**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held December 22, 2016 | |
| Commissioners Present:  Gladys M. Brown, Chairman, Joint Statement  Andrew G. Place, Vice Chairman, Joint Statement  John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet | |  |
| Petition of Duquesne Light Company For Waiver and Suspension of Meter Testing Requirements Under 52 Pa. Code §§ 57.20(e) and 57.21(f) For Deployed  Legacy Meters | | P-2016-2525790 |
| 2012 Duquesne Light Company Smart Meter Procurement and Installation Plan (2012 SMP) | | M-2009-2123948 |
| 2015 Duquesne Light Company Smart Meter Procurement and Installation Plan (2015 SMP) | | P-2015-2497267 |

**RECONSIDERATION ORDER**

**BY THE COMMISSION:**

On January 25, 2016, Duquesne Light Company (Duquesne or Duquesne Light) filed a petition at Docket No. P-2016-2525790 seeking a waiver of certain meter testing obligations (Waiver Petition). By order entered on June 23, 2016, we did not approve the waiver of meter testing obligations that Duquesne Light had requested and denied the Waiver Petition. (Waiver Order) The Waiver Order held, *inter alia*, that Duquesne Light had misinterpreted a provision of our June 24, 2009 order (*Smart Meter Implementation Order*) in *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655. On July 8, 2016, Duquesne Light filed a petition for reconsideration of the Waiver Order, seeking reconsideration of our holding regarding the *Smart Meter Implementation Order* and proposing an alternate testing plan to the one denied in the Waiver Order. Duquesne Light did not request reconsideration of the denial of the requested waiver. The Reconsideration Petition was served on the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Commission’s Bureau of Investigation and Enforcement (I&E), and Citizen Power Inc.[[1]](#footnote-1) No one filed an answer to the Reconsideration Petition.

On July 21, 2016, we granted reconsideration pending a review on the merits to retain jurisdiction pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, PA. R.A.P. Rule 1701. We shall now address the Reconsideration Petition on its merits. If stakeholders wish to pursue further interpretation, clarification, or reconsideration of the *Smart Meter Implementation Order*, they are directed to do so at that docket. If Duquesne Light wishes to pursue further meter testing options relative to legacy meters being replaced by AMI or smart meters, it is directed to do so in its smart meter plan.

1. **Background**

Duquesne Light is a jurisdictional electric distribution company (EDC) and default service provider (DSP) certificated to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania. As of November 30, 2015, Duquesne Light provided electric distribution service to approximately 590,000 customers and was the DSP for approximately 390,000 of those customers. Waiver Petition at 1.

Act 129 of 2008, P.L. 1592, (Act 129), effective November 14, 2008, required EDCs such as Duquesne Light, *inter alia*, to file smart meter plans (SMPs) by August 14, 2009. By our June 24, 2009 *Smart Meter Implementation Order*, we established standards for providing smart meter technology to customers and provided guidance for meeting those standards.

**II. History of Duquesne Light’s SMP Proceedings[[2]](#footnote-2)**

**A. Initial SMP**

Duquesne Light implemented its Initial SMP consistent with *Petition of Duquesne Light for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M‑2009-2123948 (May 11, 2010). Smart meter costs are recovered through a reconcilable cost recovery mechanism. Waiver Petition at 5.

**B. 2012 SMP**

On June 29, 2012, at Docket No. M-2009-2123948, Duquesne Light proposed to replace its Advanced Meter Reading (AMR) system with an Advance Metering Infrastructure (AMI) and to deploy smart meters over a seven year period from 2014-2020. Waiver Petition at 6. Following inquiry by stakeholders, Duquesne Light and OCA filed an uncontested Joint Petition for Approval of Full Settlement (2012 Joint Petition). On January 24, 2013, ALJ Dunderdale issued an Initial Decision approving the 2012 Joint Petition. Waiver Petition at 7.

On May 6, 2013, the Commission approved, in part, the Joint Petition and directed modification of the proposed 2012 SMP. By one of two orders entered on January 9, 2014, at Docket No. M‑2009-2123948, the Commission approved the uncontested compliance filing. *See* January 9, 2014 Final Order, Docket No. M‑2009‑2123948.

Also, on August 2, 2013, Duquesne Light requested amendment of its 2012 SMP. Duquesne requested recovery of the costs associated with its FOCUS project encompassing upgrades to its information technology system to provide the back-office foundation for smart meters. By the second order entered on January 9, 2014, the Commission granted amendment to permit Duquesne Light to request recovery of its FOCUS costs in base rates, exclusive of costs that are recovered through its smart meter charge. *See* January 4, 2014 Order, Docket No. M‑2009‑2123948.

**C. Proposed 2015 SMP**

On August 4, 2015, at Docket Nos. P-2015-2497267 and M-2009-2123948, Duquesne Light proposed its 2015 SMP, seeking, *inter alia*, to accelerate smart meter deployment by one year. Other matters are being litigated, but no party[[3]](#footnote-3) has challenged the accelerated deployment schedule. Waiver Petition at 9‑10. The transcript of the initial hearing was submitted to the ALJ in February 2016. Briefs were filed in March 2016. Reply briefs were filed in April 2016. That record was reopened for further hearing. Additional briefs were filed on July 20, 2016, by Duquesne Light, OCA, and Citizen Power. The Initial Decision in that proceeding was issued on November 8, 2016. The Initial Decision did not address waivers of meter testing.

**III. History of This Proceeding**

1. **Waiver Petition And Waiver Order Regarding Section 57.20(e) Watthour Meter Testing And Section 57.21(f) Demand Meter Testing**

Duquesne Light filed its Waiver Petition on January 25, 2016, and served OCA, OSBA, and I&E.[[4]](#footnote-4) No answers were filed. Duquesne Light sought to suspend meter testing for watthour meters and demand meters that were going to eventually be replaced with smart meters. Waiver Petition at 18-19.

In support of its Waiver Petition, Duquesne Light cited our 2009 *Smart Meter Implementation Order*, claiming that it provided a blanket waiver from Section 57.20(h) meter testing for all meters to be replaced by smart meters. Waiver Petition at 19. Our Waiver Order rejected that interpretation. We concluded that the waiver of Section 57.20(h) meter testing granted in the *Smart Meter Implementation Order* applied only to legacy meters being replaced *early* *and* *upon customer request*. Both criteria had to be present for the waiver granted in the Smart Meter Implementation Order to apply. It did not apply to meters being replaced on schedule as part of an approved AMI program in a SMP. Waiver Order at 5‑8. We denied the waiver.

1. **Duquesne Light’s Petition For Reconsideration**

On July 8, 2016, Duquesne Light petitioned for reconsideration of the Waiver Order. The Reconsideration Petition (1) challenges the Commission’s interpretation of the *Smart Meter Implementation Order* and (2) proposes a new “as found” meter testing program. Duquesne Light is not contesting the denial of waiver relative to Section 57.20(e) testing of legacy watthour meters or Section 57.21(f) testing of legacy demand meters.

On July 21, 2016, we granted reconsideration pending our review on the merits in order to retain jurisdiction pursuant to PA. R.A.P. Rule 1701. This order shall address the Reconsideration Petition on its merits.

**IV. Standard For Reconsideration**

Before addressing the substantive issues raised by Duquesne Light in its request for reconsideration, we shall address the procedural aspects of petitions for reconsideration. Petitions for reconsideration are reviewed pursuant to 66 Pa. C.S. § 703(g), 52 Pa. Code § 5.572, and *Duick v. PGW*, 56 Pa. P.U.C. 553 (1982). “A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part.” A party may not raise the same questions in a petition for reconsideration that were raised in a prior pleading. Such questions raised ought to be those that “appear to have been overlooked or not addressed by the Commission.” If “new and novel” questions are not raised, a party will not succeed in persuading the Commission that the “initial decision on a matter or issue was either unwise or in error.” *Duick* at 558.

**V. Prerequisites For And Limitations On Waivers**

**A. Waivers In General**

There are prerequisites for and limitations on waivers. Section 5.43(a) of our regulations permits a utility to petition for waiver of any Commission regulation. Section 5.43(b) requires that such petitions be served on “all persons directly affected and on other parties who petitioner believes will be affected by the petition.” 52 Pa. Code § 5.43, relating to petitions for issuance, amendment, repeal, or waiver of Commission regulations. Without a doubt, all customers of an EDC, whether residential or commercial/industrial, are affected by the accuracy of its meters.

Chapter 57 of the Pennsylvania Code lacks express provisions for waiver of its specific requirements. Because granting Duquesne Light’s request for waiver would disproportionately affect meters that measure residential service, for the purposes of responding to the original Waiver Petition, we looked to the requirements for waiver found in Chapter 56 as it relates to standards and billing practices for residential utility service. More particularly, Section 56.452(b) requires a utility to provide notice to persons who may be affected by the modification or temporary waiver. Such notice may be by bill insert or other reasonable manner. 52 Pa. Code § 56.452(b), relating to standards and billing practices for residential utility service, applications for modification or exception.

In limited circumstances in the past, we have occasionally considered notice to OCA, OSBA, and I&E as proxy for notice to customers who would be affected by a waiver of Commission regulations. In this case, however, we concluded that either the affected customers should have been notified directly of Duquesne Light’s request for waiver of legacy meter testing and suspension of Commission regulations or Duquesne Light should have explained why it felt such notice was not required.

Waivers of Commission regulations are not liberally construed or lightly granted. Waivers are not granted implicitly or of unlimited duration. In reality, waivers are narrowly crafted and generally temporary in nature. *See* 52 Pa. Code § 5.43; *PGW 2014‑2016 USECP*, Docket No. M-2013-2366301 (August 22, 2014) at 48, citing *Petition of Met-Ed for Waiver of 52 Pa. Code § 56.*97, Docket No. P-2013-2384967 (November 14, 2013) at 3.

1. **Waivers Relative To This Proceeding**

As demonstrated by the questions and data requests that we set out in the Waiver Order, Duquesne Light did not provide the requisite information on the record for an evaluation of its original request regardless of its reliance on the *Smart Meter Implementation Order* or the PPL[[5]](#footnote-5) matter. *See* Waiver Order at 10-14 and Appendix B. Duquesne Light’s reliance on PPL’s waiver in its SMP is misplaced. The significant distinction in that case is that PPL’s SMP, including the determinations made regarding meter testing, was vetted through PPL’s SMP proceeding. Thus, there is a clear distinction between the PPL situation and what Duquesne Light has requested.

To the best of our knowledge, no other EDC has asked for (or received) a complete waiver of statistical sample or periodic testing of legacy meters slated for AMI deployment replacement.[[6]](#footnote-6) Further, Subchapter O, relating to advanced meter deployment, does not address waiver of testing of legacy meters being replaced by smart meters. 52 Pa. Code §§ 57.251 – 57.259. Duquesne Light, however, is asking us to find that we granted a blanket waiver of Section 57.20(h) applicable to *all* EDCs relative to *all* legacy meters replaced by smart meters absent any evidence specific to a given EDC’s SMP. Any waiver request must be considered within the context of an approved SMP. As discussed in greater detail elsewhere in this order, Duquesne Light’s interpretation of our *Smart Meter Implementation Order* does not comport with a plain reading of that order in its entirety.

**VI. Issues Raised In Duquesne Light’s Reconsideration Petition**

Duquesne Light’s Reconsideration Petition is three-pronged. It asserts (A) that it is not seeking reconsideration of the specific waivers that were denied; (B) that the Waiver Order misconstrued the *Smart Meter Implementation Order*; and (C) that an alternate waiver should be granted. We shall address each prong in turn.

1. **Reconsideration Relative To The Original Request For Waivers**

Duquesne Light has not requested reconsideration of any matter substantively related to its original request for waivers. Specifically, Duquesne Light is no longer requesting waiver of Section 57.20(e) and Section 57.21(f) meter testing. Accordingly, there is nothing to reconsider relative to this aspect of the original order.

**Resolution:** Having granted reconsideration pending a review on the merits in this matter, we note in particular that our determination to deny Duquesne Light’s original Waiver Petition stands regardless of our interpretation of the *Smart Meter Implementation Order* articulated in the Waiver Order for a number of reasons.[[7]](#footnote-7) For example, Duquesne Light’s Waiver Request did not indicate why it did not attempt broad public notice to its customer base that would be affected if waivers as were originally requested were to be granted. *See* Waiver Order at 8-9. As indicated by the questions and data requests set out in the Waiver Order, Duquesne Light had failed to establish a factual record upon which the merits of its waiver requests could be evaluated. *See* Waiver Order at 10-14 and Appendix B. Further, Duquesne Light should have raised its initial waiver requests in its SMP proceeding. The SMP proceeding would have provided a forum for stakeholder examination of the record, merits, benefits, and costs of such waivers in the larger context of its program of smart meter deployment. PPL took this approach and had its waiver vetted in its SMP proceeding. (We also note that Duquesne Light has not cured any of these defects relative to its new proposal articulated in the Reconsideration Petition.)

**B. Reconsideration Relative To Duquesne Light’s Assertion That The Commission Has Misconstrued The Limits On The Waiver Granted By The Commission In Its *Smart Meter Implementation Order***[[8]](#footnote-8)

This is the only aspect of the Waiver Order for which Duquesne Light is seeking reconsideration. Duquesne Light asserts that the Waiver Order has “revised the [EDCs’] long-standing interpretation of the blanket waiver” granted by the Commission in the Smart Meter Implementation Order for “as found” meter testing under Section 57.20(h). Reconsideration Petition at 1-2, 7. Duquesne Light argues that the waiver granted by the *Smart Meter Implementation Order* of Section 57.20(h) is not restricted to those meters being replaced by smart meters ahead of an AMI deployment schedule at customer request. Reconsideration Petition at 2-3, 7‑9. In fact, Duquesne Light asserts that in the *Smart Meter Implementation* proceeding, the FirstEnergy EDCs requested a blanket waiver applicable to “all” “as found” meters being replaced by smart meters and that the waiver we granted therein was actually a blanket waiver applying to all “as found” meters being replaced by smart meters. Reconsideration Petition at 8. Duquesne Light further asserts that our interpretation articulated in the Waiver Order will result in “unnecessary and unreasonable costs” and that there is no explicit or implicit basis for the interpretation. Waiver Petition at 8-9.

**Resolution:** We address Duquesne Light’s contention by noting that our *Smart Meter Implementation Order* did not waive meter testing for all legacy meters replaced by smart meters and that we would have reached the same conclusion to deny the waivers of Section 57.20(e) watthour meter testing and Section 57.21(f) demand meter testing regardless of whether Duquesne had cited the Section 57.20(h) discussion in our *Smart Meter Implementation Order*. Further, Duquesne Light has not requested reconsideration of the original denial and has not advanced any new or novel matters to prompt a reversal of that denial. Conversely, a reversal or modification of that denial would not change our interpretation of our Section 57.20(h) waiver from the *Smart Meter Implementation Order*. The waiver granted in the *Smart Meter Implementation Order* was clearly limited to situations involving early replacement of legacy meters at customer request and does not apply in the situations posed by Duquesne Light relative to Sections 57.20(e) or 57.21(f) or 57.20(h).

Based on our review of the *Smart Meter Implementation* filings and the *Smart Meter Implementation Order*, we concluded and continue to conclude that Duquesne Light failed to establish that FirstEnergy requested a blanket waiver of Section 57.20(h) for all purposes. On March 30, 2009, by Secretarial Letter,[[9]](#footnote-9) we invited comments regarding our proposal to establish minimum smart meter capability as well as guidance on expectations for smart meter deployment. In addition to several passing references to “customer requests” for smart meters, the Secretarial Letter had specific provisions set out as proposed language relative to waivers for testing legacy meters replaced at customer request ahead of an AMI schedule. *See* Appendix to this order for relevant text of Secretarial Letter. The Secretarial Letter contained no proposed general or specific provisions or ordering paragraphs regarding Section 57.20(h), meter testing or waiver.

In its April 20, 2009 comments in the *Smart Meter Implementation* proceeding in response to the Secretarial Letter, FirstEnergy said:

[The proposed] guidelines contemplate the EDCs providing customers with smart meters **upon request**. Section . . . 57.20(h) provides that “[a] service watthour meter which is removed from service shall be tested for ‘as found’ registration accuracy.” Inasmuch as meters being replaced with smart meters will, in essence, be obsolete, the FE Companies respectfully ask the Commission to provide EDCs with a blanket waiver of this requirement. Without this waiver, the EDCs will be required to test meters that (i) were not replaced due to any perceived error or malfunction; and (ii) will not be put back into service, thus incurring unnecessary costs that will ultimately be paid by customers.

FirstEnergy Comments at 16, Docket No. M-2009-2092655, April 9, 2009. (emphasis added.)

FirstEnergy clearly articulated its request for a meter testing waiver in the context of its comments discussing smart meters provided **upon customer request**. FirstEnergy’s request for waiver of Section 57.20(h) meter testing was constrained to legacy watthour meters being replaced by smart meters *at customer request* *ahead of an EDC’s AMI deployment schedule*. Indeed, the entire discussion of waiver in the Smart Meter Implementation proceeding was in the context of customer requests for early deployment of smart meters. “Blanket” as used in this context was meant to save EDCs asked to replace legacy meters ahead of schedule from having to repeatedly request the same limited waiver from the Commission. It does not refer to all meter testing

Our ensuing discussion of a Section 57.20(h) waiver in the *Smart Meter Implementation Order* was also limited to those instances involving a **customer request**. It did not apply to a “systemic system-wide deployment of smart meters.” The context is clearly limited to “piecemeal or individual deployment” of smart meters at customer request. This limitation is obvious and explicit in the *Smart Meter Implementation Order*. The entirety of our discussion in the *Smart Meter Implementation Order* on this limited temporary waiver available to any EDC is set forth in the Appendix to this Order for ease of reference.

We are not persuaded that the limited and temporary waiver granted in the *Smart Meter Implementation Order* constitutes a blanket waiver. All discussion of meter testing waivers in the *Smart Meter Implementation Order* was in the context of meters replaced at customer request ahead of a deployment schedule. Customers that request accelerated deployment of smart meters incur costs for the installation of their smart meters. The *Smart Meter Implementation Order* recognized that waiving legacy meter testing when the *customer requests* accelerated smart meter deployment would provide an *offset to the customer cost* against the cost of the requested accelerated deployment. It is such a limited and temporary waiver that was granted on a blanket basis. Duquesne Light has provided no facts or law to persuade us to expand that decision or our interpretation of that decision in this proceeding.

Duquesne Light has alleged in its Reconsideration Petition that, by misinterpreting our *Smart Meter Implementation Order*, we have begun to impose requirements on the EDCs that are inconsistent with the way the EDCs have been interpreting that order. Reconsideration Petition at 1-3. We disagree. Duquesne Light has not noted any EDC relying on the interpretation that Duquesne Light is espousing. While Duquesne Light points to PPL as an example, it is clear that PPL has not relied on Duquesne Light’s interpretation.

Where there is an inconsistency between an EDC’s interpretation of a Commission order and the Commission’s own interpretation of that order, it does not necessarily follow that the Commission has misinterpreted its own order. In fact, Pennsylvania courts have held that an “administrative agency is peculiarly fitted to interpret its own orders.” *W. J. Dillner Transfer Co. v. Pa. PUC*, 107 A.2d 159, 162 (Pa. Super. Ct., 1954). Consequently, a court will not set aside an agency’s construction of its own order “unless the result is clearly erroneous, arbitrary, and unsupported by evidence.” *Dillner* at 162. We are not persuaded that the limited and temporary waiver granted in the *Smart Meter Implementation Order* applies to the waivers requested by Duquesne Light in its original Waiver Petition (or in the Reconsideration Petition) at this docket.

“Blanket” as applied to the waiver in the *Smart Meter Implementation Order* means that every EDC need not make a specific request regarding legacy meters replaced at customer request ahead of schedule. “Blanket” in this context, therefore, is a reference to the option available to any EDC responding to a customer requesting early replacement of a legacy meter, not a reference to all meter testing of legacy meters. It was not intended to, and does not, waive the requirements of Sections 57.20(e) or 57.21(f) or the requirements of Section 57.20(h) for every legacy watthour meter to be replaced under a Smart Meter Procurement and Installation Plan. Instead, the waiver granted was limited to those replacements requested by a utility customer, consistent with the context in which we addressed FirstEnergy’s comments in raising the issue. Also, any such blanket waiver actually granted would clearly be temporary as eventually there would be no more meters being replaced at customer request ahead of schedule because eventually all meters would have been replaced pursuant to approved AMI deployment schedules. There would be no more legacy meters left for which customers could request early replacement.

At first glance, the language of Ordering Paragraph No. 5 of the *Smart Meter Implementation Order,* relied upon by Duquesne Light, might appear to cast a broad waiver over all electric distribution companies required to install smart meters; however, this is not the case. The inartistic use of more or less technical terms in a legal document should not be given enough weight as to overcome the party’s (or the tribunal’s) overall intent as evidenced by the writing as a whole. *Lancaster Malleable Castings Co. v. Dunie*, 73 A.2d 417, 418 (Pa. 1950). Here, the intent to limit application of the waiver to customer requested meter replacements is made clear by reading the relevant portions of the *Smart Meter Implementation Order* in its entirety. It is clear that within the original *Smart Meter Implementation Order*, both FirstEnergy’s request for waiver and the Commission’s grant of waiver were fully contained in and constrained by the context of “customer request” and early replacement. *Smart Meter Implementation Order* at 9. Additionally, in the text leading up to the discussion of FirstEnergy’s waiver request, we acknowledged and recognized the problem of greater costs associated with a piecemeal or individual smart meter deployment plan as opposed to a scheduled systematic deployment.

When looking at the fragments of text quoted by Duquesne Light from the *Smart Meter Implementation Order*, it appears that Duquesne Light has misread the scope of the partial temporary waiver granted in that order. What Duquesne Light fails to recognize is the context within which the discussion of the original partial temporary waiver was undertaken, *i.e.*, within the larger discussion of “Customer Request” issues. It was surrounded by a discussion of the challenges a piecemeal deployment of smart meters would impose. We are not persuaded by Duquesne Light’s assertion that the Commission’s interpretation of its *Smart Meter Implementation Order* was “clearly erroneous, arbitrary, and unsupported by evidence.” Agency orders should not be so narrowly construed as to defeat the clear intent of the administrative officer or agency. *See United States v. Grunenwald*, 66 F. Supp. 223, 226 (W.D. Pa. 1946).

**C. Request For Consideration Of New “As Found” Meter Testing Proposal**

As part of its Reconsideration Petition, Duquesne Light has proposed a new testing plan relative to legacy meters and has requested a waiver of Section 57.20(h) in order to implement this new program. In support thereof, Duquesne Light cites our approval of a “similar proposal” for PPL Electric Utilities in *PPL SMP Installation Plan*, Docket No. M‑2014‑2430781 (September 3, 2015). Reconsideration Petition at 11.

**Resolution:** The new “as found” meter testing program was not under consideration in the original determination of this matter. Rather, this new proposal calls for a waiver of a completely different regulation than was requested in the original petition. We conclude that this is not a “new or novel question” relative to the matter under consideration in the original order. Instead, this is simply new matter. Consequently, this proposal cannot serve as a sufficient basis for reconsideration of our Waiver Order.

Assuming *arguendo*, that we could or should consider the new waiver proposal as grounds for reconsideration, we would also reject the new request on its merits. In alleging that its new proposal is similar to meter testing waiver provisions previously approved for PPL, Duquesne Light acknowledges that PPL’s program was developed in the context of PPL’s SMP proceeding. Reconsideration Petition at 11. This highlights the proper context in which to consider an alternative to “as found” meter testing or a waiver of legacy meter testing for those meters to be replaced as part of a smart meter plan. Such alternatives and any corresponding waivers must be considered in the context of, and by the parties to, an EDC’s smart meter plan proceeding. A new proposal in and of itself is not a matter that was previously overlooked by the Commission.

In its Reconsideration Petition, Duquesne Light cites our approval of a “similar proposal” for PPL. Reconsideration Petition at 11. Should Duquesne Light wish to petition for waiver of Section 57.20(h), we remind it that “a prior grant of a waiver does not automatically require future grants of similar waivers.” *In re J.W. McGrath* , 9 Pa. D. & C.5th 403, 415 (Ct. Com. Pl. 2009). If Duquesne Light wishes to pursue a new smart meter testing waiver proposal, it should do so in the context of its SMP while staying mindful of the deficiencies we have articulated relative to the original waiver request. *See* Waiver Order at 8-14 and Appendix B.

Duquesne Light’s justification for the new proposal in its Reconsideration Petition is strikingly similar to its prior Waiver Petition, *albeit* the section under consideration now is different and meter counts are changed. Questions raised for reconsideration ought to be those that “appear to have been overlooked or not addressed by the Commission.” *Duick at* 559. The new proposal does not convince us that our initial decision was either unwise or in error. The new proposal is not a matter that was originally overlooked. Nor has Duquesne Light convinced us that it would be appropriate to contemplate new matter relative to a smart meter plan in this proceeding, outside the context of its smart meter plan. We are, therefore, not persuaded that we should exercise our discretion to rescind or amend the prior Waiver Order in whole or in part. There is no reason to address “as found” testing for legacy meters outside a SMP proceeding, and we decline to treat the components of smart meter deployment on a piecemeal basis. PPL, which Duquesne Light seeks to rely upon, addressed its meter testing concerns in its own SMP. In order to consider Duquesne Light’s new waiver proposal, there is no need for rescission, amendment, or reconsideration of the Waiver Order, and it would be inappropriate for us to do so.

Accordingly, we will not address the merits of the new proposal at this time outside Duquesne Light’s SMP. Duquesne Light does not need an individual waiver to avoid having to test legacy meters replaced early at customer request. Waivers of any other legacy meter testing must be considered in the context of a smart meter plan which will allow a full consideration of the record, merits, benefits, and costs concerning any such alternatives.

**VII. Conclusion**

We conclude that Duquesne Light has not established any legal, justifiable, or reasonable basis for reconsideration or revision of our Waiver Order, and we shall therefore deny the Reconsideration Petition on its merits.

We stand by our original interpretation in the Waiver Order that the *Smart Meter Implementation Order* did not waive all Section 57.20(h) meter testing for all legacy meters being replaced by smart meters. If stakeholders wish to pursue further interpretation, clarification, or reconsideration of the question regarding whether the *Smart Meter Implementation Order* waived all Section 57.20(h) meter testing for all legacy meters being replaced by smart meters, they are directed to do so at that docket.

If Duquesne Light Company wishes to pursue an alternative to compliance with Section 57.20(h) in terms of the new proposal set out in its Reconsideration Petition or in terms of another alternative, it should do so in the context of it Smart Meter Plan proceeding; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company for Reconsideration of the June 23, 2016 Order (Waiver Order) in this proceeding is denied, consistent with this Order.

2. That a copy of this Order be served on Duquesne Light Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission’s Bureau of Investigation and Enforcement, and the Energy Association of Pennsylvania.

3. That a copy of this Order be served on the parties to Duquesne Light Company’s *Petition to Modify Its [2012] Smart Meter Plan and [Implement Its 2015 Smart Meter Plan]* at Docket Nos. M-2009-2123948 and P-2015-2497267.

4. That this matter be correlated with *Duquesne Light Company’s Smart Meter Plan* at Docket No. M-2009-2123948.

5. That a copy of this order be served on parties in *Smart Meter Procurement and Installation* at Docket No. M-2009-2092655. If stakeholders wish to pursue further interpretation, clarification, or reconsideration of the question regarding whether the *Smart Meter Implementation Order* waived all meter testing pursuant to 52 Pa. Code § 57.20(h) for all legacy meters being replaced by smart meters, they are directed to do so at that docket.

6. That if Duquesne Light Company wishes to pursue an alternative to compliance with 52 Pa. Code § 57.20(h), or to pursue further meter testing options relative to legacy meters being replaced by AMI or smart meters, it is directed to do so in the context of its Smart Meter Plan proceeding at Docket No. P-2015-2497267.

7. That quality-of-service questions regarding this Order may be directed to Dan Mumford, [dmumford@pa.gov](mailto:dmumford@pa.gov) or 717-783-1957, in the Commission’s Office of Competitive Market Oversight or Amanda Gordon, [amgordon@pa.gov](mailto:amgordon@pa.gov) or 717-783-9090 in the Commission’s Bureau of Consumer Services. Technical questions regarding this Order may be directed to David Washko, [dawashko@pa.gov](mailto:dawashko@pa.gov) or 717‑425‑7401, in the Commission’s Bureau of Technical Utility Services. Legal questions may be directed to Louise Fink Smith, [finksmith@pa.gov](mailto:finksmith@pa.gov) or 717-787-5000, in the Commission’s Law Bureau.

8. That these dockets be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 22, 2016

ORDER ENTERED: December 22, 2016

APPENDIX

**Excerpt from Secretarial Letter:**

1. **Customer Request**

As pointed out above, the Commission will not require EDCs to deploy smart meters until after the Commission‑approved network development and installation grace period. Once this grace period expires, each covered EDC must supply a smart meter upon request by a customer, per Act 129.

The Commission recognizes that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment. The General Assembly recognized this as well when it included the proviso that the customer requesting the smart meter must agree to pay for the cost of the smart meter. However, the Commission does not believe it was the intent of the General Assembly for this customer to pay the entire cost of the smart meter and its supporting infrastructure. Such a requirement would be so cost prohibitive that no customer would request a smart meter. Furthermore, the customer would be paying for the smart meter directly and also through the EDC’s cost recovery mechanism. Such a result would be an absurd, impossible and unreasonable outcome, which is contrary to the rules of statutory construction. See 1 Pa. C.S. § 1922(1). To avoid this absurd result, the Commission believes that only the incremental costs over and above the cost for system-wide deployment are to be paid by customers requesting early deployment of a smart meter.

The Commission directs each covered EDC to include in its smart meter plan a proposal to install individual smart meters in advance of the EDC’s system-wide deployment and after the network grace period. This proposal should include an itemization of the incremental costs. If an EDC cannot provide the incremental costs at the time of its initial filing, it will have to seek Commission approval of these incremental charges prior to the expiration of the approved network grace period. If an EDC does not obtain approval of these incremental costs prior to the end of the grace period it must install individual smart meters at its own expense. Such costs are not recoverable from ratepayers.

March 30, 2009 Secretarial Letter, Docket No. M-2009-2092655, Attachment B at 5-6.

**Excerpts from *Smart Meter Implementation Order*:**

**2. Customer Request**

As pointed out above, the Commission will not require EDCs to deploy smart meters until after the EDC’s Commission approved network development and installation grace period ends. Once this grace period expires, **each covered EDC must supply a smart meter upon request by a customer**, per Act 129.

The Commission recognizes that **deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment**. The General Assembly recognized this as well when it included the proviso that the customer requesting the smart meter must agree to pay for the cost of the smart meter. However, the Commission does not believe it was the intent of the General Assembly for this customer to pay the entire cost of the smart meter and its supporting infrastructure. Such a requirement would be so cost‑prohibitive that no customer would request a smart meter. Furthermore, the customer would be paying for the smart meter directly and also through the EDC’s cost recovery mechanism. Such a result would be an absurd, [page 9] impossible and unreasonable outcome, which is contrary to the rules of statutory construction. See 1 Pa.C.S. § 1922(1). **To avoid this absurd result, the Commission believes that only the incremental costs over and above the cost for system-wide deployment are to be paid by customers requesting early deployment of a smart meter**.

The Commission directs each covered EDC to include in its smart meter plan a **proposal to install individual smart meters in advance of the EDC’s system-wide deployment and after the network installation grace period**. This proposal should include an itemization of the incremental costs. If an EDC cannot provide the incremental costs at the time of its initial filing, it will have to seek Commission approval of these incremental charges prior to the expiration of the approved network grace period. If an EDC does not obtain approval of these incremental costs prior to the end of the grace period it must install individual smart meters at its own expense. Such costs are not recoverable from ratepayers.

Several commenters expressed concerns regarding **the costs associated with installing smart meters at customer request pursuant to 66 Pa. C.S. § 2807(f)(2)(i)**. OCA agreed that a customer should pay for the incremental costs of **installing a meter prior to the scheduled rollout**. However, OCA does not feel that the customer should have to provide payment upfront to cover the costs, but rather the costs should be recovered through an increased customer charge on the customer’s monthly bill. OCA also warns that care must be taken to ensure that the customer is not being subjected to any sort of double recovery. PECO and FirstEnergy maintain that the customer must pay these costs as a lump sum at the time of the request, as stated in Act 129.

FirstEnergy submits that 52 Pa. Code § 57.20(h) provides that “a service watt-hour meter which is removed from service shall be tested for ‘as found’ registration accuracy.” FirstEnergy requests that the Commission provide EDCs with a blanket waiver of this [page 10] requirement, as the meters are not being replaced due to any perceived malfunction and will not be put back into service. FirstEnergy posits that such a waiver will eliminate unnecessary costs associated with system-wide smart meter installation.

Duquesne states that the incremental costs to an individual customer would be astronomical because **reading the new meters without having deployed the entire infrastructure would require the purchasing of trucks and the hiring of meter readers and administrative office workers to manually enter the meter reads**.

The Commission interprets the Act to mean that a customer must pay the costs of installing a meter at the time of the request, and hence disagrees with OCA’s assertion that the costs should be embedded in a customer charge. **The EDC needs to be reimbursed for the task of installing a meter on a piecemeal basis**, and the easiest way to accomplish that recovery is not through a customer charge increase, but rather by receiving an upfront payment from the customer.

As for Duquesne’s worry about the incremental costs being astronomical, the Commission believes there is confusion when **Duquesne says it is worried about reading meters before the new infrastructure is in place**. The Commission is not requiring an EDC to do anything extraordinary during this smart meter procurement and installation grace period. **The requirement to install interval capable meters during the grace period or smart meters at the request of a customer** is intended to support rate structures, energy efficiency or demand response programs offered by the EDC or a third party at the request of a customer. These types of programs have been in place and offered to customers for decades. All the Commission is requiring is that EDCs facilitate these programs in a cost effective manner that provides access to the data needed to support these programs without unnecessary or unreasonable barriers. Therefore, the Commission expects the EDCs to provide a plan for supporting these programs in such a [page 11] manner that does not require unreasonable or imprudent costs. Furthermore, all incremental costs that EDCs plan on recovering from a customer must first be reviewed and approved by the Commission. Staff believes these costs will be reasonable and by no means astronomical.

The Commission agrees with FirstEnergy that the costs of complying with 52 Pa. Code § 57.20(h) are unnecessary and will grant a waiver of this provision for watthour meters that are being replaced with smart meters in accordance with an approved plan. The Commission believes it would add unreasonable and unnecessary costs to require the EDCs to test every meter removed for the purposes of upgrading to a smart meter.

*Smart Meter Implementation Order* at 9-12 (**emphasis** added).

1. The Reconsideration Petition was also provided to Administrative Law Judge Katrina L. Dunderdale, the presiding ALJ in Duquesne Light’s 2015 SMP. [↑](#footnote-ref-1)
2. For a detailed history of the various proceedings mentioned, see our June 23, 2016 Order. [↑](#footnote-ref-2)
3. The parties to the litigation in the 2015 SMP proceeding are Duquesne Light, OCA, OSBA, I&E, and Citizen Power, Inc. [↑](#footnote-ref-3)
4. Duquesne Light did not coordinate the Waiver Petition with either of its SMP dockets, but we served the Waiver Order on the parties at the 2012 SMP docket. [↑](#footnote-ref-4)
5. Duquesne Light cites to *PPL SMP Installation Plan*, Docket No. M-2014-2430781 (September 3, 2015). [↑](#footnote-ref-5)
6. We do note that we have granted a city natural gas distribution company (CNGDC) a partial limited temporary waiver in conjunction with its request to extend its eight-year meter testing cycle in conjunction with its AMR replacement schedule. *See PGW Petition for FOI Implementation Plan and Restructuring Surcharge*, Docket No. M-00021612 (September 8, 2003) (PGW AMR Waiver Order). In that proceeding, we did not waive the legacy meter testing but rather extended the testing cycle length within which meters would be tested to accommodate the AMR replacement schedule. We did require reporting on the pass/fail and fast/slow results of meters for which testing was delayed. While meter testing for accuracy might present parallels between gas meters and electric meters, no one has addressed the comparability of safety-related issues underlying meter testing for the two energy sources. [↑](#footnote-ref-6)
7. This is not an exhaustive list. [↑](#footnote-ref-7)
8. We have set out in an Appendix to this order the relevant portions of the *Smart Meter Implementation Order* and the Secretarial Letter that gave rise to the *Smart Meter implementation Order*. [↑](#footnote-ref-8)
9. That request for comments ultimately led to entry of the *Smart Meter Implementation Order* at Docket No. M‑2009‑2092655. [↑](#footnote-ref-9)