

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held May 23, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

John Kline

C-2017-2621072

v.

PPL Electric Utilities

**OPINION AND ORDER**

**BEFORE THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition) filed by John Kline (Mr. Kline or Petitioner) on October 23, 2020, directed to our Opinion and Order entered October 8, 2020, in the above-captioned proceeding. *See John Kline v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621072 (Opinion and Order entered October 8, 2020) (*October 2020 Order*). By Order entered October 29, 2020, we granted reconsideration of the Petition of Mr. Kline, pending review of and consideration on the merits, pursuant to Pa. R.A.P. Rule 1701(b)(3). On November 2, 2020, PPL Electric Utilities (PPL) filed an Answer to the Petition (PPL Answer).

On consideration of the Petition, it shall be denied, consistent with the discussion in this Opinion and Order. A related PPL Motion to Stay Proceedings and Answer thereto filed by Mr. Kline is deemed moot.

Finally, on entry of the Opinion and Order in this proceeding, the Commission shall mark the above-captioned docket closed and relinquish jurisdiction for purposes of any forthcoming appeal. *See* Petitioner's Notice of Intent to Appeal.

## **I. Background**

This case involves a Complaint concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that PPL proposes to install at the Complainant's residence and use in the ordinary course of business to measure the Complainant's electricity consumption. The Complainant refuses to have a smart meter installed for various reasons. Complaint at 2-6.

PPL, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns and maintains the meters in its distribution system. *See*, PPL's Tariff Electric Pa. P.U.C. No. 201, Rule 8 at 12.

The Complainant is a PPL customer who has been notified of PPL's intent to install a smart meter at his residence.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

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

(ii) In new building construction.

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

66 Pa. C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See*, H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including PPL, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*). PPL sought and obtained the Commission’s approval to complete

the installation of AMI meters for substantially all customers within its service territory by the end of 2019. *See*, Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan, Docket No. M-2014-2430781 (Opinion and Order entered September 3, 2015); *see also*, Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Procurement and Installation Plan, Docket No. M-2009-2123945 (Opinion and Order entered June 24, 2010).

## II. History of the Proceeding

On August 24, 2017, Mr. Kline filed the instant Complaint. In the Complaint, Mr. Kline averred, in pertinent part, that he has the right to prevent PPL's installation of a smart meter at his service address and that he has the right to retain his current meter and electric utility service at his residence for health, fire safety, privacy, and non-discrimination reasons. The Complaint further contended that Act 129 was not meant to be a mandate, but rather an option for customers agreeing to smart meter installation. Complaint at 2-6; *October 2020 Order*.

The Complaint was assigned to the Commission's Office of Administrative Law Judge (OALJ) for such proceedings as necessary and the issuance of an Initial Decision. After evidentiary hearings before an Administrative Law Judge (ALJ) and the issuance of an Initial Decision,<sup>1</sup> the Commission issued a final order denying the Complaint. *October 2020 Order*. Mr. Kline, thereafter, filed the Petition requesting reconsideration that is now before the Commission. Mr. Kline additionally provided the Commission's Secretary with notice of his intent to appeal the final order.

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<sup>1</sup> *See, John Kline v. PPL Electric Utilities Corporation*, Docket No. C-2017-2621072 (Initial Decision issued August 18, 2018); 2018 WL 4185436 (Pa. P.U.C.).

On October 27, 2020, PPL filed a Motion for Stay directed to the *October 2020 Order*. The PPL motion to stay was filed in light of the decision of the Commonwealth Court in *Povacz, et al. v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (*Povacz I - Commonwealth Ct. Decision*). This decision was issued on October 8, 2020. By Answer filed October 29, 2020, Mr. Kline responded to the PPL Motion for Stay. Mr. Kline generally objected to the motion. However, Mr. Kline acknowledged the propriety of holding in abeyance any decisions on smart meter cases pending the Commission's forthcoming appeal of the *Povacz I - Commonwealth Ct. Decision*.<sup>2</sup>

By Order entered October 29, 2020, we granted reconsideration of the Petition of Mr. Kline within the meaning of Pa. R.A.P. Rule 1701(b)(3) so as to preserve administrative jurisdiction over the matter. On November 2, 2020, PPL filed an Answer, opposing the relief requested in the Petition.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, 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 2020 Stay Order*). The *November 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.<sup>3</sup> By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay. Notice was provided on

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<sup>2</sup> See, e.g., Petition at 13: “However, if it is the intention of the PUC to request review or appeal of the CWC Opinion [*Povacz I - Commonwealth Ct. Decision*], they should stay all current smart meter cases and not rule on them until that process is completed.”

<sup>3</sup> We conclude that the PPL Motion for Stay filed on October 27, 2020, is mooted by issuance of the Commission's *November 2020 Stay Order*.

November 14, 2023, informing the Complainant of the lifting of the stay and their procedural rights and obligations under the Commission's Regulations.

The Petition of Mr. Kline is ripe for final disposition before this agency.

### **III. Discussion**

#### **A. Legal Standards**

With respect to petitions for rehearing, reconsideration, rescission and amendment of Commission orders, the Code establishes a party's right to seek relief within fifteen days following the service of a Commission order pursuant to Subsection 703(f). 66 Pa. Code § 703(f)(relating to rehearing).<sup>4</sup> Upon the filing of a petition for relief pursuant to Section 703(f) the Commission may affirm, rescind, or modify its original order. 66 Pa. C.S. § 703(f). The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa. C.S. § 703(g)(relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of Commission Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572(c) of Commission Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas or others within fifteen

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<sup>4</sup> Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for *rehearing* pursuant to Section 703(f) of the Code, typically include an allegation of new evidence. 66 Pa. Code § 703(f); *See, West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995).

days of the service of a Commission order, or under Section 5.572(d) as a petition for rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission under the same standard.

The standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Philip Duick et al. v Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982) (*Duick*) as follows:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise *its discretion* under this code section to rescind or amend a prior order in whole or in part on the grounds that the decision or ruling of the Commission on a matter or issue was either unwise or in error.

In this regard we agree with the Court in the *Pennsylvania Railroad Company* case, wherein the Court said,

[b]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of these appellants ... and dismissed by the Commission ... and not appealed from. Parties,..., cannot be permitted, by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them and not appealed from. ...

*Pennsylvania Railroad Co. v. Public Service Commission*, 118 Pa. Super. 380 (1935)

What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us

that our initial decision on a matter or issue was either unwise or in error.

*Duick* at 559; see also, *AT&T v Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. 1990)

The Commission utilizes a two-step analysis in determining whether to exercise its discretion to grant relief under *Duick*. See, e.g., *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Opinion and Order entered May 19, 2019) (SBG Order)<sup>5</sup> (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Opinion and Order entered September 11, 2014)).

The first step is to determine whether a party has offered any basis to persuade the Commission to exercise its discretion, including but not limited to, new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. This initial step examines whether a party raises the same questions which were specifically considered and decided against them by a prior Order of the Commission. If so, it is unlikely that the Commission will be persuaded to exercise its discretion to grant relief. *Duick* at 559 (citing *Pennsylvania Railroad Co. v. Public Service Commission*, 118 Pa. Super. 380 (1935)). The second step of the *Duick* analysis is to evaluate any matter the Commission has deemed worthy of consideration, to determine whether to grant any relief.

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<sup>5</sup> *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

## **B. Kline Petition for Reconsideration and/or Rehearing**

In substance, the Petition raises six considerations on which Mr. Kline bases his arguments in support of reconsideration. The issues in support of reconsideration are stated as follows: (1) Nothing in the language of Act 129 facially requires every customer to endure involuntary exposure to RF [radio frequency] emissions; (2) Act 129 does not preclude either PPL or the PUC from accommodating a customer's request to refuse installation; (3) The PUC violated the Commonwealth Court of Pennsylvania's opinion in No. 492 C.D. 2019, No. 606 C.D. 2019 and No. 607 C.D. 2019 Filed: October 8, 2020; (4) Electro-hypersensitivity is a Newly Identified and Characterized Neurologic Pathological Disorder; (5) Additional mitigation efforts in the Kline household; and (6) Considerations overlooked or not addressed by the Commission - John Kline's request for reasonable accommodations.

We summarize the Petitioner's arguments in support of reconsideration, as follows:

### **1. Nothing in the Language of Act 129 Facially Requires Every Customer to Endure Involuntary Exposure to RF Emissions**

At Petition, pages 5-7, it is argued that the *October 2020 Order* should be reversed as to the statutory interpretation of the mandatory nature of Act 129 and EDC smart meter deployment. The Petitioner primarily relies upon the language of the Commonwealth Court in *Povacz I – Commonwealth Ct. Decision* in support of this position.

**2. Act 129 Does Not Preclude Either PPL or the PUC From Accommodating A Customer's Request to Refuse Installation;**

At Petition, pages 7-10, Mr. Kline argues, substantially in line with his prior argument, that the Commission engaged in an erroneous interpretation of the legislative intent concerning the mandatory nature of smart meter installation by EDCs subject to the provisions of Act 129. Petitioner argues that the Commission's interpretation that the legislative intent of Act 129 does not provide the Commission with authority to accommodate a customer's request to refuse installation was in error.

**3. The PUC Violated the Commonwealth Court of Pennsylvania's Opinion in No. 492 C.D. 2019, No. 606 C.D. 2019 and No. 607 C.D. 2019 Filed: October 8, 2020**

In the Petition, pages 11-14, the Petitioner emphasizes the case of *Noreen McCarthy v. Metropolitan Edison Company*, Docket No. C-2019-3006923, a smart meter complaint proceeding, to argue that the disposition in the *October 2020 Order* was contrary to the holdings of the Commonwealth Court in *Povacz I – Commonwealth Ct. Decision*. The Petitioner finds it significant that the presiding ALJ in *Noreen McCarthy v. Metropolitan Edison Company*, was aware of and referenced the *Povacz I – Commonwealth Ct. Decision* opinion, but still ruled that the smart meter installation was mandated pursuant to Act 129. Petition at 12. Petitioner cites the ALJ's ruling and extensively criticizes the ALJ's analysis in the case.

The Petitioner is most concerned and emphasizes the presiding ALJ's discussion in *Noreen McCarthy v. Metropolitan Edison Company*, that even were one to assume that the holdings of the Commonwealth Court were not appealed, the decision by a utility to transition from analog meters to smart meters would represent an internal managerial decision of the utility. As an internal management decision, this would be a decision over which the Commission would not have authority to prevent. Petition at 13,

citing *Met-Ed v. Pa. PUC*, 437 A.2d 76 (Pa. Cmwlth. 1981) - the Commission is not empowered to act like a super board of directors to interfere in the internal management affairs of a utility.

**4. Electro-Hypersensitivity is a Newly Identified and Characterized Neurologic Pathological Disorder**

At Petition, pages 14-19, Mr. Kline addresses a medical review article titled, “Electrohypersensitivity as a Newly Identified and Characterized Neurologic Pathological Disorder: How to Diagnose, Treat, and Prevent It.” The Petitioner has attached this article as an exhibit to the Petition and explains that this is new evidence which did not arise until after the conclusion of the hearing and briefing process in his Complaint. *See*, Exhibit A to Petition; Petition at 14-15.

The article attached to the Petition was published in the International Journal of Molecular Sciences on March 11, 2020. Petition at 15. Mr. Kline cites and attaches this article in support of his argument, *inter alia*, that the state of medical science is not conclusive concerning adverse (or lack thereof) health effects of RF emission and exposure.

Petitioner acknowledges that he is not qualified to interpret the article attached as Exhibit A. Rather, the Petitioner attaches and cites to the article “. . . as an example of numerous studies related to this issue.” Also, in the Petition, it is argued that “[t]he PUC and the EDCs and their expert witnesses cannot continue to ignore the vast amount of scientific data available on this subject. But Neither expert witness [PPL expert witnesses] has a career or participated in any study on the subject of ehs/ems,<sup>6</sup> so

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<sup>6</sup> We note that the Petitioner is referencing the general issue of electro-hypersensitivity and that EMF and RF are interchangeable/synonymous terms referring to wireless emission. *See, Povacz I – Commonwealth Ct. Decision*, n. 2.

their expertise is no longer sufficient considering their lack of experience in this matter.”  
Petition at 15.

The Petitioner draws an analogy between the dispute over the EDC deployment of smart meters pursuant to Act 129, to the avoidance of foods based on the existence of a food allergy. Petition at 16-18. In continuing with this analogy, the Petitioner notes that none of the federal agencies responsible for food safety in interstate commerce “mandate” that an establishment cannot serve foods from a major food allergen group, nor do they mandate that the consumers eat these foods due to the high risk. The Petitioner explains, under this theory/analogy, that the consumer does not have to prove, with extensive medical data, that they can be severely harmed by consuming these certain foods to which they are allergic. Rather, it is argued by the Petitioner: “If a particular establishment cannot accommodate them, they have the choice to go elsewhere.” Petition at 18. The conclusion of this point, is that the Petitioner makes the argument that for people who are suffering from EHS or simply understand the dangers of constant exposure to RF, Petitioner feels deprived of a choice pursuant to the statutory interpretation of Act 129:

The EDC in our geographic area is the only option we have and the PUC, a regulatory agency is mandating that the EDCs must put us at risk without any options for accommodations. The PUC does not even require the EDC to inform their customers of documented known risks. This in and of itself is unreasonable!

Petition at 18.

## **5. Additional Mitigation Efforts in the Kline Household**

At pages 19-21 of the Petition, the Petitioner cites to several “mitigation” acts taken in his household since the close of the record in the Complaint. These

measures are explained to support the Petitioner’s assertion that “reasonable service” under the Code (66 Pa. C.S. § 1501) should entitle him to obtain a reasonable accommodation concerning smart meter deployment at his service address – without showing proof of harm. *See* Petition at 21: “When ruling on this reconsideration, the PUC should take these new changes into consideration since Act 129 does not preclude accommodations of customers’ health concerns, regardless of proof of harm.”

**6. Considerations Overlooked or Not Addressed by the Commission - John Kline’s Request for Reasonable Accommodations**

The Petitioner asserts that an issue which was overlooked in the proceeding concerns a specific request for accommodation. The request is found in Section 10 of Complainant Exhibit 1. (The document did not contain page numbers). Mr. Kline explains that it was his intention to read the document into the transcript at the hearing in the matter. However, the ALJ, with concurrence of PPL, ruled that the exhibit be placed into the record rather than read, for purposes of saving time. Petition at 21-22.

Here, the Petitioner references, “dirty electricity.” The Petitioner explains that, pursuant to his research, he has found that the current meters PPL has installed, that transmit usage data through power lines, are also responsible for the “same amount if not more dirty electricity in the home.”<sup>7</sup> Mr. Kline does not present a definition of “dirty

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<sup>7</sup> *See, October 8, 2020 Order, Finding of Fact No. 5:*

5. The RF Mesh system allows the Company to receive data from the customer’s meter wirelessly, unlike PPL’s previous powerline carrier (PLC) system that used the customer’s actual wires. Tr. 84-86.

Order at 7.

electricity.”<sup>8</sup> When read in context, “dirty electricity” would, apparently, refer to levels of RF emissions that Mr. Kline is apprehensive are either equal to, or greater than, emissions from smart meters – all to which he is opposed. *See* Petition at 22 (excerpted from Complainant Exhibit 1): “During our research, I have come to find out that the current meters PPL has installed, that transmit the usage through power lines are also responsible for the same amount if not more dirty electricity in the home. It is no coincidence that both my wife and I have had symptoms that can be contributed to dirty electricity since they were installed.”

The Petition goes on to state that his current meter is obsolete and cannot be relied upon for meter readings. Therefore, the Petitioner states that he has been calling in monthly readings for accurate billings for the last eight months. Petition at 22. Mr. Kline proposes that the same process can be accomplished with a “standard analog meter” which would be the only “acceptable accommodation” for the Petitioner and family. Petition at 23.

## **7. Conclusion**

In the Petition’s “Conclusion,” the Petitioner makes comparison between the accommodations required by the federal, Americans with Disability Act (ADA), CFR Title 28, Part 35, and reasonable accommodations that he would propose for smart meter installation in Pennsylvania. Petition at 25-29. In advocating for such similar treatment, Mr. Kline asserts, in pertinent part, that a person does not have to go through extensive documentation to an entity about their disability. Rather, Petitioner observes, an affidavit from the disabled person, for example, can often suffice as the documentation to support the accommodation. *Id.*

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<sup>8</sup> Petitioner attaches to the Petition an Exhibit B, which is a webpage print-out from [www.electrahealth.com](http://www.electrahealth.com) regarding an analog meter that he proposes to be installed at his service address in lieu of his, existing meter, or a smart meter.

Finally, per a request set forth in the Petition, Petitioner wants to acknowledge that he and PPL have reached an informal accord to defer installation of a smart meter device at his home pending disposition of his litigation before the Commission. Petition at 24.

### **C. PPL Answer**

As a threshold consideration, PPL responds that the Petitioner mis-states the holding of the *Povacz I- Commonwealth Ct. Decision* as that decision should apply to his request for reconsideration. PPL states that, even if the *Povacz I - Commonwealth Ct. Decision* were to stand, the Complainant must sustain his burden of proof that PPL's installation of the AMI meter at his service address would constitute unsafe or unreasonable service under Section 1501 of the Code in order for him to be granted relief. PPL Answer at 1.

As such, argues PPL, the Complainant failed to meet that burden of proof in this proceeding and the Petition should be denied. *See*, PPL Answer at 7-10, citing, *inter alia*, *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949-50 (Pa. Cmwlth. 1984) (holding that when presented with a formal complaint alleging a violation of Section 1501, the Commission cannot sustain the complaint or “require any action by the utility” without finding that the utility breached its duty under Section 1501); *Peoples Cab Co. v. Pa. PUC*, 137 A.2d 873, 878-79 (Pa. Sup. Ct. 1958) (holding that the Commission does not have the authority to regulate or control the management decisions of a utility absent a finding that the management decision would adversely affect the public); *Phila. Suburban Water Co. v. Feinstein*, 383 A.2d 997, 998-99 (Pa. Cmwlth. 1978) (holding that the Commission may not allocate the amount of a disputed water bill between the utility and the customer where the complainant had not met the burden of proof).

PPL, in its Answer, next defends its actions in deploying smart meters throughout its service areas as a lawful exercise of managerial discretion. PPL explains that the Commonwealth Court has held that “[a]dministrative agencies do not have the authority to order a regulated company to change lawful conduct on the theory that it is in the best interest of their customers.” PPL Answer at 9, citing *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1056 (Pa. Cmwlth. 2002) (citation omitted). PPL further states that it exercised its discretion and decided to install the smart meter, given: (1) the benefits it provides over the current analog meter; (2) the sheer lack of evidence that the smart meter constitutes unsafe, unreasonable, or inadequate service; and (3) the inefficiencies and increased costs associated with deploying smart meters on a piecemeal or individual basis. Therefore, the Commission should not interfere with this “internal management” decision by PPL. PPL Answer at 9, citing *Met-Edison v. Pa. PUC*, *supra*.

In a concluding reply to the position of Mr. Kline that the holding in *Povacz I – Commonwealth Ct. Decision* supports reconsideration of our *October 2020 Order*, PPL states that it currently offers a potential accommodation to customers who have issues with the installation of an AMI meter on their properties. Under the Company’s Commission-approved tariff, customers can request that the Company relocate the AMI meter to an alternate location, so long as they pay the Company’s estimated costs associated with such relocation. *See*, PPL Answer at 10, citing Rule 4(I)(2) of PPL Electric’s Tariff, Supp. No. 59 to Electric Pa. P.U.C. No. 201, Third Revised Page No. 8E (stating that “[t]he relocation of Company facilities, when done at the request of others, is at the applicant’s expense and payment of the Company’s estimated cost of the relocation is required in advance of construction.”)

PPL addresses the contentions of the Petitioner concerning mitigation measures that have been taken in his household and their (positive) effect on the health of his family. PPL counters these assertions by arguing that they do not meet the *Duick* standards for reconsideration. *See*, PPL Answer at 11, citing *Duick*,

56 Pa. P.U.C. 553, 559 - the petition for reconsideration “must allege [the] newly discovered evidence...[was] not discoverable though the exercise of due diligence prior to the close of the record”). PPL advises that the Petitioner had a full and fair opportunity to present this type of testimony during hearings on the Complaint and did not do so.

In response to the submission of the medical article attached as Exhibit A to the Petition and the website print out regarding an analog meter, attached as Exhibit B, PPL urges their rejection as uncorroborated hearsay which cannot form the basis for substantial evidence in this case. PPL Answer at 12. Consideration of these submittals is further objectionable to PPL based on due process grounds. *Id.*

PPL adds, even more importantly, Exhibit A should be rejected as irrelevant. PPL explains that Mr. Kline does not aver that he or anyone in his household suffers from a medical ailment that would be negatively affected by an AMI meter. PPL Answer at 13, referencing *October 2020 Order*, at 23.

Lastly, PPL responds that the Petitioner’s allegations about his existing PLC meter presenting health and safety concerns should also be rejected as a basis for reconsideration. The allegations about the PLC meter fail to meet the *Duick* standards and should be disregarded. PPL Answer at 13.

#### **D. Disposition**

We advise the Parties that any issue or argument that we do not specifically address has been duly considered and will be denied without further discussion. It is well-settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consl. Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

On review of the Petition, although we find that the Petitioner has raised a new or novel argument, *i.e.*, the unsettled state of appeals and pending smart meter complaint proceedings at the time of filing this Petition, we nevertheless find that the Petitioner fails to provide any basis which persuades us to reconsider or rehear the matters addressed by the *October 2020 Order*. In the circumstances, we conclude that reconsideration is not warranted. The Petition shall be denied and this docket closed.

Specifically, we find no merit in the Petitioner's contentions Nos. 1-3 that: (1) Nothing in the language of Act 129 facially requires every customer to endure involuntary exposure to RF emissions; (2) Act 129 does not preclude either PPL or the PUC from accommodating a customer's request to refuse installation; and (3) the PUC violated the Commonwealth Court of Pennsylvania's opinion in No. 492 C.D. 2019, No. 606 C.D. 2019 and No. 607 C.D. 2019 Filed: October 8, 2020.

On review of the contentions Nos. 1-3 in the Petition, Mr. Kline essentially argues in support of an interpretation of Act 129 that has been thoroughly considered and rejected by the Pennsylvania Supreme Court in *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

After citing examples of proceedings which Mr. Kline argues, stand for the proposition that deployment of smart meter technology can be obviated for accommodations sought by a specific customer, Mr. Kline primarily relies upon language in the *Povacz I - Commonwealth Ct. Decision*, essentially arguing for an "opt-out" of Act 129. We find that this position, however, has been directly repudiated by the Pennsylvania Supreme Court. The question of whether Act 129 establishes an "opt-out" process for the installation of AMI meters has been directly addressed by the court. The Supreme Court has stated:

Our comprehensive reading of Act 129 leads us to conclude that the statute is not ambiguous and that Section 2807(f)(2) imposes a mandate on EDCs to furnish smart meter technology to all electric customers within an electric distribution service area, regardless of a customer's preference. In reaching this conclusion, we have considered Section 2807(f)(2) in its context as the implementation provision of Act 129.

280 A.3d at 992.

In our *October 2020 Order*, we reasoned as follows:

The Commission has addressed the position of various complainants objecting to the installation of AMI meters, that the deployment of smart meters in accordance with the provisions of the Act should be a voluntary election by the customer. We have concluded that there is no provision in the Code, the Commission's Regulations, or Orders that allows a utility customer to "opt-out" of smart meter installation. *See, e.g., Starr v. PECO, supra, Bervinchak v. PPL Electric Utilities Corporation*, Docket Nos. C-2016-2572824 and C-2016-2577527 (Initial Decision dated August 16, 2018; Final Order October 2, 2018); *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 at 10 (Order and Opinion entered January 24, 2013); *Povacz v. PECO Energy Company*, Docket No. C-20152475023 (Opinion and Order entered 26, 2018). This determination is subject to the opportunity for any affected EDC customer to establish, by a preponderance of the evidence, in any fact-specific proceeding, that installation of such meter would violate Section 1501 of the Code. See *Kreider; Romeo*.

*October 2020 Order* at 88 (emphasis supplied).

Based on the foregoing, our analysis in *Povacz, et al*, comports with the Pennsylvania Supreme Court in *Povacz II*. Therefore, we reject the Petitioner's

contentions Nos. 1-3, concerning the legislative intent of Act 129, as a basis for reconsideration.

Turning to the Petitioner's contention No. 4- Electro-hypersensitivity is a Newly Identified and Characterized Neurologic Pathological Disorder, we also reject this contention as a basis for granting reconsideration.

The Petitioner has proffered an article, "Electrohypersensitivity as a Newly Identified and Characterized Neurologic Pathological Disorder: How to Diagnose, Treat, and Prevent It" in support of either reconsideration and/or rehearing. We conclude that the proffer of this article does not substantiate a grant of either reconsideration and/or rehearing in this matter.

In the Complaint, Mr. Kline vigorously opposed smart meter deployment based on personal assertions regarding the health effects of RM emissions from the smart meter devices and related articles and publications. However, as noted by the presiding ALJ, and emphasized by PPL, the Petitioner does not substantiate any adverse health consequence of RF emissions. We find the following to be the essential proffer of proof in the Complaint:

The position of the Complainant, as summarized by ALJ Barnes in the Initial Decision is reprinted below:

Complainant does not aver that he or anyone in his household suffers from a medical ailment that would be negatively affected by an AMI meter. However, he generally claims RF Fields from AMI meters can cause negative biological effects such as cancer. Complainant and his wife have DirecTV, a Wi-Fi network and cell phones; however, they limit their exposure by turning the Wi-Fi off when it is not in use and

limiting television viewing to one-half hour per day.

I.D. at 13.

*October 2020 Order* at 19 (emphasis supplied).

Sensitivity to electromagnetic emission was a contested issue in this proceeding and in several related proceedings involving various complainants' opposition to smart meter installation at their service address. As was previously determined, the record in this case does not support a determination of unsafe facilities due to the installation of a smart meter. *Id.* Further, we agree with PPL that the Exhibits A and B attached to the Petition (Exhibit A (the "Electrohypersensitivity" study) and Exhibit B (the [www.electrahealth.com](http://www.electrahealth.com) webpage about an analog meter)) should be rejected as uncorroborated hearsay which cannot form the basis for substantial evidence in this case. *See*, PPL Answer at 12. Therefore, we are not persuaded that the Petitioner's proffer of unsubstantiated hearsay supports reconsideration and/or rehearing in this matter.

We are similarly unpersuaded by the Petitioner's contentions Nos. 5 and 6 (*i.e.*, (5) Additional mitigation efforts in the Kline household; and (6) Considerations overlooked or not addressed by the Commission - John Kline's request for reasonable accommodations), support reconsideration of the *October 2020 Order*.

When we evaluate the position of the Petitioner, we conclude that the above-cited arguments are a reiteration of the Petitioner's advocacy for accommodations other than deployment of a smart meter to his home, which was expressly considered and rejected in the *October 2020 Order*. Therefore, we find that the Petitioner has not raised new or novel arguments, overlooked considerations, or *any* consideration that cause us to find that the standards of *Duick* have been met. Accordingly, we find that reconsideration or rehearing is not warranted.

#### **IV. Conclusion**

On consideration of the Petition and Answer, we shall deny the Petition, consistent with the discussion in this Opinion and Order; **THEREFORE,**

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

1. That the Petition for Reconsideration, filed by John Kline on October 23, 2020, and directed to the Commission Opinion and Order entered October 8, 2020, at Docket No. C-2017-2621072, is denied consistent with the discussion in this Opinion and Order.
2. That the Motion for Stay filed by PPL Electric Utilities Corporation on October 27, 2020, directed to the October 8, 2020, Opinion and Order of the Commission is deemed moot.
3. That the Commission hereby expressly relinquishes jurisdiction for purposes of any forthcoming appellate court proceedings in this matter.

4. That the Commission's Secretary shall mark the formal complaint at Docket No. C-2017-2621072 is closed.

**BY THE COMMISSION:**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 23, 2024

ORDER ENTERED: May 23, 2024