

November 29, 2024

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Answer to Complainant's Petition for Reconsideration.

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 regular mail and email)  
Administrative Law Judge Jeffrey Watson (w/enc.) (via email)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA GRACE EDWARDS, :  
 :  
 Complainant, :  
 :  
 vs. :  
 :  
 DUQUESNE LIGHT COMPANY, :  
 :  
 Respondent. :

No: C-2018-3002741

**ANSWER TO COMPLAINANT’S  
PETITION FOR RECONSIDERATION**

Filed on behalf of Respondent:  
Duquesne Light Company

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

**ANSWER TO COMPLAINANT’S PETITION FOR RECONSIDERATION**

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files its Answer to the Petition for Reconsideration filed by Complainant, Miranda Grace Edwards (“Complainant”).

**I. INTRODUCTION**

Duquesne Light, pursuant to 52 Pa. Code §§ 1.12, 5.61, and 5.572, respectfully submits this Answer to the Petition for Reconsideration filed by Complainant on November 18, 2024 (“Petition”). In her Petition, Complainant seeks reconsideration because, among other reasons, she allegedly has “new and novel” arguments not considered by the Pennsylvania Public Utility Commission (the “Commission”) in its November 7, 2024 Opinion and Order dismissing her Complaint (“November 7, 2024 Order”).

As explained further below, Complainant’s Petition lacks merit and is largely based off of a regurgitation or spinoff of arguments previously raised by Complainant throughout this proceeding, as well as a series of flawed legal assertions and immaterial

extra-record evidence. Complainant's Petition continues to fundamentally disregard well-settled law established in Povacz, et al. v. Pa. PUC, 280 A.3d 975 (Pa. 2022) ("Povacz II"). Namely, the Supreme Court in Povacz II held that: (1) Act 129 of 2008 ("Act 129") mandates the systemwide installation of smart meters; (2) the PUC applied the correct burden of proof standard in smart meter complaint cases arising under Section 1501 of the Public Utility Code; (3) an electric distribution company ("EDC") cannot be required to provide an accommodation to a customer absent a Section 1501 violation; and (4) even if a complainant meets its burden of proof for alleged Section 1501 violations, the complainant is merely "entitled to an accommodation to the extent allowed by Act 129 and a utility's tariff." 280 A.3d at 1014.

A petition for reconsideration, if granted, disturbs a final order. Pa. PUC v. Phila. Gas Works, Docket No. R-2008-2073938, 2009 LEXIS 596, at \*4 (Pa. P.U.C. Mar. 26, 2009). Thus, a petition for reconsideration may only "be granted judiciously and under appropriate circumstances." Id. A petition for reconsideration will not be granted unless it raises "'new and novel arguments' not previously heard or considerations that appear to have been overlooked or not addressed by the Commission." Id. (relying on Duick v. PG&W, 56 Pa. P.U.C. 553, 559 (Pa. P.U.C. Dec. 17, 1982)). Moreover, parties "cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them." Duick, 56 Pa. P.U.C. at 559. None of these circumstances are present here to justify reconsideration.

Complainant's Petition does not raise any new evidence; it merely reiterates all the same contentions properly rejected by ALJ Watson and the Commission. Complainant

also fails to assert a substantial change in circumstances or an error of fact or law that would entitle her to the extreme remedy of reconsideration. Not only has Complainant failed to meet her burden of proof throughout this proceeding, but none of the arguments in her Petition warrant the severe remedy of disturbing a final order. For these reasons, Complainant's Petition should be denied.

## II. BACKGROUND

Complainant is a Duquesne Light customer at a property located at 3835 Acorn Street, Pittsburgh, Pennsylvania (the "Service Location"). Duquesne Light attempted to install a smart meter at the Service Location on two separate occasions but has been prevented from doing so both times by Complainant. 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,<sup>1</sup> and invade her privacy. The Company filed its Answer and New Matter denying the material allegations within the Formal Complaint, as well as submitting

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<sup>1</sup> While Complainant originally raised concerns that the Smart Meter posed a fire hazard to her home, this argument has been properly rejected by both the Presiding ALJ and the Commission and is not the subject of Complainant's Petition for Reconsideration. See Initial Decision, p. 41; November 7, 2024 Order, p. 20.

Preliminary Objections on July 5, 2018. On July 24, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (“ALJ”) Jeffrey A. Watson as the Presiding Officer in this proceeding.

On October 24, 2018, ALJ Watson issued an Interim Order granting in part and denying in part the Company’ Preliminary Objections. On October 25, 2018, ALJ Watson issued a Telephonic Pre-hearing Conference Notice to take place on November 29, 2018; however, Complainant sent a letter dated November 9, 2018, requesting that the pre-hearing conference be canceled due to her belief that it was “more of a waste of time than not.” On November 20, 2018, ALJ Watson issued a Cancellation Notice, canceling the Telephonic Pre-hearing Conference. 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. On February 27, 2020, 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.

On July 6, 2020, the Company submitted its initial brief to ALJ Watson. On August 7, 2020, Complainant submitted her initial brief. On September 11, 2020, the Parties submitted their respective reply briefs. On November 4, 2020, the Commission issued an Order at Docket No. M-2009-2092655 staying all smart meter complaint proceedings that were then pending before the Commission. The Commission lifted the stay imposed by

the November 4, 2020 Order on November 14, 2023. On January 23, 2024, Complainant filed a Motion to Recuse ALJ Watson, which was subsequently denied by the Presiding ALJ on March 29, 2024. By Secretarial Letter dated June 24, 2024, the Commission served ALJ Watson's Initial Decision dismissing Complainant's Formal and Amended Complaint with prejudice. Complainant filed Exceptions to the Initial Decision of ALJ Watson on July 10, 2024. On July 25, 2024, Duquesne Light filed a Reply to Complainant's Exceptions.<sup>2</sup> On November 7, 2024, the Commission entered its Final Order denying Complainant's Exceptions, adopting the Initial Decision, and denying the Formal and Amended Complaint. Complainant then filed her Petition for Reconsideration on November 18, 2024. For the reasons explained below, the Complainant's Petition lacks merit and should be denied in its entirety.

### III. LEGAL STANDARD

The Commission's standard for reviewing petitions for reconsideration following final orders is 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. In this regard [the Commission] agree[s] with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . ." *What [the Commission] expect[s] 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, [the Commission] consider[s] it unlikely that a party will succeed in persuading [it] that [the*

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<sup>2</sup> The Company incorporates by reference its Post-Hearing Brief filed July 6, 2020, and its Reply to Complainant's Exceptions filed July 25, 2024, as if stated fully herein.

Commission's] initial decision on a matter or issue was either unwise or in error.

Philip Duick et al. v. Pennsylvania Gas and Water Company, 56 Pa. PUC 553, 558 (Pa. P.U.C. Dec. 17, 1982) (emphasis added).

In reviewing a petition for reconsideration, the Commission must use a “totality of the circumstances” approach to determine whether it should exercise its discretion to reconsider. Feleccia v. PPL Electric Utilities Corp., Docket No. C-2016-20016210 (Order entered Mar. 7, 2003). The Supreme Court of Pennsylvania has held that “[b]ecause such relief [of reconsideration] may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” Pittsburgh v. Pa. Dep’t of Transp., 416 A.2d 461, 465 (Pa. 1980). The petitioner seeking reconsideration bears the burden of establishing “the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” Althea Poe-Henderson v. Philadelphia Gas Works, Docket No. F-2019-3010206, 2020 LEXIS 249, at \*5-6 (Pa. P.U.C. Aug. 6, 2020). In interpreting “newly discovered evidence,” the Commission has cautioned that this means newly discovered evidence “not discoverable through the exercise of due diligence prior to the close of the record.” Duick, 56 Pa. PUC at 558. Thus, a petition for reconsideration cannot be used to allege new arguments which could have, *and should have* been previously raised, but were not.

As explained below, the Commission should deny Complainant’s Petition for Reconsideration because none of Complainant’s arguments meet the high legal standard for reconsideration of a Commission’s final order.

#### IV. ARGUMENT

The Commission should deny Complainant's Petition because Complainant has failed to meet the strict standard necessary for reconsideration. Specifically, Complainant has failed to establish any "newly discovered evidence, a substantial change in circumstances, or an error of fact or law." Althea Poe-Henderson v. Philadelphia Gas Works, Docket No. F-2019-3010206, 2020 LEXIS 249, at \*5-6 (Pa. P.U.C. Aug. 6, 2020). Moreover, Complainant improperly uses her Petition for Reconsideration to present additional legal authority, all of which could have, *and should have* been previously raised through the exercise of Complainant's due diligence prior to the close of the record.

Despite Complainant's characterization of her arguments as "new and novel," her Petition merely regurgitates the same arguments previously raised during the hearing and in her post-hearing brief in support of her core assertion that Duquesne Light is not permitted to install a smart meter at the Service Location. See generally Petition; Complainant's Post-Hearing Brief; Complainant's Exceptions. However, in both the Initial Decision and Final Order, ALJ Watson and the Commission considered and rejected Complainant's argument that she is entitled to an "opt-out" of smart meter installation. See Initial Decision, p. 37; Nov. 7, 2024 Order, p. 24.

In her Petition, the Complainant argues that the Commission should grant reconsideration because "(1) the FCC regulations have been called into question in federal court; (2) state and federal statutes require EDCs to warn and protect the public from danger; (3) Complainant has the right to a pollution-free environment, which includes electromagnetic pollution; (4) the law, as cited by both the Supreme Court and the

Commonwealth Court of Pennsylvania compels DLC to provide a reasonable accommodation; (5) two concepts in Pennsylvania statutes offer precedent for kindness in considerations of accommodation; (6) the Commission should urge DLC to take a cooperative, rather than adversarial approach to allowing Pennsylvania citizens to opt out of a smart meter; (7) contrary to the Commission's Opinion, DLC is a state actor; (8) the Commission should consider the undue burden standard that has been established in the United State Supreme Court; (9) the major questions doctrine addresses the authority of agencies in administrative law cases, and as such raises the question of the right of the Commission to act as it did in Complainant's case; (10) the powers of PUC's Administrative Law Courts extend beyond what has been legally delegated, as adjudicated in the U.S. Court of Appeals; (11) Funding sources for the Pennsylvania Public Utility Commission may compromise its ability to be impartial; (12) the Commission should render the PUC's Implementation Order relevant to Act 129 *ultra vires*; and (13) the Commission overlooked the Pennsylvania Code that places the burden of proof on DLC." See Petition, pp. 4-25.<sup>3</sup> In support of her Petition, Complainant attaches a copy of a United States Court of Appeals for the District of Columbia Circuit "Evidence of Harm Files" in connection with the August 13, 2021, decision in Env't

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<sup>3</sup> Complainant labeled her arguments "A" through "E" and separated her arguments into three separate groups of "New or Novel Arguments." For purposes of this Answer, the Company has labeled its Responses to Complainant's Petition numerically (i.e., 1-13). The Company's Nos. 1-3 correspond to Complainant's Group I arguments; Nos. 4-7 correspond to Complainant's Group II arguments; Nos. 8-12 correspond to Complainant's Group III arguments; and No. 13 corresponds to Complainant's section titled "Matters That Were Overlooked or Not Addressed."

Health Trust, et al. v. Federal Communications Commission and United States of America, at Case No. 20-1025.

Complainant's arguments lack merit and should be rejected.

**1. Complainant's Argument Related to the FCC's Regulations and Federal Law Should be Rejected.**

The Complainant argues that the FCC's regulations have been called into question in federal court since the PUC initiated the November 4, 2020, stay in proceedings; however, this argument is meritless. See Petition, p. 5. Despite Complainant's characterization of this argument as "new and novel," this case was decided *prior* to the Supreme Court's Povacz II decision and was fully addressed by the holding in Povacz II. Povacz, 280 A.3d 975 at 1008-09. In fact, the Supreme Court of Pennsylvania explicitly evaluated and rejected petitioners' argument related to Env't Health Trust in Povacz II:

We conclude that *Environmental Health Trust* provides no guidance on the matter at hand because the circuit court did not reach the merits of the question before it, i.e., whether the 1996 FCC limits for RF radiation exposure adequately protect against purported negative effects unrelated to cancer caused by exposure to RF radiation. Rather, the circuit court found that the FCC violated the requirements of the ADA by failing "to respond to record evidence that exposure to RF radiation at levels below the [FCC's] circuit limits may cause negative health effects unrelated to cancer" with a reasoned explanation for its contrary conclusion.

Povacz, 280 A.3d at 1008 (citing Env't Health Trust v. FCC, 9 F.4th 893, 903, 905 (D.C. Cir. 2021)).

The Court in Povacz II further reasoned:

At most, therefore, *Environmental Health Trust* suggests that the science regarding a causal connection between RF emissions and adverse human health effects has evolved since 1996, the last year FCC limits for RF emissions were updated. **However, it does not support a claim that RF emissions at or below the 1996 FCC limits cause adverse human health effects and in no way overcomes the record facts that Customers failed to**

**adduce sufficient evidence to meet the preponderance of the evidence standard.**

Povacz, 280 A.3d at 1009 (emphasis added).

Complainant has mischaracterized the holding in Env't Health Trust. Notably, Complainant acknowledges that the Initial Decision and the Commission's Opinion and Order in this matter considered the FCC regulations and guidelines. See Petition, p. 5. Complainant also purportedly relies on the Supremacy Clause of the United States Constitution as support for argument. Complainant drastically misunderstands what the Supremacy Clause is. The PUC has authority to regulate and oversee electrical utilities and in doing so implemented Act 129; this simply is not a Supremacy Clause issue. See 66 Pa. C.S.A § 2807.

Povacz II fully addressed Env't Health Trust and held it inapplicable to smart meter proceedings. Thus, Complainant's argument must be rejected here. Furthermore, Complainant's requested stay must be denied. This case has already been stayed for several years; there is no need to stay it again. Complainant had an evidentiary burden to carry, years to develop her case, and she failed to satisfy that burden. As such, Complainant's Petition does not meet the strict standard for reconsideration and should be denied here.

**2. Complainant's Argument that State and Federal Statutes Require EDCs to Warn and Protect the Public from Danger Should be Rejected.**

The Complainant further relies on Env't Health Trust to support her argument that the Commission should require the Company to conduct further testing of its smart meters pursuant to 42 U.S.C. § 4332(C) and The National Environmental Policy Act

("NEPA").<sup>4</sup> See Petition, pp. 7-8. As explained in greater detail above, this argument fails in light of Povacz II's holding of this case as having no significance to smart meter proceedings. Notably, Complainant cites to a certain portion of the statute which directs that "all agencies of the Federal Government shall . . ." 42 U.S.C. § 4332. Complainant's reliance on this statute is misplaced as the Commission is not "an agency of the Federal Government" but rather a state-level agency and thus lacks jurisdiction to analyze this statute. The PUC's jurisdiction is confined to the Public Utility Code, which the Commission has already ruled that the Company is in full compliance with. See generally November 7, 2024 Order. Furthermore, it is unclear what "testing" is purportedly required by the statute cited by Complainant, and Complainant's Petition ignores the substantial evidence Duquesne Light presented on the tests it has already conducted on its smart meters, which are described in detail in the Company's post-hearing brief.

Complainant's arguments related to 42 U.S.C. § 4332, as relied upon in Env't Health Trust must fail as they were already considered and rejected by the Court and are inapplicable to the Commission.

**3. The Complainant's Argument that She has the Right to a Pollution-Free Environment, Which Includes Electromagnetic Pollution Should be Rejected.**

In her Petition, Complainant poses environmental concerns related to smart meters. See Petition, p. 9. Despite Complainant's characterization of these concerns as a "new argument," this is essentially the same argument Complainant has made

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<sup>4</sup> It should be noted that NEPA is codified at 42 U.S.C. 4332; thus, Complainant mistakenly appears to rely on two different laws, which are actually one in the same.

throughout the entirety of this proceeding regarding the alleged harm caused by smart meters. Thus, such an argument fails under the strict standard set forth in Duick, which prohibits arguments from being raised that should have been, but were not, previously raised in the proceeding. Complainant's attempt to supplement her argument related to health and safety concerns with additional articles and case law – all of which could have *and should have* been made previously at the Evidentiary Hearing and/or at any other time prior to the close of the record – is improper and should be rejected.

Even if this argument passes muster under Duick, it should nevertheless be rejected because the Commission has already properly held that Complainant failed to meet her evidentiary burden of establishing that the deployment of smart meters is unsafe or unreasonable or that it would constitute inadequate utility service. See November 7, 2024 Order, pp. 31-32. Complainant's "new argument" in her Petition related to health concerns is not novel to this matter and does not alter the analysis here.

Once again, Complainant relies on Env't Health Trust in support of her argument regarding the right to a pollution free environment; however, no such right was established by that case. Moreover, as mentioned earlier, the Court in Povacz II found this case to be irrelevant and unpersuasive as it relates to utility customers. Povacz, 280 A.3d at 1008-09. In fact, the court in Env't Health Trust specifically held that "To be clear, we take no position in the scientific debate regarding the health and environmental effects of RF radiation – we merely conclude that the Commission's cursory analysis of material record evidence was insufficient as a matter of law." 9 F.4th at 913.

In addition, Complainant's reliance on Section 27 of the Pennsylvania Constitution is misplaced and unsupported by case law. Section 27 makes no reference to a "citizen's right to a pollution-free environment," nor does Complainant cite any case law interpreting Section 27 to guarantee any such right. Complainant's failure to exercise her due diligence to previously produce such "evidentiary" sources prior to the close of the record in this case does not constitute grounds for reconsideration.

**4. Complainant's Argument that the Law Compels the Company to Provide a Reasonable Accommodation Should be Rejected.**

Complainant's argument that the Commission did not consider the rulings in Povacz I and Povacz II is flawed for a number of reasons. First, in support of her argument that she is entitled to an accommodation, Complainant relies on Povacz I, which was overruled by Povacz II and thus is no longer applicable law. See Petition, p. 9. Moreover, the Commission properly considered Povacz II in its decision in this case, and in fact, heavily relied on this holding in support of its conclusion that Complainant failed to meet her burden of proof to seek an accommodation. See November 7, 2024 Order, pp. 23-24.

Povacz II made clear that customers who prove a Section 1501 violation are limited to accommodations allowed by Act 129 and the utility's tariff. Here, the only accommodation permitted under the Company's Commission-approved tariff is relocation of the smart meter to an alternative location on the premises. See Initial Decision, Finding of Fact No. 17. Complainant has failed to meet her evidentiary burden to prove that the installation of a smart meter would violate Section 1501 of the Code.

Nevertheless, the accommodation allowed in the Company's tariff has been available to Complainant throughout this proceeding, and she has been free to avail herself of such accommodation. Complainant's dissatisfaction with the only available accommodation does not alter the fact that she did not carry her evidentiary burden.

Second, Complainant's requested relief of avoiding a smart meter altogether is not available under well-settled law. 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, p. 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, 280 A.3d at 1014; Duquesne Light Company's Supplemental Post-Hearing Brief, p. 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 "opt-out" of such installation. Povacz, 280 A.3d at 983. This is not a new development, and Complainant has had more than enough time to raise this (flawed) argument prior to the close of the record. Thus, Complainant's argument is meritless and fails to meet the strict standard for reconsideration under Duick.

**5. Complainant's Argument Regarding Extra-Record Immaterial Statutes Should be Rejected.**

Complainant offers two statutes: (1) Act of Oct. 25, 2013, P.L. 665, No. 79 and (2) 42 Pa. C.S. § 9777. Neither of these cited statutes have anything to do with electric meters and thus are completely irrelevant to the matter at issue.

**6. Complainant's Argument Regarding a Cooperative Approach to Legal Authority Does Not Alter the Law.**

In her Petition, Complainant encourages the Company to support "smart meter opt-out legislation." See Petition, p. 12. An encouragement that the Company support legislative action that Complainant supports is not a basis to award reconsideration. As mentioned above and numerous times throughout this proceeding, Act 129 mandates smart meter installation, and utility customers do not have the option to refuse such installation. See Povacz, 280 A.3d at 983.

**7. Complainant's Argument That the Company is a State Actor Should be Rejected Again.**

Complainant has previously attempted to argue that the Company is a state actor in her Exceptions to the Initial Decision of ALJ Watson. See Complainant's Exception No. 2. This argument was properly addressed and rejected by the Commission in its November 7, 2024 Order. Complainant cannot attempt to re-raise the same argument in her Petition by disguising it as a "new argument" solely because she is unsatisfied with the Commission's decision. For that reason alone, this argument should be rejected under Duick. In the event this argument passes muster under Duick, the Company has already thoroughly addressed this argument in its Reply to Complainant's Exceptions, which it

fully incorporates by reference herein. Duquesne Light is not a state actor and thus cannot violate Complainant's constitutional rights by installing a smart meter at her service address. See Respondent's Reply to Complainant's Exceptions, pp. 11-14; See also Jackson v. Metropolitan Edison Co., 419 U.S. 345, 348-59 (1974) (holding 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"). Complainant's citation to numerous, decades-old case law does not alter the result in this case.

**8. Complainant's Argument That the Commission Should Consider the Undue Burden Standard Should be Rejected.**

Complainant argues that the Commission "should consider the undue burden standard" established by the United States Supreme Court. See Petition, pp. 17-18. Not only is Complainant's argument not "new or novel," but it is meritless.

Complainant's argument here is essentially a collateral attack on the holding in Povacz II and Act 129, which is settled law. In addition, the "undue burden" test relied upon by Complainant, as it pertains to these individual cases, was meant to address the state's interest with respect to constitutionally protected liberties. See Planned Parenthood v. Casey, 505 U.S. 833 (1992); City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983). The undue burden test has not been applied to smart meter cases in Pennsylvania and thus is wholly immaterial to the matter at issue. Povacz II sets the standard for resolution of these cases.

**9. Complainant’s Argument Regarding the Major Questions Doctrine Should be Rejected.**

Complainant argues that the “major questions” doctrine holds that courts will “presume that Congress does not delegate to executive agencies issues of major political or economic significance.” See Petition, p. 19. The “major questions” doctrine does not apply to the matter at hand, which is notably a matter of state law. As acknowledged by Complainant, the “major questions” doctrine requires the agency to “point to clear congressional authorization for the authority it claims . . .” West Virginia v. EPA, 597 U.S. 697, 723 (2022) (emphasis added). Act 129 is a state statute which was enacted by the Pennsylvania legislature, not congress. Thus, the “major questions” doctrine is inapplicable to Act 129, which has been fully interpreted by the Pennsylvania Supreme Court in Povacz II. Moreover, the “major questions” doctrine has existed for years; thus, Complainant could have brought this argument before the Commission previously. Her failure to do so does not warrant reconsideration under Duick.

**10. Complainant’s Argument Regarding the Commission Acting Beyond its Delegated Authority Should be Rejected.**

Complaint relies on the holding in Jarkesy v. Sec. & Exch. Comm’n., 34 F.4th 446 (5th Cir. 2022) in support of her argument that the Commission acted beyond its delegated authority in ruling on her Complaint. Notably, this case, along with a string of other federal court cases relied upon by Complainant, has no applicability to this proceeding. Particularly, Complainant relies on the assertion in Jarkesy that Administrative Law Courts do not afford petitioners some legal protections such as the right to a jury trial. Jarkesy is distinguishable in nature from actions before the

Commission because that case analyzed whether a federal agency could deprive the petitioner of a jury trial where the case was criminal in nature. 34 F.4th at 453. Complainant's action is not criminal in nature.

Moreover, no right to a jury trial exists at the Commission. The Pennsylvania Supreme Court has "interpreted Article 1, Section 6 of the Pennsylvania Constitution as only preserving the right to trial by jury in those cases where it existed at the time the Constitution was adopted in 1790 . . . . regulated public utility service did not exist at the time of the adoption of the Pennsylvania Constitution in 1790." Vertis Group v. Pa. PUC, 840 A.2d 390, 398 (Pa. Commw. Ct. 2003). Complainant chose to file her Complaint with the PUC, availed herself of the PUC's authority, and is thus compelled to follow its procedures and evidentiary standards. Thus, Complainant's argument here is meritless and should be rejected.

**11. Complainant's Argument Regarding Funding Sources for the Pennsylvania Public Utility Commission Should be Rejected.**

Complainant appears to insinuate that there is some sort of causal connection between how the PUC receives its funding and its ruling against Complainant in this matter. See Petition, pp. 22-23. This argument is nothing short of mere speculation. Complainant's concerns regarding partiality are not supported by the only competent evidence in the record. The Commission properly ruled against Complainant due to well-established law in Povacz II mandating smart meter deployment and the copious, competent evidence provided by the Company throughout this proceeding. Complainant's failure to produce credible evidence to carry her burden of proof is her

own fault and not the result of any partiality on the Commission's behalf. Moreover, Complainant had ample time to raise these unfounded allegations throughout this proceeding—perhaps in her Motion to Recuse ALJ Watson filed on January 23, 2024—however, Complainant did not previously raise this issue. Therefore, Complainant's argument should be rejected under the strict standard established in Duick.

**12. Complainant's Argument that the Implementation of Act 129 Was Taken Ultra Vires Should be Rejected.**

In her Petition, Complainant argues that the Commission's Implementaton Order for Act 129 was done so *ultra vires* and thus should be considered "null and void." See Petition, p. 23. The PUC is authorized to interpret and enforce the Public Utility Code. In Povacz II, the court held that its:

comprehensive reading of Act 129 leads [the court] 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, [the court has] considered Section 2807(f)(2) in its context as the implementation provision of Act 129.

280 A.3d at 992.

Thus, Complainant's argument has been refuted by the court in Povacz II, which specifically considered the General Assembly's intent in interpreting Act 129. Despite Complainant's dissatisfaction with the outcome of this case, the Supreme Court's holding in Povacz II is controlling on the Commission, and the Commission must follow the clear directive adjudicated by the Court. Thus, the Implementation Order was not rendered *ultra vires*, and Complainant's argument should be rejected.

**13. Complainant's Attempt to Shift the Burden of Proof to the Company Should be Rejected.**

The Complainant argues that the Commission “overlooked the Pennsylvania Code that places the burden of proof on DLC” thus attempting to improperly shift the burden of proof in this matter. See Petition, p. 24. The Code makes it clear that the Complainant bears the burden of proof in this proceeding. 66 Pa. C.S. § 332(a). Section 332 of the Code is established precedent and applies generally to all proceedings before the Commission, to which Complainant is no exception. The fact that the Code does not specify the exact type of case in its burden of proof language is of no consequence here.

The burden only shifts to the Company if the Complainant establishes a *prima facie* case that the Company violated the Public Utility Code, the Commission's regulations, or a Commission order. See November 7, 2024 Order, p. 12. However, in that instance, the Company's burden would be limited to producing rebuttal evidence. Id. Here, Complainant bears the overarching burden of proof, which she failed to carry in this case. Even if it *were* the Company's burden to carry, Duquesne Light properly carried its burden of proof in producing the only credible and competent evidence in this proceeding which has proven that the Company's smart meters comply with FCC guidelines and do not violate any of the Commission's regulations or the Public Utility Code. As such, this argument does not constitute grounds for reconsideration under Duick and should be rejected.

V. CONCLUSION

WHEREFORE, for all the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration filed by Miranda Grace Edwards in its entirety.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



By: \_\_\_\_\_

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Duquesne Light Company**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA GRACE 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 Answer to Complainant's Petition for Reconsideration upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Miranda Grace Edwards  
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Administrative Law Judge Jeffrey Watson  
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Dated this 29th day of November 2024.



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Jeremy V. Farrell, Esquire