

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

Public Meeting held September 12, 2024

Commissioners Present:

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

Geoff Day

C-2018-3003960

v.

Duquesne Light Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rescission (Petition) filed by Mr. Geoff Day (Petitioner or Mr. Day)<sup>1</sup> on June 20, 2024, relative to the above-captioned

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<sup>1</sup> We note that the Petitioner is identified as both “Geoff Day” and “Geoffrey Day” in the Amended Formal Complaint (Amended Complaint) filed by Mr. Day on February 21, 2019, in the instant proceeding and elsewhere in the record. *See*, Amended Complaint at *passim*. According to the Customer (Complainant) Information section of the Amended Complaint, the Petitioner’s name is “Geoff Day.” Amended Complaint at 1, ¶ 1. Therefore, we shall refer to the Petitioner as Geoff Day or Mr. Day.

proceeding.<sup>2</sup> The Petition was filed in response to the Opinion and Order entered April 4, 2024 (*April 2024 Order*).<sup>3</sup> The *April 2024 Order*, *inter alia*, adopted the Initial Decision of Administrative Law Judge (ALJ) Jeffrey Watson, which was served on the Parties on April 13, 2020, and denied the Amended Complaint. Duquesne filed an Answer to the Petition on August 27, 2024. For the reasons discussed below, we shall deny the Petition.

## I. Background

This case involves a Formal Complaint (Complaint), as amended, concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Duquesne uses in the ordinary course of business to measure electricity consumption. Duquesne, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns, and maintains the meters in its distribution system. The Petitioner is a Duquesne customer and is the owner of a duplex home with two resident

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<sup>2</sup> By Secretarial Letter issued August 7, 2024 (*August 2024 Secretarial Letter*), the Commission’s Secretary: (1) notified the Parties that there was no Certificate of Service or other indication that the Petition was served on the Respondent (*i.e.*, Duquesne Light Company (Duquesne or the Company)); and (2) enclosed the Petition, in order to constitute service under 52 Pa. Code §§ 1.54, 1.57, and 1.58. Therefore, pursuant to 52 Pa. Code § 5.572(e), Duquesne was given ten days from the date of the letter, or until August 17, 2024, to file an Answer to the Petition. *See, August 2024 Secretarial Letter*. Given that August 17, 2024, was a Saturday, an Answer to the Petition was due on Monday, August 19, 2024. Duquesne did not file an Answer to the Petition until Tuesday, August 27, 2024. Therein, Duquesne notes that it has filed its Answer to the Petition pursuant to 52 Pa. Code § 5.61-“Answers to complaints, petitions, motions, and preliminary objections.” This section of our Regulations provides a period of twenty days to file an answer. *See, Answer to the Petition* at 1. We note that 52 Pa. Code § 5.61 pertains to the filing of answers to petitions that are preliminary in nature, and not to answers to petitions for rescission, which are governed under 52 Pa. Code § 5.572(e). Nonetheless, in light of the procedural irregularities in this specific proceeding, we shall consider the contents of Duquesne’s Answer to the Petition.

<sup>3</sup> As discussed, *infra*, the *April 2024 Order* became final without further Commission action on April 24, 2024.

properties – one property which does not have a smart meter installed (Unit 1), and one property where a smart meter was installed by Duquesne (Unit 2).<sup>4</sup> Duquesne proposes to install a smart meter at Unit 1. Mr. Day is seeking a directive that Duquesne: (1) be prevented from installing a smart meter at Unit 1; and (2) remove the smart meter from Unit 2 and replace it with an analog meter. Amended Complaint at 3.

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.

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<sup>4</sup> In the interest of privacy, we will not be stating the mailing address locations for the two residences in this case.

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 Duquesne, 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 Implementation Order*). Duquesne sought and obtained the Commission’s approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by late 2018. *Petition of Duquesne Light Company for Approval of Its Final Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2123948 (Opinion and Order entered May 6, 2013) (*2013 Smart Meter Order*); *See also, Petition of Duquesne Light Company for Approval to Modify its Smart Meter Procurement and Installation Plan*, Docket No. P-2015-2497267 (Opinion and Order entered April 7, 2017) (*2017 Smart Meter Order*).

## I. History of the Proceeding<sup>5</sup>

On August 10, 2018, the Petitioner filed the instant Complaint.<sup>6</sup> In the Complaint, Mr. Day alleged, *inter alia*, that the Company installed a smart meter on his property without his consent and ignored his requests to remove the smart meter. As relief, Mr. Day requested, *inter alia*, that the Commission order the Company to: (1) remove the smart meter from his property; and (2) refrain from forcing the installation of the smart meter at his residence. Complaint at 2-3; I.D. at 1-2.

On September 4, 2018, Duquesne filed an Answer and New Matter to the Complaint (Answer), essentially denying material allegations in the Complaint but contending that the Company is required by Act 129 to install smart meters at the service address. Duquesne averred, *inter alia*, that the subject property identified by Mr. Day is a two-family dwelling with a smart meter installed at one side of the home (*i.e.*, Unit 2) but not the other (*i.e.*, Unit 1). Answer at 1-2; I.D. at 2.

On February 1, 2019, a prehearing conference was held as scheduled. The Company was represented by counsel, and Mr. Day appeared *pro se*. At the hearing, a discussion was held where the subject property was described as a duplex home with two different meters, and it was represented by the Parties that one meter is a smart meter and one is not. It was further represented that Duquesne was not being provided access to the meter at Unit 1. The Parties agreed that Mr. Day would file an Amended Complaint to

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<sup>5</sup> See, *April 2024 Order* at 4-11 for a comprehensive summary describing the procedural history of this proceeding, which is incorporated herein.

<sup>6</sup> Upon review of the Commission's case management system, although the Complaint was filed with the Commission on August 10, 2018, it was not served on the Respondent until August 13, 2018. Therefore, pursuant to 52 Pa. Code § 5.61(a), Duquesne was provided twenty (20) days to file an Answer to the Complaint. It is noted that Monday, September 3, 2018, was a holiday. Therefore, an Answer to the Complaint was due Tuesday, September 4, 2018.

identify: (1) the properties that are the subject of the Complaint; (2) the claims that he is asserting; and (3) the relief requested for each claim and property. Feb. 1, 2019 Tr. at 19-23; I.D. at 3.

As noted, *supra*, on February 21, 2019, Mr. Day filed the Amended Complaint.<sup>7</sup> In the Amended Complaint, Mr. Day: (1) alleged that Duquesne is threatening to, or already has, shut off his electric service; and (2) identified the two properties that are the subject of his Amended Complaint. As relief, Mr. Day requested, *inter alia*, that the Commission order the Company to: (1) remove the smart meter at Unit 2 and replace it with an analog meter; and (2) stop attempting to install an additional smart meter at Unit 1. Amended Complaint at 3; I.D. at 3.

On March 14, 2019, Duquesne filed an Answer and New Matter to the Amended Complaint (Answer to Amended Complaint), essentially denying all of the material allegations of the Amended Complaint but contending that it is required to install smart meters at the locations identified in the Amended Complaint. Answer to Amended Complaint at 1-2; I.D. at 4.

On August 21, 2019, an evidentiary hearing was held as scheduled (August 21 Hearing). The Company was represented by counsel, and Mr. Day appeared *pro se* and agreed to proceed with the hearing. At the August 21 Hearing, the Parties agreed, by written stipulation, that Mr. Day: (1) is the owner of two properties – one property which does not presently have a smart meter installed, and one property where a smart meter was installed by Duquesne; and (2) is withdrawing all allegations and concerns raised in the Complaint and Amended Complaint, with the exception of the

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<sup>7</sup> By Secretarial Letter dated February 22, 2019, Duquesne was provided a copy of the Amended Complaint and provided that if the Company wished to respond to the Amended Complaint, such answer must be filed with the Commission within twenty (20) days of the date on the letter.

question of law as to whether Duquesne has the lawful right to install a smart meter at Mr. Day's residence, even though Mr. Day does not consent to the installation of the smart meter. I.D. at 8 (citing ALJ Exh. 1); Aug. 21 Tr. at 51-53.

On December 19, 2019, the ALJ issued an Interim Order Closing the Hearing Record. I.D. at 8.

In the Initial Decision issued on April 13, 2020, the ALJ found that Mr. Day failed to carry his burden of proving that: (1) Duquesne violated the Code or a Commission Regulation or Order in requiring installation of a smart meter at his residence; and (2) Duquesne's proposed installation of a smart meter constitutes unsafe or unreasonable service, in violation of 66 Pa.C.S. § 1501. Accordingly, the ALJ recommended that the Commission dismiss the Amended Complaint. I.D. at 1, 20-21.

On May 1, 2020, Mr. Day filed Exceptions to the Initial Decision (Exceptions). In his Exceptions, Mr. Day generally disagreed with the Initial Decision, asserting that the ALJ's recommended rejection of Mr. Day's basis for refusing smart meter installation somehow constitutes a violation of a constitutionally-protected right. Exc. at 1. On May 11, 2020, Duquesne filed Replies to Exceptions, asserting that, essentially, the Exceptions provide no basis for overturning the Initial Decision and, therefore, should be denied. R. Exc. at 10.

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. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. Notice was provided on November 14, 2023, informing Mr. Day of the lifting of the stay and his procedural rights and obligations under the Commission's regulations.

On April 4, 2024, the Commission entered the *April 2024 Order*, which denied Mr. Day's Exceptions, adopted the ALJ's Initial Decision, and denied Mr. Day's Amended Complaint and Complaint. *April 2024 Order* at 31.

As previously noted, Mr. Day filed his Petition on June 20, 2024. Duquesne filed an Answer to the Petition on August 29, 2024.

## **II. Discussion**

As previously noted, Mr. Day filed a Petition for Rescission on June 20, 2024, which is fifty-seven (57) days after the date that the *April 2024 Order* became the final action of the Commission (*i.e.*, more than fifteen (15) days beyond the deadline for filing a Petition for Reconsideration, pursuant to 52 Pa. Code § 5.572(c)). Because the Petitioner's filing was made well-past the date that the *April 2024 Order* became final in this case, the Petitioner's filing on June 20, 2024, is a Petition for Rescission of the Commission's final decision. 52 Pa. Code § 5.572(d).

### **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.C.S. § 703(f) (relating to rehearing).<sup>8</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 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.

In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See, City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *see also, West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*); *see also, Richard Feleccia v. PPL Electric Utilities Corporation, d/b/a PPL Utilities and*

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<sup>8</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 (Cmwlth. 1995).

*Barbara A. Lima*, Docket No. C-20016210 (Opinion and Order entered March 7, 2003) (*Feleccia*).

The Commission's application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *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). With respect to petitions for rescission, specifically, we have stated that in order “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” *Feleccia*, slip op. at 3 (citing *Duick* at 559).

A Commission decision to deny a petition for rescission or amendment is a matter squarely within its discretion, subject to being overturned only where a reviewing court finds “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power*, 659 A.2d at 1065.

## **B. The April 2024 Order**

In the *April 2024 Order*, we denied Mr. Day’s Exceptions, adopted ALJ Watson’s Initial Decision, and dismissed the Complaint. Specifically, we agreed with the ALJ that: (1) there is no specific provision in the Code or the Commission’s Regulations or Orders that provides for customers to opt-out of smart meter installation; and (2) Mr. Day is attempting to opt-out of receiving a smart meter based on his interpretation of Act 129, which is inconsistent with Commission precedent. *April 2024 Order* at 27-28 (citing I.D. at 15, 20). Further, we agreed with Duquesne that: (1) the Company’s Commission-approved tariff, *inter alia*, requires that smart meters be installed at each customer-metered premises; and (2) the Company was required by its Commission-approved smart meter deployment plan (SMDP) to install a smart meter at Mr. Day’s home. *Id.* at 28 (citing R. Exc. at 17-19). Moreover, we agreed with the ALJ’s analysis and conclusion that: (1) under the provisions of Act 129, Duquesne is required to deploy smart meters, consistent with 66 Pa.C.S. § 2807(f)(2); and (2) Mr. Day

presented no evidence to support the conclusion that Duquesne, which is required to comply with Act 129 and 66 Pa.C.S. § 2807 by installing smart meters at his residence, violated the Code, a Commission Regulation, or a Commission Order. *Id.* at 29-30 (citing I.D. at 15-17). Accordingly, we found no error in the ALJ’s determination that the installation of the smart meter was mandatory and agreed with the Company that Mr. Day’s request for an opt-out of smart meter installation must be rejected. I.D. at 30.

Regarding Mr. Day’s claim of a violation of a constitutionally protected right, we found that the Commission: (1) does not have jurisdiction to rule on such claims; (2) may exercise only those powers given by the legislature; and (3) is only authorized to hear complaints regarding the Code, Commission Regulations or a Commission Order. Accordingly, we denied Mr. Day’s claims of a violation of a constitutionally protected right. *April 2024 Order* at 30 (citing R. Exc. at 20-21; I.D. at 17).

### **C. The Petition<sup>9</sup>**

In the Petition, the Petitioner asserts his strong disagreement with the *April 2024 Order*.<sup>10</sup> Specifically, the Petitioner posits that the *April 2024 Order* is “void”

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<sup>9</sup> We acknowledge that the format of the Petition does not strictly comply with Section 5.572(a) of our Regulations, 52 Pa. Code § 5.572(a), which requires that petitions “specify, in numbered paragraphs, the findings or orders involved and the points relied upon by the petitioner, with appropriate record references and specific requests for findings or orders desired.” 52 Pa. Code § 5.572(a). Nevertheless, particularly because the Petitioner is appearing *pro se*, we will accept the Petition as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

<sup>10</sup> The Petitioner also claims that he did not receive a copy of the *April 2024 Order* until April 29, 2024. Petition at 1. The Commission’s case management system indicates that the *April 2024 Order* was served via USPS Certified Mail on April 4, 2024. According to USPS Tracking, on April 8, 2024, USPS attempted to deliver a copy of the *April 2024 Order* to the recipient, but that delivery was refused.

and violates his constitutional rights. Petition at 1-2. As such, the Petitioner demands an opt-out of smart meter installation based on constitutional rights. Petition at 3. Further, the Petitioner contends that, essentially, the Commission will be subject to federal prosecution if it enforces the *April 2024 Order* or Act 129. Petition at 3-4. Specifically, the Petitioner states that if the Commission does not immediately rescind the *April 2024 Order*, “the Commission is acting in treason to the United States, making war upon the Constitutions and [t]he People, and committing multiple felonies under relevant federal laws.” Petition at 4. Moreover, the Petitioner recommends, *inter alia*, that the Commission issue a waiver to Duquesne and the other EDCs for instances where the homeowner does not consent to a smart meter installation, adding that the only “lawful option” is for “the Commission” to bill customers monthly for usage. *Id.* The Petitioner closes his petition by noting that he will never waive his rights and demands that the Commission “not violate the public trust” and govern itself accordingly because “time is of the essence.” *Id.* (emphasis omitted).

#### **D. Duquesne’s Answer to the Petition**

In its Answer to the Petition, Duquesne argues that the Petition is without merit because the Complainant has failed to meet the strict standards that are necessary to grant rescission. In this regard, Duquesne asserts that the Petitioner has failed to demonstrate that there has been any newly discovered evidence, a substantial change in circumstances, or an error of fact or law. Answer to the Petition at 5, 6 (citing *Althea Poe-Henderson v. Philadelphia Gas Works*, Docket No. F-2019-3010206 (Opinion and Order entered August 6, 2020)). Instead, Duquesne submits that the Petitioner’s arguments in his Petition simply restate the arguments that the Commission previously considered and rejected in the *April 2024 Order*. For example, Duquesne stresses that while the Petitioner maintains that he is entitled to opt-out of the installation of a smart meter at his service address, the Commission ruled that “there is no specific provision in the Code or the Commission’s Regulations or Orders that provides for

customers to opt-out of smart meter installation.” Answer to the Petition at 6-7 (citing *April 2024 Order* at 27-28). Duquesne adds that in the *April 2024 Order*, the Commission cited to *Povacz, et al. v. Pa. PUC*, 280 A.3d 975, 983–84 (Pa. 2022) to highlight that the Supreme Court of Pennsylvania has affirmatively established that there is no “opt-out” provision for smart meter installation. Answer to the Petition at 7 (citing *April 2024 Order* at 14, 27).

Duquesne also submits that the Commission has already considered and rejected the Petitioner’s claim that the installation of a smart meter at his service address would violate his constitutional rights. More specifically, Duquesne points out that the Commission adopted the ruling of ALJ Watson that “although Duquesne is regulated by the Commission, it is not a ‘state actor,’ and therefore, the U.S. Constitution does not apply to the conduct by a private company.” Answer to the Petition at 8 (citing I.D. at 17; *April 2024 Order* at 30). According to the Company, it is well settled that the United States Constitution only applies to “state action” and not to the conduct of a private company, even if the company is regulated by the “state.” Answer to the Petition at 8-9 (citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349-50 (1974)). Based on the above, Duquesne insists that the Commission should deny the Petition in its entirety. Answer to the Petition at 9.

## **E. Disposition**

At the onset, we note that any argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

## **1. Extra-Record Material Not Considered**

As a preliminary matter, we note that the Petitioner has filed and made use of extra-record materials. We will disregard the extra-record materials – specifically, the single-page document attached to the Petition entitled: “Form COL – Violation Warning Denial of Rights Under Color of Law” – as it was submitted after the close of the record and the use of this extra-record information by the Commission would violate Duquesne’s due process rights. Petition at 5; 52 Pa. Code § 5.431. We reject the Petitioner’s attempt to relitigate his Complaint and introduce a new issue and exhibit after the close of the record.

## **2. Substance of the Petition**

Based upon our review of the Petition and the record in this proceeding, we find that the Petitioner has failed to allege any new or novel arguments or other basis that would persuade us to reverse, modify, or amend the *April 2024 Order*, which became the final action of the Commission, pursuant to Section 332(h) of the Code, 66 Pa.C.S. § 332(h). Therefore, we shall decline to exercise our discretion to disturb the *April 2024 Order*.

As Duquesne observes in its Answer to the Petition, the averments that Mr. Day provides in his Petition echo the arguments expressed by Mr. Day in support of his Amended Complaint – they are largely premised on his claim that smart meter installation somehow constitutes a violation of a constitutionally-protected right. As discussed, *supra*, the *April 2024 Order*, *inter alia*, adopted the ALJ’s Initial Decision, which recommended that the Commission dismiss the Amended Complaint for Mr. Day’s failure to meet his burden of proof. Specifically, the ALJ found that: (1) there is no specific provision in the Code or the Commission’s Regulations or Orders that provides for customers to opt-out of smart meter installation; and (2) no evidence was presented to

support the conclusion that Duquesne's refusal to allow Mr. Day to opt-out of smart meter installation violates any law, Commission Regulation, or Order. *See*, I.D. at 15, 17. We note that Mr. Day's Petition never specifically addresses the findings and conclusions of the *April 2024 Order* or the underlying Initial Decision. Instead, Mr. Day's Petition, essentially, repeats his claims challenging the right to opt-out of smart meter installation, to which he averred in his Amended Complaint and in his testimony, in opposition to Duquesne's smart meter installation. *See*, Amended Complaint at 4, 6. We find that the Petitioner fails to make any new or novel arguments that would persuade us to reverse, modify, or amend the *April 2024 Order*, or that the ALJ erred in recommending that the Commission dismiss Mr. Day's Amended Complaint.

Given that the content of the Petition does not allege any new or novel arguments that would persuade us to reverse, modify, or amend the *April 2024 Order*, we perceive no grounds on which to rescind or reconsider the dismissal of Mr. Day's Amended Complaint. Indeed, the Petitioner's repeated assertion that he is constitutionally permitted to opt-out of smart meter installation is insufficient to justify modifying or amending the *April 2024 Order*. Therefore, we shall deny Mr. Day's Petition as it does not raise any new or novel arguments or other basis that persuades us to rescind the *April 2024 Order*. Accordingly, we believe that it is reasonable to deny the Petition under the circumstances in this case.

Further, we decline to address Mr. Day's contention that the Commission will be subject to federal prosecution if it enforces the *April 2024 Order* and/or installs a smart meter at his residence. Such an argument raises matters outside the scope of Commission jurisdiction and is, therefore, rejected.

### III. Conclusion

For the reasons set forth above, we shall deny the Petition for Rescission filed by Geoff Day, consistent with this Opinion and Order; **THEREFORE,**

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

1. That the Petition for Rescission filed by Geoff Day on June 20, 2024, at Docket No. C-2018-3003960, is denied, consistent with this Opinion and Order.
2. That this proceeding, at Docket No. C-2018-3003960, be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 12, 2024

ORDER ENTERED: September 12, 2024