

March 20, 2017

*Via Electronic Filing and E-Mail*

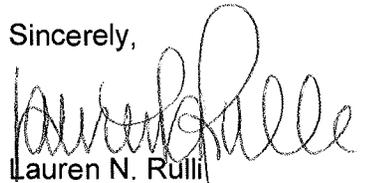
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Norbert Sliwinski v. Duquesne Light Company  
Docket No. C-2016-2559985

Dear Secretary Chiavetta:

Duquesne Light Company's Reply Exceptions are enclosed for filing. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Lauren N. Rulli  
Attorney for Duquesne Light Company

Enclosure

cc: Norbert Sliwinski (with enclosure)  
Office of Special Assistants (OSA), via email (with enclosure)

LIT:620910-1 014657-158498

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NORBERT SLIWINSKI</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2016-2559985</b>
	:	
<b>DUQUESNE LIGHT COMPANY</b>	:	
<b>Respondent</b>	:	
	:	

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**DUQUESNE LIGHT’S REPLY TO COMPLAINANT’S EXCEPTIONS**

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”), by and through its attorneys, Tucker Arensberg, P.C., files the following Reply to Complainant’s Exceptions to the Initial Decision of Administrative Law Judge Jeffrey A. Watson:

**I.     UNDISPUTED FACTS AND PROCEDURAL HISTORY**

On August 4, 2016, Duquesne Light was served with a Formal Complaint filed by Norbert Sliwinski (“Complainant”). A copy of the Complaint is attached as Exhibit 1. In his Complaint, the Complainant checks the box “Other” and states “See attached.” Complainant attaches a letter opposing the installation of a smart meter on the grounds that it may cause adverse health effects to his family. Exhibit 1. Complainant’s letter also states

Since it has been shown that Smart Meters are not safe, I am therefore against the meter exchange and do not grant permission to install of foresaid [sic] meter.

Exhibit 1.

Complainant does not allege that a smart meter is installed at his property or that he is currently suffering any adverse health affects associated with the installation of a smart meter. Rather, Complainant states that he has “concerns” about smart meters' safety if one is installed at his residence. Exhibit 1.

On August 23, 2016, Duquesne Light filed Preliminary Objections that were subsequently overruled by Administrative Law Judge Watson. Simultaneously with its Preliminary Objections, Duquesne Light filed an Answer and New Matter, which contained a notice to plead. A copy of Duquesne Light's Answer is attached as Exhibit 2. In its Answer and New Matter, Duquesne Light pleads that a smart meter has not yet been installed at Complainant's Property, that Act 129 of 2008 directs Duquesne Light to file smart meter procurement and installation plans, and that Duquesne Light filed and the Public Utility Commission (“Commission”) approved its smart meter procurement and installation plan. Exhibit 2, Answer, ¶ 4; New Matter, ¶ 1-2, 12. Thus, by planning to install a smart meter at Complainant's residence, Duquesne Light is complying with the Commission's directives. Exhibit 2, New Matter, ¶16. Duquesne Light further avers that there is no provision of the Public Utility Code that permits Complainant to opt-out of its smart meter installation plan. Exhibit 2, New Matter, ¶ 15.

On September 1, 2016, the Complainant mailed a response to Duquesne Light's Answer, but sent it only to Duquesne Light and not the Commission. Complainant's Response attached is as Exhibit 3. In his response, Complainant does not dispute that a smart meter is not installed at his residence. Rather, he confirms this fact by stating that he is “still not ‘opting in’ i.e. - agreeing to have a Smart Meter installed.” Exhibit 3.

After the pleadings were closed, Duquesne Light filed a Motion for Judgment on the Pleadings on the grounds that, based on the pleadings of record, Complainant's claims do not fall under Kreider v. PECO Energy Co., P-2015-2495064, 2015 WL 5256653 (Pa. P.U.C. Sept. 3, 2015), and, thus, he is not entitled to any relief as he does not have a smart meter installed at his residence and is not suffering from any adverse health conditions associated with a smart meter. Judge Watson agreed and granted Duquesne Light's Motion for Judgment on the Pleadings and dismissed the Complaint. Complainant filed Exceptions on February 7, 2017.<sup>1</sup>

## II. LEGAL STANDARD

Motions for judgment on the pleadings are governed by Section 5.102 of the Commission's regulations, 52 Pa. Code § 5.102. Judgment on the pleadings is available when the pleadings, depositions, and other documents show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). Judgment on the pleadings should be granted when the right to relief is clear and free from doubt. Brenda Smith, C-2015-2493947, 2016 WL 5121961, at \*3 (Pa. P.U.C. Sept. 15, 2016). In determining the absence of a genuine issue of material fact, the Commission must view the record in the light most favorable to the non-moving party and resolve any doubts against the entry of the judgment. Id. The moving party bears the burden of demonstrating there is no genuine issue of material fact; however, the non-moving party (here, the Complainant) must allege facts showing that an issue for trial exists. Id.

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<sup>1</sup> On or about February 17, 2017, the Commission granted Duquesne Light an extension until March 20, 2017, to file a response to Complainant's Exceptions.

The provisions at 52 Pa. Code § 5.102 serve judicial economy by avoiding a hearing where no factual dispute exists. Id. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. § 703(a); Lehigh Valley Power Committee v. Pa. PUC, 563 A.2d 557 (Pa. Cmwlth. 1989).

### III. ARGUMENT

Two crucial facts are not in dispute here: 1) a smart meter **has not** been installed at Complainant's residence; and 2) Complaint **has not** experienced any health or other effects associated with the installation of a smart meter. Rather, Complainant's sole reason for filing his Formal Complaint and Exceptions is to opt out of Duquesne Light's smart meter installation plan because he fears the possibility that the smart meter may cause safety or health issues if installed at his home.

Complainant cannot proceed to a hearing based on these allegations for two reasons:

1) He has no standing because he has not shown he is aggrieved. He neither has a smart meter installed nor suffers from any adverse effects from a smart meter. Complainant's claims are hypothetical and based on pure conjecture as to what he believes may happen if a smart meter is installed at his property; and

2) Duquesne Light's Smart Meter Procurement and Installation Plan has been approved by the Commission, which is prima facie evidence that it is just and reasonable. Complainant's allegations are insufficient to challenge the Commission's approval.

Either of these reasons, on its own, is sufficient to warrant dismissal of the Complaint. For these reasons, which are set forth at more length below, Complainant cannot state a violation of any provisions of the Public Utility Code or of the

Commission's Regulations or Orders, and, therefore, Duquesne Light is entitled to judgment as a matter of law.

The Commonwealth Court's recent ruling in Romeo v. Pa. Pub. Utility Comm'n., No. 498 C.D. 2016, 2017 WL 510550 (Pa. Cmwlth. Feb. 8, 2017),<sup>2</sup> does not undermine the above defenses because the Court did not address them. Nor does Romeo create a new opt-out provision or undermine the Commission's precedent that a hearing is not required where it would be fruitless.

**A. Complainant's Exceptions should be dismissed because he lacks standing.**

The undisputed facts that Complainant does not have a smart meter installed at his residence and is not suffering from any adverse health conditions associated with a smart meter make clear that he asserts a claim he does not have standing to bring.

The long-standing, fundamental principles of standing were enumerated by the Pennsylvania Supreme Court in William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975). To have standing, the "adversely affected" or "aggrieved" party must: 1) have a substantial interest in the subject matter of the litigation; 2) the interest must be direct; and 3) the interest must be immediate and not a remote consequence. William Penn, 346 A.2d at 283; Walter v. Magee-Womens Hospital of UPMC Health System, 876 A.2d 400, 404 (Pa. Super. 2005). A party's interest is "substantial" when there is "some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." William Penn, 346 A.2d at 282. The requirement that the interest be "direct" goes to causation in that

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<sup>2</sup> The Westlaw version of the Romeo decision states: "NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL."

“the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains.” Id. at 284. The interest must also be “immediate” and not “conjectural” or “hypothetical,” the concern being focused on the nature and proximity of the action and injury challenged to the person challenging it. Id.

Here, Complainant cannot meet any of the requirements to establish standing. First, his interest is not substantial because he does not have a smart meter and is not suffering from any adverse affects from a smart meter. Rather, his claim is that smart meters are unsafe to the public as a whole, which is the exact type of “abstract interest to all citizens” that the Pennsylvania Supreme Court stated precludes a party from having standing. William Penn, 346 A.2d at 282

Next, Complainant’s claims are not direct because he has not demonstrated any causation between Duquesne Light’s smart meters and the safety and health effects cited in his Formal Complaint and Exceptions. Complainant cannot claim that a Duquesne Light smart meter caused him any harm (because he does not have one). As such, there is no causal link between Complainant’s claims and Duquesne Light’s smart meters, making Complainant’s complaints indirect and incapable of conferring standing.

Lastly, Complainant’s interest in this case is not immediate because Duquesne Light has not installed a smart meter at his residence and he is not suffering from any adverse health conditions from a smart meter. Instead, Complainant’s concerns are hypothetical and based on the pure conjecture that a smart meter, if installed at his residence, might pose a safety risk or cause a future health condition. These abstract, generalized fears of future possibilities are far too speculative to confer standing.

**B. Duquesne Light is also entitled to judgment as a matter of law because the Commission already approved its Smart Meter Procurement and Installation Plan.**

**1. Duquesne Light's Smart Meter Procurement and Installation Plan complies with Pennsylvania law.**

Act 129 of 2008 was signed into law on October 15, 2008. The Act took effect on November 14, 2008, and amended Section 2807 of the Public Utility Code. Act 129 directed Duquesne Light and other utility companies to file smart meter procurement and installation plans with the Commission, which Duquesne Light did. On May 6, 2013, at Docket No. M-2009-2123948, the Commission approved Duquesne Light's Smart Meter Procurement and Installation Plan (the "Plan"). Thus, by planning to install a smart meter at Complainant's residence, Duquesne Light is **complying** with Act 129 as well as the Commission's express directives. See Campisi v. PECO Energy Co., C-2014-2434501, 2014 WL 4644282 (Pa. P.U.C. Sept. 3, 2014) (dismissing formal complaint where the complainant sought to opt out of PECO's smart meter program) (citing additional cases).

Section 2807 of the Public Utility Code provides in pertinent part:

(f) Smart meter technology<sup>3</sup> 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.

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3. The Commission defines "smart meter technology" as "technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity usage on at least an hourly basis, including related electric distribution system upgrades to enable the technology." 66 Pa. C.S. § 2807(g).

(ii) In new building construction.

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

66 Pa. C.S. § 2807(f)(2) (emphasis added).

The Commission ruled that “[t]he use of the word ‘shall’ in the statutes indicates the General Assembly’s direction that all customers will receive a smart meter.” Evans v. PECO Energy Co., Docket No. C-2013-2368477, 2013 WL 7019103 at \*3 (Pa. P.U.C. Dec. 19, 2013) (Hoyer, ALJ) (emphasis added). Likewise, the Commission Implementation Order relating to the installation of smart meters provides: “The Commission believes that it was the intent of the General Assembly to require all covered [Electric Distribution Companies] 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.’” Id. (quoting Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009)) (emphasis added).

Here, the Commission’s approval of Duquesne Light’s Plan is prima facie evidence that it is reasonable and in compliance with the law. 66 Pa. Code § 316. That is significant given the fact that Complainant has no smart meter because, to establish liability, he would necessarily have to establish that Duquesne Light’s smart meter practices as a whole are unreasonable and unsafe. There is no other way to establish liability under the operative and undisputed facts. The Commission, however, has already approved Duquesne Light’s Smart Meter Procurement and Installation Plan, which is prima facie evidence that the Plan is reasonable and complies with the law.

Complainant alleged no facts showing a change in circumstances or any other reason to disturb the Commission's prior determination.

The Commission's decision in Robert Wojack, C-2015-2484600, 2015 WL 4606038 (Pa. P.U.C. July 10, 2015) (Haas, ALJ), is illustrative. There, a complainant challenged a utility's monthly service charge. The Commission dismissed the complaint as legally insufficient because the monthly service charge at issue was previously approved by the Commission and made part of the utility's tariff. The Commission found that its approval of the monthly service charge constitutes prima facie evidence of the justness and reasonableness of the rate. 66 Pa. Code §316. To overcome the presumption of reasonableness, a complainant must show "a recent and significant change in circumstances," which the complainant in that case failed to allege. Id. at \*4.

The instant case compels the same result. Complainant has failed to show any change in circumstances since the Commission's approval of Duquesne Light's Smart Meter Procurement and Implementation Plan. Therefore, judgment on the pleadings in favor of Duquesne Light is warranted, as Complainant cannot demonstrate any violations of a statute or Commission regulation or order.

**2. A hearing would be fruitless because Complainant is not entitled to the relief he requests as a matter of law.**

Despite Complainant's desire to not have a smart meter installed at his residence, "there is no provision in the statute that allows customers to 'opt out' of smart meter installation. . ." Evans, 2013 WL 7019103 at \*3. See also, Francis v. PECO Energy Co., Docket No. C-2014-2451351, 2015 WL 5011620 at \*7 (Pa. P.U.C. August 20, 2015) (noting that "there is no provision in the Code, the Commission's Regulations, or Commission Orders that permits a customer to opt out of having a smart meter

installed on his or her premises.”); Povacz v. PECO Energy Co., Docket NO. C-2012-2317176, 2013 WL 392699 (Pa. P.U.C. Jan. 24, 2013).

Here, Duquesne Light’s smart meters are being deployed in compliance with the Commission-approved smart meter procurement and installation plan, and the law does not provide for the Complainant to “opt out” of smart meter installation. Therefore, a hearing would be futile because the Commission cannot grant Complainant the relief he requests. Case law is clear that, if a hearing would be fruitless because the Commission lacks the authority to grant the relief requested, a case may be dismissed without a hearing. 66 Pa. Stat. and Cons. Stat. Ann. § 703. See also, McCarey v. PECO Energy Co., Docket No. C-2015-2503724, 2016 WL 2988859 (Pa. P.U.C. May 19, 2016) (noting that are cases “where a hearing would not alter the inevitable conclusion that this Commission cannot provide the Complainant the relief requested.”).

**V. CONCLUSION**

For the reasons set forth above, Respondent Duquesne Light Company respectfully requests that Complainant’s Exceptions be denied and that the Initial Decision of Administrative Law Judge Watson be affirmed.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Lauren N. Rulli

PA I.D. No. 313768

(412) 594-5510

1500 One PPG Place

Pittsburgh, PA 15222

Counsel for Respondent, Duquesne  
Light Company



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

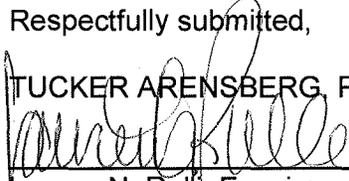
NORBERT SLIWINSKI,	)	
	)	
	)	
Complainant,	)	
vs.	)	Docket No. C-2016-2559985
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent.	)	

**APPENDIX TO RESPONDENT'S REPLY TO EXCEPTIONS**

Respondent's Exhibit 1 - Sliwinski's July 20, 2016 Complaint
Respondent's Exhibit 2 - Duquesne Light Company's Answer and New Matter to Formal Complaint
Respondent's Exhibit 3 - Sliwinski's September 1, 2016 Complainant's Response to Duquesne Light Company's Answer

Respectfully submitted,

TUCKER ARENSBERG, P.C.

  
\_\_\_\_\_  
Lauren N. Rulli, Esquire  
PA I.D. No. 313768

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-5510  
Counsel for Respondent, Duquesne Light  
Company

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Formal Complaint**

RECEIVED  
2016 JUL 22 AM 9:46  
PA P.U.C.  
SECRETARY'S BUREAU

**1. Customer (Complainant) Information**

Name Norbert Sliwinski

Street 856 Cottonwood Dr

City Monroeville

State PA

Zip 15146

County Allegheny

Telephone Number(s) Where We Can Contact You During the Day:

412 372 7338 (home)

n/a (mobile)

E-mail Address (optional): nsliwinski@hotmail.com

Utility Account Number: (from your bill) 6259350000

**2. Name of Utility or Company (Respondent)**

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Duquesne Light Company

**3. Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

ELECTRIC

WASTEWATER/SEWER

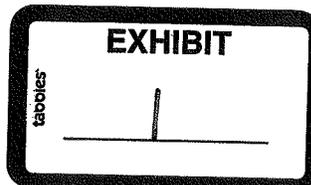
GAS

TELEPHONE/TELECOMMUNICATIONS (local, long distance)

WATER

MOTOR CARRIER (e.g. taxi, moving company, limousine)

STEAM HEAT



**4. Reason for Complaint**

**What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other see attached

**5. Requested Relief**

**How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.**

**6. Protection From Abuse (PFA)**

**Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.**

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

**7. Prior Utility Contact**

**a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?**

YES

NO

**b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?**

YES

NO

**c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.**

**8. Legal Representation**

**If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.**

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

**9. Verification and Signature**

**You must sign your complaint.** Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

**Verification:**

I NORBERT SLIWINSKI, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

  
(Signature of Complainant)

7/20/16  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

**10. Two Ways to File Your Formal Complaint**

**Electronically.** You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

**Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120**

**Attachment to PUC Complaint Form dated July 18<sup>th</sup> 2016**

This is to inform you that I am vehemently opposed to the installation of a so called Smart Meter anywhere on my premises. Hundreds if not thousands of these meters have been, and still are being installed on peoples properties without the consent of the property owners. The meters have not undergone any long term testing, or environmental studies to determine there safety. The World Health Organization has already classified the meter which emits HRF as a **2B Health** hazard –as carcinogen - same as DDT and lead from decades ago, which where touted to be save.

Based on case studies which have shown that pulsed radiation as produced by Smart Meters can, and have caused serious health problems, including tinnitus, memory loss and seizures. Studies have linked biological effects to RF radiation exposure, including increased cancer risk, damage to the nervous system, adverse reproductive effects, DNA damage, and more. Customers with smart meter have registered health complaints, which include sleep problems, headaches, nausea, anxiety, heart palpitations, tinnitus and ear pain, concentration and memory problems, dizziness, immune, nervous and hormonal system impacts. We are already being bombarded by cell towers, cell phones and Wi-Fi at infinitum, and do not need another source of harmful HFR especially not this close to our living quarters.

My wife and I are both seniors and therefore in the above target group of any of the biological affects of HFR. We are also concerned about our young grandchildren who visit us frequently and are staying in bedrooms which are less than 3 feet away from the present electric meter. There are hundreds of physicist, scientists and medical doctors who have studied the effects of the Smart Meter and are warning the populations of all countries who are either using or are planning to use them. I am also quoting your own Section 1501 of the Public Utility Code which states: "requires every public utility in Pennsylvania to "maintain adequate, efficient, safe, and reasonable service and facilities"

Since it has been shown that the Smart Meters are not safe, I am therefore against the meter exchange and do not grant permission to install of foresaid meter.

Please view the attached file <https://www.youtube.com/watch?v=v4HsxNG2-4M> which clearly explains the side effects a Smart Meter has on human beings.

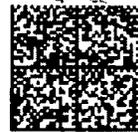
Sincerely,

A handwritten signature in black ink, appearing to be 'Norbert Sliwinski', written in a cursive style.

Norbert Sliwinski

Norbert Siwinski  
856 Cottonwood Dr.  
Monroeville, PA 15146

FITTSBURGH  
PA 150  
20 JUL '16  
PM 6 L



U.S. POSTAGE  
\$ .68  
FCM LETTER  
15146  
Date of sale  
07/20/16  
06 2500  
08353444 SSK

FOLD HERE

SECRETARY  
PUC  
400 NORTH STREET  
HARRISBURG PA 17120

17120-021199





**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NORBERT SLIWINSKI,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2016-2559985
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**ANSWER AND NEW MATTER TO FORMAL COMPLAINT**

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent, Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., hereby files the within Answer to Formal Complaint, stating as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Duquesne Light denies all material allegations in the Complaint unless specifically admitted. For the reasons set forth below and in Duquesne Light's Preliminary Objections, Complainant may not opt out of Duquesne Light's smart meter program. Duquesne Light is required by state law to install smart meters throughout its service territory, which includes Complainant's residence. To date, a smart meter has not yet been installed at Complainant's residence. Duquesne Light further denies that, once installed, a smart meter would have an adverse impact on the health or safety of Complainant and his family.

By way of background, Complainant established service in his name at 856 Cottonwood Drive, Monroeville, Pennsylvania (the "Property") on May 1, 1973. In June 2016 (before ever being notified by Duquesne Light that his meter was scheduled to be exchanged for a smart meter), Complainant contacted Duquesne Light and asked to opt out Duquesne Light's Advanced Meter Exchange (AMI) program, also known as the smart meter program. Duquesne Light's liaison for the AMI Program informed Complainant that the smart meter program was mandatory. Complainant acknowledged that he understood the AMI program and its requirements; however, he still refused to allow Duquesne Light to exchange his meter. After Complainant's refusal to accept a smart meter, Duquesne Light mailed him a letter dated July 13, 2016, outlining the benefits of the program. A copy of the July 13, 2016 correspondence is attached as Exhibit A.

To date, a smart meter has not yet been installed at the Property, but, if Complainant wants to continue to receive electric service from Duquesne Light, he may not opt out of having the meter installed. State law does not permit the exemption sought by Complainant. Act 129 of 2008 directed Duquesne Light and other electric distribution companies ("EDCs") to file smart meter procurement and installation plans with the Commission. Duquesne Light filed such a plan, which was approved by the Commission on May 6, 2013, at Docket No. M-2009-2123948. As set forth more fully in Duquesne Light's New Matter and Preliminary Objections, state law requires that all customers of Duquesne Light receive a smart meter.

Pursuant to Act 129, Duquesne Light is in the process of upgrading its metering infrastructure. As part of this upgrade, Duquesne Light will replace approximately 600,000 existing electric meters with new, digital models throughout its service territory.<sup>[1]</sup> These smart

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<sup>[1]</sup> The AMI Program offers various benefits to Duquesne Light's customers. Some of the initial benefits include: online tools that provide access to customer's electric usage information 24/7 and help customers discover ways to manage their bills as well as email or phone alerts designed to reduce high bill surprises and help customers manage high usage activity. In the future, the program will also provide outage alerts and restoration of service estimates to help customers plan during emergencies and also

meters allow two-way communication between the meter and Duquesne Light via a secure wireless network. Duquesne Light has also added policies to its Tariff relating to its smart meter program. Copies of the pertinent pages of Duquesne Light's Tariff are attached as Exhibit B.

With respect to Complainant's concerns about the radio frequency ("RF") of its new smart meters, Duquesne Light states that the Company's smart meters, like its traditional analog meters, utilize low-energy RF waves to transmit electricity, but transmit RF waves for only short periods every day. Furthermore, the Federal Communications Commission ("FCC") has established safe limits for RF exposure and the RF exposure for Duquesne Light's smart meters is well below the limits set by the FCC. In fact, according to a study completed by the California Council of Service and Technology, smart meters, when installed and maintained properly, result in lower RF emission than most common household electronic items, such as cell phones, microwaves, wireless internet, baby monitors, and garage door openers. The World Health Organization has similarly concluded that no adverse health effects have been demonstrated to result from exposure to low-level RF. A copy of Duquesne Light's promotional brochure titled "Myths v. Facts: The Truth About Smart Meters" that discusses these matters is attached as Exhibit C. In light of the foregoing, Duquesne Light denies that the installation of a smart meter at the Property would endanger the health or wellbeing of Complainant and his family.

Duquesne Light also denies that its smart meters pose a safety hazard, as alleged in the Complaint. To the contrary, the meters purchased by Duquesne Light have been tested and found to meet all accuracy, safety, and reliability standards by the American National Standards Institute (ANSI).

5. This paragraph was left blank in the Complaint and requires no response. To the extent that a response is required, Complainant may not opt out of Duquesne Light's smart

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provide an optional Time-of-use program that may provide benefits to customers who can shift portions of their power to non-peak hours.

meter program for the reasons set forth in paragraph 4, which is incorporated by reference as if fully restated.

6. After reasonable investigation, Duquesne Light is without knowledge or information sufficient to form a belief as to whether or not Complainant has received a "Protection from Abuse" order, and, therefore, denies the same.

7(a). It is admitted that this Formal Complaint is not an appeal from the decision of the Bureau of Consumer Services.

7(b). Duquesne Light denies the allegation in paragraph 7(b) of the Formal Complaint that Complainant has not spoken to a representative of the Company. To the contrary, the Company's representatives have communicated with Complainant regarding the smart meter program on at least one occasion.

7(c). This paragraph was left blank in the Complaint and requires no response.

8. This paragraph was left blank in the Complaint and requires no response.

9. No response is required to Complainant's verification and signature.

#### **NEW MATTER**

10. The allegations in the preceding paragraphs of this Answer and New Matter are incorporated by reference as if fully set forth.

11. Act 129 of 2008 directed Duquesne Light and other EDCs to file smart meter procurement and installation plans with the Commission.

12. The Commission approved Duquesne Light's petition for approval of its smart meter procurement and installation plan on May 6, 2013, at Docket No. M-2009-2123949. A copy of the Commission's Order is attached as Exhibit D.

13. 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) (emphasis added).

14. The Commission has ruled that “[t]he use of the word ‘shall’ in the statutes indicates the General Assembly’s direction that all customers will receive a smart meter.” Evans v. PECO Energy Co., Docket No. C-2013-2368477, 2013 WL 7019103 at \*3 (Pa. P.U.C. Dec. 19, 2013) (Hoyer, ALJ) (emphasis added). Likewise, the Commission Implementation Order relating to the installation of smart meters provides: “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.’***” Id. (quoting Smart Meter Procurement and Installation Implementation Order, Docket No. M-2009-2092655 (entered June 24, 2009)) (emphasis added).

15. Simply put, “there is no provision in the statute that allows customers to ‘opt out’ of smart meter installation, as Complainants desire.” Evans, 2013 WL 7019103 at \*3. See also, Francis v. PECO Energy Co., Docket No. C-2014-2451351, 2015 WL 5011620 at \*7 (Pa. P.U.C. August 20, 2015) (noting that “there is no provision in the Code, the Commission’s Regulations, or Commission Orders that permits a customer to opt out of having a smart meter installed on his or her premises.”); Povacz v. PECO Energy Co., Docket NO. C-2012-2317176, 2013 WL 392699 (Pa. P.U.C. Jan. 24, 2013).

16. Thus, by planning to install a smart meter at Complainant’s residence, Duquesne Light is *complying* with the Commission’s directives. State law does not allow Complainant to opt out of Duquesne Light’s smart meter program.

WHEREFORE, Respondent, Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the relief sought by Complainant in the Formal Complaint, and dismiss the Formal Complaint with prejudice.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read "Jeremy V. Farrell", is written over a horizontal line.

Jeremy V. Farrell, Esquire

PA I.D. No. 316258

(412) 594-3938

Lauren Woleslagle Rulli

PA I.D. No. 313768

(412) 594-5510

1500 One PPG Place

Pittsburgh, PA 15222

Counsel for Respondent, Duquesne Light  
Company



July 13, 2016

Norbert Sliwinski  
856 Cottonwood Dr  
Monroeville, PA 15146

Re: Advanced Metering Infrastructure

Dear Norbert Sliwinski:

We have added a note in your customer account indicating your desire to not receive an advanced digital meter. Our ongoing exchange of meters is part of an overall upgrade of the company's metering infrastructure required by Pennsylvania law called Act 129. Duquesne Light began exchanging existing analog meters with advanced digital meters in 2014 and currently is scheduled to complete the work by 2019.

As noted in the enclosed Pennsylvania Public Utility Commission (PUC) Q&A: "*state law does not allow a customer to 'opt out' of their EDC's (electric distribution company's) smart meter program... Installation of a smart meter is a condition of service...*" As a result, your existing analog meter will be replaced with a digital meter before we complete our meter exchanges in 2019. Duquesne Light will attempt to contact you before your exchange takes place.

In addition, there are circumstances that may require the exchange of your meter before that date. This includes, but is not limited to, the failure of your current analog meter, if your meter is randomly selected for PUC-required accuracy testing, or if the current automated meter reading system for analog meters no longer is available in your area. In those rare cases, you may not be contacted before the exchange takes place.

We ask that you consider, as detailed below, the benefits digital meters offer, as well as information related to questions you may have about the advanced metering technology:

- Once fully enabled, our new advanced metering infrastructure also will provide access to online tools that can help you manage your electric bill and set up email or phone alerts to warn you of potential high bills. It also will offer an optional Time-of-Use program that may provide benefits to those who can shift portions of their power use to non-peak hours. In the future, the new meter technology, in conjunction with other system improvements, will enable us to provide outage alerts and time-restoration estimates that could help customers make plans during storm-related service interruptions.
- We will continue to keep your billing and account information secure as we do today. Our new advanced metering infrastructure is being deployed with multiple layers of security controls designed to protect the privacy and security of customer data.
- The Radio Frequency (RF) output of the low-power digital meters is consistent with the output of our current analog meters, which have been measuring and transmitting customers' usage wirelessly for almost 20 years. In addition, the RF from our digital meters is significantly less than a cell phone, cordless phone or wireless router commonly found in most homes today.

For more information, visit the Meter Exchange section of our website, [DuquesneLight.com](http://DuquesneLight.com), or contact us at [MeterExchangeInquiry@duqlight.com](mailto:MeterExchangeInquiry@duqlight.com).

Thank you,

Dave Defide  
Manager, Customer Programs



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**RULES AND REGULATIONS - (Continued)****MEASUREMENT AND USE OF SERVICE - (Continued)****14.2 CUSTOMER REQUEST FOR SPECIAL METERING – (Continued)**

The Company has adopted a program that provides all customers with meters to provide data for normal monthly billing services. In the event that a residential or small commercial customer, or an EGS on behalf of a residential or small commercial customer, requests an upgrade to an Alpha Powerplus meter, which the Company provides for large commercial and industrial customers, installation of that meter will be provided at a cost of \$586.00, plus additional costs for the appropriate communication/system infrastructure. These net incremental charges, as set forth in the Company's Advance Meter Catalog, may be paid to the Company by either the customer or the EGS, or jointly by the customer and the EGS pursuant to a mutual agreement.

Act 129 of 2008 ("Act") required electric distribution companies ("EDCs") with at least 100,000 customers to file a Smart Meter Procurement and Installation Plan ("Plan") for Commission approval. The Commission's Smart Meter Procurement and Installation Implementation Order entered June 24, 2009, at Docket No. M-2009-2092655 set forth additional details for EDCs and rules for customers who request a smart meter prior to the EDC installing a smart meter on their premise. For customers who request a smart meter installed at their premise prior to October 2012, the Company will install an interval meter in lieu of a smart meter. The meter will be provided at a cost of \$586.00, as specified above, plus \$719.00 for the appropriate communication/system infrastructure. For a customer requesting pulse data from the interval meter, an additional charge of \$197.00 will apply. The requesting customer's account must be current and all payments must be made up-front prior to installation.

**14.3 SUB-METERING** If a customer wishes to have metering installed in addition to the Company installed meter, the meter must be installed on the customers electrical system and at the expense of the customer.

**15. INABILITY TO READ RESIDENTIAL METERS** When scheduled readings of kilowatt-hour meters are not obtained because of inability to gain access to the meter location, the customer may read his meter and furnish the Company the reading on cards supplied by the Company, or by telephone to the Company, in which case the bill will be rendered on the basis of such reading; otherwise, the Company will estimate the bill. No more than five (5) successive bills will be rendered on readings made by the customer.

**15.1 INABILITY TO READ COMMERCIAL OR INDUSTRIAL METERS** When scheduled readings of kilowatt-hour and demand meters are not obtained, the Company may render an interim statement for each month until the meters are read.

**16. USE OF SERVICE BY CUSTOMER** The customer shall use the electric service only at the premise where service is established; and after electric service has been established, shall notify the Company of any change in connected load, demand, or other conditions of use. The customer shall notify the Company of other on site sources of electric generation or electricity concurrently produced as a by-product of another process or electricity produced utilizing renewable resources. Customers who own and operate electric generation equipment shall conform with the Company's "Electric Service Installation Rules," copies of which may be obtained by calling, e-mailing or writing the Company's business office or at [www.duquesnelight.com](http://www.duquesnelight.com). For customers who own and operate electric generation, the provisions of Rider No. 16 - Service to Non-Utility Generating Facilities and Rider No. 21 - Net Metering Service may also apply. (C)



(C) – Indicates Change

ISSUED: APRIL 12, 2011

EFFECTIVE: APRIL 21, 2011

1

STANDARD CONTRACT RIDERS - (Continued)

RIDER NO. 20 – SMART METER CHARGE

(Applicable to Rates RS, RH, RA, GS/GM, GMH, GL, GLH, L, HVPS and AL)

PURPOSE

The Smart Meter Charge ("SMC") is instituted as a cost recovery mechanism to recover all costs to implement the Company's Smart Meter Procurement and Implementation Plan ("Plan"). The SMC has been added per Commission Order at Docket No. M-2009-2123948. Act 129 ("Act") became effective November 14, 2008, requiring all Pennsylvania electric distribution companies ("EDCs") with more than 100,000 customers to implement smart meters. Act 129 set forth the timeline for implementation, the definition of smart meters and the provisions for full and current cost recovery of all costs incurred by EDCs to install and make fully functional a smart meter system defined in and required by Act 129. The Company filed its Plan on August 14, 2009, in compliance with the Act, including this Charge and provisions for cost recovery. This Charge shall be updated as described below to recover all costs associated with implementing the Plan.

The SMC is a non-bypassable charge and shall be applicable to the monthly bill of all metered customers based on the number of meters installed at the premise.

ELIGIBLE COSTS

The SMC recovers all eligible costs incurred by the Company to implement smart meter technology and the supporting infrastructure. Eligible costs, described in 66 Pa. C.S. § 2807(f), include capital and expense items relating to all Plan elements, equipment and facilities, as well as all related administrative costs. Plan costs include, but are not limited to, capital expenditures for any equipment and facilities that may be required to implement the Plan, as well as depreciation, operating and maintenance expenses, a return component based on the EDC's weighted cost of capital and taxes. In general, eligible administrative costs include, but are not limited to, incremental costs relating to Plan development, cost analysis, measurement and verification and reporting. The costs associated with testing, upgrades, maintenance and personnel training are considered eligible costs.

MONTHLY SMART METER CHARGE

Meter Type	Monthly Charge Per Meter
Single-Phase	\$2.80
Poly-Phase	\$2.32

(D)  
(D)

The SMC, calculated independently for each meter type, shall be applied to all applicable customers served under the Tariff. Customers will be billed based on the number of meter types installed at their premise. Customers with multiple meters will incur multiple charges. The SMC shall be determined in dollars and cents per month per meter in accordance with the formula described in the "Calculation of Charge" section and shall be applied to all applicable customers served during any part of a billing month.

(D) – Indicates Decrease

## STANDARD CONTRACT RIDERS - (Continued)

(C)

RIDER NO. 20 – SMART METER CHARGE - (Continued)

(Applicable to Rates RS, RH, RA, GS/GM, GMH, GL, GLH, L, HVPS and AL)

CALCULATION OF CHARGE

The Company will update the monthly SMC effective January 1, April 1, July 1 and October 1 each year. At least ten (10) days prior to each effective date, the Company will submit a filing to the Commission with calculations described in this section supporting the proposed SMC. The initial charge, effective August 1, 2010, shall recover the eligible Plan costs that are not reflected in the Company's rates and are projected to be placed in-service or incurred as expense from July 1, 2010, through September 30, 2010. The initial charge for the SMC will also include a one-year amortization of deferred costs incurred prior to implementation of the Charge. The SMC will be updated to reflect eligible plant projects to be placed in-service and projected operational expense for the upcoming quarter.

The Company will calculate the quarterly revenue requirement for three primary capital cost components of the smart meter system: a) single-phase meters, b) three-phase or poly-phase meters and c) common costs. The Company will then assign and allocate common costs, to the extent possible, to the single-phase and poly-phase revenue requirement.

The following formulas set forth the calculation of the quarterly revenue requirement of each capital cost component and the monthly charge per meter type.

$$SMRR = (NPIS * PTRR) / 4 + Depr / 4 + O\&M - S + \epsilon / 4$$

Where: **SMRR** = The Smart Meter Revenue Requirement ("SMRR") calculated separately for single-phase and for poly-phase meters for the quarter. The SMRR for each meter type shall include an allocated share of the SMRR for common costs. The SMRR for common costs shall be allocated to each meter type based on the number of meters of each meter type.

**NPIS** = Projected average net plant in-service for the upcoming quarter including the applicable balance of accumulated deferred income taxes.

**PTRR** = Pre-tax rate of return. The pre-tax rate of return will be calculated using the State and Federal income tax rates, the Company's capital structure and cost rates for the long-term debt, preferred stock and common equity approved by the Commission in the Smart Meter Proceeding establishing this Rider.

**Depr** = Depreciation Expense. The depreciation expense is the net original cost of smart meter eligible plant multiplied by the annual accrual rates employed by the Company.

**O&M** = Operating and maintenance, administrative and other applicable expenses associated with the net plant in-service for the quarter.

**S** = Operating cost savings for the Company, if any, associated with implementing the smart meter system.

(C) – Indicates Change

ISSUED: JULY 22, 2010

EFFECTIVE: AUGUST 1, 2010

STANDARD CONTRACT RIDERS - (Continued)

RIDER NO. 20 – SMART METER CHARGE - (Continued)

(Applicable to Rates RS, RH, RA, GS/GM, GMH, GL, GLH, L, HVPS and AL)

CALCULATION OF CHARGE – (Continued)

- e = Experienced net over or under collection of revenue included in the SMC as of the end of the 12-month period ending June 30 each year including applicable interest. Interest shall be computed monthly at the legal rate of interest from the month the over or under collection occurs to the effective month that the over collection is refunded or the under collection is recouped. The e-factor shall be updated and included in the bills effective January 1 of each year. (C)

$$SMC = SMRR / M * ( 1 / (1 - T) )$$

- Where:
- SMC** = The Smart Meter Charge per meter per month.
  - M** = Forecast meter count for each meter type for the upcoming quarter applicable to customer bills.
  - T** = The total Pennsylvania Gross Receipts Tax rate in effect during the billing month, expressed in decimal form.

ANNUAL RECONCILIATION

On or about August 1 of the filing year, the Company will submit a reconciliation filing to the Commission Pursuant to 66 Pa.C.S. § 1307(e) for the twelve (12) months ending June 30, the reconciliation period. The revenue billed under the SMC for each quarter of the reconciliation period will be compared to the actual revenue requirement for each quarter. The over or under collection of revenue during the reconciliation period will be recouped or refunded, as appropriate, with interest, over a one-year period commencing on January 1 of the following year. The over or under collection will be included in the quarterly calculation of the SMRR.

MISCELLANEOUS

Minimum bills shall not be reduced by reason of the SMC, nor shall charges hereunder be part of the monthly rate schedule minimum.

Rider No. 10 – State Tax Adjustment Surcharge (STAS) shall be applicable to the Charge defined in this Rider.

The SMC will be added to the monthly Customer Distribution Charge of each applicable rate schedule. For those rate classes that do not have a Customer Distribution Charge, the SMC will be added to the First Block of Demand Charge as stated in the applicable Tariff rate schedule.

(C) – Indicates Change

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STANDARD CONTRACT RIDERS - (Continued)

(C)

RIDER NO. 20 – SMART METER CHARGE - (Continued)

(Applicable to Rates RS, RH, RA, GS/GM, GMH, GL, GLH, L, HVPS and AL)

MISCELLANEOUS – (Continued)

The Company shall file reconciliation statements annually.

The SMC shall be subject to review and audit by the Commission. The SMC shall remain in effect until full smart meter deployment is complete or until otherwise directed by the Commission.

This Rider will remain in effect until the final reconciliation statement is approved and charges fully recovered.

# Myths vs. Facts: The Truth about Smart Meters

## EXHIBIT

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Misunderstanding advanced technology can lead to the emergence of urban legends. The case is no different with smart meters, which utilities are rolling out across the country in an effort to bring the benefits of a modernized electric grid to consumers like you.

The following are the most commonly circulated smart meter myths. Our responses, each supported by research, offer the facts — the real deal on smart meters.

### MYTH NO. 1

1

Smart meters are less accurate than analog meters.

**TRUTH:** Smart meters are rigorously tested for accuracy even before they leave the manufacturing plant.

**TRUTH:** Some public service commissions require meter manufacturers to supply test results to prove that their smart meters generate on-the-mark measurements. All meter manufacturers must follow performance standards set by the American National Standards Institute.

**TRUTH:** Prior to installation, utilities repeatedly perform accuracy tests, often side-by-side with analog meters.

Repeated tests confirm that smart meters are accurate, in some cases even more accurate than analog meters.

### MYTH NO. 2

2

Smart meters are a health threat because they communicate using wireless signals.

**TRUTH:** In-depth review of the scientific literature by the World Health Organization (WHO) revealed that the small amount of radio frequency (RF) energy produced by smart meters is not harmful to human health.

**TRUTH:** RF emitted by smart meters is well below the limits set by Federal Communications Commission and it is below levels produced by other common household devices like cell phones, baby monitors, satellite TVs, and microwaves. In fact, you would have to be exposed to the RF from a smart meter for 375 years to get a dose equivalent to that of one year of 15-minutes-per-day cell phone use.

No credible evidence shows any threat to human health from RF emissions at or below RF exposure limits developed by the FCC. With over 25,000 articles published on the topic over the last 30 years, scientific knowledge in this area is now more extensive than for most chemicals.

### MYTH NO. 3

3

Smart meters will not keep my data secure.

**TRUTH:** Just as the banking, credit card and cable industries have provided secure access to your information online, the utility industry is poised to do the same using advanced security and encryption technology to safeguard your data.

**TRUTH:** Utilities are involved in national consortiums and work with national cyber-security to regularly audit their systems to ensure privacy and security of smart meters.

The privacy of your data is protected now. Utilities work constantly to safeguard it. That will not change with the use of smart meters.

MYTH NO. 4

4

Smart meters are hazardous, increasing the risk of fire and explosion.

**TRUTH:** Smart meters must meet safety requirements and standards spelled out in the National Electric Safety Code (NESC).

**TRUTH:** Public service commissions require independent certification proving that smart meters are safe and show resistance to heat, fire, voltages, surges, and self-heating.

Companies that manufacture smart meters produce certifiably safe and reliable equipment. Nevertheless, smart meters should be installed and uninstalled only by trained professionals exercising standard safety precautions.

MYTH NO. 5

5

Smart meters are an invasion of privacy.

**TRUTH:** Smart meters measure how much energy you use, based on time of day, not how you use that energy. Unless you install a home energy management system, smart meters cannot tell whether the energy used is from your oven, air conditioner, or hairdryer.

**TRUTH:** Utilities adhere to strict policies, following state laws that regulate the use of personal information for business functions like billing and customer service.

Smart meters are a landmark change allowing two-way communication between your utility and you, much like cell phones and banking. Utilities keep your data private and secure, similar to those industries and similar to how it's always been.

MYTH NO. 6

6

Smart meters do not provide any consumer benefits.

**TRUTH:** Smart meters measure and transmit your energy usage directly to your utility, eliminating the practice of estimated bills, which means no more surprises on your electric bill.

**TRUTH:** Smart meters provide you with near-real time energy usage information about how much, when and in some cases, at what price, you use energy. Armed with this information, you can take more control over your energy consumption—and your monthly bills.

**TRUTH:** Working as a part of the smart grid, smart meters improve power outage detection and notification. Smart meters electronically report the location of outages before you ever have to call your utility, making restoration faster and status notification to you much easier.

Greater reliability, faster power restoration, convenience, and control are just a few of the many benefits of smart meters.



SmartGrid  
consumer  
collaborative  
listen, educate, collaborate

Working for a consumer-friendly,  
consumer-safe smart grid

SGCC is a consumer focused non-profit organization aiming to promote the understanding and benefits of modernized electrical systems among all stakeholders in the United States. Membership is open to all consumer and environmental advocates, technology vendors, research scientists, and electric utilities for sharing in research, best practices, and collaborative efforts of the group. Join @ [www.smartgridcc.org](http://www.smartgridcc.org).

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Separating myths from reality allows you to take advantage of all the benefits that a smarter, more modernized electric grid offers. It's important to stay informed and learn about the different ways your utility is deploying smart grid and smart meters to improve their electric service. For trusted information about smart grid and smart meters visit the Smart Grid Consumer Collaborative (SGCC) at [smartgridcc.org](http://smartgridcc.org), the US Department of Energy at [SmartGrid.gov](http://SmartGrid.gov), or your utility website.

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held April 4, 2013

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

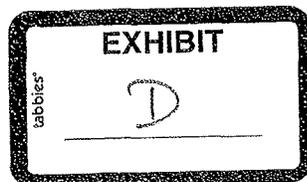
Petition of Duquesne Light Company for  
Approval of Its Final Smart Meter  
Procurement and Installation Plan

M-2009-2123948

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on January 14, 2013, relative to the Petition of Duquesne Light Company (Duquesne or the Company) for Approval of Its Final Smart Meter Procurement and Installation Plan (Final SMP). A Joint Petition for Approval of Full Settlement of All Issues (Joint Petition) was filed on December 7, 2012, by Duquesne and the Office of Consumer Advocate (OCA) (Joint Petitioners). For the reasons fully delineated herein, we shall grant Duquesne's Petition as modified by this Opinion and Order.



## I. Background

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 required Electric Distribution Companies (EDCs) to file smart meter plans within nine months after the effective date of Act 129. On June 24, 2009, the Commission issued its Smart Meter Implementation Order at Docket No. M-2009-2092655 (*Implementation Order*), which established the standards that EDCs must meet for providing smart meter technology to customers and also provided guidance for meeting those standards.

On August 14, 2009, Duquesne filed its Initial Smart Meter Procurement and Installation Plan (Initial SMP) with the Commission. The Commission entered an Order on May 11, 2010, approving Duquesne's Initial SMP, with certain modifications. Pursuant to the May 11, 2010 Order, Duquesne was required to file certain periodic updates with the Commission detailing its smart meter implementation status. First, on July 1, 2010, Duquesne filed a Cost Benefit Analysis for the additional smart meter capabilities identified in the Implementation Order. Next, on December 29, 2010, Duquesne filed its Application for Approval of Assessment of Needs, Technology Solutions and Vendor Selection. In that Application, the Company provided a detailed assessment of its Advanced Meter Infrastructure (AMI) technology requirements, possible solutions and selection of technologies and vendors. Duquesne then filed a Supplement to its Assessment Application on January 31, 2011, wherein it identified Itron, Inc. as its recommended primary contractor to design, construct, implement and oversee the Company's SMP.

On November 18, 2011, Duquesne filed a status update with respect to its SMP and requested a six month extension, from December 31, 2011 to June 30, 2012, to file the Company's Final SMP. Duquesne's request for an extension was granted via a Commission Secretarial Letter issued on December 13, 2011.

## **II. Procedural History**

On June 29, 2012, Duquesne filed its Petition for Approval of its Final Smart Meter Plan in which it requested final approval from the Commission of its Final SMP. On July 23, 2012, the OCA and Citizen Power, Inc. (Citizen Power) filed Answers to Duquesne's Petition. By Secretarial Letter issued August 17, 2012, the Commission notified the Parties that this matter had been referred to the Office of ALJ for further proceedings.

An initial Prehearing conference was held on September 17, 2012, and a further Prehearing Conference was held on November 15, 2012, wherein representatives from Duquesne, the OCA, Duquesne Industrial Intervenors (DII) and Citizen Power attended. Subsequent to the further Prehearing Conference, the Parties were able to reach a settlement in principle of all issues. On December 7, 2012, the Joint Petitioners filed the Joint Petition in which the Parties agreed to resolve all issues related to Duquesne's Final SMP. The record closed on December 21, 2012, upon expiration of the time in which interested Parties could object or comment on the Petition. All of the active Parties in this proceeding either support or do not oppose the settlement.

On January 14, 2013, ALJ Dunderdale issued an Initial Decision wherein she granted the Joint Petitioners unopposed settlement without modification. No Exceptions to the Initial Decision were received. Nevertheless, we have exercised our right to review the Initial Decision pursuant to 66 Pa. C.S. § 332(h).

## **III. Discussion**

We note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the

Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

**A. Legal Standards**

As the proponent of a rule or order, the Company has the burden of proof in this proceeding in accordance with Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). Courts have held that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Because the Joint Petitioners have reached a full settlement of the issues and claims that arose in this proceeding, the Joint Petitioners have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case.

Regulatory proceedings often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*.

## **B. Joint Petition for Approval of Full Settlement**

### **1. Introduction**

As stated previously, on December 7, 2012, the Joint Petitioners filed the Settlement. The Joint Petitioners state that the Settlement has been agreed to, or is not opposed, by all active Parties in this proceeding, noting that the Office of Small Business Advocate (OSBA), DII and Citizen Power have indicated that they do not oppose the Settlement. According to the Joint Petitioners, the Settlement resolves all issues in this proceeding and is in the best interests of Duquesne, the Joint Petitioners and the Company's customers. Settlement at 6. The Settlement provides for the approval of Duquesne's Final

SMP with certain clarifications and modifications that provide for additional customer education regarding smart meter technology and deployment and that provide for additional protection of customer data and the security of the distribution system. In addition, the Settlement provides that the Company will meet with stakeholders to obtain input on a plan to allow low-income customers to use smart meter technology to reduce their energy bills.

## **2. Terms and Conditions of the Full Settlement**

The Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, and five appendices. Appendices A and B to the Settlement are the Statements in Support of Settlement submitted by Duquesne and the OCA, respectively. Appendices C through E to the Settlement are the letters of non-opposition of the OSBA, DII and Citizen Power, respectively.

The essential terms and conditions of the Settlement are set forth in Section II, as follows:

## **II. SETTLEMENT TERMS AND CONDITIONS**

19. Duquesne Light's Final Smart Meter Plan is approved with the following clarifications and/or revisions.

*a. Customer Education and Research Metrics*

20. Within 60 days from the final order in this proceeding, the Company shall arrange to meet with the OCA and interested parties to obtain input on a plan to research the actual experiences of low-income customers to determine how such customers may be able to use smart meter technology to reduce their energy bills and to incorporate information regarding such customers into the Company's Customer Acceptance and Education Plan performance metrics. The Company also agrees to meet with the OCA and

interested parties to obtain input to research the actual experiences of low use (base load usage below 500 kWh), medically needy (customers with Chapter 56 medical certifications at the time a smart meter is installed) and other vulnerable customers to the extent such customers can be reasonably identified, and as agreed to between the Company and the OCA, provided that the Company will not be required to research other vulnerable customers if such agreement cannot be reached. The meeting(s) will establish a review and reporting process and a timeline for deliverables. The timeline in the plan will align with scheduled smart meter deployment estimated to begin in the fourth quarter of 2014. With regard to researching the experiences of customers described above, the parties may consider the Company's gathering and sharing with interested parties' non-confidential information regarding such customers' load shapes and usage characteristics as a means of informing the design of potential programs to enable such customers to benefit from smart meter technology.

21. The Company will propose any potential customer education measures for Time-of-Use ("TOU") rates when it files for Commission approval of a TOU program under Act 129. The Company will seek Commission approval of such measures in conjunction with such TOU program. All Parties to this Settlement reserve their rights to contest the Company's proposed allocation of customer education costs in that filing.

*b. Reasonable and Adequate Service*

22. Duquesne Light shall comply with all provisions of Chapter 14 of the Pennsylvania Public Utility Code (66 Pa. C.S.A. Chapter 14) and Chapter 56 of the Commission's regulations (52 Pa. Code Chapter 56) with respect to the application of remote connect and disconnect. Specifically, Duquesne Light will:

- a) Send an appropriately trained representative to the customer premise before any termination is scheduled to occur. The representative will use reasonable efforts to make personal contact with a

responsible adult occupant of the premise prior to the termination.

b) Where personal contact is not made prior to termination, the representative shall leave conspicuously at the residence a notice informing the customer that utility service is being disconnected and how the customer can effect reconnection. The notice shall include the number of a hotline where low-income and vulnerable customers can receive information on all Duquesne Light Universal Service and Energy Conservation programs and related payment information.

c) Service shall not be terminated if the customer can show confirmation of payment through either authorized agent or automated payment systems. The representative shall be fully trained to direct low income and vulnerable customers to a hotline where they can receive information on all Duquesne Light's Universal Service and Energy Conservation program and related payment information.

d) On or before October 1, 2016, Duquesne Light shall make a tariff filing with the Commission to reduce its restoration fee for reconnection where the remote feature is used.

23. Duquesne Light will investigate alternatives for Voltage Monitoring functionality if the capability doesn't exist within the Oracle software solution by 2016.

*c. Privacy and Security*

24. During the first quarter of 2013, the Company shall hire a third party consultant to assist the Company in developing a privacy policy for customers' smart meter data. The development of said policy shall be carried out in consultation with interested stakeholders and shall be the subject of at least semiannual meetings with stakeholders during the development of the privacy policy. The third party consultant will be asked to report on the range of practices of

other U.S. EDCs with respect to privacy policies for smart meter data. The allowed cost for this study shall not exceed \$40,000.

25. Duquesne Light will conduct a vulnerability assessment across the entire Advanced Metering Infrastructure (AMI) solution including penetration testing at the meter to validate the cyber security of its AMI system.

*d. Miscellaneous Issues*

26. Duquesne Light will adopt the “Green Button Initiative” in providing consumption data to customers. This standardized data format will enable customers to utilize smart phone applications developed by third parties.

27. The Company shall be permitted to recover any additional costs associated with implementing the terms and conditions of this Settlement through its SMC, except as limited herein.

28. The Joint Petitioners aver that the petitions and applications at Docket No. M-2009-2123948, that preceded the Company’s Final Smart Meter Plan, have been incorporated therein, as modified by the Final Smart Meter Plan, and all issues associated with those filings have been fully resolved by the instant Settlement. The Joint Petitioners further aver that no further action is required on the petitions and applications that preceded the Final Smart Meter Plan.

Settlement ¶¶ 19-28 at 6-10.

On the basis of these and other provisions of the Settlement, the Joint Petitioners request that the Commission approve the Company’s Final SMP including all the terms and conditions embodied in the Joint Petition for Settlement, without modification.

### 3. Disposition of the Full Settlement

The Joint Petitioners assert that approval of the Settlement is in the public interest because it provides for: (1) additional customer education regarding smart meter technology and deployment and ensures stakeholder input on these issues, and (2) the protection of customer data and the security of the distribution system. The Joint Petitioners further assert that the Settlement reduces administrative burden on the Parties and the Commission by avoiding the expense and uncertainty attended with a fully litigated proceeding and administrative adjudication. Settlement at 10.

The proposed Settlement is conditioned upon Commission approval of its terms and conditions without modification. According to Paragraph 31 of the Settlement, in the event that the Commission modifies the Settlement, any Joint Petitioner may elect to withdraw from the Settlement and proceed with litigation. In that event, the entire Settlement automatically shall be void and of no effect. Paragraph 31 provides that this Settlement may be withdrawn upon written notice to the Commission and all Parties five days from the date of the entry of the Commission Order denying or modifying the Settlement. The Settlement is made without any admissions against, or prejudice to, any position that any Joint Petitioner may adopt in any future litigation. In addition, the Joint Petitioners have agreed that the terms of the Settlement may not be cited as precedent in any future proceeding, and that the Commission's approval of the Settlement shall not be construed to represent approval of any Joint Petitioner's position on any issue, except as required to implement the terms of the settlement in this and future proceedings involving Duquesne. The Joint Petitioners agree that the Settlement is a compromise, and does not necessarily represent the position that a Joint Petitioner would advance in a litigated proceeding. *Id.* at 11.

As stated above, all Parties to this proceeding either support, or do not oppose, the terms of the Settlement. The Settlement provides for certain modifications to

the Final SMP Plan initially proposed by Duquesne, and represents a compromise among the Joint Petitioners that resolves all of the issues that have been raised in this proceeding. The Parties are to be commended for reaching an amicable Settlement on such a complex filing.

Based on our review of the record, we conclude that the proposed Settlement is in the public interest, and we shall approve it with the exception of several issues which remain to be addressed in order for Duquesne's SMP to comply with its statutory objectives. First, pursuant to Act 129 of 2008, Smart Meter Technology must enable the use of time-of-use (TOU) rates and real time pricing (RTP). 66 Pa. C.S. § 2807(g). Customers can elect to participate in TOU rates and real time pricing. See 66 Pa. C.S. § 2807 (f) (5). In our *Implementation Order*, we established additional meter capability requirements including, *inter alia*, that the smart meter must have the capability to support the net metering of customer generators. It is unclear whether Duquesne's SMP satisfies these criteria.

To satisfy the statutory smart meter capability requirements and requirements set forth in the *Implementation Order*, it is necessary that Duquesne's SMP provide for changes to Duquesne's settlement and customer profile processes. Currently, for monthly metered customer accounts, Duquesne uses a standard customer class average profile when allocating energy costs to customers. Individual customer hourly usage is interpolated from this standard class profile. As such, if an individual customer reduces usage during an on-peak hour, that monthly metered customer does not get the benefit of any cost savings for that on-peak reduction when Duquesne allocates hourly energy payment responsibility to the electric generation supplier serving that customer. This is why TOU rates and RTP programs cannot be effectively implemented without using hourly interval meters.

However, the meter alone is not enough for Duquesne to be capable of providing TOU rates and RTP and supporting net metering of customer-generators. Duquesne must also modify its settlement processes to allocate energy to each customer according to their actual usage profile, for each hour, as recorded by the installed smart meter. This is exactly what Duquesne does for its existing large customers with currently installed interval meters. Without adjusting these settlement and profiling processes, incentives and efforts for customers to receive TOU and RTP offers, as well as the successful marketing of net metering offers, will be thwarted in contravention of the statute and the *Implementation Order*.

Duquesne proposes to gradually install smart meters between 2014 and 2020. Because of this long installation period, it will be necessary for Duquesne to implement these settlement and profiling process changes prior to the completion of all smart meter installations. Accordingly, Duquesne should file a supplemental SMP with the Commission providing a reasonable period, after installation of each smart meter, in which it will ensure that each customer gets its energy and capacity assignments based on the actual hourly energy usage of that customer. Customers should not be forced to wait years to be capable of receiving TOU, RTP and net metering pricing products.

The second unresolved issue with Duquesne's SMP relates to third-party access to customer meter data. This filing is designed as Duquesne's "Final Smart Meter Procurement and Installation Plan." Duquesne's Final SMP properly provides for the development of a web portal for the purpose of efficiently sharing certain limited customer authorized usage and service data with service providers of that customer.<sup>1</sup> However, the Final SMP does not provide the specifics of the web-based solution or how and when it will be implemented.

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<sup>1</sup> Information sharing does not include sensitive customer financial data. Data access is limited to usage data required to efficiently and accurately price service offerings to customers.

By Order entered on December 6, 2012, at Docket No. M-2009-2092655, we directed the Electronic Data Exchange Working Group (EDEWG) to initiate a web-portal working group to develop a standardized solution for acquisition of interval usage data via a secure web-portal. It is our expectation that Duquesne and the other EDCs will be directed to update their smart meter technology and implementation plans when the work of this web-portal group has concluded. Any such updates would be for the purpose of implementing a standardized web-based solution, arising out of the working group and approved by the Commission, to provide authorized third parties with secure access to customer interval usage data.

Finally, we note that we previously directed that each plan shall include the individual costs for deploying and operating nine additional smart meter technology capabilities. *Implementation Order* at 30. Duquesne has indicated that the cost of the Voltage Monitoring and Communication of Outages and Restorations capabilities are not justified at this time. However, Duquesne failed to provide specific cost effectiveness data supporting its decision not to include these capabilities in the SMP.<sup>2</sup> Based on the record as developed, we are unable to determine whether Duquesne's circumstances merit a waiver of these capabilities.

Therefore, we shall direct Duquesne to make a compliance filing within ninety days of the date of entry of this Opinion and Order, specifying its proposed changes to settlements and profile processes, and providing data supporting whether or not inclusion of the Voltage Monitoring and Communication of Outages and Restorations capabilities are cost effective. We shall approve Duquesne's Final Smart Meter Plan as

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<sup>2</sup> The Commission directed that deployment and operating costs of the additional capabilities be presented including a breakdown of all incremental costs and any associated potential operational and maintenance cost savings. *Id.* "All cost estimates must be supported by estimates from at least two vendors where available. To the extent that an EDC or another party demonstrates that a particular Commission imposed requirement is not cost-effective, the Commission will have the option of waiving a particular requirement for that EDC or all EDCs." *Id.* at 30-31.

modified by the Joint Petition for Full Settlement of all Issues in all other respects. We direct that the Parties to the Joint Petition provide written notice to the Commission and all Parties within five days from the date of the entry of this Opinion and Order whether they intend to withdraw from the Settlement based upon our directed modifications.

#### **IV. Conclusion**

For the reasons set forth, *supra*, we will grant Duquesne's Petition, approve the Joint Petition for Full Settlement, and approve Duquesne's Final Smart Meter Plan, as modified by, and consistent with, this Opinion and Order. Duquesne is directed to make a compliance filing within ninety days of the entry of this Opinion and Order, specifying its proposed changes to settlements and profile processes, and providing data supporting whether or not inclusion of the Voltage Monitoring and Communication of Outages and Restorations capabilities are cost effective; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Petition of Duquesne Light Company seeking approval of its Final Smart Meter Plan is granted, as modified by this Opinion and Order.
2. That the Joint Petition for Approval of Full Settlement of All Issues filed on December 7, 2012, is approved, as modified by this Opinion and Order.
3. That the Parties to the Joint Petition for Approval of Full Settlement of All Issues provide written notice to the Commission and all Parties within five (5) days from the date of entry of this Opinion and Order, whether they intend to withdraw from the Settlement based upon the Commission directed modifications. In the event no adverse comments are filed regarding the directed modifications, this Order shall be deemed final without further Commission action.

4. That Duquesne Light Company shall make a compliance filing within ninety (90) days of the date of entry of this Opinion and Order, specifying its proposed changes to settlements and profile processes, and providing data supporting whether or not inclusion of the Voltage Monitoring and Communication of Outages and Restorations capabilities are cost effective.

5. That any other interested Parties are directed to file comments on Duquesne Light Company's compliance filing submitted in response to Ordering Paragraph No. 4, above, within 120 days of the date of entry of this Opinion and Order.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 4, 2013

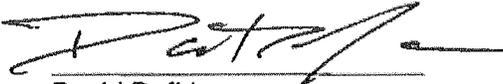
ORDER ENTERED: May 6, 2013

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NORBERT SLIWINSKI,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2016-2559985
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**VERIFICATION**

I, David Defide, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
David Defide

\_\_\_\_\_  
Date



Duquesne Light Co  
411 Seventh Ave.  
Pittsburgh PA 15219  
Attn.: Richard Riazzi CEO

*Kevin Rodan*  
*NOBERT SHWINSKI*  
*6259350000*

9/1/2016

Ref: Your law office representatives letter dated 7/23/2016 Docket # C2016-2559985

Dear Mr. Riazzi.

Though I appreciate the length at which your lawyers tried to make case by trying to present various state laws, rules and regulations, I am still not "opting in" i.e. agreeing to have a SmartMeter installed, see following paragraph and attachment – There is NO FEDERAL MANDATE to have SM installed.

Contrary to the bleating of manufacturers and utility talking heads, who claim there is no "opt out", the fact is you, the consumer must be offered the meter, or request a meter and "OPT IN". No one can be forced to comply with an unrevealed contract between private corporations, and to which you were never a party and had no knowledge of.

Additionally, the attachment Myths vs. Facts about the "Truth" of smart meters does not resonate with me. That organization does not have a single employee who has any competency in - or knowledge of – any electrical device and certainly not of one as complicated as a Smart There are no engineers, scientists or physicists listed.

How would they now how a smart meter functions and what the meters capabilities are? What makes them the experts? Have they assigned an independent non- government run testing lab to test Meter for safety aspects etc.

Furthermore I would like to point out that the Smart Meters have not been approved by the Federal Governments own Underwriters Laboratory or UL. Contrary to their rebuttal of the 6 Myths listed there are hundreds if not thousands of case histories of SmartMeter's exploding, catching fires and high output of HF radiation making people ill.

I have enclosed some information of case histories right here in Pittsburgh from your own customers who after the SM was installed the rates of gone up

**Smart Meters Pose Ongoing Issues For Duquesne Light Customers**  
**May 17, 2016 8:38 PM By Jon Delano**  
**Filed Under: Duquesne Light, Jon Delano, Smart Meters**

PITTSBURGH (KDKA) — Do you have one of those smart meters that Duquesne Light is installing all over? Turns out, sometimes customers are experiencing problems with them. Last January, Karen Mihalic told KDKA-TV about her first bill after the installation of her smart meter. "That's when I had my shock," she told KDKA money editor Jon Delano at the time. The first month after Duquesne Light installed her smart meter, the Mihalics' electric bill skyrocketed from \$42 a month to over \$2,500. She

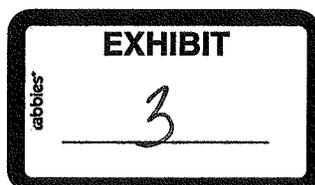


Exhibit 3

was hardly alone. Christine Fox's bill jumped two-and-a-half times during the winter. "I think there are many people out there who are having problems with it," Fox said last January. Fast forward to now and Duquesne Light customer Ernie Leopold of Findlay Township has just the opposite kind of smart meter problem. "Six months into it we started getting zero bills. Our bill came with a zero dollar amount," said Leopold, "even though we were using electricity." Leopold called Duquesne Light — who replaced the meter and figured out what was owed for electricity actually used — but the problem kept repeating and got worse. Obviously, these smart meters are not so smart.

This is the third smart meter for the Leopolds and then they got a notice that their electricity was going to be shut off.

As you can see there are a myriad of problems with the SM and I am more than ever against the replacement of my analog meter and hereby give notice that I am not OPTING IN.

I am also demanding a response about the SMART METERING Policy Actions since the Energy Policy Act of 2005.

Sincerely,  
  
Norbert Sliwinski

The following links will show serious problems with the SM which have an affect on safety and health issues:

SEE ATTACHMENTS &  
SMART METER HARM  
NO FEDERAL MANDATE

## Smart Meter Harm

*Overbilling, fires, health problems, inaccuracy, hacking & cybersecurity, interference, privacy loss, and more....*

← British report: Smart Meters are a potential catastrophic government IT disaster  
40 NGOs lodge complaint over pro-industry bias in European Commission assessment of EMF →

### **German govt. expert warns Smart Meters are access points to electricity grid, hacking the grid from private homes possible**

Posted on April 2, 2015 by admin

***"Introducing smart meters means you install access points to the electricity grid in private homes," said Reinhard Gruenwald, an energy expert at the Office of Technology Assessment at the German Bundestag, a scientific institution advising German lawmakers. "You can't physically protect those. If criminals are smart enough, they may be able to manipulate them."***

*Attacks on grids could cause major catastrophes globally, according to Nicholas Hanlon, project manager for critical infrastructure security at the Center for Security Policy.*

*"Clean water, hospitals, transportation, communications, and food storage, all depend on the electrical grid," he said. "If the grid is down for a few days it's no big deal. But imagine social order after two weeks."*

Imagine one or more nuclear power plant catastrophes if back-up generators don't immediately operate at full power following a grid shutdown.

Analog electromechanical meters are not access points to the electricity grid . Why are political leaders endangering our entire society?

From **Bloomberg**, April 1, 2015

### **Turkey's 10-Hour Blackout Shows Threat to World Power Grids**

by Firat Kayakiran, Onur Ant, and Ercan Ersoy

A massive power failure that crippled life in Turkey for almost 10 hours on Tuesday highlights the threats facing electricity grids worldwide.

Turkey's most extensive power failure in 15 years, which left people stranded in elevators and traffic snarled, wasn't the result of a lack of electricity. The prime minister said all possible causes — including a cyber-attack — were being investigated.

While the source of the problem is still unknown, recent revelations that a 2008 oil pipeline explosion in Turkey was orchestrated via computer and the high-profile hacking last year on Sony Pictures Entertainment demonstrate the increasing ability to penetrate systems. For power grids, technology being added to make them more reliable and productive is also giving attackers an entry point into vital infrastructure.

"Every country, including the U.S., will be looking at it to see what the vulnerabilities were and learn some lessons about protection," said Kit Konolige, a New York-based utility analyst for Bloomberg. "An electric grid is a complex system and it's hard to ensure that it's defended everywhere."

Several foreign governments have hacked into U.S. energy, water and fuel distribution systems and might damage essential services, the National Security Agency said in November. A report by California-based cybersecurity company SentinelOne predicts that such attacks will disrupt U.S. electricity in 2015.

### **Targeting Industry**

"More and more attacks are targeting the industrial control systems that run the production networks of critical infrastructure, stealing data and causing damage," said David Emm, a principal researcher at Moscow-based security company Kaspersky Lab Inc., which advises governments and businesses.

All power use was previously measured by mechanical meters, which were inspected and read by a utility worker. Now, utilities are turning to smart meters, which communicate live data to customers and the utility company. This opens up the systems to hackers.

Turkey's regional power grids have been investing to transform substations, transformers and circuit-breakers to smart devices since they were privatized starting in 2008, said Ugur Yuksel, coordinator of the nation's Electricity Distributors' Association, which governs all 21 grids in Turkey.

### **Plant Failures**

"The more you use telecommunication systems and Internet, the more exposed you are to cyber-attack," Yuksel said by phone from Ankara on Wednesday, without speculating on the cause of

the Turkish blackout. "The best way to minimize the threat of cyber-attacks on grids is to start using closed networks that employ Internet-based communication selectively."

A domino effect of power plant failures that began on western Turkey's Aegean coast caused blackouts all the way to the eastern part of the country, Energy Minister Taner Yildiz said at a conference in Istanbul on Thursday, according to state-run news Anadolu Agency. "We cannot say the reason why there were failures and a cyber-attack is not ruled out."

Turkey's national grid operated by the state power transmission company Turkiye Elektrik Iletim AS could be vulnerable to "decoding of encrypted information," Yildiz said, without elaborating.

### **Data Transmission**

Supervisory systems used by operators are open to threats of cyber-attacks because they employ telecommunication systems, Yuksel said. In Turkey, like in many other countries, grid operators use fiber optic cabling networks and mobile services for data transmission, he said.

It is not only hostile states that target these critical infrastructures at the heart of the economy, but also "hacktivists, hooligans and criminals," according to Kaspersky Lab. Research shows that most companies don't invest enough in security technology — systems are often outdated and only a third of the employees pay attention to cybersafety, said Kaspersky Lab's Vyacheslav Borilin.

Germany, Europe's biggest energy market, is in the midst of a push to expand and modernize its grid to integrate more renewable power. Smart meters installed in homes across Europe can communicate with a power supplier or the grid operator.

### **Protecting Meters**

"Introducing smart meters means you install access points to the electricity grid in private homes," said Reinhard Gruenwald, an energy expert at the Office of Technology Assessment at the German Bundestag, a scientific institution advising German lawmakers. "You can't physically protect those. If criminals are smart enough, they may be able to manipulate them."

# SMART METERS: No Federal Mandate

August 15, 2011

SMART METERS health hazards, Marti Oakley, No "opt in", PPJG, public utilities, PURPA, RF radiation, smart meters, surveillance, tax packages 46  
Comments

Marti Oakley (c)copyright 2011 All Rights Reserved

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***This Standard would also allow utilities to recover from ratepayers any capital, operating expenditures, or other costs of the smart grid investment, including a reasonable rate-of-return. "***

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THERE IS NO FEDERAL SECURITY MANDATE FOR SMART METERS, according to George W. Arnold the national coordinator for smart-grid interoperability at the National Institute of Standards and Technology. This agency of the U.S. Department of Commerce is said not to be involved in regulations but is only tasked with promoting standards among industries.

While both the 2005 and 2007 faux energy bills were codified into public laws, NO part of them creates a federal law pertaining to individual consumers or dictating that the public must be forced to comply with provisions of SMART Grid.

Contrary to the bleating of manufacturers and utility talking heads, who claim there is no "opt out", the fact is you, the consumer must be offered the meter, or request a meter and "OPT IN". No one can be forced to comply with an unrevealed contract between private corporations, and to which you were never a party and had no knowledge of.

## **Emergency Economic Stabilization Act of 2008 :**

An Energy Tax Package was under development in Congress for several years prior to 2008. In September 2008, the package was finally enacted into law via its inclusion in the Emergency Economic Stabilization Act of 2008. This tax package shifted tax liabilities from corporations who were already posting massive record profits, onto the public.

### Section 1307 State Consideration of Smart Grid

Energy 2007, Page 6 : This Section amends PURPA to create two additional PURPA Standards. (Note: Two new PURPA Standards are also created in Section 532.)

These standards are in the form of requirements on parties such as utilities to undertake certain actions. The standards are not directly prescriptive on these parties, however; it is up to state utility regulatory commissions, or the bodies that govern other types of utilities, to decide that the standards should be actually adopted by utilities subject to their jurisdiction.

The only direct mandate with PURPA standards is for the state or other jurisdictional body TO CONSIDER whether the new Standard should be implemented and to demonstrate that it has undertaken such consideration.

The first new Standard would require utilities—prior to undertaking investments in non-advanced grid technologies— to demonstrate that they have considered investments in “qualified smart grid systems” based on a list of factors (on page 301) in the section that include total costs, cost-effectiveness, etc.

**This Standard would also allow utilities to recover from ratepayers any capital, operating expenditures, or other costs of the smart grid investment, including a reasonable rate-of-return.**

Furthermore, this Standard would allow utilities to recover remaining book value of any equipment rendered obsolete by the deployment of such smart grid systems. There is no description or list relative to what “qualified smart grid systems” would be. ( end Page 6 ) (all emphasis, mine)

**This is a tax bill. “Ratepayers” are actually taxpayers. This is a new TAX forcing the public to finance SMART METERS/GRID at the rate of 100% of costs plus a profit margin written into it. We are being forced to finance a system sold as energy conservation, efficiency, carbon reduction, and at the same time being subjected to unwarranted surveillance, data mining, and extreme health hazards not to mention the invasion of our homes and businesses. Taxes for this system are applied to your energy bill under several categories and not one part of this bill or the SMART GRID system will reduce consumption or make energy sources more secure or efficient.**

The Energy bills of 2005 and 2007 were Energy TAX bills and had nothing to do with conservation, security or efficiency. Reading through the 2005-2007 tax provisions is a laundry list of non-related tax breaks, subsidies, tax credits and other loopholes for gas and oil cartels and other so-called energy producing corporations. All taxes for financing this loss of revenue will be applied to and paid by ....you, the general public.

Public Utility Regulatory Policies Act of 1978 (PURPA) Through PURPA, two standards were established: “The Energy Independence and Security Act of 2007 (EISA 2007) contains two sections (secs. 532 and 1307), that also add additional “States-must-consider” standards to the Public Utility Regulatory Policies Act of 1978 (PURPA).”

The “states must consider” does not mean the states must comply as there is no law to force compliance of the states.

*“DOE itself is NOT involved in the implementation of PURPA—States (or local governing boards) are—and so DOE is not in a position to offer guidance or advice on these new PURPA provisions.”*

**\*\*This is where the Department of Energy excused itself because it has no lawful authority.**

## **How they got in YOUR state**

Demand Response and SMART METERING Policy Actions since the Energy Policy Act of 2005.

A summary for State Officials.

This summary is the guide document instructing state officials on how to implement this business plan in their respective states.

### Follow the Money!

*In late October 2009, the Department of Energy (DOE) announced the recipients of the \$3.4 billion in stimulus grants under the American Recovery and Reinvestment Act (ARRA). Award selections were announced for 100 smart grid projects that are intended to lead to the rollout of approximately 18 million smart meters, 1 million in-home energy management displays, and 170,000 smart thermostats, as well as numerous advanced transformers and load management devices. The award selections were organized by category: 1) Advanced Metering Infrastructure; 2) Customer Systems; 3) Electric Distribution Systems; 4) Electric Transmission Systems; 5) Equipment Manufacturing; and 6) Integrated and/or Crosscutting Systems. In its announcement, the DOE said the \$3.4 billion represented the largest amount of ARRA funding ever made in a single day.*

*But smart-grid projects that are competing for the \$800 million in federal grants under the stimulus program would have to meet strict cyber security guidelines. The standards institute and other groups are working on a set of recommendations for state utility boards and the Federal Energy Regulatory Commission. (this is in addition to the 3.4 Billion the DoE handed out under the stimulus package and does not include the staggering number of other quickly devised "grant" programs which were nothing more than federal subsidizing of private corporations identified as "stakeholders" in this assault on the public, amounting to billions more.)*

ABSOLUTELY no testing was ever done on the SMART METERS to substantiate the claims by government and manufacturers that the meters are safe. Independent testing however exposes the danger of these meters to the overall public health. 'Smart' meter radiation is a Class 2B carcinogen according to the World Health Organization ([pdf](http://stopsmartmeters.org/)) (from <http://stopsmartmeters.org/> ) And this is just the tip of the SMART METER iceberg. No one knows what the affects of meshed systems will have on communities and neighborhoods as they are bombarded with massive amounts of radio frequency radiation thousands of times a day.

### So how did they do it?

It is an assault on the senses that as the country foundered on the edge of near total economic collapse due to the corruption on Wall Street and in banking, that our congresses and presidents for the last ten years used this crisis to finance a massive assault on the public meant to further cement a police state while pandering to corporations to enrich them and by extension and as a repayment of favors owed, enriched themselves.

Congress flooded the Department of Energy and the Commerce Department with billions of dollars loaded into the Economic Stabilization Act 2008 and the Stimulus 2009 package to buy access to individual states. Considering the abhorrent state of our economy, you might be wondering where these billions came from.

First came the "economic stabilization act of 2008, then the "stimulus" package of 2009 where billions and billions were funneled to federal corporate agencies. Then came a meeting with the "council of governors" to determine how to access the states, flood them with cash during severe

economic distress that they allowed to happen, and gain access inside the geographical boundaries of the states.

Of course, the "council of governors" jumped right on the wagon and every governor in every state followed them with their hands out for the free cash.....that came from borrowing against the full faith and credit of the United States (Inc) which turns out to be ....you, the taxpayer.

This allowed the DoE and various other unlawfully created corporate federal agencies to disperse massive wads of cash to those "stakeholders" they cherish so much.

In short, the public is being forced to subsidize the capital investment and expansion of privately owned utilities in addition to being forced to pay a second time as these same parasitic corporations recoup these same investments that were funded by the stimulus package to begin with.

Reading through the Energy Policy Act of 2005 and the subsequent EISA 2007 energy bill, it is absolutely clear that what did pass pertaining to SMART Metering pertained only to Federal buildings and [federal] housing. This is in adherence to the Constitution which gives the federal government power only over needful buildings, insular possessions and territories. In every other instance the word "voluntary" precedes any item.

\* The SMART GRID system is nothing more than a system of accelerated energy costs with accompanying tax increases. The system cannot and does not deliver more efficient use of energy and isn't meant to. The intent of the GRID and the meters is to pin energy rates to the ever fluctuating markets enabling the energy provider to charge the highest rate possible in any given period of time. Higher rates mean higher taxes. This isn't about energy conservation or any of the other nonsense put out as propaganda to foist these deadly meters upon an unsuspecting public: This is simply a business plan meant to unlawfully spy on private citizens while extorting the public for corporate profits.

And if you get sick from these meters blasting you 24 hours a day with radio frequency radiation.....tough crunchies. There's money to be made.

'Smart' meter radiation is a Class 2B carcinogen according to the World Health Organization (pdf), at least 100x the exposure from a cell phone, say UC Nuclear experts. Equivalent to living within 500 feet of a major cell tower, according to independent EMF expert Cindy Sage. Thousands are reporting adverse health effects to the PUC, and yet installations continue as if nothing is wrong.

JUST LIKE OBAMA CARE!

**USC Title 15 Commerce and Trade.**

**Not revised, codified and enacted into positive**

**law. <http://www.ilsdc.org/attachments/wysiwyq/544/usc-pos-law-titles.pdf>**

Regardless, Title 15 Commerce and Trade is non-positive Code & Title, simply meaning that there is no underlying Constitutional authority for the federal government to enter into these areas and therefore, these "codes" cannot be codified into public law and carry no force of law except as it applies to the District of Columbia, insular possessions and territories. These are the ONLY places the federal government has absolute authority. Commerce and trade cannot be codified into public law as there is no underlying Constitutional authority for the federal government to enter into commerce or trade other than as a contracting party or, in the treaty process. The government *may* enter into trade disputes between the states as an arbitrator when there is a state-to-state dispute although, depending upon the political leanings of SCOTUS at any given time, the twisting and contorting of this provision can change dramatically.

The federal government has no authority to unlawfully cede to or, empower any federal agency with powers and authority the federal government does not possess and never did.

Federal Energy Regulatory Commission (FERC)

<http://www.ferc.gov/legal/fed-sta/ene-pol-act.asp>      <http://www.ferc.gov/industries/electric/indus-act/smart-grid.aspx>  
<http://www.ferc.gov/industries/electric/indus-act/smart-grid/eisa.pdf>

Federal metering requirements (Applies ONLY to federal buildings and [federal] housing) and include NO specific guidance of what to measure (i.e., kW, KVA, PF, Voltage, etc.)

PURPA Section 532

<http://www.seiec.com/Purpa%2011%20integrated%20resource%20planning.html>

Estimated Budget Effects Of The Revenue Provisions Contained In Titles I. And XV. Of H.R. 6, The "Clean Renewable Energy And Conservation Tax Act Of 2007," As Passed By The House Of Representatives On December 6,

2007 <http://www.jct.gov/publications.html?func=startdown&id=1352>

Tax provisions written into both the 2005 and 2007

bills. <http://jct.gov/publications.html?func=startdown&id=1353>

Economic Stabilization Act of

2008 [http://www.house.gov/apps/list/press/financialsvcs\\_dem/press092808.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press092808.shtml)

Department of Energy funding from Stimulus

package <http://www.kema.com/services/consulting/utility-future/smart-grid/follow-the-money-stimulus-funding-begins-to-flow-into-smart-grid-section.aspx>

Federal funding for metering federal buildings and federal

housing [http://www.govenergy.com/2009/pdfs/presentations/Energy101-](http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-Session05-Chvala_William.pdf)

[Session05/Energy101-Session05-Chvala\\_William.pdf](http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-Session05-Chvala_William.pdf)

An Energy Tax

Package [http://www.house.gov/apps/list/press/financialsvcs\\_dem/press092808.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press092808.shtml)

Federal Meeting

Requirements [http://www.govenergy.com/2009/pdfs/presentations/Energy101-](http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-Session05-Chvala_William.pdf)

[Session05/Energy101-Session05-Chvala\\_William.pdf](http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-Session05-Chvala_William.pdf)

Demand Response and SMART METERING Policy Actions since the Energy Policy Act of 2005. A summary for State Officials

<http://www.scribd.com/doc/43043654/US-Smart-Meters-Regulations-Policy-Makers-Guide>

What are "advanced meters?"

[http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-](http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-Session05-Chvala_William.pdf)

[Session05-Chvala\\_William.pdf](http://www.govenergy.com/2009/pdfs/presentations/Energy101-Session05/Energy101-Session05-Chvala_William.pdf)

National Institutes of Standards and Technology

<http://www.nist.gov/smartgrid/>

US-S Smart Meters Regulations Policy Makers Guide

<http://www.scribd.com/doc/43043654/US-Smart-Meters-Regulations-Policy-Makers-Guide>

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NORBERT SLIWINSKI :  
Complainant :  
v. : DOCKET NO. C-2016-2559985  
: :  
DUQUESNE LIGHT ENERGY COMPANY :  
Respondent :  
:

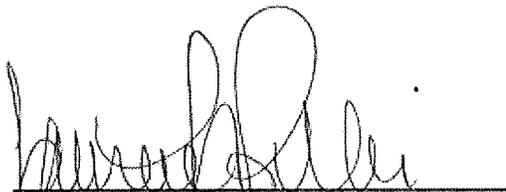
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CERTIFICATE OF SERVICE

I, Lauren N. Rulli, hereby certify that I have this day served a copy of Duquesne Light Company's Motion for Judgment on the Pleadings in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Norbert Sliwinski  
856 Cottonwood Drive  
Monroeville, PA 15146  
*Via First Class Mail*

November 15, 2016

  
\_\_\_\_\_  
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