

July 24, 2024

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Reply to Complainant's Exceptions.

A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

c: Miranda Grace Edwards (w/enc.) (via email and regular mail)
ALJ Jeffrey Watson (w/enc.) (via email and regular mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA GRACE EDWARDS,

Complainant,

No: C-2018-3002741

v.

DUQUESNE LIGHT COMPANY,

Respondent.

**REPLY TO COMPLAINANT'S
EXCEPTIONS**

Served on Behalf of Respondent
Duquesne Light Company

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REPLY TO COMPLAINANT'S EXCEPTIONS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files its Reply to Complainant’s Exceptions to the Initial Decision of Administrative Law Judge Jeffrey A. Watson dated June 24, 2024.

I. INTRODUCTION

On June 24, 2024, the Presiding ALJ issued an Initial Decision in favor of Duquesne Light. The Initial Decision correctly ruled that Pennsylvania law mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs including Duquesne Light. Further, it held that the Complainant did not carry her burden of proof that the Company violated the Public Utility Code or a regulation or order of the Commission in attempting to install a smart meter at Complainant’s property. Accordingly, the Presiding ALJ properly dismissed Complainant’s Formal Complaint.

On July 9, 2024, Complainant filed Exceptions to the Initial Decision of ALJ Watson. Notably, they continuously fail to cite what she contends to be erroneous findings of fact or conclusions of law. Instead, Complainant repeatedly ignores well-settled law regarding the mandate of smart meter deployment and raises arguments that have already been addressed and properly rejected by the Presiding ALJ, the Commission, and the Supreme Court of Pennsylvania.

While Complainant's Exceptions are difficult to follow in many respects, many of its core flaws are clear. As an example, she relies on flawed interpretations of areas of the law not at issue in this proceeding, including by opening her Exceptions with a lengthy discussion on contract law. This is not a contract case, but a dispute over the provision of electric utility service under Act 129 and other relevant provisions of the Public Utility Code (the "Code").

Significantly, Complainant's Exceptions also ignore the mounds of evidence that Duquesne Light has introduced into the record of this proceeding. Specifically, Complainant raises concerns that the smart meters pose health, safety, and privacy issues that are completely unsupported by the record evidence and the Presiding ALJ's findings of fact. Complainant's assertion that "potential harm" has been established in this case is blatantly wrong as she has failed to present any competent medical or expert evidence to establish her claims. For all these reasons, and more, Complainant's Exceptions should be denied in their entirety.

II. BACKGROUND

A. Act 129 of 2008

On October 15, 2008, then-Pennsylvania Governor, Ed Rendell, signed Act 129 into law. 66 Pa. C.S.A. § 101 et seq.; Lamagna v. Pa. Elec. Co., Docket No. C-2017-2608014, 2018 WL 6124353, at *11 (Pa. P.U.C. Oct. 30, 2018) (Watson, ALJ). Act 129 amended Section 2807 of the Pennsylvania Public Utility Code ("PUC"). Of relevance here, Act 129 states:

(f) Smart meter technology and time of use rates.--

(2) Electric distribution companies *shall furnish smart meter technology* as follows:

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

(ii) In new building construction.

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

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

Act 129 also required electric distribution companies (“EDCs”) with more than 100,000 customers to file smart meter technology procurement and installation plans with the Commission for approval. 66 Pa. C.S.A. § 2807(f)(1). Each plan had to describe the smart meter technology that the EDC planned to deploy. *Id.*; Frompovich v. PECO Energy Co., Docket No. C-2015-2474602, 2018 WL 2149249, at *4 (Pa. P.U.C. May 3, 2018). The Commission also issued an Implementation Order establishing guidelines for smart meter technology procurement and installation. See Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009).

B. Duquesne Light’s Smart Meter Plan and Tariff Rule 9B

On June 29, 2012, Duquesne Light filed a Smart Meter Plan with the Commission at Docket No. M-2009-2123948. See Initial Order, Finding of Fact No. 14. The Commission approved Duquesne Light’s Smart Meter Plan the following year. *Id.* Duquesne Light later submitted an Amended Smart Meter Plan, which the Commission approved in relevant part on April 7, 2017. See Docket No. P-2015-2497267, Opinion and Order (April 7, 2017). Duquesne Light’s Amended Smart Meter Plan states that the

Company will install smart meters at all metered service locations within its service territory.

At Duquesne Light's request, the Commission also approved a new rule to Duquesne Light's Tariff to address smart meter installations. The new tariff rule - Rule 9B - states, "[s]mart meters conforming to Company standards must be installed at each metered service premises. Customers may not decline smart meter installation for any reason." See Initial Order, Finding of Fact No. 16. Rule 9B further states that if a customer does not want a smart meter at their service address, the customer's sole remedy is to designate an alternative location on the premises for the smart meter. See Initial Order, Finding of Fact No. 17.

C. Complainant's Allegations

On June 14, 2018, Complainant filed a Formal Complaint with the Commission against Duquesne Light. See Complaint (filed on June 14, 2018). She attempted to file an Amended Formal Complaint on March 4, 2019; however, it was not initially served upon the Presiding Officer, nor was it filed in the Commission's online docket for this case. See Amended Complaint. The Formal Complaint and Amended Formal Complaint allege that Duquesne Light is not permitted to install a smart meter at her residence located at 3835 Acorn Street, Pittsburgh, Pennsylvania, and that the Company's smart meter may damage her health, create a fire hazard,¹ and invade her privacy. As relief, Complainant seeks to prevent the Company from installing a smart meter at the service address. In

¹ While Complainant originally raised concerns that the Smart Meter posed a fire hazard to her home, this argument has been properly rejected by the Presiding ALJ and is not the subject of Complainant's Exceptions. See Initial Decision at 41.

response, Duquesne Light denied Complainant's allegations and asserted that it is required by Act 129 to install a smart meter at the service addresses of all customers within its service territory, including Complainant.

D. The Hearing

On December 20, 2019, the Commission issued a Call-out Hearing Notice, requesting that the parties appear for a telephonic evidentiary hearing on February 27, 2020. See Initial Call Out Telephonic Hearing (Dec. 20, 2019) (Watson, ALJ). On February 21, 2019, the parties appeared for the telephonic evidentiary hearing before the Presiding ALJ. Complainant presented her case through her own testimony. Duquesne Light presented its case through the testimony of Michael Belanger, Steven Wright, Michael Tallent, Dr. Benjamin Cotts, Dr. Gabor Mezei, Michael Secchiutti, and Roxanne Morris. Notably, Complainant did not present any expert testimony at the evidentiary hearing.

At the hearing, the Company presented evidence through expert testimony that the meter currently installed at Complainant's Service Address no longer has an operational network. Tr. at 417-18; 438-39. The Company further presented evidence that Act 129, the Commission's Implementation Order, and the Company's Smart Meter Plan and Tariff require Duquesne Light to install a smart meter with certain specifications at the Service Address. 66 Pa. C.S.A. § 2807; Tr. at 404-05. The Company's smart meter network transmits information through brief, low power radiofrequency communications. Tr. at 174, 177, 306, 312-13. Additionally, Duquesne Light presented evidence that the RF from the radios in the Company's smart meters is a tiny fraction of the permissible limits set by the Federal Communications Commission ("FCC") due to

its exceptionally limited duty cycle. See Tr. at 175, 180, 315–16, 407. Furthermore, the Company presented evidence that the scientific and medical evidence does not establish a link between RF exposure below acceptable levels and adverse health effects. Tr. at 364–65, 378. Finally, as discussed in more detail below, Duquesne Light presented evidence at the hearing that its smart meter collects only aggregate consumption usage information, and the Company adequately protects customer information through robust cybersecurity safeguards. Tr. at 409, 276.

Following the hearing, the Parties submitted initial and supplemental post-hearing briefs. Duquesne Light’s post-hearing briefs along with all exhibits, both of which are available on the public docket, are fully incorporated by reference.

E. The Initial Decision

On June 24, 2024, the Presiding ALJ issued an Initial Decision dismissing the Amended Formal Complaint. The Initial Decision rejected Complainant’s argument by holding that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs. Initial Decision at 46. The Initial Decision also held that Complainant presented no medical or expert evidence to establish her claims, nor did Complainant claim to suffer from a specific health condition that makes her sensitive to RF or that she is a member of a group that is allegedly vulnerable to harm from RF. *Id.* at 40–41. Instead, Complainant presented her lay opinion that smart meters generally cause harm to individuals exposed to them, present a fire hazard, and constitute an invasion of privacy. *Id.* at 41. It further held that Complainant’s personal beliefs alone do not constitute evidence sufficient to support her claims and thus she

failed to carry her burden of proof establishing that Duquesne Light violated the PUC or a regulation or order of the Commission in installing a smart meter at her property. Id. at 41, 47. Accordingly, the Presiding ALJ found that Complainant's claims are not supported by the evidence and must be dismissed. Id. at 48.

F. Complainant's Exceptions

On July 9, 2024, Complainant filed Exceptions to the Initial Decision. The Exceptions are difficult to follow and tend to regurgitate arguments that have previously been addressed and properly rejected by the Presiding ALJ, this Commission, and Pennsylvania courts. Id. They also often fail to identify the specific findings of fact or conclusions of law to which exception is taken. Id. Rather, the Exceptions cite to multiple documents and sources outside of the record, ignore the Company's vast amount of properly introduced and credible evidence, and disregard settled law addressing the exact issue in this case. Id.

III. ARGUMENT TO REPLIES TO EXCEPTIONS

The Commission should deny the exceptions for four main reasons discussed in more detail below: (i) they continuously fail to identify any erroneous findings of fact or conclusions of law;² (ii) Act 129 mandates the installation of a smart meter at

² Under 52 Pa. Code § 5.533(b), "each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite the relevant pages of the decision." Further, "supporting reasons for the exceptions shall follow each specific exception." 52 Pa. Code § 5.533(b). Exceptions must be denied if a complainant merely disagrees with an initial decision and does not identify specific findings of fact or conclusions of law that should be reversed. See Meena v. PECO Energy Co., Docket No. F-2016-2523604, 2017 WL 4552491, at *6 (Pa. P.U.C. Oct. 5, 2017); Buske v. Pa. Elec. Co., Docket No. F-2015-2491561, 2017 WL 3420810, at *7 (Pa. P.U.C. Aug. 3, 2017).

Complainant's service address; (iii) all of Complainant's arguments were unsupported by competent evidence and have already been previously addressed and correctly rejected; and (iv) the Fourth Amendment does not apply to Duquesne Light because it is not a "state actor."

A. Reply to Exception No. 1 Related to the Smart Meter Mandate Imposed by Act 129.

The Commission should deny Exception No. 1 because the Presiding ALJ correctly ruled that Act 129 mandates the installation of smart meters. By holding that Act 129 mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs, the Presiding ALJ correctly interpreted Act 129's plain text and followed the Commission's well-established precedent and recent Pennsylvania Supreme Court decision.

As discussed in Duquesne Light's Supplemental Post-Hearing Brief, Act 129 states that "[e]lectric distribution companies *shall* furnish smart meter technology . . . in accordance with a depreciation schedule not to exceed 15 years." Duquesne Light Company's Supplemental Post-Hearing Brief at 27 (citing 66 Pa. C.S.A. § 2807(f)(2)) (emphasis added). The Commission has repeatedly ruled, and the Supreme Court of Pennsylvania has now affirmed, that the use of the word "shall" in Act 129 indicates the General Assembly's direction that all customers receive a smart meter. Povacz v. State PUC, 280 A.3d 975, 1014 (Pa. 2022) ("Povacz II"); Duquesne Light Company's

Supplemental Post-Hearing Brief at 28 (citing Evans v. PECO Energy Co., Docket No. C-2013-2368477, 2013 WL 7019103, at *3 (Pa. P.U.C. Dec. 19, 2013) (Hoyer, ALJ).

Complainant improperly disregards well-settled law established in *Povacz II*, which mandates the installation of smart meters for all electric customers within an electric distribution service area and does not provide customers the opportunity to refuse such installation. Povacz, 280 A.3d at 983. Complainant repeatedly avers that there is no smart meter mandate under Act 129; however, this exact issue was settled by the ruling in *Povacz II* and thus Complainant's argument has already been rejected by the highest court in the Commonwealth.

In *Povacz II*, the Supreme Court of Pennsylvania held that a comprehensive reading of Act 129 establishes "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." Povacz, 280 A.3d at 992. Notably, Complainant concedes that the language in Section 2807(f)(2) is "clear and unambiguous." Exceptions at 4-5. Thus, Complainant lacks a legal basis to aver that Act 129 does not mandate smart meter installation.³

Since the Supreme Court of Pennsylvania's decision in *Povacz II*, there have been numerous Pennsylvania Commonwealth Court cases and PUC decisions that have cited with approval to *Povacz II* and held that Act 129 mandates the installation of smart meters, in direct contradiction of what Complainant seeks to argue here. Less than one year ago,

³ Duquesne Light also notes that Complainant's Exceptions cite to case law which has since been overruled, in support of her argument of the legislature's intent to refuse to mandate smart meters for every ratepayer. Complainant's reliance on case law that is no longer binding authority is unwarranted.

a complainant (like Complainant here) attempted to argue that Act 129 does not mandate smart metering for all Pennsylvanians. Myers v. Pa. PUC, 306 A.3d 963, 964 (Pa. Commw. Ct. 2023). The court rejected this argument in light of the holding in *Povacz II* and cited with approval to the Supreme Court of Pennsylvania’s holding that “Act 129 mandates that EDCs ‘furnish smart meters to all electric customers within an electric distribution service area and does not provide electric customers the ability to opt out of having a smart meter installed.” Id. at 966 (citing to Povacz, 280 A.3d at 983); see also, e.g., Paul v. Pa. PUC, 299 A.3d 1069, 1071 (Pa. Commw. Ct. 2023) (affirming the PUC’s dismissal of the complainant’s Formal Complaint by holding that complainant’s issues on appeal (including the issue of mandatory smart meter installation) “have been resolved by the Pennsylvania Supreme Court’s recent decision in [*Povacz II*]”); Suzanna Darula v. Pennsylvania Electric Company, Docket No. C-2017-2618084, 2024 LEXIS 116 at *17 (denying complainant’s exception that smart meters are not mandated by Act 129 pursuant to the Pennsylvania Supreme Court holding in *Povacz II*).

Complainant’s interpretation of the term “depreciation” in Act 129 has also been rejected by the Court in *Povacz II*. The court in *Povacz II* interpreted this section of Act 129 “in context as allowing EDCs to depreciate fully the existing Legacy meters while simultaneously furnishing smart meter technology to customers at little to no cost.” Povacz, 280 A.3d at 996. In doing so, the Pennsylvania Supreme Court specifically rejected the argument that the term “depreciation” found in Subsection (f)(2)(iii) does not equate with the universal deployment of smart meters. Id. For these reasons,

Complainant's Exception No. 1 should be rejected, and the Presiding ALJ's well-reasoned Initial Decision should be adopted.

B. Reply to Exception No. 2 Related to an Alleged Violation of Complainant's Constitutional Rights.

The Commission should deny Exception No. 2 because it fails to identify any erroneous findings of fact or conclusions of law, and the Presiding ALJ correctly ruled that the Commission lacks jurisdiction to consider a claim that the installation of a smart meter violates Complainant's Fourth Amendment rights under the United States Constitution. Complainant's argument is confusing but fails for a few reasons. First, Complainant fails to identify a specific erroneous finding of fact or conclusion of law that she takes exception to, as required under the Rule. Second, Complainant seems to concede that Duquesne Light has not violated any specific holding in Naperville Smart Meter Awareness v. City of Naperville, 69 F. Supp. 3d 830 (N.D. Ill. 2014).

Duquesne Light notes that the Presiding ALJ cited Naperville in support of his ruling that the "Commission lacks jurisdiction to consider a claim that the installation of a smart meter violates Complainants Fourth Amendment rights under the United States Constitution." See Initial Decision at 45. As explained below, this conclusion is settled precedent. Consequently, Complainant's arguments attempting to characterize these meters as being electronic surveillance prohibited by federal law is not only untenable, but it also falls outside the PUC's jurisdiction.

Just this year, the PUC addressed the specific issue of electronic surveillance in one of its decisions. Lauren Zonca v. Metropolitan Edison Company, Docket No. C-2019-

3007961, 2024 LEXIS 147, at *14 (Pa. P.U.C. May 9, 2024) (Watson, ALJ). In Zonca, the complainant (like Complainant here), filed Exceptions arguing that the company's installation of a smart meter will violate the U.S. Constitution. Id. ALJ Watson denied complainant's exceptions based on the premise that EDCs are not state actors and thus the company cannot violate the complainant's constitutional rights by installing a smart meter. Id. Furthermore, Zonca cited to Naperville and recognized that even if the company were a state actor, the Seventh Circuit Court of Appeals in Naperville found that the collection of smart meter data by a city-owned public utility constituted a reasonable warrantless search. Id.

The United States Constitution only applies to "state action;" it does not apply to conduct by a private company like Duquesne Light, even if the company is regulated by the state. Jackson v. Metropolitan Edison Co., 419 U.S. 345, 349-350 (1974); Schutz v. PPL Elec. Utilities Corp., No. C-2018-3005659, 2019 WL 2744430, at *12 (Pa. P.U.C. June 11, 2019)).

In Jackson, a customer sued a privately owned and operated utility company, alleging that it violated her due process rights under the Fourteenth Amendment to the United States Constitution by terminating her electric service. 419 U.S. at 348-49. The U.S. District Court for the Middle District of Pennsylvania dismissed her complaint. Id. at 349. The United States Court of Appeals for the Third Circuit affirmed. Id. The Supreme Court of the United States ruled that although the utility company was heavily regulated by the Commonwealth of Pennsylvania, state regulation did not convert the utility's decision to terminate the complainant's electric service into "state action." Id. at

358-59.

The Commission reached the same conclusion in Schutz. In that case, a residential customer filed a complaint seeking to prevent a utility company from installing a smart meter at her residence. She argued that the installation of a smart meter violated her right against unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution. Id. at *12. In response, the utility asserted that it was not a state actor and thus not subject to the Fourth and Fourteenth Amendments. Id. The presiding administrative law judge held that the utility was not a “state actor”; rather, “it is a private, regulated utility company not constrained by the Fourth Amendment.” Id. Accordingly, the presiding administrative law judge dismissed the complaint. Id. at *14.

More recently, the Commission once again rejected the Complainants’ argument that the installation of a smart meter would violate their Fourth Amendment privacy rights. Charles and Sylvia Bolte v. Metropolitan Edison Co., No. C-2019-3011287, 2024 LEXIS 65 at *21 (Pa. P.U.C. Feb. 22, 2024). In response, the utility asserted that because it was not a state actor, it could not violate the complainant’s constitutional rights with the installation of a new AMI meter. Id. at *17. The Presiding ALJ denied the complainants’ exception on this matter and adopted the initial decision which rejected complainants’ Fourth Amendment argument. Id. at *22.

Here, as in the authority outlined above, Duquesne Light is not a state actor and thus cannot violate Complainant’s constitutional rights by installing a smart meter at her service address. Duquesne Light is not acting under the color of law as an agent of the

state. The Pennsylvania Supreme Court has already rejected the same constitutional arguments raised by Complainant here. The Supreme Court of Pennsylvania cited with approval to the holding in Naperville which rejected the customers' "Fourteenth Amendment bodily integrity argument because their complaint failed to identify an arbitrary deprivation of a recognized liberty or property interest." PovacZ, 280 A.3d at 985, n.8 (citing to Naperville, 69 F. Supp. 3d at 839). Therefore, Complainant's constitutional arguments should be denied.

Furthermore, the Company takes appropriate steps to protect smart meter information and data. As noted in the Company's Supplemental Post-Hearing Brief, Duquesne Light collects only aggregate household information, not data about specific appliances or devices Complainant uses. Duquesne Light Company's Supplemental Post-Hearing Brief at 40. Duquesne Light's smart meters collect and convey information regarding a customer's consumption, voltage information, tamper events, and outage events. See Initial Decision, Finding of Fact No. 11. The Company does not collect consumer data on a granular, appliance-by-appliance basis, nor does it send any personally identifiable information in messages transmitted through its mesh network. Id. at No. 27. There is also no personally identifiable information such as social security numbers, customer names or address, or bank account information in the consumption data or other messages that Duquesne Light sends through its smart meter network. Id. at No. 74.

Additionally, Duquesne Light deploys numerous cybersecurity measures to protect information collected by its smart meters and uses several protections within its

data collection engine itself, such as multiple redundant firewalls, identity access management controls, security event monitoring, security patching, and vulnerability management. *Id.* at No. 75. Duquesne Light does not sell customer information to third parties with whom it does not have a business relationship and its smart meter network has never been hacked. *Id.* at Nos. 76–77. Notably, Complainant introduced no credible evidence that even slightly contradicted any evidence introduced by Duquesne Light about the privacy and cybersecurity protections in its smart meters and mesh network. Thus, Complainant’s data privacy concerns lack merit. For these reasons, Complainant’s Exception No. 2 should be rejected, and the Presiding ALJ’s well-reasoned Initial Decision should be adopted.

C. Reply to Exception No. 3 Related to the Collection of Smart Meter Data.

The Commission should deny Exception No. 3 because it fails to identify any erroneous findings of fact or conclusions of law and the Presiding ALJ correctly ruled that the Company’s smart meter does not collect excess customer information beyond what is necessary for consumption data. The Commission should deny Exception No. 3 because once again, Complainant has not complied with the procedural requirements of 52 Pa. Code § 5.533(b) by identifying a specific erroneous finding of fact or conclusion of law which she takes exception to. Moreover, Complainant’s argument is difficult to follow but appears to generally boil down to whether smart meters are mandatory or not, which has already been addressed in depth in Duquesne Light’s response to Exception No. 1 above and which is incorporated here.

Furthermore, there is no evidentiary support for Complainant's contention that the use of a mesh network results in the collection of any additional information about customers beyond what Duquesne Light described at the hearing. To the contrary, Duquesne Light introduced credible evidence that it does not collect consumption data on a granular appliance-by-appliance basis, nor does the Company send any personally identifiable information in messages transmitted through its mesh network. Tr. at 262-63. The Company further introduced evidence that there is no personally identifiable information such as social security numbers, customer names or address, or bank account information in the consumption data or other messages that Duquesne Light sends through its smart meter network. Tr. at 263. Duquesne Light has adequately established that the information collected by the mesh network is permissible under Act 129.

It should also be noted that the use of the mesh network is part and parcel of smart meter technology, which the General Assembly mandated through Act 129. See generally Duquesne Light Company's Supplemental Post-Hearing Brief at 9-12. The mesh network is simply how collected information is then communicated to Duquesne Light for monthly billing purposes. Tr. at 409. Thus, Complainant's argument regarding the collection of additional information is unsupported by the record and lacks any evidentiary support. Additionally, to the extent that Exception No. 3 relies on the premise that the installation of a smart meter would violate Complainant's constitutional rights, the Company hereby incorporates by reference its argument in Exception No. 2 which outright rejects any claim to a violation of Complainant's Fourth Amendment

privacy rights. For these reasons, Complainant's Exception No. 3 should be rejected, and the Presiding ALJ's well-reasoned Initial Decision should be adopted.

D. Reply to Exception No. 4 Related to Termination of Service.

The Commission should deny Exception No. 4 because the Presiding ALJ correctly ruled that Duquesne Light is allowed to terminate service if Complainant refuses to allow access to the meter. The Company's Tariff establishes that Duquesne Light can terminate Complainant's service if she continues to block the installation of a smart meter. As stated in the Company's Supplemental Post-Hearing Brief, Rule 22 of the Tariff authorizes Company representatives to access the Company's equipment for a host of enumerated reasons:

22. ACCESS TO PREMISES Company representatives, who are properly identified, shall have full and free access to the customer's premises at all reasonable times for the purpose of reading Company meters, for inspection and repairs, for removal of Company property, or for any other purpose incident to the service. The Company shall have the right to access customer owned facilities and equipment at all hours for the purposes of responding to an emergency, restoring electric service, rendering the electric facilities safe and reliable, or for the purpose of reducing the likelihood of damage to the Company's facilities or equipment. The customer should immediately communicate with the Company in case of any question as to the authority or credentials of Company representatives. A customer's failure to provide access may be grounds for service termination pursuant to Rule No. 33 herein.

Rule 33 of the Tariff authorizes Duquesne Light to terminate service and remove its equipment from the customer's property if the Company is blocked proper access to its equipment:

33. INACCESSIBILITY The Company may terminate electric service and remove its equipment from the premises upon reasonable notice in case meter readers or other authorized representatives of the Company cannot

gain admittance or are refused admittance to the premises for the purposes of reading Company meters, inspection and repairs, removal of Company property, responding to an emergency, restoring electric service, rendering the electric facilities safe and reliable, or for any other purpose incident to the service or in case the customer interferes with Company representatives in the performance of their duties. When a residential customer or a residence is involved, the Company will comply with the provisions of 52 Pa. Code Chapter 56, "Standards and Billing Practices for Residential Utility Service" and 66 Pa. C.S. § 1406, "Termination of Utility Service."

Furthermore, both the Code and regulations allow the Company to terminate service in scenarios where a customer prevents the utility from accessing its equipment. See 66 Pa. C.S.A. § 1406(a) ("A public utility may notify a customer and terminate service provided to a customer...for...failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading."); 52 Pa. Code § 56.81 (same).

As noted above, these provisions have the force of law and collectively establish (i) that Duquesne Light's representatives must have full and free access to the Service Address at all reasonable times to exchange the meter, and (ii) that Duquesne Light can terminate Complainant's electric service and remove its equipment from the Service Address if she fails to grant proper access to Company representatives.

Duquesne Light's tariff and the accommodation it provides, as mentioned above, is not discriminatory and has been approved by the Commission. Complainant's displeasure that the accommodation is not her preferred one (an opt out) is not a basis to challenge it. Nor is Complainant legally entitled to a different accommodation as a matter of law because she failed to satisfy her burden of proof in establishing a violation of the Code. Initial Decision at 47; Povacz II, 280 A.3d at 1014.

Moreover, the consequences Complainant describes should her service be terminated are wholly avoidable and are based on concerns that are not supported by record evidence.⁴ Complainant continuously ignores well-settled law by arguing that an “opt-out” is still a viable and reasonable accommodation under Pennsylvania law. To the contrary, the Pennsylvania Supreme Court has specifically held that Act 129 does not provide electric customers with the option to opt-out of smart meter installation. Povacz, 280 A.3d at 999. For these reasons, Complainant’s Exception No. 4 should be rejected, and the Presiding ALJ’s well-reasoned Initial Decision should be adopted.

E. Reply to Exception No. 5 Related to Complainant’s Failure to Offer Competent Medical or Expert Evidence at the Hearing.

The Commission should deny Exception No. 5 because Complainant presented no competent medical or expert evidence to establish her claims. In order to satisfy her burden of proof for a Section 1501 claim involving the safety of smart meter and radio frequency (“RF”) emissions, Complainant must first “present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects.” Povacz, 280 A.3d at 1006. Then, Complainant must present “expert opinion rendered to a reasonable degree of medical certainty that RF emissions from the smart meters, either alone or cumulative to other sources of RF emissions, caused the harm.” Id. Complainant did neither.

⁴ Duquesne Light also notes that Complainant has no grounds to introduce new evidence of her dehumidifiers as Complainant notably admits this concern was discovered in the years following the evidentiary hearing and thus are not at issue in the current record.

During the hearing on February 27, 2020, Complainant testified on her own behalf and did not offer any witnesses. At no point did Complainant claim to be an expert witness, and she conceded that she is not an electrical engineer, a certified electrician, or an expert in cybersecurity. Tr. at 107, 155; Duquesne Light Company's Supplemental Post-Hearing Brief at 24. Moreover, Complainant presented no admissible or competent medical evidence or records at the hearing, let alone any evidence or records establishing a link between RF and health problems. Tr. at 147-48; Duquesne Light Company's Supplemental Post-Hearing Brief at 24. Not only did Complainant fail to present medical or expert evidence linking RF emissions and adverse health effects in general, but Complainant does not even claim to have a specific health condition that makes her highly sensitive to RF, nor does she claim to be a member of a group that is allegedly vulnerable to harm from RF. Id. As a non-expert witness, Complainant has neither the factual nor legal basis to support her lay (and misdirected) opinion that nonthermal effects of RF will cause her harm.

Even under relaxed evidentiary standards, Complainant's numerous documents and articles were inadmissible for the reasons discussed at the hearing and, in any event, do not support a finding of a "conclusive causal connection" between RF and alleged harm, as required to establish a Section 1501 claim under *Povacz II*. See Duquesne Light's Motion to Strike, available on public docket, at 6-9. Thus, the Presiding ALJ correctly rejected Complainant's exhibits. Complainant's numbered paragraphs of purported "facts" appear to simply ignore the vast amount of properly admitted evidence offered on behalf of the Company, upon which the Presiding ALJ ultimately based his decision

to dismiss Complainant's Amended Complaint. Complainant cannot now attempt to disguise and introduce properly rejected evidence as conclusive "facts" in support of her argument that the Presiding ALJ improperly concluded that Complainant presented no medical or expert evidence to establish her claims. Thus, the Presiding ALJ correctly dismissed Complainant's Complaint on the basis that she failed to present any medical or expert evidence to support her claims. For these reasons, Complainant's Exception No. 5 should be rejected, and the Presiding ALJ's well-reasoned Initial Decision should be adopted.

F. Reply to Exception No. 6 Related to Complainant's Motion to Recuse.

The Commission should deny Exception No. 6 because it fails to identify any erroneous findings of fact or conclusions of law, and Complainant's recusal arguments have already been properly denied by the Presiding ALJ. Furthermore, Exception No. 6 regurgitates the arguments previously raised in her Motion to Recuse Administrative Law Judge Jeffrey A. Watson, which was properly denied on March 29, 2024. See Motion to Recuse ALJ Watson and Interim Order Denying Complainant's Motion for Recusal of ALJ Watson (Mar. 29, 2024).

As previously stated in Duquesne Light's Answer in Opposition to Complainant's Motion to Recuse, Complainant was not rushed into filing a formal complaint. See Answer to Motion to Recuse at ¶ 7. To the contrary, Complainant had more than enough time, specifically 1.5 years, to develop her case and present it at the hearing on February 27, 2020. Id. Despite Complainant's continuous disgruntlement with ALJ Watson's alleged misinterpretation of her Complaint, she has yet to provide any factual or

evidentiary basis on which to conclude that the alleged misrepresentation of her complaint has deprived her in any way of the ability to adequately pursue her claims in this action. Id. at 8. More notably, Complainant has continuously made contradictory statements regarding the filing of her Informal Complaint and even appears to acknowledge that she did, in fact, file an Informal Complaint despite her averments to the contrary. See Initial Decision at 16-17.

Duquesne Light once again disagrees that ALJ Watson “abused” Complainant in any way throughout the hearing and suggests that the hearing record speaks for itself. See Answer to Motion to Recuse at ¶ 10. Furthermore, as noted in the Initial Decision, Complainant’s own actions significantly contributed to the length of the hearing and thus any dissatisfaction is attributable to Complainant herself. See Initial Decision at 19-22. Lastly, ALJ Watson properly denied Complainant’s Motion to Recuse for her failure to follow procedural requirements by alleging any personal bias or other sufficient grounds upon which ALJ Watson should be recused, as required under 52 Pa. Code 5.482. See Answer to Motion to Recuse at ¶ 16. For these reasons, Complainant’s Exception No. 6 should be rejected, and the Presiding ALJ’s well-reasoned Initial Decision should be adopted.

IV. CONCLUSION

Duquesne Light respectfully requests that the Commission deny the Exceptions, adopt the Initial Decision, and dismiss the Amended Formal Complaint. The Exceptions provide no basis to overturn the Initial Decision because they do not properly identify specific findings of fact or conclusions of law that are allegedly incorrect, and

Complainant's main argument regarding the mandate of smart meter deployment has already been settled by the holding in *Povacz II*. The Commission has repeatedly held, and the Supreme Court of Pennsylvania has now affirmed, that Act 129 mandates the installation of smart meters for all service addresses; thus, Complaint has no grounds upon which to argue otherwise. Moreover, Duquesne Light's Tariff - which has the force of law - requires the Company to install a smart meter at Complainant's service address. Finally, the Fourth Amendment to the United States Constitution (or any other constitutional provision) does not apply to this situation. For these reasons, the Initial Decision is correct and should be adopted by the Commission.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



By: _____

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Duquesne Light Company**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA EDWARDS,	:	
	:	
Complainant,	:	
vs.	:	No: C-2018-3002741
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply to Complainant's Exceptions upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Miranda Edwards
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(via mail and e-mail at:
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Administrative Law Judge Jeffrey Watson
Pennsylvania Public Utility Commission
Piatt Place - 301 Fifth Avenue
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Dated this 24th day of July 2024.



Jeremy V. Farrell, Esquire