4. Ms. Hanley testified that “the reason why this case exists is because I wanted to make sure that there was a formal documentation within your system that we had been getting monthly -- bimonthly shut off threats in the middle of determining our rights. Our legal rights.” Tr. 14.

During the hearing, I took official notice of the Hanley Appeal. Tr. 30, 31. The Hanley Appeal concerns an appeal of the Commission’s Opinion and Order in the matter of *Hanley v. Pennsylvania Power Co.*, Docket No. C-2023-3041147 (Opinion and Order entered May 9, 2024) (“2024 Hanley Order”) to the Commonwealth Court. The 2024 Hanley Order adopted my Initial Decision at that docket and dismissed the Hanleys’ formal complaint seeking to prevent the installation of a smart meter at their residence. The Hanley Appeal was initiated on June 13, 2024, through the filing of a petition for review with the Commonwealth Court.

In response to Ms. Hanley’s testimony, Respondent witness Ahr acknowledged that the Company attempted to install a smart meter at the residence of Complainants following the 2024 Hanley Order and that Respondent initiated termination proceedings after Complainants refused the Company access to their meter. Mr. Ahr testified that the Company is not required to wait before commencing installation or termination activities after an Opinion and Order has been issued by the Commission. Tr. 38-39.

Respondent’s actions in attempting to install a smart meter at Complainants’ address, and in initiating termination proceedings when Complainants refused installation, were made consistent with the law. The Commission’s regulations permit a utility to terminate service to a customer after required notice is provided when

said customer refuses a utility access to its meter. The Commission's regulations provide in pertinent part the following:

§ 56.81. Authorized termination of service.

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.

52 Pa. Code § 56.81(3).

As discussed in this decision, Act 129 requires the system wide installation of smart meters by EDCs. Respondent is permitted to terminate service to customers who refuse to grant access to their meter for smart meter installation pursuant to the above regulation.

Complainants challenged the installation of a smart meter at their residence in the 2024 Hanley Order proceeding. As stated, the 2024 Hanley Order denied Complainants' formal complaint in that proceeding challenging smart meter installation. The Code states the following regarding decisions by the Commission:

(e) Decisions by commission.--After the conclusion of the hearing, the commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence. A copy of such order, certified under the seal of the commission, shall be served by registered or certified mail upon the party or parties against whom it runs, or his attorney, and notice

thereof shall be given to the other parties to the proceedings or their attorney. **Such order shall take effect and become operative as designated therein, and shall continue in force either for a period which may be designated therein, or until changed or revoked by the commission.** The commission may grant and prescribe such additional time as, in its judgment, is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

66 Pa.C.S. § 703(e) (emphasis added).

The 2024 Hanley Order took effect and became operative on May 9, 2024. Importantly, Complainants did not seek a stay, supersedeas, or to otherwise postpone the enforcement of the 2024 Hanley Order.⁶ Review of the Hanley Appeal docket also reveals that Complainants did not seek a stay, supersedeas, or to otherwise postpone the enforcement of the 2024 Hanley Order with the Commonwealth Court. Stays of determinations of governmental units, such as the Commission, before the Commonwealth Court are governed by Rule 1781 of the Pennsylvania Rules of Appellate Procedure which states the following:

Rule 1781. Stay Pending Action on Petition for Review or Petition for Specialized Review

(a) Application to government unit.--Application for a stay or *supersedeas* of an order or other determination of any government unit pending review in an appellate court on petition for review or petition for specialized review

⁶ The Commission’s regulations state that “petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.” 52 Pa. Code § 5.572(c).

shall ordinarily be made in the first instance to the government unit.

Pa.R.A.P., Rule 1781(a).

The Pennsylvania Rules of Appellate Procedure go on to state, in pertinent part, that an application for stay or supersedeas of a determination of a government unit may be made to the appellate court after application has been made to the government unit and denied, or application to the government unit for the relief sought is not practicable. Pa.R.A.P., Rule 1781(b).

In sum, the act of appealing the 2024 Hanley Order alone does not act as an automatic stay or a supersedeas of the 2024 Hanley Order. To stay the 2024 Hanley Order Complainants were first required to petition the Commission and then to petition the Commonwealth Court if their petition before the Commission was denied.

In conclusion, because Complainants did not petition the Commission for a stay or supersedeas of the 2024 Hanley Order, Respondent was permitted to commence smart meter installation activities following the entry of the 2024 Hanley Order. Further, as Complainants did not permit Respondent access to their meter for smart meter installation, Respondent was permitted pursuant to the Commission's regulations to initiate termination proceedings. Therefore, Complainants' argument that Respondent erred in attempting to shut off their service for their refusal of smart meter installation during the pendency of the Hanley Appeal must be rejected.

Conclusion

In conclusion, Complainants have not met their burden of proving that Respondent violated the Public Utility Code, or the Commission's regulations, or a

Commission order. As Complainants have not met their burden of proof in this proceeding, the Complaint will be dismissed in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.

2. As the party seeking affirmative relief from the Commission, Complainants bear the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. 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 Public Utility Code, the Commission's regulations, or order. 66 Pa.C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

5. Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975, 992 (Pa. 2022).

6. The Public Utility Regulatory Policies Act of 1978 and the Energy Policy Act of 2005 do not preempt the smart meter provisions of the Code or of Act 129. *Romeo v. Pa. Pub. Util. Comm'n*, 154 A.3d 422, 428 (Pa. Cmwlth. 2017).

7. The Fourth Amendment's protection against unlawful searches and seizures applies to “only governmental action.” *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

8. The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974).

9. 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. 52 Pa. Code § 56.81(3).

10. After the conclusion of the hearing, the commission shall make and file its findings and order with its opinion, if any. Its findings shall be in sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence. A copy of such order, certified under the seal of the commission, shall be served by registered or certified mail upon the party or parties against whom it runs, or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorney. Such order shall take effect and become operative as designated therein, and shall continue in force either for a period which may be designated therein, or until changed or revoked by the commission. The commission may grant and prescribe such additional time as, in its judgment, is

