BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL AND
FRANCIS HRIADIL,

Complainants,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

MOTION FOR SUMMARY JUDGMENT AND TO STAY HEARING PENDING OUTCOME OF ACCOMMODATION PROCESS

Served on Behalf of Respondent:
Duquesne Light Company

Counsel of Record for this Party:

Jeremy V. Farrell, Esquire
PA I.D. No. 316258

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1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-3938
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NOTICE TO PLEAD

TO COMPLAINANTS:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND TO STAY HEARING PENDING OUTCOME OF ACCOMMODATION PROCESS WITHIN TWENTY (20) DAYS OF SERVICE OR A RULING MAY BE ENTERED AGAINST YOU.

TUCKER ARENSBERG, P.C.

Jeremy V. Farrell, Esquire
Counsel for Duquesne Light Company

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and FRANCIS HRIADIL,	:	
Complainants,	:	
v.	:	No: C-2016-2571726
DUQUESNE LIGHT COMPANY,	:	
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MOTION FOR SUMMARY JUDGMENT AND
TO STAY HEARING PENDING OUTCOME OF ACCOMMODATION PROCESS

Pursuant to 52 Pa. Code § 5.102, Respondent Duquesne Light Company, by and through its attorneys, files this Motion for Summary Judgment and to Stay Hearing Pending Outcome of Accommodation Process.

1. It is undisputed that, through this action, Complainants seek to avoid the installation of a smart meter at 331 Shady Ridge Drive, Monroeville, PA 15146 (the "Service Address"). Complaint at ¶ 5 ("we are asking for a waiver to prevent the forced installation of this device [a smart meter] on our residence").

2. Complainants are not entitled to that relief under settled Pennsylvania law. The Pennsylvania Supreme Court has squarely held that Act 129 is mandatory, that covered electric distribution companies (which includes Duquesne Light)[1] must install smart meters throughout their service territory, and that customers may not opt out of smart meter installation. Povacz v. State PUC, 280 A.3d 975, 983 (Pa. 2022) ("Povacz II") ("For the reasons set forth herein, we conclude that Act 129 does mandate that EDCs furnish smart meters to all electric customers

[1] See, e.g., Duquesne Light's Final Smart Meter Technology Procurement and Installation Plan dated June 29, 2012, Opinion and Order dated May 6, 2013, and Opinion and Order dated April 7, 2017 (approving amended smart meter plan), all of which were previously filed with the Commission.

within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed."). See also, id. at 992, 998, and 1014; Hoffman-Lorah v. Pa. PUC, No. 712 C.D. 2019, 2023 Pa. Commw. Unpub. LEXIS 325 at *10 (Pa. Cmwlth. 2023) (concluding that the Commission did not err when it held that "Act 129 mandated smart metering for all Pennsylvanians, with no opt out"); Branagh v. Pa. PUC, No. 1857 C.D. 2019, 2023 Pa. Commw. Unpub. LEXIS 352 at *26 (Pa. Cmwlth. 2023) (holding that "It is now beyond dispute that Act 129 imposes a mandatory smart meter installation requirement . . . and does not itself provide for an 'opt-out' by consumers who do not want smart meters in their homes."); Hess v. Pa. PUC, No. 1155 C.D. 2020, 2023 Pa. Commw. Unpub. LEXIS 371 at *10 (Pa. Cmwlth. 2023) (stating that "Our Supreme Court's decision in *Povacz II* establishes that Act 129 mandates smart meters for all EDC customers . . . ."); Paul v. Pa. PUC, 299 A.3d 1069, 1077 (Pa. Cmwlth. 2023) (holding that the complainant's arguments regarding the PUC's interpretation of Act 129 "are now foreclosed by the Supreme Court's decision in *Povacz*" that smart meter installation is mandatory and Act 129 contains no opt-out provision); Schmukler v. Pa. PUC, 302 A.3d 247, 254 (Pa. Cmwlth. 2023) (holding that "the Commission properly interpreted Act 129 that it does not include a smart meter opt-out for customers" in light of the Pennsylvania Supreme Court's decision in *Povacz*).

3. Given the precedent just cited, Duquesne Light must install a smart meter at the Service Address, and Complainants may not refuse the installation. Complainants' request to opt out of a smart meter thus fails as a matter of law, making summary judgment in favor of Duquesne Light appropriate on that issue. See 52 Pa. Code 5.102(d)(1) ("The judgment sought will be rendered if the applicable pleadings … show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law").

4. While Complainants may not refuse the installation of a smart meter, if they prove a violation of 66 Pa. C.S. § 1501, they may be entitled to an accommodation (which does not include opting out of a smart meter), to the extent permitted by Act 129 **and** Duquesne Light's

Tariff. Povacz II, 280 A.3d at 1014 ("If the customer establishes by a preponderance of the evidence based on the totality of the circumstances that smart meter service violates Section 1501, they are entitled to an accommodation to the extent allowed by Act 129 **and** a utility's tariff.") (emphasis added).

5. In relevant part, Duquesne Light's Tariff, which has been filed with and approved by the Commission,[2] provides that the only accommodation available to customers with respect to smart meters is relocating the meter at the service address, subject to the conditions noted below:

> **B. Meter Relocation for all Customers**
>
> Pursuant to Act 129 of 2008; the Commission's Smart Meter Procurement and Installation Implementation Order entered June 24, 2009, at Docket No. M-2009-2092655; and Duquesne Light's Smart Meter Procurement and Installation Plan, approved in relevant part by Order entered April 7, 2017, at Docket No. P-2015-2497267; smart meter(s) conforming to Company standards must be installed at each metered service premises. Customers may not decline smart meter installation for any reason. Instead, as their sole remedy, customers may designate an alternative location on the premises for the smart meter. The Company shall relocate the smart meter to such alternative location where (i) the relocation (including associated customer service equipment) conforms to the Company's "Electric Service Installation Rules" (see Rule No. 6) and the National Electric Safety Code, as determined by the Company in its sole judgment; (ii) the relocation can be readily, safely, and reliably interconnected to the Company's facilities, as determined by the Company in its sole judgment; (iii) the customer provides any easements, permits, or other governmental or third-party approvals the Company deems necessary to accommodate such relocation; and (iv) the Company receives, in advance, payment for the Company's estimated total direct and indirect costs including the related income tax of such relocation.

A copy of the Tariff's relevant pages is compiled in Exhibit A.

6. Duquesne Light is willing to voluntarily explore the possibility of meter relocation with Complainants, consistent with the provisions of its Tariff.[3]

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[2] A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. Pa. Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa.Cmwlth. 1995); Respond Power, LLC v. Pa. Elec. Co. *and* Respond Power LLC v. West Penn Power Co., Docket Numbers C-2016-2576287 and C-2016-2576292 (Order Entered July 13, 2017).

[3] To be clear, Duquesne Light is not in any way conceding that its smart meters or any of its related practices violate 66 Pa. C.S. § 1501. As noted in this motion, Duquesne Light makes this motion in an effort to try to accommodate its customers, consistent with law, and to hopefully allow the parties and the Commission to potentially avoid time, costs, and other resources on a hearing that may not be necessary.

7. Because Duquesne Light is willing to voluntarily explore options with Complainants that could provide them with the only relief to which Complainants are potentially entitled to after a hearing, in the interests of judicial economy and preservation of resources, Duquesne Light respectfully asks that the Presiding Administrative Law Judge place a 60-day stay on this action to allow the parties to explore potential meter relocation.

8. If, after the 60-day period, meter relocation is determined either not to be possible or of interest to Complainants, then Duquesne Light submits that the case should be dismissed with prejudice because then the Hriadils are not entitled to any relief as a matter of law. Povacz II, 280 A.3d at 1014 (even if customers prevail on a §1501 claim, they are "entitled to an accommodation to the extent allowed by Act 129 **and** a utility's tariff") (emphasis added); Duquesne Light Tariff Rule 9B (noting that the customer's "**sole** remedy" with respect to smart meter installation is to relocate the meter, consistent with the corresponding terms and conditions of the Tariff) (emphasis added).

WHEREFORE, Duquesne Light respectfully asks that the Presiding Administrative Law Judge issue an order that:

a. Requires Duquesne Light to install a smart meter at the Service Address;
b. Prevents Complainants from refusing installation of the smart meter at the Service Address;
c. Permits Duquesne Light to terminate service to the Service Address if Complainants refuse installation of the smart meter, consistent with the provisions of the Public Utility Code and Duquesne Light's Tariff;
d. Stays this action for 60 days for the parties to explore, in good faith, potential relocation of the meter at the Service Address, consistent with the terms of Duquesne Light's Tariff; and

e. Requires the filing of a joint status report within 14 days after the conclusion of the 60-day stay indicating whether (i) meter relocation is possible and/or of interest to Complainants and (ii) setting forth at least three mutually convenient dates for a status conference before the Presiding Administrative Law Judge to discuss outstanding issues relating to the disposition of the case.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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Counsel for Respondent
Duquesne Light Company

SUPPLEMENT NO. 69
TO ELECTRIC – PA. P.U.C. NO. 25

DUQUESNE LIGHT CO.

SCHEDULE OF RATES

For Electric Service in Allegheny and Beaver Counties

(For List of Communities Served, see Pages No. 4 and 5)

Issued By

DUQUESNE LIGHT COMPANY
411 Seventh Avenue
Pittsburgh, PA 15219

Kevin E. Walker
President and Chief Executive Officer

ISSUED: December 21, 2023 EFFECTIVE: January 1, 2024

Issued in compliance with Section B-1 of the
Pennsylvania Public Utility Commission Order of March 10, 1970.

NOTICE

THIS TARIFF SUPPLEMENT DECREASES A RATE WITHIN AN EXISTING RIDER

See Page Two

Exhibit A

LIST OF MODIFICATIONS MADE BY THIS TARIFF

DECREASE

Rider No. 10 – State Tax Adjustment

Eighth Revised Page No. 112
Cancelling Seventh Revised Page No. 112

In compliance with Section B-1 of the Pennsylvania Public Utility Commission Order of March 10, 1970, the State Tax Adjustment (STAS) has been recalculated as follows:

Part 1 of the Surcharge has decreased from (0.1358%) to (0.3517%).

Part 2 of the Surcharge remains at 0.0000%.

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(C) – Indicates Change

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(C) – Indicates Change

LIST OF COMMUNITIES SERVED

The Company renders service in portions of Allegheny and Beaver Counties, Pennsylvania. Electric service is available in all localities where the Company has distribution facilities, including all or a portion of the following cities, boroughs and townships.

ALLEGHENY COUNTY

Cities and Boroughs

Aspinwall
Avalon
Baldwin
Bell Acres
Bellevue
Ben Avon
Ben Avon Heights
Bethel Park
Blawnox
Braddock
Braddock Hills
Brentwood
Carnegie
Castle Shannon
Chalfant
Churchill
Clairton
Coraopolis
Crafton
Dormont
Dravosburg
Duquesne
East McKeesport
East Pittsburgh
Edgewood
Edgeworth
Emsworth
Etna
Forest Hills
Fox Chapel
Franklin Park
Glassport
Glenfield
Green Tree
Haysville
Heidleberg
Homestead
Ingram
Jefferson
Leetsdale
Liberty
Lincoln
McKeesport
McKees Rocks
Millvale
Monroeville
Mt. Oliver
Munhall
North Braddock
Oakmont
Osborne
Pennsbury Village
Pittsburgh
Pleasant Hills
Plum
Port Vue
Rankin
Rosslyn Farms
Sewickley
Sewickley Heights
Sewickley Hills
Sharpsburg
Swissvale
Thornburg
Trafford
Turtle Creek
Verona
Versailles
Wall
West Homestead
West Mifflin
West View
Whitaker
Whitehall
White Oak
Wilkinsburg
Wilmerding

Townships

Aleppo
Baldwin
Collier
Crescent
Findlay
Hampton
Indiana
Kennedy
Kilbuck
Leet
McCandless
Moon
Mt. Lebanon
Neville
North Versailles
O'Hara
Ohio
Penn Hills
Pine
Reserve
Richland
Robinson
Ross
Scott
Shaler
Stowe
Upper St. Clair
West Deer
Wilkins

LIST OF COMMUNITIES SERVED - (Continued)

BEAVER COUNTY

Cities and Boroughs

Aliquippa	East Rochester	Glasgow	Patterson Heights
Ambridge	Eastvale	Hookstown	Rochester
Baden	Economy	Industry	Shippingport
Beaver	Fallston	Midland	South Heights
Beaver Falls	Frankfort Springs	Monaca	West Mayfield
Bridgewater	Freedom	New Brighton	
Conway	Georgetown	Ohioville	

Townships

Brighton	Hanover	New Sewickley	Raccoon
Center	Harmony	Patterson	Rochester
Daugherty	Hopewell	Potter	Vanport
Greene	Independence	Pulaski	White

RULES AND REGULATIONS - (Continued)

INSTALLATION OF SERVICE - (Continued)

7. SUPPLY LINE EXTENSIONS - (Continued)

F. Contributions in Aid of Construction – (Continued)

(3) At the end of the five-year revenue guarantee period, a final reconciliation of delivery charges during the period will be made against the CIAC. If the total delivery charges paid exceed or equal the original CIAC, any remaining CIAC will be returned to the customer. If the total delivery charges paid are less than the original CIAC, the remaining CIAC will be retained by the Company.

8. **NONSTANDARD SERVICE** The Company reserves the right to require a customer or applicant for service to pay the cost, including the related income tax, of any special installation necessary to meet the unusual requirements of the customer or applicant for service, including, but not limited to:

(1) service at other than standard voltages,

(2) service for intermittent, unbalanced or fluctuating loads, which, in the Company's sole judgement, would not generate sufficient revenue to recover the installation costs of the required facilities,

(3) service for loads that will be continuous but that will generate minimal usage, and which, in the Company's sole judgement, would not generate sufficient revenue to recover the installation costs of the required facilities,

(4) service for loads that will require provision of closer voltage regulation than required by standard service,

(5) redundant service requested by the customer and not required by the Company, and

(6) service routings or configurations that deviate from the Company's standard construction standards described in the Company's "Electric Service Installation Rules," or that would otherwise necessitate significant construction of new Company facilities.

The customer or applicant shall pay all costs to the Company of performing environmental assessments, including, but not limited to, the cost of consultants utilized by the Company, the cost of removal and disposal of contamination, waste or hazardous materials or dealing with other adverse environmental conditions associated with either the initial installation, modification, repair, maintenance or removal of service facilities.

The Company may decline to provide Nonstandard Service where, in the Company's sole judgment, it would not be commercially, operationally, and/or technically reasonable to provide such service.

9. RELOCATIONS OF FACILITIES

A. Pole Removal or Relocation for Residential Customers

When requested by a residential property owner who is not otherwise entitled to receive condemnation damages to cover the cost of the pole removal or relocation or who is not requesting a pole removal or relocation as the result of damages caused by the intentional or negligent conduct of any party, the Company will when it is practicable, subject to the execution

RULES AND REGULATIONS - (Continued)

INSTALLATION OF SERVICE - (Continued)

9. RELOCATIONS OF FACILITIES – (Continued)

A. Pole Removal or Relocation for Residential Customers – (Continued)

and receipt of required easements, licenses or municipal permits, remove or relocate a pole or poles and associated attachments, upon receipt, in advance, of the Company's estimated contractor or direct labor and direct material costs associated with the particular pole removal or relocation, less any maintenance expenses avoided as a result of the pole removal or relocation.

For purposes of this Rule, the following definitions are applicable:

(1) **Contractor costs** - Amount paid by the utility to a contractor for work performed on a pole removal or relocation.

(2) **Direct labor costs** - Includes pay and expenses of public utility employees directly attributable to work performed on pole removals or relocations. Excludes payroll taxes, workmen's compensation, similar items of expense and construction overhead costs.

(3) **Direct materials costs** - Includes the purchase price of materials used in performing a pole removal or relocation and excludes the related stores expenses. Proper allowance shall be made for unused materials, and materials recovered from temporary structures, and for discounts allowed and realized in purchase of materials.

(4) **Income tax** - Federal and State tax relating to the tax liability of contributions in aid-of-construction.

B. Meter Relocation for all Customers

Pursuant to Act 129 of 2008; the Commission's Smart Meter Procurement and Installation Implementation Order entered June 24, 2009, at Docket No. M-2009-2092655; and Duquesne Light's Smart Meter Procurement and Installation Plan, approved in relevant part by Order entered April 7, 2017, at Docket No. P-2015-2497267; smart meter(s) conforming to Company standards must be installed at each metered service premises. Customers may not decline smart meter installation for any reason. Instead, as their sole remedy, customers may designate an alternative location on the premises for the smart meter. The Company shall relocate the smart meter to such alternative location where (i) the relocation (including associated customer service equipment) conforms to the Company's "Electric Service Installation Rules" (see Rule No. 6) and the National Electric Safety Code, as determined by the Company in its sole judgment; (ii) the relocation can be readily, safely, and reliably interconnected to the Company's facilities, as determined by the Company in its sole judgment; (iii) the customer provides any easements, permits, or other governmental or third-party approvals the Company deems necessary to accommodate such relocation; and (iv) the Company receives, in advance, payment for the Company's estimated total direct and indirect costs including the related income tax of such relocation.

RULES AND REGULATIONS - (Continued)

INSTALLATION OF SERVICE - (Continued)

9. RELOCATIONS OF FACILITIES – (Continued)

C. Other Company Facilities for all Customers

When requested or required by the action of a customer or a third party, relocation of Company facilities, except those covered under Section A of this Rule, will be performed by the Company upon receipt, in advance, of the Company's estimated total direct and indirect costs including the related income tax of such relocations from the customer or such third party. The Company may waive charges under this rule if, in the Company's judgment, the location of the Company's existing supply line and/or service line on the customer's property restricts the growth of the customer's operations and the potential increase in the Company's revenues.

10. **ONE SERVICE OF A KIND** Only one service of each type as to voltage and phase will be provided to a customer under one contract; provided, however, that when, in the judgment of the Company, standard electric service may be most economically effected by establishing a separate service connection for a portion of the customer's load, such separate service connection may, at the option of the customer, be combined, notwithstanding similarity as to voltage and phase, with other service connections under a single contract for the customer's entire electric delivery service requirements at the affected location. Electric service at different premises, regardless of voltage or phase, shall never be combined for billing under one account for the purpose of reducing Company charges. (C) (C)

11. **METER SUPPORTS** The customer shall provide on the premises, at a location satisfactory to the Company, proper space, supports, and enclosures for metering equipment.

12. **TRANSFORMERS AND CONTROL EQUIPMENT** Where, in the judgement of the Company, it is necessary to install transformers and other control or protective equipment on the customer's premises, the customer shall provide a suitable place, foundation and housing for such installation, in accordance with the Company's "Electric Service Installation Rules."

13. **CUSTOMER'S FACILITIES** The installation and maintenance of the customer's wiring and equipment shall be in accordance with the Company's "Electric Service Installation Rules" and shall be subject to the approval of the proper authorities. The Company is not required to provide electric service thereto unless so approved, but does not assume any responsibility for securing such approval. The Company shall not be liable for damages or injuries resulting from any defects in the customer's wiring or equipment.

13.1 UNDERGROUND DISTRIBUTION

A. When the Company is required by governmental order or enters into agreements with redevelopment authorities, a private real estate developer or a group of customers to change its distribution supply lines from overhead to underground, customers receiving or to receive electric service at voltages of 600 volts or less from these supply lines shall provide at their own expense the necessary facilities for receiving such underground service.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Respondent's Motion for Summary Judgment and to Stay Hearing Pending Outcome of Accommodation Process upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Michele and Francis Hriadil
331 Shady Ridge Drive
Monroeville, PA 15146

Via Email: hriadil@attglobal.net

Administrative Law Judge DeVoe
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222

Via First-Class, U.S. Mail

Dated this 17th day of January 2024

Jeremy V. Farrell, Esquire
Pa. I.D. No. 316258
jfarrell@tuckerlaw.com