331 Shady Ridge Drive
Monroeville, PA 15146

January 27, 2017

Via Paper Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: **Michele Hriadil and Francis Hriadil v. Duquesne Light Company**
Docket No. C-2016-2571726

Dear Secretary Chiavetta:

Enclosed please find Complainants New Matter #2 to add to our Formal Complaint filed by Michele and Francis Hriadil.

A copy of this document has been served upon the Respondent's Counsel, Jeremy V Farrell, Esquire, in accordance with Commission regulations.

Please feel free to contact me if you have any questions.

Sincerely,

Francis Hriadil

Francis Hriadil
Complainant
(412) 779-3314
hriadil@attglobal.net

Enclosure

Cc: Jeremy V Farrell, Esquire, Counsel for Duquesne Light Company (with enclosure)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and FRANCIS HRIADIL,	:	
Complainant,	:	
vs.	:	No: C-2016-2571726
DUQUESNE LIGHT COMPANY,	:	
Respondent.	:	

NEW MATTER #2

Filed by Michele and Francis Hriadil

hriadil@attglobal.net
(412) 779-3314
331 Shady Ridge Drive
Monroeville, PA 15146

NOTICE TO PLEAD on NEW MATTER #2

TO: RESPONDENT'S GENERAL COUNSEL, JEREMY V FARRELL, ESQUIRE, AND LAUREN N RULLI, ESQUIRE.

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN NEW MATTER OF COMPLAINANTS MICHELE AND FRANCIS HRIADIL WITHIN TWENTY (20) DAYS OF SERVICE HEREOF, OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Francis Hriadil

Francis Hriadil
January 27, 2017

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and FRANCIS HRIADIL,	:	
Complainant,	:	
vs.	:	No: C-2016-2571726
DUQUESNE LIGHT COMPANY,	:	
Respondent.	:	

NEW MATTER #2

TO THE HONORABLE COMMISSION:

1. Complainants (our) Formal Complaint, Complainants (our) November 29, 2016 Response to Respondent's original Preliminary Objections, Complainants (our) December 19, 2016 Response Addendum to Respondent's Corrected Preliminary Objections, Complainants (our) January 9, 2017 Response to the Respondent's Answer and New Matter, Complainants (our) January 20, 2017 Response to the Respondent's Answer in Opposition to Complainant's Motion for Summary Judgment, Complainants (our) January 24, 2017 New Matter, all Supporting Documents and all Exhibits, are incorporated here-in by reference as if fully restated.

2. In Section 13, page 5, of Respondent's Answer and New Matter, Respondent presents the following reference to Act 129

"Section 2807 of the Public Utility Code provides:

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

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

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

(ii) In new building construction.

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

66 Pa. C.S. § 2807(f)(2)."

Complainants (we) wish to raise a New Matter about this reference.

3. I am an engineer by training and profession. Engineers inherently deal in truth, precision, clarity, and logic in everything that we do. Logic requires no special skill or talent. It is a common ability inherent in the normal operation of the human brain. It entails sound reasoning, which simply is a reasonable way of interpreting and thinking about things. Whether dealing with detailed technical material or casual reading for enjoyment, a commonly accepted "standard of reasonableness" applies to the interpretation of any written material that has ever been produced. The law recognizes this standard as well, otherwise a law is subject to interpretive contrivance and has no meaning.

For example, this reasonableness standard exists in contract law. It is used to determine contractual intent, or if a breach of the standard of care has occurred, provided a duty of care can be proven. The standard that is applied is that **intent of a party is determined by examining the understanding of a reasonable person**. The Trans-Lex.org Law Search defines the standard as:

Principle No. I.2.1 - Standard of reasonableness: The parties always have to act according to what is reasonable in view of the particular nature of their transaction and the circumstances involved, in particular the economic interests and expectations of the parties."

4. So, one may ask what is the most reasonable interpretation of the section of Act 129, C.S. § 2807(f) (2) copied here in 2.?

To a reasonable person reading this

Articles (i) and (ii) clearly and explicitly indicate **who / what "shall be furnished" with Smart Meter Technology**

and **Article (iii)** clearly and explicitly indicates **how / when that Smart Meter Technology "shall be furnished"**

Consider each Article in succession:

(i) The first and foremost stipulation, § 2807 (f) (2) (i), states that EDCs "**shall furnish**" smart meter technology

"upon request from a customer that agrees to pay the cost of the smart meter at the time of the request."

This specifies a **voluntary opt-in stipulation** which explicitly states that ***customers may choose to join the Smart Meter program if they so desire.*** **It further states** that **if a customer does request a Smart Meter and agree to pay the cost, the EDCs "shall furnish" that Smart Meter technology.** There is no ambiguity here. And, as the foremost stipulation, it sets the basis and tone in establishing the intention of Act 129, especially in light of the documented declarations of the Legislators.

(ii) The second stipulation, § 2807 (f) (2) (ii), states that EDCs "**shall furnish**" smart meter technology

"in new building construction."

This specifies that EDCs "shall furnish" smart meter technology in new building construction. Note, that it does not specifically state that the builder "must" have that technology installed. It only states that the EDCs "shall furnish" it (i.e. "shall provide" it). The implication being that **it remains at the discretion of the builder even in the case of new building construction**. There is no ambiguity here.

(iii). The third stipulation, § 2807 (f) (2) (iii), states that EDCs **"shall furnish"** smart meter technology

"in accordance with a depreciation schedule not to exceed 15 years."

This specifies that the EDCs have 15 years to phase in the Smart Meters that the EDCs "shall furnish" per Articles (i) and (ii). This is reasonable since the EDCs already have fully functioning Analog Meters deployed in the field, and they have an inventory of Analog Meters already purchased and in stock. It would be unreasonable to expect the EDCs to immediately and completely abandon their stockpile of Analog Meters, and furnish Smart Meters immediately upon request. So, this stipulation allows the EDCs a time frame, 15 years, to phase in the requested Smart Meters. This does not override or supersede the previous stipulations, as that would cause an irreconcilable conflict. There is no ambiguity here.

Thus, **Act 129 as written and passed defines a voluntary "Opt-In" program**. Complainants (we) aver that this is **the only interpretation that meets a "standard of reasonableness" as to the meaning and intent of Act 129 as passed, and signed by Governor Rendell.**

5. Is there evidence from the General Assembly itself as to the intent of Act 129 as written and passed? Yes, there is incontrovertible evidence. The General Assembly has documented quite clearly in **the Legislative Record, in SenateJournal Pages 2626-2631, Oct. 8, 2008, what its intention and direction was at the time of its passage of Act 129.** It is re-iterated here, as it was in Complainants (our) January 9, 2017 Response to Respondent's Answer and New Matter, and Complainants (our) Responses to Respondent's Preliminary Objections,

Senator Tomlinson, states with regard to House Bill No. 2200 as amended by the Senate, and subsequently signed by Governor Rendell as Act 129, that

"**It is not mandated, but it allows for ... anyone who wants to purchase a smart meter** which they feel will help them manage their electric load better." **(emphasis added)**

Senator Boscola states,

> "**We also made sure that smart meters would not be mandated for every single ratepayer**. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households." **(emphasis added)**

Senator Fumo states,

> **"In addition, we did not mandate smart meters, but we made them optional." (emphasis added)**

These declarations by the legislators who passed Act 129 are unequivocal, unambiguous, and and incontrovertible.

6. Next, we come to the issue of the use of the word "shall" in C.S. § 2807(f) (2). The statute explicitly states "shall furnish", not "must furnish". "Shall" and "must" do not mean the same thing legally. The legal standard is that **"must" is the only word that imposes a legal obligation**. "Shall" does not. "Must" is legally accepted as the only clear, valid way to express "mandatory."

> **The Supreme Court, the highest and final judicial authority in the country, has ruled that when the word "shall" appears in statutes, it means "may."** (*Gutierrez de Martinez v. Lamagno 515 U.S. 417 (1995)*)

Bryan Garner, the legal writing scholar and editor of Black's Law Dictionary,

> wrote that **"In legal instruments, "shall" violates the presumption of consistency.**

The Federal Register Document Drafting Handbook (Section 3)

> states that **"must" imposes a legal obligation. "Shall" does not**.

The Federal Plain Language Guidelines (page 25)

> referred to in the Federal Plain Writing Act of 2010,
>
> specifies that **"must", not "shall", is used to indicate a requirement**.

In legal reference books like the Federal Rules of Civil Procedure

the accepted legal standard is that "must" imposes a legal mandate or obligation, "shall" does not.

Nearly every jurisdiction has held

that **the word "shall" does not definitively mean "must"**.

So, according to accepted legal standards and precedents that go as high as the US Supreme Court, any ruling declaring that the use of the word "shall" imposes a legal obligation or mandate, in a statute or otherwise, is in error.

7. It has already been established in Complainants (our) previous filings, and in Formal Complaints filed by other Complainants, that the Smart Meter program in Pennsylvania, with its current implementation protocol and management practices, places a serious burden on the residents of the state. Residents are faced with serious risks, and they suffer any and all consequences. **No accommodation is given for any circumstances, conditions, or extenuating factors. No accommodation is given for anything**. Yet, the state's own **Public Utility Code Section 1501** requires every public utility to furnish and maintain "**adequate, efficient, safe, and reasonable service and facilities**" that provides "**for the accommodation, convenience, and safety of its patrons**, employees, and the public." And, one of the very reasons that the Public Utility Commission exists is to make sure that this code, among others, is followed.

Any attempt to refuse the installation of a Smart Meter, for whatever reason, is met with an onslaught of lengthy and dense legal documents by the EDCs, and an onerous process that has been imposed by the very same Public Utility Commission (PUC) responsible for safeguarding the well-being of its constituents. And, the plain fact of the matter is that it cannot be denied that the PA PUC wrote the Implementation Order upon which the whole issue of a mandate rests. Yet, the PA PUC is the primary judicial body when an issue/complaint is brought forward challenging the installation of a Smart Meter that has not been requested, and that represents a credible threat of harm to the homeowner and

his/her family. In other judicial venues where such a conflict of interest is apparent, arrangements are routinely made to change that venue and remove that conflict. The party responsible for creating a policy, rule, condition, or contract cannot in fairness be the same party that adjudicates any challenge of that policy, rule, condition, or contract. This is simple common sense. Justice is supposed to be blind and impartial, not oblivious and one-sided.

Subtle and not so subtle forms of **duress** are being applied to frighten and wear the Complainants, such as ourselves, down so that they capitulate. The EDCs, as Duquesne Light has done in their November 4, 2016 Answer and New Matter on page 3, raise the specter and threat of "suspension of service" unless acceptance of their "Smart Meter Equipment and Contract" is forthcoming. Yet, the Complainants (we) have been lifetime customers and have always met our responsibility to pay our electric bills. The Courts, in deciding actual cases, have been quite clear on matters of duress, that is, any "threat of harm that is made to compel a person to do something against his or her will or judgment." This whole Smart Meter deployment scheme in Pennsylvania is nothing other than a well-orchestrated de facto form of duress being perpetrated on ill-informed and ill-prepared residents to compel their acceptance.

The question of **undue influence** on the PA PUC in this matter has also been raised in a number of quarters. The Courts, in deciding actual cases, have ruled that any contract that is obtained or imposed through **undue influence** is invalid. No contract can be rightfully formed unless there has been a "meeting of the minds", and there has been no "meeting of the minds" here. And, there are legal protections that no one can be forced to comply with an unrevealed contract between private corporations, to which they were never a party and had no knowledge of. There has been no credible cost benefit and risk analysis provided to the public. There has been no transparency to taxpayers. There has been very little accurate information provided to the general public all at.

8. In Section 14, page 5, of Respondent's Answer and New Matter, Respondent references the Smart Meter Procurement and Installation Implementation Order issued in June of 2009, which states

> "The Commission **'believes'** that it was the **'intent'** of the General Assembly to require all covered EDCs to deploy smart meters system-wide when it included a requirement for smart meter deployment 'in accordance with a depreciation schedule not to exceed 15 years.'"
>
> **('emphasis added')**

And, the Respondent references a subsequent **"decision"** by PUC Administrative Law Judge (ALJ) Hoyer in December 2013 that

> "the use of the word **'shall'** in the statute indicates the General Assembly's direction that all customers **'will'** receive a smart meter."
>
> **('emphasis added')**

Complainants (we) have presented incontrovertible Material Facts that

8.1. The **"belief"** of the Commission **as to the meaning of the wording** of Act 129, stated at the time of its Implementation Order,

does NOT satisfy any rationale test of reasonableness.

In fact, it is so "off the mark" that it begs the question does the English language mean something different at the PA PUC than anywhere else? Because, to a reasonable man, it comes across as illogical and nothing other than an interpretive contrivance.

8.2. The **"belief"** of the Commission **as to the intent of the General Assembly** stated at the time of its Implementation Order,

is NOT consistent or compatible with the recorded declarations of the Legislators in the General Assembly, who specifically and emphatically stated that the Smart Meter program is OPTIONAL and is NOT MANDATED, which are documented in the Legislative Record.

There is nothing in the legislative record that supports the Commission's "belief", and the Implementation Order as it was originally written.

On the contrary, the Commission's "belief" is seen to be in stark contrast with and completely opposite to what the Legislators actually stated.

8.3. The **"decision"** by ALJ Hoyer as to the meaning of the world **"shall"**, as it relates to the General Assembly's direction,
is also found to be **NOT consistent or compatible with the recorded declarations of the Legislators in the General Assembly who, and we re-iterate, specifically and emphatically stated that the Smart Meter program is OPTIONAL and is NOT MANDATED.**

There is nothing in the legislative record that supports the ruling that the ALJ Hoyer handed down. On the contrary, the ALJ Hoyer's "decision" is seen to be in stark contrast with and completely opposite to what the Legislators actually stated. Further, it does **NOT meet the accepted legal standard that, to impose a legal obligation or mandate, the word "must" must be used, and not the word "shall". And, it VIOLATES the ruling and legal precedent set by the Supreme Court which states that when the word "shall" appears in statutes, it means "may".**

8.4. The **"belief"** of the Commission and the **"decision"** by ALJ Hoyer, both place § 2807 (f) (2) (iii) in **direct and irreconcilable CONFLICT with § 2807 (f) (2) (i)**, and a reasonable interpretation of § 2807 (f) (2) (ii). Such a forced interpretation of § 2807 (f) (2) (iii) cannot stand because it makes the three clauses of § 2807 (f) (2) **incompatible, inconsistent, and irreconcilable** with each other. It is **NOT logically viable** and invalidates this interpretation. It is noted that a reasonable interpretation of these clauses, and the stated intention of the Legislators, does not lead to any such internal conflict. Further, as § 2807 (f) (2) (i) is the first, and as such, foremost stipulation, it takes precedence in defining the intention of § 2807 (f) (2), especially in light of the Legislators' documented declarations.

9. Complainants (we) aver that the Smart Meter Implementation Order, and the subsequent ruling by ALJ Hoyer, are in error. They do not meet the test of reasonableness. They have no rational legal basis. They fail to meet accepted legal standards. And, they violate established legal precedent.

Complainants (we) further aver that the Smart Meter Implementation Order, and the subsequent ruling by ALJ Hoyer, are in fact, in violation of Act 129, as it was written and passed by the General Assembly, as it was intended by the Legislators, and as it was signed by Governor Rendell.

What legal standard and what legal basis allows an improperly worded implementation order to supplant the law it was intended to implement? The law IS the law. And, the stated intention of the Legislature IS the stated intention of the Legislature. This supersedes any incorrectly worded implementation order that is in error. The most reasonable, equitable, and common sense solution, and the one that is the least costly to the residents of the state of Pennsylvania, is simply for the Commission to revise and correct its Implementation Order.

The English language does not mean something different in Pennsylvania, and at the PUC, than anywhere else. The laws of physics, chemistry, biology, and human physiology do not operate differently in Pennsylvania than anywhere else.

It is unconscionable and a sad state of affairs that residents of the state of Pennsylvania who have not requested a Smart Meter, have not agreed to pay for a Smart Meter, and have not Opted-Into the Smart Meter program, as is their right, and as is specifically and explicitly defined in 66 Pa. C.S. §2807 (f) (2) (i) of Act 129, are being forced to expend significant time, effort, and resources simply to exercise that right. The Commission was established primarily to foster and ensure the protection, safety, and well-being of the residents of the state of Pennsylvania, and to uphold the Public Utility Code and the law, and it is legally and ethically bound to do so. As residents of the state of Pennsylvania, Complainants (we) are only asking the Commission to adhere to the letter of the law and the stated intention of the Legislature.

Complainants (we) may not be well-schooled or well-versed in "legal speak" or "legal terminology" and we may not possess much "legal eloquence"; but, that does not detract from the soundness and legitimacy of our arguments, and the preponderance of material evidence and facts, much of which is incontrovertible, that supports our complaint, and our request for relief and Summary Judgment on our behalf.

WHEREFORE, considering the incontrovertible facts and issues established here-in, along with the many other relevant factors Complainant's (we) have presented in our Formal Complaint, in our previously filed January 24, 2017 New Matter, our January 20, 2017 Response to the Respondent's Answer in Opposition to Complainant's Motion for Summary Judgment, our January 9, 2017 Response to the Respondent's Answer and New Matter, and our November 29, 2016 and December 19, 2016 written responses to both the Respondent's original Preliminary Objections and the Corrected Preliminary Objections, Complainants Michele Hriadil and Francis Hriadil respectfully request the following:

#1. that the Respondent concedes that the Complainants (we have been excellent long time (i.e. for decades) customers of DLC, that we have always met our obligations and responsibility to pay our electric bills, and that we are up to date with our utility payments and not delinquent or in arrears. And, if the Respondent cannot establish otherwise, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

#2. that the Respondent concedes that Complainants (we) have never requested or agreed to pay for a Smart Meter. And, if the Respondent cannot establish otherwise, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

#3. that the Respondent concedes that in their deployment of Smart Meters, no accommodation or consideration is given for any circumstances, conditions, or extenuating factors, including but not limited to age, medical condition, disability, medical implants, relative health, reliance on critical care equipment that may be

subject to electronic interference. Further, no accounting is made for and no accommodation is provided for the age and condition of the customer's electrical panel and wiring. And, if the Respondent cannot establish otherwise, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

#4. the Complainants (we) aver that § 2807 (f) (2) (i), the very first stipulation listed, which states that EDCs "shall furnish" smart meter technology "upon request from a customer that agrees to pay the cost of the smart meter at the time of the request" means exactly what it says. Customers who wish to have a Smart Meter must proactively request and agree to pay the cost of the Smart Meter. And, as the foremost stipulation, it takes precedence in defining the intention of § 2807 (f) (2), especially in light of the documented declarations of the Legislators. And, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

#5. the Complainants (we) aver that the stated intention of Legislators of the General Assembly with regard to Act 129 as passed and signed, is clearly and definitively documented in the Legislative Record, in Senate Journal Pages 2626-2631, Oct. 8, 2008, that the Legislators, including Senators Tomlinson, Boscola, and Fumo, whose statements have been included here-in on pages 5 and 6, have specifically, emphatically, and incontrovertibly stated that the Smart Meter program is "OPTIONAL", and "IS NOT MANDATED." In other words, it is VOLUNTARY. And, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

#6. the Complainants (we) aver that the Implementation Order of June 2009, and the subsequent ruling by ALJ Hoyer in December 2013, in their interpretation of Act 129 as written and passed, is NOT consistent or compatible with the stated intention of the Legislators in the General Assembly, who specifically and emphatically stated that the Smart Meter program is "OPTIONAL" and "IS NOT MANDATED". In fact, they are "diametrically opposite" to the Legislators' stated intention. And, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

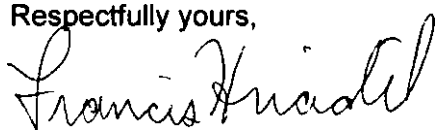
#7. the Complainants (we) aver that the Implementation Order of June 2009, and the subsequent ruling by ALJ Hoyer in December 2013, in their interpretation of Act 129 as written and passed, does not meet the test of reasonableness and is not logically viable as it makes the three clauses of § 2807 (f) (2) incompatible, inconsistent, and irreconcilable with each other. And, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

#8. the Complainants (we) aver that the ruling by ALJ Hoyer in December 2013, in his interpretation of the word "shall", is in error and does not meet the accepted legal standard that "must" is the only word that imposes a legal obligation or mandate. And further, it is in violation of the precedent set by the US Supreme Court in its ruling that when the word "shall" appears in statutes, it means "may." And, Complainants (we) respectfully request that the Commission rule that it is a Material Fact that this is the case.

Complainants (we) continue to emphatically aver that, as we have never requested or agreed to pay for a Smart Meter, we are in complete compliance with Act 129 as it was written and passed by the General Assembly, as it was intended by the Legislators, and as it was signed by Governor Rendell. There is no sound or rational legal basis that establishes otherwise.

Complainants (we) also respectfully suggest that the most reasonable, equitable, and common sense solution to the errors present in the Implementation Order of June 2009 and the ruling by ALJ Hoyer in December 2013, and the one that is the least costly to the residents of the state of Pennsylvania, is simply for the Commission to revise and correct its Implementation Order.

Respectfully yours,



Francis Hriadil
(412) 779-3314
331 Shady Ridge Drive
Monroeville, PA 15146
January 27, 2017

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and FRANCIS HRIADIL,	:	
Complainant,	:	
vs.	:	No: C-2016-2571726
DUQUESNE LIGHT COMPANY,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

Jeremy V Farrell, Esquire
Lauren N. Rulli, Esquire
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5619 (Fax)

Counsel for Respondent, Duquesne Light Company

Dated this 27th day of January, 2017

Michele and Francis Hriadil
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Rosemary Chiavetta, Secretary
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