

August 15, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Miranda Grace Edwards v. Duquesne Light Company
Docket No. C-2018-3002741

Dear Secretary Chiavetta:

Attached please find the Complainant's (my) responses to Duquesne Light Company's Answer and New Matter to the Formal Complaint I filed. It has been submitted in accordance with the agreed-upon deadline of August 15, 2018.

A copy of this document has been served upon the Respondent's Counsel, Shane Miller, Esq., in accordance with Commission regulations.

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

Sincerely,



M. Grace Edwards
Complainant
msea.mdew@gmail.com

Attachment

Cc: Shane Miller, Esquire, Counsel for Duquesne Light Company (via email) (with attachment)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA GRACE EDWARDS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No. C-2018-3002741

Complainant's Response to

**ANSWER AND NEW MATTER TO
FORMAL COMPLAINT**

Filed by Miranda Grace Edwards

msea.mdew@gmail.com
3835 Acorn Street
Pittsburgh, PA 15207

COMPLAINANT'S RESPONSE to ANSWER AND NEW MATTER TO FORMAL COMPLAINT

TO: RESPONDENT'S GENERAL COUNSEL, SHANE MILLER, ESQUIRE; AND JEREMY V FARRELL, ESQUIRE

THESE PAGES CONSTITUTE THE FILING OF MY WRITTEN RESPONSE TO THE ANSWER AND NEW MATTER OF RESPONDENT DUQUESNE LIGHT COMPANY. THESE HAVE BEEN SUBMITTED TO YOU PER THE AGREED-UPON DEADLINE OF AUGUST 15, 2018.



Miranda Grace Edwards

August 15, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA GRACE EDWARDS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No. C-2018-3002741

**Complainant's Response to
ANSWER AND NEW MATTER TO FORMAL COMPLAINT**

TO THE HONORABLE COMMISSION:

I have read the Answer and New Matter to Formal Complaint of the Respondent's Counsel, Paul Shane Miller, in its entirety and have the following responses and exceptions:

Overall: The content of the Respondent's Answer and New Matter to my Formal Complaint does not provide much new material beyond their filed Original Preliminary Objections to Formal Complaint of July 5, 2018, even considering the New Matter they have submitted. For the most part, it is a restatement of their Preliminary Objections. The Complainant (I) have already addressed all of those statements and assertions, many of which are incorrect and inaccurate, point by point and in turn, in my Response to their Preliminary Objections filing. Still, I will address these points again herein as they are raised.

10. DLC Counsel's statement: The allegations in the preceding paragraphs of this Answer and New Matter are incorporated by reference as if fully set forth.

Complainant's response:

10. No response needed.

11. DLC Counsel's statement: Act 129 requires electric distribution companies with more than 100,000 customers, including Duquesne Light, to deploy smart meters throughout their service territories. 66 Pa. C.S. §2807.

Complainant's response:

11. DLC Counsel continues to misrepresent the statute, which clouds the issue. 66 Pa. C.S. §2807 (hereafter referenced as Act 129), as signed by Governor Ed Rendell, has as its first and foremost tenet, §2807(f) (2) (i), that electric distribution companies (EDCs) "shall furnish" smart meter technology "upon request from a customer that agrees to pay the cost of the smart meter at the time of the request." This is a voluntary *opt-in* provision that explicitly says EDCs will make the smart meter program available

to customers; that a customer may request to join the program; and that if the customer makes a request and is willing to pay the cost of the smart meter, the EDC cannot deny the request. It is a matter of fact that I have never requested a smart meter. Nowhere does it say EDCs are *required* to deploy smart meters by making them mandatory. The language of the statute is clear and concise, and controlling on this issue. I never agreed to pay the cost of a smart meter.

12. DLC Counsel's statement: Act 129 also requires electric distribution companies with more than 100,000 customers, including Duquesne Light, to file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa. C.S. §2807(f)(1).

Complainant's response:

12. I am not disputing that Pa. C.S. § 2807(f)(1) required EDCs to file a smart meter technology procurement and installation plan "within nine months after the effective date" of the named paragraph.

13. DLC Counsel's statement: Duquesne Light filed a smart meter technology procurement and installation plan, which the Commission approved on May 6, 2013. See Docket No. M-2009-2123948.

Complainant's response:

13(a). I am not disputing that DLC filed a smart meter technology procurement and installation plan, or that the Commission approved it. The filing of the plan has no bearing on the issue of whether deployment of smart meters is mandatory. The statute cited in ¶11 controls. I aver that the Commission's approval (Docket M-2009-2092655) cannot contradict state law (the opt-in provision of Act 129 that is explicitly stated in Pa. C.S. § 2807). To the extent that the PA PUC Implementation Order contravenes state law, it is null and void and has no legal effect. The PA PUC has the authority to correct this error.

13(b). The expressed intent of the legislature was documented in *Senate Journal* page 2626-2631, Oct. 8, 2008. Here, Senator Tomlinson states with regard to HB2200 (subsequently signed by Governor Rendell as Act 129) as amended by the Senate, "It is not mandated, but it allows for... anyone who wants to purchase a smart meter which they feel will help them manage their electric load better." Here, Senator Boscola states, "We also made sure that smart meters would not be mandated for every single ratepayer. Not only is that a smarter approach to smart meter deployment, but it will also save electric customers hundreds of millions of dollars paying for something that will not provide a real benefit in their own households." And here, Senator Fumo states, "In addition, we did not mandate smart meters, but we made them optional." This intent is further substantiated by *House Journal* page 386-403, Feb. 11, 2008, and *House Journal* page 430-432, Feb. 12, 2008.

13(c). Provisions § 2807(f) (2) (ii) and (iii) address cases not associated with or beyond the scope of existing individual customers. Also, I aver that § 2807(f) (2) (iii) does not override or supersede § 2807(f) (2) (i), the first and foremost tenet; or § 2807(f) (ii). If § 2807(f) (2) (iii) did override or supersede the previous two tenets, those previous two tenets would be meaningless and would have no reason to be included in Act 129. But they were included.

13(d). Although the smart meter is attached to a homeowner's residence, it is and remains the equipment and property of the EDC, which is a private corporation doing business for profit. One aspect of a corporation's financial status is the expensing of capital assets and equipment through depreciation. Depreciation of an asset and the depreciation schedule for an asset has little to do with the actual service life of that asset or piece of equipment. Equipment routinely continues to function and be used well beyond its "depreciated life." An asset's "depreciable life" is an artificial construct that is assigned in the tax code, and it varies from asset to asset, property to property, and piece of equipment to piece of equipment. The PA PUC's emphasis on and seeming misinterpretation of § 2807(f) (2) (iii) as a deadline for mandatory implementation of smart meter technology is debatable at best. A (mostly) analog meter like mine should have a service life of 30-40 years. I don't know when my current meter was installed. But apparently it contains AMR technology, which would not have existed 30-40 years ago. It seems reasonable to expect that my current meter would not need to be replaced until at least 2025. Also, it has not been 15 years since Act 129 was signed into law. My current meter is functioning normally and should continue to do so for the foreseeable future.

13(e). The original bill, PN3218, associated with HB2200, clearly stated that "Electric distribution companies shall furnish smart meter technology to: (C) One hundred percent of its customers within ten years after the effective date of this paragraph." This would have implemented a definitive state mandate, but it was resoundingly rejected by the General Assembly. The legislation evolved to its final voluntary opt-in form, which was signed by Governor Rendell.

13(f). One may debate the meanings of the specific words that comprise § 2807(f) (2) (iii), but one cannot argue the intent and meaning of the legislature's discussion as summarized by Senator Fumo's recorded statement [referenced in ¶13(b) of this response] that "we did not mandate smart meters, but we made them optional."

13(g). DLC's smart meter technology procurement and installation plan contradicts Act 129 and violates §1501 of the PA Utility Code.

14. DLC Counsel's statement: The Commission approved, in relevant part, Duquesne Light's amended Smart Meter Plan on April 7, 2017. See Docket No. P-2015-2497267, Opinion and Order at 9, 51.

Complainant's response:

14. I am not disputing that DLC filed its amended smart meter technology procurement and installation plan or that the PA PUC approved it in relevant part on April 7, 2017. However, as far as I can tell, none of the details relevant to my complaint changed from the previous filing. DLC's statement in ¶14 has no bearing on the issue of whether smart meters are mandatory as legislated by Act 129. As I have argued, they are not.

15. DLC Counsel's statement: The Smart Meter Plan requires Duquesne Light to finish installing residential smart meters, including at the Property, by the end of 2018.

Complainant's response:

15(a). I am not disputing that DLC's Smart Meter Plan says it requires DLC to finish installing residential smart meters by the end of 2018. I am asserting that Act 129, the law that was enacted by a legislative body of elected officials, was explicitly intended to offer a *voluntary, opt-in* smart meter program; and that the PA PUC erroneously subverted the intent of the law by ignoring the recorded statements of legislators regarding Act 129 and taking liberties with the English language. This error had the effect of mandating large EDCs to force smart meter technology on unwilling customers. But the PA PUC has the authority to correct this error.

15(b). Filing a Formal Complaint against DLC with the PA PUC was the only option presented to me for refusing the smart meter because of the PA PUC's erroneous interpretation of Act 129. It is important to note that I called the PA PUC on June 1, 2018, with the specific intent of filing an informal complaint. I spoke with a woman on the phone who told me "it won't do anything" and prevented me from filing an informal complaint. I repeatedly asked for a tracking number or some way to register that I had made this call to file an informal complaint and the woman repeatedly denied my requests. I am reasonably certain this call was recorded, and that the PA PUC could retrieve the record of my call.

16. DLC Counsel's statement: Act 129 does not permit a customer to "opt out" of receiving a smart meter.

Complainant's response:

16. DLC's statement that I seek to "'opt out' of receiving a smart meter" is a misrepresentation of the facts in that I never agreed to opt in to the smart meter program. Act 129 has as its first and foremost tenet, §2807(f) (2) (i), that electric distribution companies (EDCs) "shall furnish" smart meter technology "**upon request** from a customer that **agrees to pay** the cost of the smart meter at the time of the request." (emphasis added) This is a voluntary *opt-in* provision that explicitly says EDCs will make the smart meter program available to customers; that a customer may request to join the program; and that if the customer makes a request and is willing to pay the cost of the smart meter, the EDC cannot deny the request. It is a matter of fact that I

have never requested a smart meter. I never agreed to pay the cost of a smart meter.

17. DLC Counsel's statement: 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).

Complainant's response:

17(a). The statute cited in Evans states in pertinent part:

(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.** (emphasis added) (Evans v. PECO Energy Co., Docket No. C-2013-2368477, 2013 WL 7019103, at *4)

In DLC Counsel's pleading, the meaning of the word “shall” is taken out of context.

17(b). Under the Pennsylvania Statutory Construction Act of 1972, “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” [1 Pa. C.S. §1921(b)]

17(c). Furthermore, it seems relevant to note that DLC frequently references Evans, a case that differs significantly from mine in that the complainant (Evans) submitted no response to the respondent's (PECO Energy's) Preliminary Objections or Answer and New Matter. The ruling was made only on the basis of the initial formal complaint and the respondent's Preliminary Objections and Answer and New Matter.

18. DLC Counsel's statement: 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.”).

Complainant's response:

18. This statement references two prior cases related to Complainants' “desire” to “opt out” of smart meter installation.” Act 129 has as its first and foremost tenet, §2807(f) (2) (i), that electric distribution companies (EDCs) “shall furnish” smart meter technology

“upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.” This is a voluntary *opt-in* provision that explicitly says EDCs will make the smart meter program available to customers; that a customer may request to join the program; and that if the customer makes a request and is willing to pay the cost of the smart meter, the EDC cannot deny the request. It is a matter of fact that I have never requested a smart meter. I never agreed to pay the cost of a smart meter. DLC’s statement that I “[seek] to ‘opt out’ of receiving a smart meter” is a misrepresentation of the facts in that I never agreed to opt in to the smart meter program.

19. DLC Counsel’s statement: Duquesne Light notified Complainant via letter on or about April 4, 2018 that the Company planned to install a meter at the Property.

Complainant’s response:

19. Admitted, upon information and belief.

20. DLC Counsel’s statement: Duquesne Light attempted to contact Complainants [sic] by phone on May 4, 2018 to advise her of the impending meter exchange, but the Company was unable to reach her or leave a voicemail.

Complainant’s response:

20. Denied. DLC Counsel has not explained why they would have been unable to leave a voicemail. Complainant’s (my) voicemail has been operational for more than five years.

21. DLC Counsel’s statement: Duquesne Light attempted to exchange the meter on or about May 10, 2018, but Complainant prevented the Company from doing so.

Complainant’s response:

21. I object to DLC Counsel’s intentionally vague characterization of my actions. I advised the Wellington contractor of my choice to decline the smart meter. My refusal was polite. The Wellington contractor responded in an equally polite (even sympathetic) manner. I prevented DLC from exchanging the meter simply by denying my permission, which DLC already knew they did not have because of my earlier phone call (also referenced in my Formal Complaint). Had I been absent from the Property when the contractor arrived, DLC would have exchanged the smart meter without my permission and against my explicitly stated wishes.

22. DLC Counsel’s statement: By attempting 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.

Complainant’s response:

22. Denied. Rather, by attempting to install a smart meter, DLC is attempting to enforce its own directive, submitted to the PA PUC, which contradicts state law. To the extent

DLC Counsel claims the law lacks an “opt-out” provision, they are misrepresenting the law. There is no opt-out provision because the law is opt-in by nature. The language on the face of the statute is clear and concise, and therefore controlling on this issue.

23. DLC Counsel’s statement: Therefore, insofar as Complainant asks the Commission to exempt her from Duquesne Light’s smart meter program, such request must be dismissed because Complainant is not entitled to such relief, and the Commission lacks the authority to grant it.

Complainant’s response:

23. Denied. I am not asking the Commission to “exempt” me from DLC’s smart meter program because no exemption is required. DLC Counsel misrepresents the relief I am seeking. Act 129 gives me free choice to request a smart meter, which by nature gives me the option to decline the same.

24. DLC Counsel’s statement: Duquesne Light has not yet installed a smart meter at the Property. Duquesne Light is willing to cooperate with Complainant to relocate the new meter to a mutually agreeable location, in an effort to minimize any concerns Complainant has regarding smart meters, in a manner that complies with the Company’s tariff and associated rules.

Complainant’s response:

24(a). DLC’s statement in ¶24 that I have not had a smart meter installed at my home yet is true and accurate to the best of my knowledge as of August 9, 2018. Within the confines of this response, I follow DLC in excluding the AMR meter DLC says I already have on my Property from the category of “smart meter”—unlike the SK9MIA7 OpenWay—even though both meters transmit RF waves and information.

24(b). DLC’s desire to “cooperate” with me to “relocate the new meter” is not a viable option because no possible location would be “mutually agreeable” or address “any concerns” I have regarding smart meters. First, no location of a smart meter on my Property would address my privacy, safety, and security concerns.

By their nature, smart meters:

***Individually identify electrical devices inside the home** and record exactly when they are operated, causing an invasion of privacy.

***Continuously monitor household activity and occupancy** in violation of rights and domestic security.

***Transmit wireless signals that may be intercepted** by unauthorized and unknown parties. Those signals can be used to monitor behavior and occupancy and they can be used by criminals to aid criminal activity against the occupants.

***Collect, record, and store data about occupants’ daily habits and activities in permanent databases** that are accessed by parties not authorized or invited to know and share that private data by those whose activities were recorded. In addition, these databases may be shared with or fall into the hands of criminals, blackmailers, corrupt law enforcement, private hackers of wireless transmissions, power company

employees, and other unidentified parties who may act against the interests of the occupants under metered surveillance. DLC and the PUC have not adequately disclosed the particular recording and transmission capabilities of the smart meter; or the extent of the data that will be recorded, stored, and shared; or the purposes to which the data will and will not be put.

***Present a fire hazard**, as the PUC already must be aware. Pennsylvania halted installation of smart meters in 2012 after a spate of “overheating”-related fires associated with Sensus smart meters. In cases across the U.S., utility companies deny responsibility for damage to homes caused by fires that may have originated in Smart Meters. They have been known to remove smart meters from the scene of house fires before insurance adjusters can access the meters. Home insurance may not cover damage caused by these types of fires.

Relocating the smart meter on my Property would not address any of these valid concerns.

24(c). To the extent smart meters present a credible threat of harm to my health, no location on my Property would mitigate this threat. This is a very small Property. Its biological occupants frequently or always occupy every part of the structure and the minuscule outdoor component.

25. DLC Counsel’s statement: In addition, the Complaint must be dismissed, in part, because the Commission lacks jurisdiction over Complainant’s claim that Duquesne Light has violated the Fourth Amendment to the United States Constitution.

Complainant’s response:

25(a). Denied. I am not asking the PA PUC to adjudicate my claim that installation of a smart meter on my property by DLC or any EDC without my consent constitutes a violation of the Fourth Amendment to the United States Constitution. It is nevertheless worth noting and considering the legally valid argument that the PA PUC’s implementation order contradicts the Fourth Amendment to the United States Constitution. As far as I am aware, the lack of jurisdiction to adjudicate a claim that a law has been violated does not excuse a “creature of statute” (DLC Counsel in ¶25) such as the PA PUC from following the law. All judges have the inherent power and obligation to order a person or entity violating the United States Constitution to cease and desist. The United States Constitution is the supreme law of the land and protects homeowners and consumers from unreasonable invasion of their privacy.

25(b). Forcing customers to accept controversial smart meter technology that may endanger their homes, privacy, and health violates §1501 of the PA Public Utility Code: *Every public utility shall furnish and maintain **adequate, efficient, safe, and reasonable service and facilities**, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities **as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public**. Such service also shall be*

*reasonably continuous and **without unreasonable interruptions** or delay.* (emphasis added)

WHEREFORE, considering these facts along with the many other relevant factors I have presented in my Formal Complaint, in this written response, and in my previously filed August 6, 2018 written response to the Respondent's Preliminary Objections, Complainant Miranda Grace Edwards respectfully requests that the Commission deny Duquesne Light Company's Answer and New Matter, as has occurred in other similar complaints before the Commission.

Further, in light of all that I have presented on this matter in my Formal Complaint and my filed responses, I respectfully request that the Commission grant a Summary Judgment in my favor, and against the Respondent, indicating that Complainant (I):

- Have not requested or agreed to the installation of a smart meter.
- Am not required to have a smart meter installed.
- Am at risk of multiple credible threats of harm from a smart meter.
- Am at risk of multiple credible threats to my health and safety from termination of my electric utility service.
- Am not in violation of Act 129 and the expressed, publicly-recorded intent of the Legislature.
- Am not currently in violation of any deployment timeline, no matter how Act 129 is interpreted.

I reiterate that I believe I have adequately addressed each of the Respondent's Objections, Answers, and New Matters; that I have established that my Formal Complaint is valid and has merit, and is neither frivolous nor a waste of everyone's time and resources; that I have met the criteria for legal sufficiency, I have established a cognizable claim, I have provided sufficient evidence that this matter is in the public interest; and finally that I have established that DLC has no basis to ask for my complaint to be dismissed and my requested relief to be denied.

Respectfully submitted,



Miranda Grace Edwards

August 15, 2018

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Complainant,

vs.

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No. C-2018-3002741

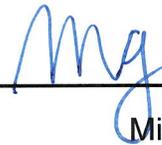
CERTIFICATE OF SERVICE

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

Shane Miller, Esquire
Jeremy V Farrell, Esquire
1500 One PPG Place
Pittsburgh, PA 15222
Fax: 412-594-5619

Counsel for Respondent, Duquesne Light Company

Dated this 15th day of August, 2018



Miranda Grace Edwards

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Pittsburgh, PA 15207