

November 27, 2024

Via Electronic Filing

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

RE: Pamela Scott v. Duquesne Light Company
Docket No. C-2018-3004042

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: Pamela Scott (w/enc.) (via regular mail)
Administrative Law Judge Jeffrey Watson (w/enc.) (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT,

Complainant,

No: C-2018-3004042

v.

DUQUESNE LIGHT COMPANY,

Respondent.

**REPLY TO COMPLAINANT'S
EXCEPTIONS**

Served on Behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

Jeremy V. Farrell, Esquire
PA I.D. No. 316258

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-3938
jfarrell@tuckerlaw.com

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 October 29, 2024.

I. INTRODUCTION

On October 29, 2024, the Presiding ALJ issued an Initial Decision in favor of Duquesne Light. Following binding precedent from the Pennsylvania Supreme Court, the Initial Decision correctly ruled that Pennsylvania law mandates smart meter deployment and requires the system-wide installation of smart meter technology by EDCs like 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 November 15, 2024, Complainant filed Exceptions to the Initial Decision of ALJ Watson. 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. 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 arguments rest solely on her personal beliefs, which do not meet the high burden of proof required to succeed on this claim. 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 requires 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. The Commission approved Duquesne Light's Smart Meter Plan the following year. 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 Decision, Finding of Fact No. 33. 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 Decision, Finding of Fact No. 34.

C. Complainant's Allegations

On August 16, 2018, Complainant filed a Formal Complaint with the Commission against Duquesne Light. See Complaint (filed on August 16, 2018); Initial Decision, p. 1. The Formal Complaint alleges that Duquesne Light is not permitted to install a smart meter at her residence located at 134 Markham Drive, Pittsburgh, PA 15228, that it is not permitted to shut off her electric service for refusal to allow a smart meter to be installed, and that she is entitled to an exemption because the Company's smart meter allegedly causes her adverse health conditions. See Complaint; Initial Decision, p. 1. As relief, Complainant seeks to prevent the Company from terminating her service until this dispute is resolved or until a state law is passed to permit an opt-out from smart meter programs. See Complaint; Initial Decision, p. 2. In 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. See Complaint; Initial Decision, p. 2.

D. The Hearing

On January 30, 2020, a Telephone Hearing Notice was issued scheduling the telephonic evidentiary hearing for Thursday, March 12, 2020. See Telephone Hearing Notice (Jan. 30, 2020); Initial Decision, p. 5. On March 12, 2020, the parties appeared for the telephonic evidentiary hearing before the Presiding ALJ. See Initial Decision, p. 6. Duquesne Light presented its case through the expert witness testimony of Dr. Benjamin Cotts and Dr. Gabor Mezei, and fact witness testimony of Michael Belanger, Steve Wright, Michael Secchutti, and Ronald Dornin. See Initial Decision, pp. 10-12. Complainant

presented her case through the fact witness testimony of herself and Joshua Hart, who notably *is not* a medical doctor, epidemiologist, public health professional, certified electrician, or electrical engineer. See Initial Decision, p. 9. In fact, Mr. Hart had not even met Complainant prior to the hearing and had never seen any medical records regarding the health symptoms identified by Complainant, including electro-hypersensitivity syndrome, and had never talked to her treating physicians. See Initial Decision, p. 9. 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 327-28. The Company further presented evidence that Act 129, the Commission's Implementation Order, and the Company's Smart Meter Plan and Tariff requires Duquesne Light to install a smart meter with certain specifications at the Service Address. 66 Pa. C.S.A. § 2807; Tr. at 333-34. The Company's smart meter network transmits information through brief, low power radiofrequency communications. Tr. at 185-86, 190, 249. 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 186-88, 190, 249. 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. See Tr. at 295-96, 299.

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 October 29, 2024, the Presiding ALJ issued an Initial Decision dismissing the 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, p. 24. The Initial Decision also held that Complainant presented no medical evidence, witnesses, or records at the hearing demonstrating that RF emitted from a smart meter will harm her. Id. at 81. Instead, Complainant presented her lay opinions and beliefs regarding concerns about health, safety, and privacy in connection with smart meters. Id. at 29. 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 attempting to install a smart meter at her property. Id. at 29. Accordingly, the Presiding ALJ found that Complainant's claims are not supported by the evidence and must be dismissed. Id. at 35.

F. Complainant's Exceptions

On November 15, 2024, Complainant filed Exceptions to the Initial Decision. The Exceptions tend to regurgitate arguments that have previously been addressed and properly rejected by the Presiding ALJ, this Commission, and Pennsylvania courts. See

Complainant's Exceptions. They also often fail to identify the specific findings of fact or conclusions of law to which exception is taken and ignore the Company's vast amount of properly introduced and credible evidence, and disregard settled law addressing the exact issues in this case. Id.

III. ARGUMENT

The Commission should deny the exceptions¹ for three main reasons discussed in more detail below: (i) Act 129 mandates the installation of a smart meter at Complainant's service address and does not entitle Complainant to an "opt-out"; (ii) all of Complainant's arguments were unsupported by competent evidence and have already been previously addressed and correctly rejected; and (iii) Complainant has failed to meet her burden of proof to establish a violation of Section 1501 or any other provision of the Code.

A. Reply to Exception No. 1

The Commission should deny Exception No. 1 because it fails to identify any erroneous findings of fact or conclusions of law, and the Presiding ALJ correctly ruled that Act 129 mandates smart meter installation and does not provide Complainant with the right to an "opt-out." Complainant has not complied with the procedural

¹ 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).

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, 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.

Exception No. 1 argues that the Presiding ALJ mischaracterized the relief sought by Complainant. Regardless of how Complainant chooses to phrase and characterize her requests, Complainant is essentially seeking an "opt-out" of smart meter installation, which she is not entitled to under well-settled law. For example, Complainant argues that in her January 8, 2024, Supplemental Brief, she requested that the Company allow her to keep her current analog meter. See Complainant's Exceptions, p. 2. Complainant further argues that she previously requested that "Duquesne Light not be allowed to install such digital smart meter, which emits radio frequency (RF) twenty-four hours a day." Id. For all intents and purposes, these requests seek an "opt-out" of smart meter installation, which is not available under Pennsylvania 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. 24 (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, p. 25 (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. Thus, Complainant's averment that "The Supreme Court of Pennsylvania has ruled that EDCs are permitted to provide opt outs as a customer service policy" is a blatant disregard for well-established law in *Povacz II*. See Complainant's Exceptions, p. 2. Notably, Complainant cites no case law to support this assertion.

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. About one year ago, 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., Hoffman-Lorah v. Pa. PUC, 301 A.3d 492 (Pa. Commw. Ct. 2023) (rejecting, in light of Povacz II, the customer’s argument that she could opt out of smart meter installation); Branagh v. Pa. PUC, No. 1857 C.D. 2019, 2023 Pa. Commw. Unpub. LEXIS 352, at *26 (noting it is now “beyond dispute” that Act 129 mandates smart meter installations and that customers do not have an opt out right); Paul v. Pa. PUC, 299 A.3d 1069 (Pa. Commw. Ct. 2023) (noting that the “Supreme Court [in Povacz II] rejected the central premise of Ms. Paul’s present appeal - that an EDC customer has an unqualified right to refuse the installation of a smart meter and demand another type of meter”); 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’s holding in Povacz II). Moreover, no provision in the Public Utility Code or the Commission’s Regulations or Orders allows a customer to “opt out” of receiving a smart meter. Hoffman-Lorah v. PPL Elec. Util. Corp., Docket No. C-2018-2644957, 2019 WL 2325713, at *28 (Pa. P.U.C. May 23, 2019).

Complainant’s requested relief was not ignored by ALJ Watson; rather, the Presiding ALJ’s Initial Decision fully addressed her Complaint and properly dismissed it because it is well settled that Complainant is not entitled to the relief she seeks under Pennsylvania law. 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

The Commission should deny Exception No. 2 because the Presiding ALJ correctly weighed the evidence presented at the hearing and ruled that Complainant did not meet her burden of proof. The Supreme Court's standard for establishing a Rule 1501 violation is clear and requires expert testimony, which Complainant did not produce. In smart meter cases raising alleged violations of Section 1501, the complainant has the burden of proving, by a preponderance of the evidence, that the utility is responsible for the problem described in the Complaint. Kreider v. PECO Energy Co., Docket No. P-2015-2495064, 2015 WL 5256653, at *11 (Pa. P.U.C. Sept. 3, 2015); Duquesne Light's Post-Hearing Supplemental Brief, p. 23. The Commission is to analyze smart meter cases under the conclusive causal connection standard for alleged violations of Section 1501, which relies upon the preponderance of the evidence standard requiring proof by a greater weight of the evidence. Povac, 280 A.3d 984; Commonwealth v. Williams, 732 A.2d 1167, 1187 (Pa. 1999); Bostard v. Metropolitan Edison Co., Docket No. C-2018-3002753, 2020 WL 1906057, at *3 (Pa. P.U.C. Mar. 23, 2020) (Myers, ALJ).

The Supreme Court of Pennsylvania explained the burden as follows:

The preponderance burden requires a customer to prove that a service or facility is - more likely than not - the cause of the problem described in their complaint. Specific to smart meters and RF emissions, the burden is two-fold. First, a customer must present expert opinion rendered to a reasonable degree of scientific certainty that smart meters emit RFs and that RF emissions cause adverse health effects and, second, 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, cause them harm.

Povac, 280 A.3d 1006 (internal citations omitted).

Despite Complainant's assertion that she presented testimony which "represents a conclusive causal connection between the Complainant's adverse health effects and exposure to the microwave RF of a Duquesne Light Company smart meter," Complainant failed to present any evidence - let alone a preponderance of the evidence - establishing that Complainant will be adversely affected by the installation of a smart meter. Nor did Complainant produce any evidence that the installation of a smart meter constitutes unsafe or unreasonable service by Duquesne Light. Notably, Complainant produced no medical records or similar evidence at the hearing. Tr. at 174-75. She claims to suffer from Electromagnetic Hypersensitivity Syndrome ("EHS") but admitted that she has never been diagnosed with this alleged condition by a doctor or other medical professional; rather, it is a self-diagnosis. Id. at 174-76. She also presented no medical records or documents indicating that her alleged symptoms are caused by RF exposure. Id. at 180-81.

Rather than presenting competent evidence, Complainant merely offered her opinion that she suffers from EHS, and that the installation of a smart meter would exacerbate this purported condition. At no point did Complainant claim to be an expert witness. As correctly ruled upon by the Presiding ALJ, Complainant's personal beliefs "no matter how strongly held, do not constitute evidence." Lamagna v. Pa. Elec. Co., Docket No. C-2017-2608014, 2018 WL 6124353, at *15 (Pa. P.U.C. Oct. 30, 2018) (Watson, ALJ); Zimmerman v. PPL Elec. Util. Corp., Docket No. C-2017-2615038, 2018 WL 4185439, at *9 (Pa. P.U.C. Aug. 16, 2018) (Barnes, ALJ) (bald assertions about alleged health problems arising from smart meters is not evidence); see Initial Decision, Conclusion of

Law No. 10. Complainant has fallen short of the burden she bears under the conclusive causal standard² embraced by *Povacz II*. She presented no expert testimony at all to corroborate her health or safety allegations, let alone such testimony that shows within a reasonable degree of certainty that RF emissions cause her adverse health effects. See Povacz, 280 A.3d at 1006; Initial Decision, p. 29. As such, the Presiding ALJ properly ruled on all of the evidentiary issues, specifically that “there is no record evidence to support Complainant’s claim that installation of a smart meter at the service location would constitute a violation of Section 1501.” Initial Decision, p. 29.

To the extent Complainant argues that she met her burden of proof through the factual testimony of Joshua Hart, Mr. Hart was properly rejected as an expert witness and precluded from testifying beyond the fair scope of an email communication from Mr. Hart to the California Council on Science and Technology dated January 27, 2011. See Respondent’s Motion in Limine to Preclude Joshua Hart From Testifying As An Expert Witness; Initial Decision, pp. 4-5. Furthermore, the Presiding ALJ correctly noted that Mr. Hart is not a medical doctor, epidemiologist, public health professional, certified electrician, or electrical engineer.” Tr. at 46-47, 54-55; Initial Decision, p. 25.

Complainant claims that she “did not seek a medical diagnosis or medical documentation until 2023, hence the reason no medical documentation was entered into the record at the evidentiary hearing in March 2020.” Complainant’s Exceptions, p. 6.

²“Conclusive causal connection means that the proffered evidence must support the conclusion that a causal connection existed between a service or facility and the alleged harm.” Povacz, 280 A.3d at 1006.

Notably, despite this extra-record assertion, Complainant still failed to produce a single medical record or piece of documentation evidencing such a diagnosis or otherwise corroborating her claims, let alone through a qualified medical expert.

This case has been around since 2018; Complainant had more than ample time to seek expert medical opinion had she so desired. Complainant produced no expert testimony to corroborate her assertion that smart meter installation causes her harm; rather, she attempts to meet her burden through nothing more than personal beliefs and opinions regarding her health, none of which are sufficient to meet the Supreme Court's standard for proving an alleged violation of Section 1501. 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

The Commission should deny Exception No. 3 because it fails to identify any erroneous findings of fact or conclusions of law, and Complainant's argument has been waived by her failure to raise it prior to her Exceptions. The Commission has held that a party is not permitted to raise additional issues or facts in Exceptions that were not originally pleaded earlier in a proceeding or raised at the hearing. See Cynthia Young-Nelson v. PECO Energy Co., Docket No. F-2019-3009953 (Order entered Dec. 3, 2020). Complainant argues that she was deprived of the opportunity to re-open the evidentiary record to present additional evidence in light of Povacz II. See Complainant's Exceptions, p. 7. Complainant's supplemental post-hearing brief is devoid of any request that the Presiding ALJ re-open the evidentiary record. Nor did Complainant submit any other

filing seeking to re-open the evidentiary record prior to her Exceptions. Thus, Complainant has waived this issue.

In the event Complainant has not waived this argument, it nonetheless still fails as a matter of law. Despite Complainant's argument to the contrary, she was not required to meet a different burden of proof than the "preponderance of the evidence" standard. The Presiding ALJ properly applied the correct and well-settled "preponderance of the evidence" standard to Complainant's evidence and cited to multiple cases in its Initial Decision which precede *Povacz II* in support of this burden of proof, and even gave the parties another opportunity to brief the case after *Povacz II* had been issued and the stay lifted. See initial Decision, p. 21.

Moreover, as noted by the Supreme Court, the Commission has been using the "conclusive causal connection" standard in RF emissions cases "for almost three decades." Povacz, 280 A.3d at 1004. Thus, in cases "where scientific evidence is required to establish the safety of a service or facility, use of the evidentiary standard of 'conclusive causal connection' to assess the evidence is correct." Id. at 1007. It is an inaccurate statement of law to claim that the PASC created the "expert witness" requirement in *Povacz II*; it merely memorialized the state of existing law on the "conclusive causal connection" standard.

The Presiding ALJ properly applied the "conclusive causal connection" standard to assess Complainant's evidence. See Initial Decision, Conclusion of Law No. 9. Therefore, Complainant cannot claim that the wrong burden of proof standard was applied to her Complaint. Complainant had plenty of time to find an expert witness

considering this case has been around since 2018; however, Complainant's failure to produce one is evidence that she did not (or could not) find one to support her assertions regarding the safety of smart meters.

Complainant further misstates the holding regarding Section 1501 violations in *Povacz II*. *Povacz II* does not require public utilities (such as Duquesne Light) to provide accommodations where the burden of proof is not satisfied by the Complainant. Povacz, 280 A.3d at 1034–38; Initial Decision, p. 30. Here, Complainant is not entitled to an accommodation because she did not satisfy her burden of proof. See Initial Decision, p. 30. To the extent that Complainant attempts to argue that Duquesne Light's tariff conflicts with the holding in *Povacz II*, the Presiding ALJ has already properly recognized that Rule 9B of Duquesne Light's Tariff has been approved by the Commission. See Initial Decision, Finding of Fact No. 33. That Complainant does not wish to accept the accommodation that Duquesne Light offers in its tariff does not alter the analysis in this case. 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

The Commission should deny Exception No. 4 because the Presiding ALJ's findings of fact regarding RF emissions are well supported by the only competent evidence in the record, including expert testimony from Duquesne Light's witnesses. Through the expert testimony of Dr. Benjamin Cotts (Registered Professional Engineer) and the factual testimony of Michael Belanger (Senior Project Line Manager at Itron, Inc.), Duquesne Light produced evidence at the hearing that the estimated time that a

Duquesne Light meter would transmit energy during a 24-hour period - commonly referred to as the "duty cycle" is slightly less than three minutes per day on average. Tr. at 192-94, 197; Initial Decision, Findings of Fact Nos. 70-71.

In Duquesne Light's supplemental post-hearing brief, which it hereby fully incorporates by reference, it highlights the copious evidence showing RF emissions from the Company's smart meters are only a tiny fraction of the permissible limits set by the FCC and other organizations (like the IEEE and the ICNIRP). See Respondent's Supplemental Post-Hearing Brief, at 8-12. The Presiding ALJ properly accepted Duquesne Light's evidence as credible and held that "Both radios in the Company's smart meters comply with the exposure limits set by the FCC, IEEE, and ICNIRP, even if the radios operated all day long (which they do not). Initial Decision, Finding of Fact No. 62. To support his findings of fact, the Presiding ALJ properly considered and analyzed all competent evidence presented by Duquesne Light, including spurious emissions. As noted by the Presiding ALJ, there is no evidence that the Company's meters violate any regulatory standard. See Initial Decision, Finding of Fact No. 62. 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

The Commission should deny Exception No. 5 because it is not supported by competent evidence and merely regurgitates the same argument previously raised in her testimony and her supplemental post-hearing brief, which has already been properly rejected by the Presiding ALJ. Complainant attempts to conclusively state that she has

produced sufficient evidence to support her assertion that smart meters consume more energy than analog meters. Complainant relies on testimony from Duquesne Light's witnesses; however, neither witness confirmed this. To the contrary, both witnesses stated that they were unsure regarding the energy consumption of the comparative meters. Tr. at 336-37, 348. Notably, Complainant presented no evidence to support her claim that smart meters consume more energy than analog meters. Initial Decision, Finding of Fact No. 94. The Presiding ALJ properly found that "Analog and smart meters measure electric consumption in the same way, and the electronics in both types of meters are connected on the Company's side of the meter. The energy used to power the meter's electronics is not included as part of the customer's metered electric consumption." Initial Decision, Finding of Fact No. 93.

Complainant's argument, even if supported by record evidence, has no bearing on the outcome of this case. There is no evidence that Duquesne Light's meter violates any particular standard or code provision. For these reasons, Complainant's Exception No. 5 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 Formal Complaint. The Exceptions provide no basis to overturn the Initial Decision because the Presiding ALJ has properly weighed all of the evidence in reaching its conclusions of law and findings of fact, and in doing so, has fully addressed Complainant's Complaint. 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. Complainant failed to meet her burden of proof for establishing a violation of Section 1501, and thus was properly denied an accommodation. For these reasons, the Initial Decision is correct and should be adopted by the Commission.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



By: _____

Jeremy V. Farrell, Esquire
Pa. I.D. No. 316258
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212
jfarrell@tuckerlaw.com

**Counsel for Respondent,
Duquesne Light Company**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT,	:	
	:	
Complainant,	:	
vs.	:	No: C-2018-3004042
	:	
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):

Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228

Administrative Law Judge Jeffrey Watson
Pennsylvania Public Utility Commission
Piatt Place - 301 Fifth Avenue
Suite 220
Pittsburgh, PA 15222
(via mail and e-mail at: layfoster@pa.gov)

Dated this 27th day of November 2024.



Jeremy V. Farrell, Esquire