

35 Acorn Street  
Pittsburgh, PA 15207

January 19, 2024

**VIA ELECTRONIC FILING**

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

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

Dear Judge Watson:

Attached please find my **Supplemental Brief and Proposed Findings of Fact, Conclusions of Law, and Order**. I filed a copy of this document with the Pennsylvania Public Utility Commission (“PUC”) today. I also emailed a copy today to your law clerk Laythan Foster at [layfoster@pa.gov](mailto:layfoster@pa.gov) as required by the Interim Order dated December 20, 2023. I also emailed a copy of this document to Mr. Miller.

Sincerely,

/s/

M. Grace Edwards  
Complainant  
[msea.mdew@gmail.com](mailto:msea.mdew@gmail.com)

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

**E-filed with:**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Emailed to:**

Laythan Foster  
Pennsylvania Public Utility Commission  
301 5<sup>th</sup> Ave., Piatt Place, Suite 220  
Pittsburgh, PA 15222

**E-filed with:**

Administrative Law Judge Jeffrey A. Watson  
Pennsylvania Public Utility Commission  
301 5<sup>th</sup> Ave., Piatt Place, Suite 220  
Pittsburgh, PA 15222

**E-filed with/Emailed to:**

Shane Miller, Esq.  
Duquesne Light Company  
1500 One PPG Place  
Pittsburgh, PA 15222

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MIRANDA GRACE EDWARDS**           :  
    **Complainant**                   :  
    **v.**                                   :  
                                          :  
**DUQUESNE LIGHT COMPANY**       :  
    **Respondent**                    :

**Docket No. C-2018-3002741**

**POST-HEARING BRIEF AND  
PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF  
LAW, AND ORDER**

Filed on behalf of Complainant  
Miranda Grace Edwards, Pro Se

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## INTRODUCTION

This brief is submitted by Miranda Grace Edwards (“Complainant”) to support her claim that the installation by Duquesne Light Company (“DLC”) of an AMI smart meter at her home will adversely affect her and is neither “safe” nor “reasonable” under 66 Pa. C.S. § 1501 as to her.

Complainant brought her case against DLC in response to DLC’s insistence that the Complainant acquiesce to DLC’s demands to install a smart meter on her home or be subject to imminent loss of electricity. The Complainant was informed that prompt filing of a formal complaint with the PUC against DLC was the sole method by which she could retain electrical service while refusing to consent to the installation of an activity-monitoring device that also carries a fire risk and potential health effects.

The quality of being safe means the absence of risk or harm. DLC takes the extreme and unreasonable position that RF exposure from its smart meters is utterly incapable of causing harm, as if that position had been scientifically proven and generally accepted in the scientific community. To the contrary, reliable scientific evidence shows that RF exposure from smart meters such as DLC’s, as well as RF exposure from cell phones and towers, is a possible cause of biological harm to humans, animals, and vegetation.

Complainant, acting *pro se*, attempted to submit evidence demonstrating risks associated with smart meters at an 11-hour hearing on February 27, 2020, pursuant to the Order of ALJ Jeffrey A. Watson. The PUC need not resolve the scientific disagreement between the parties to resolve this case. The evidence at the very least shows potential harm to Complainant and other ratepayers from RF exposure such as that emitted from smart meters. ALJ Watson prevented all such evidence from being submitted by Complainant during the lengthy hearing, which continued until 11 p.m. ALJ Watson insisted on continuing the hearing without a dinner break; as a result, DLC’s eight industry-paid witnesses were able to stagger their testimony throughout the day but Complainant had to remain present for more than 11 hours. ALJ Watson’s conduct does not negate the existence of the evidence Complainant presented.

The question of undue influence on the PA PUC in this matter has been raised in a number of quarters. The Courts, in deciding actual cases, have ruled that any contract that is obtained or imposed through undue influence is invalid. No contract can be rightfully formed unless there has been a “meeting of the minds,” and there has been no “meeting of the minds” between Pennsylvania electric distribution companies

("EDCs") and ratepayers concerning smart meters. Moreover, there are legal protections that stipulate no one can be forced to comply with an unrevealed contract between private corporations to which they were never a party and of which they had no knowledge. There has been no credible cost-benefit and risk analysis provided to the public. There has been no transparency at all to taxpayers. There has been very little accurate information provided to the general public.

In almost every state where smart meters have been deployed, customers have the ability to opt out, which gives concerned ratepayers the chance to protect themselves and minimize effects on wildlife, pets, and vegetation in their immediate area. Pennsylvania is a notable exception, where the PUC has willfully misinterpreted Act 129 and required every ratepayer to accept a smart meter without exception—even ratepayers who object based on medical concerns. The PUC's flawed interpretation of Act 129 violates the Act's plain meaning.

DLC's smart meters present a risk of harm to Complainant and all DLC customers forced to accept these meters or lose electric service. Forcing unwilling ratepayers to accept smart meters that will compromise their safety offends fundamental principles of respect for personal autonomy and constitutes unreasonable and unsafe service to Complainant and other ratepayers in violation of section 1501.

The evidence is amply sufficient for Complainant to meet her burden under section 1501. The PUC should order DLC not to install a smart meter at Complainant's home.

## **HISTORY OF THE PROCEEDINGS**

On June 1, 2018, Complainant attempted to initiate an informal complaint process by phone with the PUC against DLC because of DLC's refusal to desist from installing a smart meter on her property or even delay installation of a smart meter. Complainant was told by a representative of PUC that an informal complaint would have no effect on her situation, but this statement contradicts PA Code §56.92:

"A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, **informal or formal** complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void." (emphasis added)

Complainant filed a formal complaint against DLC on June 14, 2018, after a DLC employee made an unannounced visit to her home on June 12, 2018, and delivered to

Complainant a three-day shut-off notice threatening to cut off electricity service to her residence on June 15, 2018. The shut-off notice claimed “non-access” was the reason for the threatened termination. Denied access to the informal complaint process, Complainant had less than three days to complete and file her original formal complaint against DLC simply to prevent her electricity from being shut off. Complainant was and is acting *pro se* in this case and was entirely unfamiliar with procedures. Before filing her original formal complaint, Complainant spoke with another PUC representative who also did not mention that according to PA Code §56.92, the unresolved informal complaint Complainant attempted to register should have rendered DLC’s shutoff notice void.

On October 24, 2018, Administrative Law Judge (ALJ) Jeffrey Watson issued an interim order regarding this case. In the Procedural Background section of the order, he stated: “Complainant also averred that Respondent provided her with a termination notice after she filed a formal complaint.” This statement is factually incorrect. As Complainant has recounted above, in her original complaint, and in her amended complaint, DLC served a 72-hour termination notice to Complainant on June 12, 2018. Complainant filed her original formal complaint on June 14, 2018. In his order, ALJ Watson misinterpreted Complainant’s claim that PUC itself actively prevented her from filing an **informal** complaint on June 1, 2018, and that by doing so PUC acted in violation of **PA Code §56.92, §56.142, §56.151, and §56.162-§56.166.**

On November 28, 2018, an interim order was entered establishing an “initial litigation schedule.” This order specified January 4, 2019, as the date by which “any Party wishing to present expert testimony of any person other than Complainant must provide to the other Party in writing, the name and business address of that person and a written summary of the expected testimony of that person.” The order also specified that on the same date, “any Party wishing to present expert testimony (including but not limited to medical, technical, etc.) must provide to the other Party in writing, the name and business address of that person and a written summary of the expected testimony of that person.”

On December 10, 2018, Complainant filed a motion to adjust the initial litigation schedule. Complainant stated that the specified deadline of January 4, 2019, was impossible for her to meet. The interim order of November 28, 2018, was filed six days after Thanksgiving—well into the holiday season when Complainant, and likely most experts, have increased family obligations. Moreover, this *pro se* Complainant is a single parent, and has a full-time job and other responsibilities. She did not already know suitable witnesses to contact at the time the November 28 interim order was entered. By contrast, DLC has a stable of paid witnesses lined up to testify in response to multiple complaints. Complainant requested more time, asking to extend the January 4, 2019, deadline to February 28, 2019; to extend the February 28, 2019, deadline to

conclude discovery to April 25, 2019, and to extend the date to file a “progress report” from March 11, 2019, to May 7, 2019.

Complainant received no response from either PUC or DLC concerning her motion to adjust the initial litigation schedule.

On December 18, 2018, DLC filed a motion to extend the discovery response deadline. This motion was granted and also agreed to by Complainant.

On or about January 31, 2019, Complainant received an envelope from DLC Counsel via U.S. mail. The envelope contained a two-paragraph letter dated January 30, 2019, and a CD with 21 files constituting DLC’s responses to Complainant’s discovery requests. DLC supplied no direct answers to any of Complainant’s questions.

On March 4, 2019, Complainant filed an amended formal complaint that noted—among other matters—the PUC’s violation of PA Code **§56.92**, ALJ Watson’s misinterpretation of Complainant’s original formal complaint in his Interim Order of October 24, 2018, and DLC’s lack of response to Complainant’s discovery questions.

DLC sent a letter via U.S. mail to Complainant dated March 25, 2019, that stated in part, “Paragraph 35 of your Amended Complaint indicates that you received a two-paragraph letter and a CD containing 21 files, but you did not receive any additional discovery responses from Duquesne Light. Duquesne Light intended to provide you with written discovery responses with the CD that you received, but these responses apparently did not reach you.” DLC enclosed written responses with the March 25, 2019, letter. PUC never responded to Complainant’s claims as set forth in the amended formal complaint. Complainant received the letter and discovery responses on March 27, 2020.

On December 20, 2019, the PUC issued a Call-Out Telephone Notice for an Initial Telephonic Hearing. The hearing was scheduled for February 27, 2020, at 10 a.m.

On December 20, 2019, Complainant filed a Motion to Stay of Proceedings until after the Commonwealth Court’s ruling on *William and Jean Haas, Petitioners v. Pennsylvania Public Utilities Commission, Respondent*, Docket No. 658 MD 2019—the outcome of which would directly affect the instant complaint.

On January 9, 2020, DLC filed an Answer in Opposition to Motion to Stay of Proceedings, claiming DLC would “be harmed by a stay” because DLC “is required by Act 129 of 2008 and its Smart Meter Plan to install a smart meter at Complainant’s residence.” DLC cited Complainant’s failure to file a status report by November 18, 2019, as a relevant fact in their answer.

On January 31, 2020, Complainant filed an Objection to the Response and Objections of Duquesne Light Company dated January 9, 2020, arguing that if William

and Jean Haas prevailed in their case, “The proceedings of my Formal Complaint C-2018-3002741 will be moot because I can continue to receive electricity from DLC without being forced to accept their ‘smart meter’ on my property. The issues raised in William and Jean Haas, Petitioners v. Pennsylvania Public Utilities Commission, Respondent, Docket No. 658 MD 2019, align with and are directly relevant to my Formal Complaint C-2018-3002741.”

On February 12, 2020, Complainant filed a Second Motion to Stay of Proceedings after the PA Commonwealth Court’s ruling on *Povacz v. Pennsylvania Public Utilities Commission*, Docket No. 492 CD 2019—the outcome of which would directly affect the instant complaint. *Povacz v. Pennsylvania Public Utilities Commission* was argued on June 10, 2020. Given that the Commonwealth Court had recently ruled on cases heard around the same time, a ruling was anticipated soon.

On February 21, 2020, ALJ Watson issued an Interim Order denying Complainant’s December 20, 2019, Motion to Stay of Proceedings. ALJ Watson stated as the main reason for denying the motion, “The Commission has adopted the standards set forth in Pa. PUC v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983) (Process Gas) for guidance regarding the issuance of a stay or supersedeas.”

On February 22, 2020, Complainant and DLC counsel (Shane Paul Miller) spoke by phone. Mr. Miller stated that as he saw it, the parties had three options: 1. Go ahead with the hearing; 2. Stay the case until Povacz decision is rendered by the Commonwealth Court; and 3. settle the case between Complainant/me and DLC (“amongst ourselves”). Parties had previously discussed option 3 via email, but didn’t get far because DLC offered to move the smart meter at Complainant’s expense as the only solution. Among other problems, this solution was physically impossible because of Complainant’s small property.

Mr. Miller stated DLC “would be willing to consent to the stay” only if Complainant would “limit the complaint only to the legal issues” (i.e., whether Act 129 makes smart meters mandatory). He wanted Complainant to agree to forfeit her right to include factual issues concerning her interactions with DLC and safety, health, and privacy concerns with smart meters.

Complainant declined to limit her complaint, and commented that it sounded like Mr. Miller was saying DLC had authority over whether the stay would be granted and that from her understanding, that decision is up to the ALJ.

On February 24, 2020, DLC filed an Answer in Opposition to Motion to Stay of Proceedings.

Complainant has no record of ALJ Watson's dismissal of Complainant's Second Motion to Stay of Proceedings; however, this motion was effectively dismissed because the proceedings were not stayed.

On February 27, 2020, the initial telephonic hearing took place. During the 11+-hour hearing, ALJ Watson refused the introduction of ANY evidence contrary to the DLC position that smart meters are safe—even factual, easily verifiable information about opt-out provisions in other states and studies written by and backed by established scientists researching potential biological harm.

ALJ Watson routinely made rude and sarcastic comments to Complainant and shouted at her on multiple occasions. When Complainant pointed this out, ALJ Watson said that he's "very soft-spoken" and just wanted to make sure he was being heard. After that exchange, he was careful not to raise his voice but continued to exhibit a disrespectful attitude toward Complainant. He frequently noted the time of day and duration of the hearing after Complainant stumbled, paused, or finished questioning a witness. When Complainant fell silent for too long he would say, "Take your time." Complainant was sitting in her kitchen throughout the hearing, trying to take notes while participating in the proceedings and surrounded by stacks of DLC's paper exhibits that took time to sort through.

At around 4:30 p.m., when Complainant started asking if the court would consider finishing the hearing on another day, ALJ Watson said, "Let's just do the highest priority witnesses and then we'll revisit it." He subsequently decided to keep pushing through to the end without giving Complainant the chance to express an objection. ALJ Watson said that the DLC witnesses' schedules had to be accommodated and some of them had been sitting there all day. But they didn't have to be present for the entire hearing, while Complainant did.

One of Complainant's friends who called in to listen to some of the hearing reported that ALJ Watson "was a total dick" to her while technical issues had dropped Complainant off the call temporarily.

By contrast, ALJ Watson complimented DLC counsel on their huge stacks of exhibits. The lawyer chuckled and apologized in response to ALJ Watson's comment. ALJ Watson replied, "I meant that in a good way, heh heh."

Complainant had to ask ALJ Watson directly to receive any information about obtaining a transcript. He instructed Complainant to contact his office to obtain one. This did not sound like a normal procedure to the admittedly inexperienced *pro se* Complainant, who was led to wonder whether ALJ Watson would have a chance to "edit" the transcript before anyone else saw it.

On April 8, 2020, ALJ Watson entered an interim order permitting the filing of briefs on or before May 29, 2020. Neither party did so.

On June 1, 2020, ALJ Watson closed the evidentiary record.

Complainant did not learn of the April 8, 2020, interim order or the June 2, 2020, interim ruling until July 6, 2020, when she received DLC's brief via U.S. mail.

On July 8, ALJ Watson issued an order extending the briefing schedule.

Complainant learned from the transcription service that purchasing the hearing transcript would cost \$1,400. Complainant was told that the cost is based on the number of pages in the transcript. Complainant learned from Audley Brown and Shirley Spunaugle of the PUC that because the PUC offices had closed indefinitely due to COVID-19, transcripts were not available to view in person. Because of contracts with the transcription services, the PUC cannot provide transcripts for Complainants by any method other than in-person viewing. Complainant had no way to reference the transcript pages noted in DLC's brief as required by PUC regulations.

Complainant filed Complainant's Post-Hearing Brief on August 6, 2020.

Both parties filed reply briefs on September 11, 2020.

On September 22, 2020, Respondent filed a Motion to Strike Improper and Inadmissible Material in Complainant's Post-Hearing Brief and Reply Brief, referring to "improper disclosures" of settlement discussions initiated by Respondent's counsel that occurred during a February 22, 2020, phone conversation. Respondent also objected to Complainant referring to evidence that ALJ Watson prevented from being entered into the record.

On October 2, 2020, Complainant filed Complainant's Objections to Duquesne Light Company's Motion to Strike, requesting that Respondent's Motion to Strike be denied.

On October 16, 2020, an interim order was entered granting the Motion to Strike Improper and Inadmissible Material in Complainant's Post-Hearing Brief and Reply Brief filed by Respondent on September 22, 2020, and denying Complainant's Objections to Duquesne Light Company's Motion to Strike, filed by Complainant on October 2, 2020. The hearing record in the case of Miranda Grace Edwards v. Duquesne Light Company filed at Docket No. C-2018-3002741 was closed.

On October 8, 2020, the Commonwealth Court of Pennsylvania (Commonwealth Court) issued an Opinion in Povacz, et al. v. Pa. Public Utility Commission, 4 (Povacz I), the first of several appeals involving PECO Energy Company's (PECO) deployment of smart meter technology pursuant to Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. §

2807(f). In the Povacz I consolidated opinion, the Commonwealth Court partially affirmed, and partially reversed and remanded, PUC's March 28, 2019, and May 9, 2019, Orders in Maria Povacz, Laura Sunstein Murphy, and Cynthia Randall. Povacz I at 495.

In light of the Commonwealth Court's decision in Povacz I, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, on November 4, 2020, pursuant to 66 Pa. C.S. § 501, instituting a stay of certain formal complaint proceedings then-pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code (November 4, 2020, Stay Order). The November 4, 2020, Stay Order also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. The November 4, 2020, Stay Order applied to and was docketed at the instant case.

PUC, as well as all other parties in Povacz I subsequently sought and were granted review of the Commonwealth Court's Povacz I decision by the Supreme Court of Pennsylvania.

On December 7, 2021, the Pennsylvania Supreme Court heard oral arguments in Povacz II.

On August 16, 2022, the Pennsylvania Supreme Court issued its Opinion in Povacz II, which overall favored PUC and the utility companies over Pennsylvania ratepayers. The Pennsylvania Supreme Court's Opinion included a footnote on page 7: "See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). *This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.*" (emphasis added)

In other words, the Supreme Court ruling states that utility companies *can* grant accommodations from smart meters according to a customer service policy. Every state in the United States *except* Pennsylvania offers some form of opt out or accommodation from smart meters. This fact, though publicly available and easily verifiable, was deemed inadmissible in Complainant's proceedings by ALJ Watson. But it does support Complainant's position that it is reasonable for utilities to grant their customers accommodation from smart meters—regardless of Respondent's choice not to offer such accommodations to its customers.

Because of the Supreme Court's decision in *Povacz II*, PUC lifted the stay implemented by the November 4, 2020, Stay Order on November 9, 2023. PUC entered an Order at Docket No. M-2009-2092655, explaining that cases pending before the Office of Administrative Law Judge, such as the instant case, would proceed as directed by the assigned presiding officer.

## **SUMMARY OF ARGUMENT**

Throughout this formal complaint process, Complainant has argued that the PUC's interpretation of Act 129 of 2008 electricity savings law (66 PA.C.S.– Omnibus Amendments Act of Oct. 15, 2008, P.L. 1592, No. 129, §2807(f)(2) (“Act 129”)) and forcing installation of "smart meters" on customers who have not agreed to, consented to, or requested the installation contravenes the clear and unambiguous language of Section 2807 (f)(2) of Act 129. **The PUC's interpretation of Act 129 violates the *Statutory Construction Act of 1972, 1 Pa.C.S. §§1501-1991***, well-settled case law regarding the interpretation of statutes, and tramples the Article I constitutional rights of customers who resist the installation of such meters.

The General Assembly's enactment of Section 2807(f)(2) contains clear and unambiguous language. The General Assembly made a policy decision to allow the installation of smart meters when the customer consented, requested, or agreed to the installation. Regarding the question of whether a customer can "opt out" of the smart meter plan, Act 129 clearly states that a customer must "request" or "consent" to participation in the smart meter program. Contrary to the PUC's interpretation, the Senate floor remarks (as referenced on pages 20 and 21 of this brief) unambiguously corroborate the legislature's intentional refusal to mandate smart meters for every ratepayer. The PUC disregarded the clear language of the statute and essentially amended the legislative enactment.

Taken *in toto*, Act 129 § 2807(f)(2)(iii), as per the definition of depreciation based on the authorities discussed herein, as used repeatedly in the PA Public Utilities Code, and mirrored by the PUC's Implementation Order, sets a cap on the service period of smart meters, dictating their service life does not exceed 15 years. The final version of § 2807 passed into law says nothing about replacing electromechanical analog meters and nothing about universal forced deployment of smart meters. No such inferences as these can be made from the statutory language of Act 129, from the "intent" as recorded in the *House* and *Senate Journals* in the legislative history of HB 2200 that became Act 129, nor in the changes to the Bill wording through each Printer's Number, culminating with the final version (PN 4526) passed into law.

Thus, there is no basis on which the PUC can justify its mandate of universal forced deployment of smart meters in their Implementation Order of June 2009 and all subsequent PUC formal complaint holdings and Implementation Orders. Consequently, the EDCs, including DLC, have no legal basis on which to force smart meters on all of their customers.

Complainant is NOT requesting, nor has she ever requested, a smart meter. She does not live in new building construction—and therefore is not required to have a smart meter under any legal interpretation of Act 129. The reason she does not have one is because she did not request one, and does not live in new building construction. She does not want a smart meter and there is no reason under the law that she must accept one on the electric socket of her home as a condition of receiving electricity from her EDC at the Service Address. Section 2807(f)(2)(iii) only deals with furnishing smart meters that have exceeded their useful life (not to exceed 15 years). It does not require Complainant or anyone else similarly situated to have a smart meter.

Furthermore, at all times to this case, Complainant—a paying noncommercial customer of DLC’s public electric service since 1994—has been forced into a commercial person and thus suffered threats to her private, common-law rights and her life needs from DLC violations allowed by the PUC as its regulator.

## **ARGUMENT**

### **A. The PUC misinterprets the plain language of Act 129.**

In Act 129 of 2008 (the Act), PA C.S. § 2807(f)(2) states:

(f)(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 request.
- (ii) In new building construction.
- (iii) In accordance with a depreciation schedule not to exceed 15 years.

Controversy has arisen over the Pennsylvania Public Utility Commission’s (PUC’s) implementation of this section of the Act. As can be demonstrated by the PUC’s own Implementation Order of June 2009,<sup>1</sup> Pennsylvania’s legislative history and various accounting and tax authorities and definitions, the PUC does not interpret the plain language of this law correctly.

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<sup>1</sup> Docket No. M-2009-2092655

The PUC Implementation Order of June 2009<sup>2</sup> on page 14 states, “The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters systemwide when it included a requirement for smart meter deployment “in accordance with a depreciation schedule not to exceed 15 years.”

Thus, the PUC forces the plain language of § 2807(f)(2)(iii) into a mandatory smart meter narrative which has thereby aided and abetted most electric distribution companies (EDCs) to force smart meters on all customers, even over their objections for various reasons. The PUC arrives at the incorrect conclusion that Act 129 creates a statewide mandate of smart meters by covered EDCs by misinterpreting unambiguous legislative intent and misinterpreting plain legislative language that leaves no room for misinterpretation.

The PUC and EDCs have overridden the plain language meaning of § 2807(f)(2)(iii). The PUC interprets the language of furnishing of smart meters “in accordance with a depreciation schedule not to exceed 15 years” to mean covered EDCs must force smart meters on all customers within 15 years. In addition, the PUC conflates furnishing smart meters with removal of analog meters, when, in fact, the Act is silent on currently deployed analog meters.

The following discussion focuses on subparagraph (f)(2)(iii) of the Act:

**“Electric distribution companies shall furnish smart meter technology as follows ...in accordance with a depreciation schedule not to exceed 15 years.”**

Interpreting this as a mandatory rollout of smart meters within 15 years not only lacks common sense, but also ignores a key term found in the law—“depreciation.” Since “depreciation” is an accounting or tax term, it is necessary to consider how applicable authorities define the term “depreciation.”

Internal Revenue Code<sup>3</sup> (IRC) § 167(a) and Treasury Regulation (Treas. Reg.) §1.167(a)-1(a) define depreciation as an allowance (deduction) for the exhaustion, wear and tear, and obsolescence of property used in a trade or business or property held for the production of income. Treas. Reg. §1.167(a)-1(a) goes on to dictate that depreciation deductions are allocated over an asset’s useful life.

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<sup>2</sup> Docket No. M-2009-2092655

<sup>3</sup> Internal Revenue Code of 1986, as amended

*Black's Law Dictionary*<sup>4</sup> mirrors this, defining depreciation as a decrease in the potential of an asset over its lifetime. Various financial accounting authorities have the same or similar definitions, such as the Federal Energy Regulatory Commission (FERC).<sup>5</sup> These definitions show that the terms wear and tear, exhaustion, or obsolescence are synonymous with the term depreciation. A depreciation schedule (or wear and tear schedule, exhaustion schedule, obsolescence schedule) is a schedule that ultimately defines an asset's useful life, and allocates its cost over its useful life. In fact, Treas. Reg. §1.167(a)-1(b) defines useful life as the period over which an asset may reasonably be expected to be useful in a trade or business or for the production of income (not necessarily the useful life inherent in the asset—but its use in business or for income production).

FERC, when it comes to defining the term “depreciation,” mirrors what has already been presented above. In establishing standards for depreciation for accounting purposes, FERC wanted to ensure that electric utilities charge proper amounts of depreciation to expense in each financial reporting period for the purpose of allocating in a systematic and rational manner the cost of utility property to the periods which the property is used in utility operations (over its estimated useful service life).<sup>6</sup> The definition of depreciation according to FERC's Uniform System of Accounts for electric utilities is “the loss of an asset's service value not restored by current maintenance.”<sup>7</sup> This is further evidence that “depreciation” is an accounting term tied to the expenditure of the cost of an asset (such as a smart meter) over its period of use, or useful life. FERC does not somehow make the term “depreciation” mean deployment, nor does any other accounting or tax authority. “Deprecation” never means “deployment.”

Based on the definition of “depreciation” and “useful life” as used in legal and accounting contexts, the plain statutory language of § 2807(f)(2)(iii) must be interpreted as follows—using terms synonymous with depreciation to aid in interpretation:

**Electric distribution companies shall furnish smart meter technology as follows ... in accordance with a wear and tear, exhaustion, or obsolescence schedule not to exceed 15 years.**

In other words, § 2807(f)(2)(iii) establishes the maximum service life of smart meters. This paragraph of the Act makes no reference to a mandatory rollout of smart meters

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<sup>4</sup> <https://thelawdictionary.org/depreciation>

<sup>5</sup> The Federal Energy Regulatory Commission (FERC) is an agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC also administers accounting and financial reporting regulations of regulated companies—such as EDCs.

<sup>6</sup> 65 FR 47664, page 47666

<sup>7</sup> 18 CFR 101. Definition No. 12

by all EDCs (regardless of their number of customers—which shall be addressed further below). It does not say, nor can it be inferred in any way, that there is a required systemwide deployment of smart meters on a schedule of no longer than 15 years, as stated in the PUC's 2009 Implementation Order. This section of the Act does not refer to replacing AMR meters or analog meters. Rather, it plainly spells out that AMI (smart meters) are to have a service period not to exceed 15 years.

The General Assembly had also previously enacted laws including parameters regarding the term “depreciation” as part of the Public Utility Consolidated Statutes. Section 1703 of Title 66 states:

§1703. Depreciation accounts; reports.

(a) Accounts.—Every public utility shall carry on its books or records of account, proper and reasonable sums representing the annual depreciation on its property used or useful in the public service, which sums shall be based upon the average estimated life of each of the several units or classes of depreciable property. The commission, by appropriate order, after hearing, shall, except where found to be inappropriate, establish for each class of public utilities, the units of depreciable property, the loss upon the retirement of which shall be charged to the depreciation reserve. (underlining added)

66 Pa. C.S. 1703(a).

66 Pa.C.S. §1703 (b) states:

(b) Statements.—Every public utility shall file with the commission, at such times and in such form as the commission may prescribe, statements setting forth the details supporting its computation of annual depreciation, as recorded on the books or records of accounts of the public utility. If the commission, upon review of such statements, is of the opinion that the amount of annual depreciation so recorded by any public utility is not reasonable and proper, it may, after hearing, require that provision be made for annual depreciation in such sums as may be found by it to be reasonable and proper. In making its findings, the commission shall give consideration to the experience of the public utility, and the predecessors of the public utility in accumulating depreciation reserves, the retirements actually made, and such other factors as may be deemed relevant. (underlining added)

66 Pa. C.S. §1703 (b).

Clearly the General Assembly was familiar with the term “depreciation” when it made a policy decision to specify the “useful life” for depreciation purposes relative to smart meters. That decision is consistent with Section 1703.

Section 2807(f)(2) in its entirety as written by the General Assembly means that the only

way homeowners would be furnished their first smart meter was to request one and pay for its cost at time of such request, if the homeowner is living in existing construction. In new construction, smart meters “shall be furnished” or provided. Thereafter, the smart meter that was furnished must be replaced with a new smart meter over a period not to exceed 15 years.<sup>8</sup>

The Commission incorrectly interprets (f)(2)(iii) as a requirement for system-wide smart meter deployment within 15 years with no exceptions. The Commission has substituted “deployment and installation schedule” for “depreciation schedule.” Nowhere does any authority define or use the terms “deployment” or “installation” as synonymous with the term “depreciation.”

Furthermore, *Black’s Law Dictionary* states: “Definition of **FURNISH**: To supply; provide; provide for use.”<sup>9</sup> Section 2807(f)(2) of the Act requires EDC’s to FURNISH smart meter technology under three conditions only. It does not require the EDCs to install or deploy smart meter technology everywhere in their territories with no exceptions. Thus, neither “furnish” nor “depreciation schedule” can be in any legal way construed to mean “install” or “deploy”, much less connote “mandatory deployment and installation.”

Section 2807(f)(6) of the Act states that subsection (f) does not apply to EDCs with 100,000 or fewer customers. This does not mean that customers of all EDCs with 100,001 or more customers must accept a smart meter, rather it means that (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) do not apply to EDCs with 100,000 or fewer customers. All this means is that an EDC with 100,000 or fewer customers does not have to furnish a smart meter upon request from a customer and that a smart meter does not have to be furnished in new construction. It does not mandate smart meters on customers of EDCs with 100,001 or more customers.

Section 2807(g) of Act 129 does include definitions of smart meter technology, including that it shall enable time-of-use rates, HOWEVER, the ONLY section of Act 129 that discusses how this technology “shall be furnished” is section (f).<sup>10</sup>

## **B. The lawmakers who finalized Act 129 did not intend it to be a mandatory smart meter deployment.**

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<sup>8</sup> It should be noted that there does not appear to be any prohibition from an EDC asking a customer if they would want to consent to the installation of a smart meter if a customer would not fall under 2807(f)(2)(i) or (ii). Instead, covered EDCs have been forcing smart meters on customers not falling under 2807(f)(2)(i) or (ii).

<sup>9</sup> <https://thelawdictionary.org/furnish>

<sup>10</sup> As smart meters are provided to those who request one, and in new building construction, time-of-use rate requirements are honored.

Additional clarity is afforded by reviewing the third clauses of § 2807(f)(2) of the Printer's Numbers (PNs) of versions of House Bill 2200 that were NOT passed into law to see what language was excluded from the final version which was passed into law. PNs 3218 and 3233 (February 11 and 12, respectively, 2008) both stated, "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." The *House Journal* records numerous dissenting comments about the mandatory nature of these PNs.

- I. House Journal, February 11, 2008, pages 386-403 [p. 390 Mr. Hutchinson; 390-391 Mr. Godshall; p. 392 Mr. McCall; p. 393 Rep. Smith and Mr. Saylor; p. 395 Mr. Benninghoff; p. 397 Mr. Gabig]
- II. House Journal, February 12, 2008, pages 430-432 [p. 431: Mr. Hutchinson]

PN 4429 (September 23, 2008) stated, "ELECTRIC DISTRIBUTION COMPANIES SHALL FURNISH SMART METER TECHNOLOGY AS FOLLOWS: ... (III) IN ACCORDANCE WITH A SCHEDULE OF REPLACEMENT OF FULL DEPRECIATION OF EXISTING METERS."

Note here, that PNs 3218 and 3233 which mandated smart meters for all customers, and PN 4429 which made reference to retiring from service and replacing existing (mostly analog) meters were NOT PASSED INTO LAW. It is also worth noting that there would be no way to logically think "depreciation" could be synonymous with "deployment" in the paragraph above from PN 4429. It simply makes no sense. Also noteworthy is that PN 4429, again—which was NOT passed into law—would have required covered EDCs to replace fully depreciated existing (presumably analog/mechanical) meters that had exceeded their useful life with smart meters.

However, this language in PN 4429 was changed, and is in sharp contrast to the language that was passed into law.

Any interpretation of §2807(f)(2)(iii) of the Act, such as the PUC and EDCs espouse, that it mandates smart meters for all customers or that it makes any reference at all to existing analog meters is erroneous, because those interpretations are based on language that the PA legislature purposefully modified and are based on language that was NOT PASSED INTO LAW. The prior PNs of the Act that were NOT passed into law should not have formed the basis for the PUC's Implementation Order of June 2009, which the PUC and all of its Administrative Law Judge's (ALJs) cite for the purpose of ruling against every single smart meter formal complaint to date.

In addition to the clear plain English understanding of Act 129 §2807(f)(2)(iii)'s reference

to a 15-year depreciation schedule are the *Senate Journal* records of PN 4526, the version that WAS signed into law.

Discussion of PN 4526 in the Senate is recorded in the *Senate Journal* on October 8, 2008, pages 2626-2631, from which the following comments pertinent to smart meters and concerns about customers are taken. Here is a link:

<https://www.legis.state.pa.us/WU01/LI/SJ/2008/0/Sj20081008.pdf#page=13>

p 2626

Senator TOMLINSON.

It also contains language in there that we will have smart meters. **It is not mandated**, but it allows for the deployment of smart meters through a depreciation process, through new home construction process, and through the depreciation of 15 years, and **for anyone who wants to purchase a smart meter which they feel will help them manage their electric load better.**

p. 2627

Senator BOSCOLA.

**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.

p. 2629

Senator FUMO.

In addition, **we did not mandate smart meters, but we made them optional.** We did say in new construction, where they really are practical, they will be put in.

### **C. The PUC twists the meaning of the word “depreciation” in its Implementation Order of June 2009.**

In its Implementation Order of June 2009, on page 12 (where new construction is discussed), the PUC states the following: “As with all equipment, meters have a useful life. EDCs determine how much to invest in meter equipment based on its useful life and have an opportunity to depreciate that investment over the useful life of the meter. In addition, EDCs have an opportunity to recover the cost of the meter from ratepayers.” As shown above, the PUC used the terms “useful life” and “depreciation” when discussing meters (including smart meters) and related those terms to the meter’s cost over its useful life. This example taken from the PUC’s 2009 Implementation Order illustrates that the PUC appears to know that “depreciation” is, in fact, an accounting term that relates to an expenditure for exhaustion, wear and tear, and obsolescence

allocated over an asset's useful life. It also shows that the PUC should know that depreciation does not mean and has nothing to do with "mandatory deployment." Rather, depreciation is a result of deployment of an asset.

After showing an understanding of what depreciation means on page 12, it is unclear how only two pages later in the Implementation Order, on page 14, the PA PUC states "The Commission believes that it was the intent of the General Assembly to require all covered EDCs to deploy smart meters systemwide when it included a requirement for smart meter deployment "in accordance with a depreciation schedule not to exceed 15 years." The PUC has consistently ruled that in using the terms "systemwide smart meter deployment," the PUC means that there can be no exception for any homeowner who objects to a smart meter on their property for any reason, including but not limited to adverse medical or health effects. There is simply no basis for this position.

Further, on page 29 of the Implementation Order where recovery of costs of "deployment and installation" of smart meter technology is discussed, the PUC states "these costs would include both capital and expense items relating to all plan elements, equipment and facilities, as well as an analysis of all administrative costs. More specifically, these costs would include, but not be limited to, capital expenditures for any equipment and facilities that may be required to implement the smart meter plan, as well as depreciation, operating and maintenance expenses." Once again, the PUC uses the term "depreciation" correctly as an accounting term as a cost *resulting from* the deployment of smart meters. "Depreciation" is not synonymous with the term "deployment"—rather, the terms are separate and distinct.

The PUC's discussion of the recovery of costs in the paragraph above comes from Section 2807(f)(7) of Act 129 of 2008. Section 2807(f)(7) provides that part of the recoverable costs include annual depreciation and capital costs over the life of smart meter technology. In § 2807(f)(7), depreciation is clearly an expense for the exhaustion, wear and tear, and obsolescence of a smart meter. Based on the PUC's 2009 Implementation Order references to "depreciation" discussed above, the PUC appears to understand the correct meaning and usage of the term. It is not logical that "depreciation" should somehow be defined completely differently by the PUC (and to ascribe legislative intent which was entirely absent from actual wording and legislative discussion just prior to passage of the Act) solely for purposes of Section 2807(f)(2)(iii).

Additional historical clarity can be seen in the words of the PA PUC itself—as recently as December 19, 2019. In its Act 129 Total Resource Cost (TRC) Test for 2021<sup>11</sup>, on

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<sup>11</sup> Act 129 discusses the TRC test being a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net

page 21, the PA PUC discusses effective useful life and stated “While certain technologies may have an expected useful life greater than 15 years, Act 129 is clear about the 15-year limit, and any adjustment to the cost ledger would circumvent the legislative directive.” Here, the PA PUC correlates useful life with cost of a technology—providing additional evidence that the meaning of depreciation is fully understood. Also of note is the repetitive theme of a 15-year useful life seen in the Act.

Section 2807(f)(7) says “an electric distribution company may recover reasonable and prudent costs of providing smart meter technology under paragraph (2)(ii) and (iii),<sup>12</sup> as determined by the commission. This paragraph includes “annual depreciation and capital costs over the life of the smart meter technology and the cost of any system upgrades that the electric distribution company may require to enable the use of smart meter technology.....”

Yet again, the General Assembly correctly applies the term “depreciation” in the context of the Act. Depreciation is clearly a cost allocated to the life of a smart meter. Depreciation means the same thing here as it does in Section 2807(f)(2)(iii). Depreciation means depreciation, not deployment.

Additionally, Section 2807(f)(7) does not require that smart meters must be furnished to every customer without exception in order for EDCs to allocate the cost of new systems enabling the use of smart meters. Section 2807(f)(7) makes no such inference, directly or indirectly.

The PUC appears to understand what depreciation means, and that Act 129 § 2807(f)(2)(iii) imposes a maximum 15-year limit on the service life of smart meters; yet states repeatedly that Act 129 §2807(f)(2)(iii) imposes a mandated deployment of smart meters to all customers of covered EDCs. The PUC is clearly capable of understanding and using the correct interpretation of the words “depreciation schedule,” but not when it is defending its misinterpretation of legislative intent and the its Implementation Order of June 2009.

#### **D. Opt-out legislative proposals attempt to mitigate PUC’s misinterpretation of Act 129 and do not contradict Act 129.**

Time and time again in the PUC formal complaint administrative process, ALJ and PUC decisions have been rendered against smart meter complainants and the decisions state that the Act does not allow for opt outs. This fact is not contested as stated. The

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present value of the monetary cost of energy efficiency conservation measures. Reference to the TRC is only made here to show the PA PUC’s correlation of cost to the useful life of technology.

<sup>12</sup> Specifically, this is referring to 2807(f)(2)(ii) and (iii).

Act does not provide any legislative opt outs, because it was solely an “opt-in” statute—which, of course, would not provide any opt outs.<sup>13</sup> It is solely and unequivocally the PUC’s misinterpretation of the legislative intent and meaning of the words “in accordance with a depreciation schedule not to exceed 15 years” that turned the Act into a mandatory no opt-out smart meter deployment law; otherwise, if the PUC had not changed the legislative intent and meaning of the law, there would never have been a need to create an opt out.

The Act does allow small volume EDCs to not furnish smart meters to its customers if that EDC services 100,000 or fewer customers. That is, if a customer is served by a small-volume EDC, that EDC does not have to furnish a smart meter to a customer upon the customer’s request for a smart meter or in new construction.

The PUC, DLC, and other utilities have either stated or insinuated that the existence of various smart meter opt-out bills proposed by the PA state legislature proves that the legislative intent of the Act was mandatory systemwide deployment.

This is patently false. The first smart meter opt-out bill was proposed in 2012 by State Rep. Mike Reese (House Bills 2186 and 2188 most recently reintroduced as four bills—House Bills 310, 311, 312, and 313). The initial Bills were introduced approximately three years AFTER the PUC’s 2009 Implementation Order, and only one year after the PUC started to dismiss all smart meter formal complaints filed by Pennsylvania residents. The introduction of smart meter opt-out bills, the most recent being Senate Bill number 791, introduced this session, was prompted by urging of constituents who were denied opt outs and accommodations in formal complaint filings in front of the PUC, and not for any other reason.

It is noteworthy that the first opt-out bill was not introduced until years after the passing of the Act and the PUC’s June 2009 Implementation Order, when the EDCs were starting their smart meter rollouts pursuant to the PUC’s implementation orders, but not before then. Timing is key here and speaks volumes. Timing of the first smart meter opt-out proposal in 2012 establishes the fact that opt-out proposals were a response to the PUC’s flawed Implementation Order and the PUC’s refusal to change its flawed interpretation of the Act, and not because of any wording or plain language in the Act itself.

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<sup>13</sup> The absence of a plainly stated opt-out provision does not preclude a utility customer from declining a meter based on various unsafe conditions (including medical implications and negative health effects) that could be caused or exacerbated by smart meter radiofrequency emissions in accordance with 66 Pa. C.S. § 1501.

See, for example, the long string of formal complaint cases that the PUC has dismissed on the pleadings starting in 2011, cited by PECO in *Kreider v PECO* PUC Docket No.: C-2015-2469655, *PECO Energy's Petition for Reconsideration of the Commission's September 3, 2015 Order*, citing *Gavin v. PECO*, Docket No. C-2012-2325258 (Final Order entered, Jan. 24, 2012):

In PECO's Interlocutory Petition for Reconsideration in *Kreider*, PECO cited an unbroken string of formal complaint smart meter cases that the PUC had dismissed heretofore without a hearing, because the PUC had determined that Act 129 did not permit any opt outs:

"Indeed, no AMI meter cases have proceeded to a hearing on the right to opt out; each of PECO's cases has been dismissed on preliminary objection. See *Francis v. PECO*, Docket No. C-2014-2451351 (Final Opinion and Ordered entered, August 20, 2015); *Van Schoyck v. PECO*, Docket No. C-2015-2478239 (Initial Decision entered, June 19, 2015); *Larson v. PECO*, Docket No. C-2014-2451754 (Final Opinion and Ordered entered, June 11, 2015); *Antonio Romeo v. PECO Energy*, Docket No. C-2015-2479260 (Initial Decision entered, June 4, 2015); *Gerald H. Smith v. PECO*, Docket No. C-2014-2443198 (Final Opinion and Order entered April 23, 2015); *Vincent Feldman v. PECO*, Docket No. C-2015-2442308 (Initial Decision entered, April 1, 2015); *Margaret Hager, M.D. v. PECO Energy*, C-2014-2444961 (Final Order entered, March 12, 2015); *Ellen Donnelly v. PECO Energy*, Docket No. F-2013-2330663 (Final Order Entered March 18, 2014); *Douglas Evans v. PECO Energy*, Docket No. C-2013-2368477 (Final Order entered, February 6, 2014); *Theresa Gavin v. PECO Energy*, Docket No. C-2012-2325258 (Order entered January 24, 2013); *Jeff Morgan v. PECO Energy*, Docket No. C-2013-2356606 (Final Order entered July 23, 2013); *Thomas McCarey v. PECO Energy*, Docket No. C-2013-2354862 (Final Order entered September 26, 2013); *Renney Thomas v. PECO Energy*, Docket No. C-2012-2336225 (Final Order entered December 31, 2013); *Maria Povacz v. PECO Energy*, Docket No. C-2012-2317176 (Order entered September 28, 2012)."

"Moreover, the Commission has ruled consistently on the right to opt out issue with respect to other EDCs. *Gloria Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Final Order entered, May 27, 2011); *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered, March 3, 2011); *Richard Secrest v. West Penn Power Company*, Docket No. C-2013-2356667 (Final Order entered, Jun. 11, 2013); *Corbett v. Pennsylvania Power Company*, Docket

No. C-2011- 2219898 (Order entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011- 2224380 (Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No. C-2012- 2300172 (Order entered July 31, 2012); *Brake v. West Penn Power Company*, Docket No. C-2013- 2367308 (Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C- 2014- 2413771 (Order entered June 12, 2014); *Efaw v West Penn Power Company*, Docket No. C-2014-2413744 (Order entered June 12, 2014); *Sean Loughry v. PPL Electric Utilities Corp.*, Docket No. C- 2014-2445932 (Order entered March 2, 2015).” *Krieder v PECO op cit*, PECO Energy's September 18, 2015 Petition for Reconsideration of the Commission's September 3, 2015 Order fn 4.

Legislators explicitly remarked as to the non-mandatory intent of PN 4526, and any subsequent effort by anyone to reach out to the PUC to remark about such intent fell on deaf ears as evidenced by complaint after complaint. As shown by a letter written by PUC counsel dated March 20, 2018, related to docket number C-2018-3000222, the PUC has taken the posture that the only way it would change its implementation order was if there was a ruling from a higher court or the Act was amended. At the same time, In the PA PUC's Public Meeting held April 15, 2010, in discussing the deployment process of smart meters and related timeframes on page 10, it states that the PUC Administrative Law Judge (ALJ) “found that the *Implementation Order* is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission's expectations about smart meter plans.”

That statement contradicts the need for a ruling from a higher court or an amendment to the Act for the PUC to change its Implementation Order. If its Implementation Order does not have the full force and effect of law, then why would a law (that has been thoroughly misinterpreted by PUC) need to be re-written? Why would a higher court need to make a ruling? The answer is that neither needs to take place. The PUC itself states that its Implementation Order is a policy not having the full force and effect of law, yet it refuses to re-address its erroneous policy in the face of overwhelming evidence (well beyond a preponderance of the evidence) that it has misinterpreted the plain language of the Act, the legislative intent of the Act and the constitutionality of its Implementation Order. The PUC can change its erroneous and illegal policy; and does not need an appellate court or the PA state legislature to do so.

**E. Time-of-use rates as prescribed in Act 129 do not require mandatory systemwide deployment of smart meters.**

EDCs and the PUC have also argued that because time-of-use rates are a requirement

under the Act, there must also be mandatory systemwide deployment of smart meters with no exceptions.

Clearly, that is not the case because EDCs with 100,000 or fewer customers do not need to participate in the smart grid, and customers served by those EDCs may not force their EDC to offer them smart meters or time-of-use rates, either. But more importantly, EDCs with 100,001 or more customers may still have customers who request a smart meter and agree to pay for it, and those EDCs will still be furnishing smart meters in new construction. Therefore, time-of-use rates are being implemented in accordance with the Act 129 to those who request them, and in new construction. Time of use rates, however, do not transform 2807(f)(2)(iii) into a mandatory smart meter deployment for all customers of EDCs with 100,001 or more customers. The language of the law does not support it. Once again, 2807(f)(2)(iii) only means that smart meter technology has a useful life not to exceed 15 years. At least every 15 years, smart meters which have already been deployed must be replaced because the Act requires it—and the PUC and DLC appear to know this.

**F. The PUC has the ability to change its own Implementation Order.**

In the PA PUC’s Public Meeting held April 15, 2010,<sup>14</sup> (the joint petition of DLC and other EDCs), the discussion on page 9 states the following: “In Commission proceedings, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy that burden, the proponent of a rule or order must prove each element of its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Comwlth. 1990). A preponderance of the evidence is established by presenting evidence that is more convincing, by even the smallest amount, than that presented by the other parties to the case. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the 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).”

In this same document (Docket No. M-2009-2123950), as mentioned above, in discussing the deployment process of smart meters and related timeframes on page 10, it states that the PUC Administrative Law Judge (ALJ) “found that the *Implementation Order* is not a regulation and does not have the full force and effect of law. Instead, it acts as a policy to provide guidelines to EDCs regarding the Commission’s expectations about smart meter plans.”

The evidence presented herein is overwhelming that Section 2807(f)(2)(iii) establishes a

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<sup>14</sup> Docket No. M-2009-2123950

maximum service life of smart meters and nothing further. The legislative intent is clear. “Not mandatory” means no forced deployment over a customer’s objections. There is no evidence to support the PUC’s position that Section 2807(f)(2)(iii) mandates deployment of smart meters to all customers not covered by Section 2807(f)(2)(i) and (ii). Accordingly, and by a preponderance of the evidence, the PUC should reverse its incorrect interpretation of Section 2807(f)(2)(iii). This reversal does not require ruling from an appellate court or an amendment to the Act, although either would serve to accomplish the same end result based on the PUC’s refusal to address the issue.

### **G. The PUC has financial incentives to stand behind its faulty Implementation Order.**

The system for handling smart meter complaints at the very least encourages claims of PUC corruption, as smart meter complainants must argue their cases before the very entity that is responsible for promulgating and enforcing the smart meter implementation orders (which Pennsylvania EDCs universally cite in these cases) for Act 129.

These PUC orders are responsible for increasing EDC gross income and thereby increasing PUC revenue, generating millions of dollars per year of the PUC’s annual budget. The PUC, through Act 55, takes a tithe of 3/10 of 1 percent of the total gross income of all electric distribution companies and electric generation companies. The more gross income from each EDC, the more money goes to the PUC. The PUC has much to gain—at PA residents’ expense—by acting outside the plain language of the law and legislative intent of Act 129.

The PUC continues to dismiss all smart meter harm complaints even as every other state PUC that has considered the potential harm from smart meters offers opt-outs: As of this writing, at least 40 other states offer opt-outs from smart meters to their residents. See attached smart meter opt-out chart (Exhibit F). Ten PA smart meter cases are already on appeal to the Commonwealth Court.

In Pennsylvania, any attempt to refuse the installation of a smart meter—for any reason—is met with an onslaught of lengthy and dense legal documents by the EDCs, and an onerous process that has been imposed by the very same PUC responsible for safeguarding the well-being of its constituents. And the plain fact of the matter is that it cannot be denied that the PUC wrote the Implementation Order upon which the whole issue of a mandate rests. Yet the PUC is the primary judicial body when an issue or complaint is brought forward challenging the installation of a smart meter that has not been requested, and that represents a credible threat of harm to the homeowner and his or her family. In other judicial venues where such a conflict of interest is apparent,

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

Subtle and not-so-subtle forms of duress are being applied to frighten and wear down Complainants so that they capitulate. The EDCs—as DLC has done to Complainant Miranda Grace Edwards most recently in their July 2, 2020, Post-Hearing Brief and Proposed Findings of Fact, Conclusions of Law, and Order on pages 29-31 and 72—raise the specter and threat of "suspension of service" unless acceptance of their "Smart Meter Equipment and Contract" is forthcoming. Complainant has been a lifetime customer and has always met her responsibility to pay her electric bills. The Courts, in deciding actual cases, have been quite clear on matters of duress—that is, any "threat of harm that is made to compel a person to do something against his or her will or judgment." The entire smart meter deployment scheme in Pennsylvania is nothing other than a well-orchestrated de facto form of duress being perpetrated on ill-informed and ill-prepared residents to compel their acceptance.

**H. The PUC's interpretation of Act 129 violates the *Statutory Construction Act of 1972*, 1 Pa.C.S. §§1501-1991, and tramples the Article I constitutional rights of customers who resist the installation of smart meters.**

Complainant's refusal to consent to the installation of a smart meter on her home is an exercise of her constitutional rights over which neither DLC nor the PUC have been delegated authority. Indeed, the delegation of such authority is beyond the power of the General Assembly as stated in Article I, section 25 of the Pennsylvania Constitution:

**§ 25. Reservation of powers in people.**

To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

PA. CONST., ART. I, §25.

Article II, section 1 of the Pennsylvania Constitution vests the entire legislative power of the Commonwealth in the General Assembly, but there are some subjects that are even beyond the power of the General Assembly to affect.

Administrative agency actions that eviscerate Complainant's right to refuse to consent to the installation of a device that will compromise her safety cannot stand.

## **PROPOSED FINDINGS OF FACT**

1. Complainant Miranda Grace Edwards ("Complainant") resides at 3835 Acorn Street, Pittsburgh, PA 15207.
2. Complainant is a *pro se* complainant and has not retained counsel.
3. Respondent is Duquesne Light Company ("DLC"), an electric distribution company ("EDC") regulated by the Pennsylvania Public Utilities Commission ("PA PUC" or "PUC").
4. Complainant is an electricity customer of DLC receiving residential service at the address above under account number 5241582885.
5. Complainant's home is heated by a gas furnace that does not function without electricity. Without electricity, the house will lack heating during the cold winter months. A lack of heating would cause Complainant to suffer (potentially fatal) physical harm if she remained in her residence. A lack of heating combined with sub-freezing temperatures would cause water pipes to freeze and burst, which in turn would cause severe damage to Complainant's home.
6. Complainant's home is cooled by an air conditioner that does not function without electricity. Without electricity, Complainant's home will lack cooling during the hot summer months. A lack of air conditioning could cause Complainant to suffer physical harm when temperatures become extremely high.
7. Complainant's home contains a gas stove with electronic ignition that does not function safely without electricity. Without electricity, Complainant will be unable to cook food in her residence.
8. Complainant's home contains a refrigerator that does not function without electricity. Without electricity, Complainant will be unable to store perishable foods in her residence.
9. Complainant's home contains computers that Complainant uses to, among other things, perform her job duties remotely. Without electricity, Complainant will be unable to work from home. Since March 2020, Complainant has worked from

home 100% of the time. If DLC terminates Complainant's electricity service, it will interfere with Complainant's ability to perform her job.

10. DLC seeks to terminate electricity service to Complainant's home as soon as possible.
11. Electricity is a basic utility that is essential for a reasonable quality of life in today's world. As such, Complainant requires uninterrupted (to the extent physically possible) electricity service at her home. If DLC terminates electricity service to Complainant's residence, this action would make it impossible for Complainant to live in her own home.
12. Complainant's account is consistently in good standing. The only reason DLC seeks to shut off Complainant's electricity service is that Complainant will not consent to the installation of a smart meter on her property.
13. DLC sent Complainant a letter dated April 4, 2018, informing Complainant that "in the coming months," DLC would "exchange the existing electric meter" at Complainant's home for "a new, digital model." The letter went on to state (in a section titled "What We Will Do") that DLC would call Complainant at "the following phone number" and listed Complainant's correct mobile phone number.
14. Within a week or so of receiving the initial April 2018 letter, Complainant called DLC's customer service number and explained that she does not consent to the installation of a smart meter. The customer representative was immediately agitated and confrontational. She would not pass the call to a manager.
15. On May 10, 2018, a contractor from Wellington Energy Co. parked in front of Complainant's house. Complainant had no reason to expect him; she had not received a phone call from DLC or anyone else regarding the meter installation (as specified in the April 2018 letter). The contractor arrived at approximately 9:30 a.m.; it was purely by chance that, running late for work, Complainant happened to be home. He would have installed the smart meter against Complainant's wishes if Complainant had not been there to ask him to refrain from doing so.
16. A day or two later, Complainant received a voicemail from DLC saying that they had been "unable" to reach her meter and asking Complainant to call and reschedule. Within a week, Complainant received a letter from DLC dated May 14, 2018. It was the same letter as the previous one, except DLC had included a "Smart Meter Q&A" sheet. It extolled the virtues of smart meters and downplayed

health concerns in a cute infographic showing how little RF a smart meter emits compared to household appliances most people own. The figures for RF exposure given by utilities are time-averaged numbers that hide the smart meter's sharp spikes and disguise the fairly continuous nature of the pulses—every four to five seconds. The sharp RF spike pattern does not resemble cell phones or Wi-Fi. Both cell phones and Wi-Fi can be strong RF emitters, but people can choose to change how they use these. Growing public awareness of RF exposure has led some to choose a wired internet connection or use a wired phone at home. However, most people are not offered a wired smart meter, and once it's installed the resident can't turn it off or move it. Exposure to this source of RF is out of a resident's control, as is the rate and intensity of the RF radiation. As a matter of fact, it seems to be out of everyone's control. Some sources say a large percentage of the RF emitted by the smart meters is part of the "mesh network" talking to itself mostly for the purpose of network synchronization rather than measuring or transmitting a resident's consumption of electricity. The smart meter Q&A sheet Complainant received made no attempt to address Complainant's privacy and security concerns regarding digital meters.

17. On May 18, 2018, Complainant received a letter from DLC stating they had "made several attempts" to contact Complainant but were "not able to gain safe access to the meter." It said Complainant must contact them "no later than 6/1/18" to arrange the meter exchange. This form letter excluded the fact that Complainant initiated contact with DLC an attempt to address the issue, but was denied even the opportunity to speak with a manager.

18. On or about June 1, 2018, Complainant initiated the informal complaint process by phone with the PUC against DLC. A PUC representative **actively prevented Complainant from filing an informal complaint, in violation of PA Code §56.92, §56.142, §56.151, and §56.162-§56.166.** From PA Code §56.92:

"A public utility may not mail or deliver a notice of termination if a notice of initial inquiry, dispute, **informal or formal** complaint has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void." (emphasis added)

The same day, Complainant sent an email to the address DLC provided in the May 18 letter (Attachment B in Complainant's original complaint).

19. On June 12, 2018, Complainant received from DLC a three-day shut-off notice threatening to cut off service to her residence on June 15, 2018. The shut-off notice claimed that the reason for the threatened termination was “non-access.”
20. Complainant filed a formal complaint against DLC on June 14, 2020 to enjoin them from shutting off her electricity.
21. Due to the complaint, DLC halted the termination of Complainant’s account and has not shut off electricity to Complainant’s residence.
22. Complainant believes that the Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter, which DLC seeks to forcibly install on her house, emits at least 1,268 pulses of RF and LF radiation per day—but possibly as many as 11,404,800 (132 times per second). And this range excludes the smart grid system of which the meter would be a part. It is important to note that Itron is the manufacturer of the SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter being deployed by DLC. Numerous studies, which Complainant and others have referenced extensively elsewhere, have shown detrimental health effects associated with electromagnetic waves such as those transmitted by smart meters including those used by DLC.
23. Complainant believes, and therefore avers, that the deployment of any wireless device by DLC on her property constitutes unsafe service to her, and would constitute DLC's ongoing creation and perpetuation of an unsafe and unhealthy condition at her home and the surrounding property in violation of Section 1501 of the Public Utility Code.
24. The Public Utility Code and the Commission's regulations require that regulated utilities such as DLC "furnish and maintain adequate, efficient, safe, and reasonable service and facilities." (66 Pa. C.S. § 1501; 52 Pa. Code § 57.194)
25. The Public Utility Code and the Commission's regulations further require that DLC make all "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." (66 Pa. C.S. § 1501; 52 Pa. Code § 57.194)
26. Neither DLC's continued deployment of the current wireless AMR meter nor DLC's deployment of a wireless AMI meter at Complainant’s residence is necessary or proper for the accommodation, convenience, and safety of its

occupants.

27. Neither DLC's wireless AMI meters nor the mesh network of which they are a part have been proven to be safe for customers' homes and the installation of such devices constitutes unsafe service in violation of Section 1501 of the Public Utility Code.
28. In DLC's deployment of smart meters, no accommodation or consideration is given for any circumstances, conditions, or extenuating factors, including but not limited to age, medical condition, disability, medical implants, relative health, reliance on critical care equipment that may be subject to electronic interference. Further, no accounting is made for and no accommodation is provided for the age and condition of the customer's electrical panel and wiring.
29. The living area of Complainant's home measures 1,356 square feet. The property is too small to accommodate moving the electricity meter away from the house, even if Complainant considered this a reasonable solution and agreed to pay the cost of moving the meter as DLC prescribed.
30. The Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter DLC seeks to forcibly install on Complainant's house has a mechanism that emits an LED flicker which indicates rate of consumption. Mr. Wright from Itron testified that the LED light changes frequency with the amount of energy used. With this feature enabled (and there is no way for a DLC customer to know for sure whether or not it is enabled), any person with harmful intentions and night-vision goggles could watch a target's residence to determine whether the target is currently at home.
31. Itron, maker of the Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter DLC seeks to forcibly install on Complainant's house, excitedly boasts of its ability "to deploy load disaggregation in real time with no special equipment at the customer premise." <https://blogs.itron.com/real-time-load-disaggregation/>
32. Complainant avers that, as she has never requested or agreed to pay for a smart meter, she is in complete compliance with Act 129 as it was written and passed by the General Assembly, as it was intended by the Legislators, and as it was signed by Governor Rendell. There is no sound or rational legal basis that establishes otherwise. Complainant also respectfully suggests that the most reasonable, equitable, and common-sense solution to the errors present in the

Implementation Order of June 2009, and the one that is the least costly to the residents of the state of Pennsylvania, is simply for the PUC to revise and correct its Implementation Order.

33. Complainant avers that, as she has never consented to provide her personal information to Itron or have her daily activities monitored by Itron, DLC has no right to enter her into such an arrangement. There is no sound or rational legal basis that establishes otherwise. And per the Pennsylvania Supreme Court's Opinion in *Povacz, et al. v. PUC, et al.* included a footnote on page 7: "See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy"—DLC can and should grant an accommodation in its customer service policy to customers who suffer ill effects from radiofrequency electromagnetic energy or, for protection of their privacy and personal safety, do not consent to provide intimate details of their daily lives to smart meter companies.

## **PROPOSED CONCLUSIONS OF LAW**

1. Pennsylvania law requires DLC as an electric utility to provide service that is safe and reasonable. 66 PA C.S. § 1501.
2. The PUC is authorized to enforce section 1501.
3. 52 PA Code § 57.251 explicitly states: "This subchapter does not require the public to participate in an advanced metering program."
4. While Act 129 does not provide for a general opt out from smart meters, nothing in Act 129 requires the installation of a smart meter on a customer's home if such installation would be unsafe or unreasonable.
5. 66 Pa. C.S. § 1501 and Act 129 should be read harmoniously together to permit the PUC to order Pennsylvania utilities to accommodate requests such as those made by many smart meter Complainants throughout Pennsylvania—some of which are supported by their treating physicians—to not have smart meters or

other RF-emitting devices installed on their residential properties.

6. Complainant has properly addressed to the PUC her concern that DLC's installation of smart meters on her home violates her right to be free of state-sponsored invasion of her personal bodily integrity under the 14th Amendment of the Federal Constitution and under Article 1, Section 11 of the Constitution of the Commonwealth of Pennsylvania.
7. Reading 66 Pa. C.S. § 1501 and Act 129 harmoniously also avoids a conflict with the 14th Amendment of the Federal Constitution as well as the due process protections in Article 1, Section 11 of the Constitution of the Commonwealth of Pennsylvania.
8. The Commission lacks authority to regulate medical treatment or medicine in any way or to override the recommendations of smart meter complainants' treating physicians.
9. Complainant has been an excellent long-time (i.e., for decades) customer of DLC. Complainant has always met her obligations and responsibility to pay her electric bills, and is up to date with her utility payments and not delinquent or in arrears.
10. Complainant has never requested or agreed to pay for a smart meter. Furthermore, if DLC cannot establish otherwise, Complainant respectfully requests that the PUC rule that it is a Material Fact that this is the case.

## **PROPOSED ORDER**

For the reasons set forth above, Complainant Miranda Grace Edwards asks the Commission to issue an order in this proceeding that states:

1. That the Commission requires and directs DLC to provide accommodations to her pursuant to 66 Pa. C.S. § 1501; and
2. That such accommodation means that DLC shall provide electrical service to her home (the Service Address) without requiring the installation of any device that:
  - a. Emits radiofrequency electromagnetic energy, or
  - b. Collects or transmits any data without her consent other than the monthly electric usage information required to bill the Service Address; and

3. That such accommodation requires DLC to remove her current AMR meter within 30 days of receiving this Order and replace it with a temporary plate or a meter that is not capable of emitting radiofrequency electromagnetic energy, preferably a mechanical analog meter such as those used in Florida, Arizona, and other states; and
4. That DLC is not precluded from providing a reasonable accommodation Complainant per Pennsylvania Supreme Court's Opinion in Povacz, et al. v. PUC, et al.: "See 66 Pa.C.S. §§ 1505 (requiring the PUC to prescribe remedial action upon finding a violation of Section 1501 'as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public') and 1501 (requiring utility to take remedial action 'as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public'). This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy."

Respectfully submitted,

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Miranda Grace Edwards  
January 19, 2024