

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory and Donna Kollmar	:	
	:	
v.	:	C-2019-3014650
	:	
West Penn Power Company	:	

**INITIAL DECISION  
ON REMAND**

Before  
Emily I. DeVoe  
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

Initial Filings by the Parties

On November 26, 2019, Gregory and Donna Kollmar (Complainants or the Kollmars) filed a Formal Complaint with the Pennsylvania Public Utility Commission

(Commission) against West Penn Power Company (WPP, Company, or Respondent)<sup>1</sup> regarding service at their residence at 1749 Freeport Road, Arnold, PA (service location). Complainants averred the Company has threatened to shut off their service and that “the smart meter is a direct energy weapon that can burn down our homes” and smart meters “can be used as a tracking device.” Complaint ¶ 5. They averred the smart meter constitutes unsafe conditions as prohibited by 66 Pa.C.S. § 1501. As relief, they requested they be permitted to “negotiate and file a new contract with [WPP] with other terms to accept smart meter if they pay [them] \$50,000 a week.” Complaint ¶ 5.

On December 16, 2019, Respondent filed an Answer and New Matter. Respondent admitted that it provides residential retail electric service to Complainants, but denied the smart meter poses a health or safety risk. Further, WPP averred it is legally required to install and retain the smart meter by the Public Utility Code, the Commission’s orders, and the Company’s Commission-approved Smart Meter Deployment Plan (SMP). *See* 66 Pa.C.S. § 2807(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Opinion and Order entered June 9, 2010).

In its New Matter, WPP averred smart meter installation is required by Act 129 of 2008 (Act 129) and WPP’s SMP and the Commission are unable to provide the requested relief sought by Complainant.

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<sup>1</sup> On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former West Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

The New Matter included a Notice to Plead, directing Complainants to file a response within twenty days of service.

On December 16, 2019, WPP filed a Preliminary Objection. WPP argued the Complaint was legally insufficient because Complainants sought relief the Commission was unable to provide as a matter of law.

The Preliminary Objection included a Notice to Plead, directing Complainants to file a response within ten days of service. Complainants did not file a response to either the New Matter or the Preliminary Objection.

On January 22, 2020, this matter was assigned to Deputy Chief Administrative Law Judge Mark Hoyer (DCALJ Hoyer).

On January 31, 2020, DCALJ Hoyer issued an Interim Order denying the Preliminary Objection.

On May 20, 2020, the Commission issued a Notice, reassigning this matter to me and scheduling a prehearing conference for July 31, 2020.

On May 21, 2020, I issued an Interim Order, scheduling the prehearing conference and detailing the Commission's procedural rules regarding service, representation, and discovery.

On July 30, 2020, Ms. Kollmar contacted my office requesting the prehearing conference be cancelled because she was sick.

On July 30, 2020, the prehearing conference was cancelled via a Cancellation Notice and Interim Order.

On July 30, 2020, I issued an Interim Order establishing a litigation schedule. I directed the Parties to exchange witness information by August 14, 2020; conclude discovery by October 9, 2020; and file dispositive motions and status reports by October 16, 2020.

On October 16, 2020, WPP filed its status report as directed by the July 30, 2020 Interim Order. WPP advised, *inter alia*, that Complainants failed to provide their witness information as directed.

Complainants did not file a status report.

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

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in *Povacz v. Pennsylvania Public Utility Commission*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I*), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129, codified at 66 Pa.C.S. § 2807(f). In the *Povacz I* consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded Commission Orders. *Povacz I* at 495. Specifically, the Commonwealth Court, in *Povacz I*, 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 the underlying cases failed to sustain their burden of proof; and (3) that the Commission's findings of fact were supported by substantial evidence. *Id.* at 490-91, 493-95. 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 487-88.

In light of the Commonwealth Court's decision in *Povacz I*, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to electric distribution companies' (EDCs) deployment of smart meter technology as being in violation of Section 1501 of the Code (*November 4, 2020, Stay Order*). The *November 4, 2020, Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. The *November 4, 2020, Stay Order* applied to and was docketed at the instant case.

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

Previously, the Commonwealth Court stayed the proceedings in several other unconsolidated appeals that raised the same, or similar, smart meter issues pending its disposition of *Povacz I*. Upon application by the Commission, the Commonwealth Court continued the stay of these appeals pending the Supreme Court's disposition of *Povacz II*.

On August 16, 2022, the Supreme Court issued an Opinion and Order, *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*). In its Opinion in *Povacz II*, the Supreme Court affirmed the Commission's determinations in all respects. The Supreme Court reversed the Commonwealth Court's

determination that Act 129 does not mandate smart meter installation and that Court's remand to the Commission for consideration as to whether the installation of a smart meter was unreasonable service under Section 1501 of the Code, 66 Pa.C.S. § 1501.

The Supreme Court did, however, affirm the Commonwealth Court's conclusion that the "[c]ustomers failed to meet their burden of proving, by a preponderance of the evidence, a conclusive causal connection between [radio frequency] emissions from smart meters and adverse human health effects." *Id.* at 1014. The Supreme Court concluded that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. *Id.* at 992. The Supreme Court found that Section 2807(f)(1) of the Public Utility Code, when read in conjunction with Section 2807(f)(2) of the Public Utility Code, provides instructions for furnishing smart meters to all customers. In short, the Supreme Court found that under Act 129, customers may choose what to do with smart meter technology but have no right to refuse smart meter installation. *Id.* at 997. Accordingly, the Supreme Court reversed the Commonwealth Court, and affirmed the Commission's interpretation in the underlying cases that Act 129 mandates universal smart meter installation. *Id.*

Given the Supreme Court's decision in *Povacz II*, the Commission lifted the stay implemented by the *November 4, 2020, Stay Order* on November 9, 2023. The Commission entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

#### Proceeding Post-*Povacz II* in the Instant Case

After the Commission lifted the Stay, I carefully reviewed the procedural history of this case. On November 28, 2023, I issued an Interim Order detailing the Supreme Court's holding in *Povacz II*, and explaining that, per the Supreme Court,

Complainants could not successfully present a *prima facie* case of an alleged violation of 66 Pa.C.S. § 1501, unless they present expert scientific and/or medical testimony. I wrote,

In this case, Complainants **must** present expert medical and/or scientific evidence to meet their burden of proof. If they are able to meet their burden of proof, they may be entitled to an accommodation to the extent allowed by Act 129 and the Company’s tariff. However, that accommodation may not rise to the level of an opt-out from smart meter installation. While the Commission is not able to allow Complaints to opt-out of smart meter installation, Complainants, if able to meet their burden of proof, may be entitled to an “accommodation.” While the Supreme Court did not expound upon what such an “accommodation” may be, the fact remains that such an “accommodation” exists as a matter of law.<sup>[2]</sup>

I ordered Complainants to provide their expert witness information to WPP and me by December 22, 2023. I explained that Complainants were required to provide the name, business address, summary of expected testimony, and *curriculum vitae* for each expert they intend to call to testify at a hearing, if one were to be held. I noted, **“Failure to provide this information by December 22, 2023, may result in dismissal of the Complaint.”**<sup>3</sup>

My November 28, 2023 Order also set a deadline of January 10, 2024, for dispositive motions, if any.

Complainants did not serve any expert witness information as directed.

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<sup>2</sup> Interim Order dated Nov. 28, 2023 at 7 (emphasis in original).

<sup>3</sup> *Id.* (emphasis in original).

On January 10, 2024, WPP filed a Motion for Summary Judgment. The Motion included a Notice to Plead, directing Complainants to file a response within twenty days of service.

Complainants did not file a response to the Motion by the deadline of February 9, 2024.

On February 13, 2024, I Issued an Interim Order closing the record.

On May 21, 2024, I issued an Initial Decision dismissing the Complaint due to Complainants' failure to identify an expert witness, finding that without doing so, Complainants would be unable to meet their burden of proof as a matter of law.

On June 8, 2024,<sup>4</sup> Complainants filed exceptions, arguing that that they were denied due process because they never had a hearing. Exc. at 1.

On November 18, 2024, Respondent filed Reply Exceptions.

On March 18, 2025, the Commission entered an Order and Opinion: (1) granting, in part, and denying, in part, the Complainants' Exceptions; (2) vacating the

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<sup>4</sup> By Secretarial Letter issued November 7, 2024 (*November 2024 Secretarial Letter*), the Commission's Secretary: (1) issued a notice to the Parties indicating that it appeared to the Commission that although the Complainants filed Exceptions and a Certificate of Service, the Complainants failed to actually send a copy of their Exceptions to West Penn Power Company (West Penn or Company or Respondent); and (2) enclosed the Exceptions, in order to constitute service under 52 Pa. Code §§ 1.54, 1.57, and 1.58. *November 2024 Secretarial Letter*. Therefore, pursuant to 52 Pa. Code § 5.535, the Respondent was given ten days, or until November 17, 2024, to file Replies to Exceptions. It is noted that November 17, 2024, was a Sunday. Therefore, Replies to Exceptions were due Monday, November 18, 2024.

Initial Decision; and (3) remanding this matter to the Office of Administrative Law Judge (OALJ) for further proceedings.

On March 24, 2025, the Commission issued a Telephonic Hearing Notice, scheduling an evidentiary hearing for April 30, 2025.

On March 25, 2025, I issued a Prehearing Order which provided detailed information regarding the hearing procedures, including how to request a continuance and how to submit proposed exhibits.

On April 30, 2025, the morning of the hearing, Ms. Kollmar called the Harrisburg office of the OALJ, requesting the hearing be cancelled. I directed my administrative staff to call her and direct her to call into the hearing as scheduled so she could make her request to continue on the record. My legal assistant subsequently confirmed she was able to contact Ms. Kollmar and relay my instructions.

I then emailed counsel for the Company and Ms. Kollmar reiterating my instructions to appear at the hearing at 10:00 a.m., and advising that the Kollmars would have an opportunity to make their motion on the record and the Company would have an opportunity to respond.

The evidentiary hearing convened as scheduled. The Complainants reported they were both ill and unable to participate in the hearing. Tr. 5. Further, they requested the hearing be scheduled for later in the day, rather than 10:00 a.m. The Company objected to the continuance, arguing this matter is several years old and the Company had invested time and resources to prepare for the hearing on April 30, 2025. Tr. 13-14. I granted the request to continue, but made clear that I would not be granting further continuances for Complainants absent good cause and documentation from a third party. I rescheduled the hearing on the record for May 12, 2025 at 1:00 p.m.

Complainants also expressed they were unaware of the procedures for requesting a continuance or how to submit proposed exhibits. I directed them to my Prehearing Order issued on March 25, 2025, which they admitted they had received, but not read. I stressed the importance of reading all correspondence issued by the Commission. I reminded them that any proposed exhibits must be received by me and counsel for the Company at least 5 days prior to the hearing.

Complainants further questioned whether Pennsylvania provides for an opt-out for customers with regard to smart meter installation. Tr. 7. I referred them to the Supreme Court's ruling in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (*Povacz II*), as well as my discussion of the same in my Initial Decision. Tr. 8-11.

Complainants further questioned why, if Pennsylvania did not provide an opt-out, we were going through the motions of an evidentiary hearing. Tr. 10. I explained that their filing of a Formal Complaint required the Commission to follow certain procedures to adjudicate their Complaint. Tr. 10-11. I advised the parties to confer either by telephone or by email to see if they could come to some sort of settlement prior to the hearing on May 12, 2025. Tr. 18-19.

Complainants indicated that their computer had been broken for some time and they were having difficulty accessing their email. Tr. 10. I informed Complainants that I would update the Commissions' records regarding service so they would receive service via eService and First-Class Mail. Tr. 16-17. I directed the Company to do likewise. Tr. 17.

On April 30, 2025, I issued an Interim Order memorializing the matters discussed at the proceeding on April 30, 2025. This Order directed the parties to, *inter alia*, appear for the hearing on May 12, 2025.

On April 30, 2025, the Commission issued a Further Telephonic Hearing Notice, scheduling an evidentiary hearing for May 12, 2025.

The hearing convened as scheduled on May 12, 2025. Complainants were present and represented themselves, and Mr. James Meehan, Esquire, appeared on behalf of the Company. At the beginning of the hearing on May 12, 2025, the parties engaged in settlement discussions. Tr. 38. While the parties were unable to come to an agreement, they expressed an interest in keeping the record open after the hearing to explore settlement options. Tr. 38-39. The parties then presented evidence. Mr. Kollmar testified, and Complainants offered no exhibits. The Company presented the testimony of Mr. James Ahr, formerly employed by the Company as Advisor for Regulatory Compliance for Smart Meters. Tr. 55. Respondent offered PD-1 through PD-4, FE PA-1, and FE PA-2, which were all admitted into the record.

At the conclusion of the hearing, the record was held open for 45 days, until June 27, 2025. I directed the Company to file a status report or, if the matter settled, a certificate of satisfaction by June 27, 2025. Tr. 76-77.

The Hearing Transcript was filed on May 30, 2025.

On June 27, 2025, the Company filed a status report indicating the parties had been unable to settle this matter.

Therefore, on July 2, 2025, I issued an Interim Order closing the record.

This matter is now ripe for adjudication.

## FINDINGS OF FACT

1. Complainants are Gregory and Donna Kollmar.
2. Respondent is West Penn Power Company, an electrical distribution company (EDC) that provides residential electrical service to Complainants at the service address.
3. Act 129 of 2008 required EDCs with at least 100,000 customers to adopt smart meter technology procurement and installation plans (SMTPIPs) to the Commission. Tr. 58; FE PA Ex. PD-1.
4. Act 129 also defined some of the specific characteristics the meters need to have, including bi-directional communication with the utility and the ability to report consumption data in at least hourly intervals. Tr. 65; FE PA Ex. PD-1.
5. WPP is an EDC with at least 100,000 customers. Tr. 59.
6. On June 24, 2009, the Commission issued an Implementation Order, providing general direction to EDCs regarding their adoption of smart meter programs and requiring EDCs to submit SMTPIPs to the Commission. Tr. 60; FE PA Ex. PD-2.
7. On August 14, 2009, WPP's SMTPIP was submitted to the Commission. Tr. 61.
8. On June 30, 2011, the Commission entered an Order approving Respondent's SMTPIP. Tr. 61-60; FE PA Ex. PD-3.

9. On December 31, 2012, Respondent filed its initial smart meter deployment plan (SMDP) with the Commission. Tr. 62-63.

10. By Order entered June 5, 2014, the Commission approved Respondent's final SMDP. Tr. 64; FE PA Ex. PD-4.

11. The SMDP does not provide an opt-out for customers. Tr. 66; FE PA Ex 1.

12. Respondent is installing Itron OpenWay CENTRON smart meters. Tr. 65.

13. WPP's SMDP requires Met-Ed to deploy 98.5% of smart meters to its customer service locations by mid-2019, and the remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, by 2022. Tr. 66-67; FE PA Ex. 1.

14. Respondent's smart meters are compliant with standards set by the Federal Communications Commission (FCC) and the American National Standards Institute (ANSI) and are Underwriters Laboratory (UL) certified. Tr. 68.

15. As of the date of the hearing, WPP had not installed a smart meter at the service location. Tr. 70.

16. Mr. Kollmar offered his own lay witness testimony at the hearing and did not testify as an expert. Tr. 40-45.

17. Respondent offered testimony of former Company employee, John Ahr. Tr. 54-71.

## DISCUSSION

### General Burden of Proof for Consumer Complaints

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa.C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consol. Edison Co. of New York v. Nat’l Labor Rel. Bd.*, 305 U.S. 197, 229 (1938). 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. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

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. *Patterson v. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). That is, the complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

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. *See, Id.* It 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. 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; see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

#### Burden of Proof Applied to Section 1501 Complaint Challenging Smart Meter Installation

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. Section 1501 of the Code, provides, in pertinent part, 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, 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 discussed above, the Supreme Court held that while Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates Section 1501 of the Code, 66 Pa.C.S. § 1501. The Supreme Court reiterated that complainants seeking relief from the Commission must satisfy their burden of proof by a preponderance of the evidence. The Supreme Court explained that inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Id.* at 1005. The Supreme Court opined that while a customer’s evidence does not need to prove their assertion beyond any doubt, evidence of a mere possibility that harm could result is insufficient to satisfy the preponderance of the evidence standard. *Id.* at 1008.

The Supreme Court noted 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. *Id.*

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.

The Supreme Court concluded that neither fear nor inconclusive scientific research was sufficient to prove that smart meter technology constitutes unsafe service under Section 1501. *Id.* at 1005 (emphasis added).

The Supreme Court held that if a customer establishes by a preponderance of the evidence, based on the totality of the circumstances, that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff. However, given that Act 129 mandates smart meter deployment, the Supreme Court clarified that such accommodation may not rise to the level of an opt-out from smart meter installation. *Id.* at 1015.

### Complainants' Case-in-Chief

At the hearing, Mr. Kolmar testified he resides at the service location with his wife and dog. Tr. 41. The service location is a relatively small single-family home with a detached garage. Tr. 42. He testified the electric meter is located on the front corner of the house. Tr. 43.

Mr. Kollmar testified as to why Complainants do not want a smart meter installed:

[W]e've read and heard and talked to people who have much more insight into this and, you know, studied it much more in detail than we have. I mean, I'm 75. I'm not sitting around reading analyst information about these smart meters. All I can say is that from the information we've more or less gleaned the fact that there's some real questions about the, I guess the frequencies that are being given off, the - the communication

frequencies between the meter and whatever, I guess, satellite that it's sending the information up to.

So, I mean, you know, when you have doubts about the - the health risks involved with a lot of this new technology, you know, you feel that you want to stay on the safe side and try not to expose yourself to these things. I can't prove it one way or the other. All I know is people that know a lot more about it than I do say there's some real - some real potential problems with the - the energy or the frequencies that are given off by the meter.

You know, like I said, though, if there's no - if there's no opting out of this thing, all the proof in the world wouldn't really change anything. We still would have to either find some way to relocate the meter or have the meter put on, if those are the only two options. So I don't - I can't really - I didn't - I didn't plan on presenting a case and trying to, you know, win a case, because really, it's strictly a situation where, you know, from what we've heard and been told, we believe that there is potential problems with these meters. That's really all I can say.

Tr. 43-44.

Complainants offered no exhibits at the hearing.

#### Whether Complainants Met Their Burden of Proof

As discussed above, there is no opt-out of smart meter installation, but if a customer is able to make a *prima facie* case, the customer may be entitled to an accommodation. To make a *prima facie* case under 1501, a complainant must satisfy his burden of proof by a preponderance of the evidence. The burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a complainant must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, the complainant must be required to 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.

Although Mr. Kollmar raised concerns about health and safety, these claims consisted solely of Mr. Kollmar's lay opinions and beliefs. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Further, the Supreme Court held that a complainant could not make a *prima facie* case in smart meter cases with only such evidence. *Povacz II* at 1005. As such, there is no record evidence to support the conclusion that Respondent's installation of the smart meter at the service location constitutes a violation of Section 1501 of the Code. Accordingly, Complainants' claims must be dismissed. In view of Complainants' failure to meet their burden of proof, the Complaint must be denied and dismissed with prejudice.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. Act 129 mandates the systemwide installation of smart meters. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).
4. While Act 129 does not provide customers with the right to opt-out of smart meter installation at their residence, they may file a complaint with the Commission raising a claim that installation of a smart meter violates 66 Pa.C.S. § 1501. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

5. The burden of proof is two-fold for Section 1501 claims involving the safety of smart meters and RF emissions. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that radio frequency emissions from smart meters cause adverse health effects. Next, a customer must present expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused them harm. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

6. Complainants seeking relief from the Commission in smart meter cases must satisfy their burden of proof by a preponderance of the evidence. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

7. Inconclusive evidence – evidence that does not lead to a conclusion of a definite result one way or the other – does not meet even the minimal requirements of the preponderance of the evidence standard. *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

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

9. Complainants failed to meet their burden of proof. 66 Pa.C.S. § 332(a); *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022).

ORDER

THEREFORE,

IT IS ORDERED;

1. That the Formal Complaint of Gregory and Donna Kollmar filed against West Penn Power Company at Docket No. C-2019-3014650, is dismissed with prejudice.

2. That Docket No. C-2019-3014650 be marked as closed.

Date: August 20, 2025

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/s/  
Emily I. DeVoe  
Administrative Law Judge