

December 3, 2024

Via Electronic Filing and Regular Mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Pamela Scott v. Duquesne Light Company
Docket No. C-2018-3004042
**COMPLAINANT'S PETITION TO REOPEN THE PROCEEDING FOR THE
PURPOSE OF TAKING ADDITIONAL EVIDENCE**

Dear Secretary Chiavetta:

Enclosed please find Complainant's Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence, in accordance with 52 Pa. Code § 5.571.

A copy of this letter and document has been served upon ALJ Jeffrey A. Watson, Jeremy V. Farrell of Tucker Arensberg (attorney for Duquesne Light Company), and Emily M. Farah (Counsel, Regulatory, Duquesne Light) in accordance with Commission regulations. In addition, per your request in your cover letter dated October 29, 2024 (accompanying the Initial Decision of the Administrative Law Judge), a courtesy copy of this Petition has been e-mailed to the Commission's Office of Special Assistants.

I have yet to hear back from you regarding my inquiry on November 15 as to why Pennsylvania is the only state in the nation that allows its own Supreme Court's prescription for medical exemptions to be overruled by a utility's arbitrarily-conceived and arbitrarily-inserted tariff rule. Please reply.

(Duquesne Light Company Tariff Rule 9B: "Customers may not decline smart meter installation for any reason. Instead, as their sole remedy, customers may designate an alternative location on the premises for the smart meter.")

Again, I reiterate that the PAPUC should not be in the business of approving tariff rules that defy the Supreme Court of Pennsylvania.

Please feel free to contact me if you have any questions.

Sincerely,

/s/
Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

Encl: Complainant's Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence
Certificate of Service
Cc: ALJ Jeffrey A. Watson (with enclosure) (via electronic filing and regular mail)
Jeremy V. Farrell, Esq. (with enclosure) (via electronic filing and regular mail)
Emily M. Farah, Esq. (with enclosure) (via electronic filing and electronic mail)
Commission's Office of Special Assistants (with enclosure)(via electronic mail)
Governor Josh Shapiro (with enclosure)
Secretary of Health Dr. Debra L. Bogen (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT	:	
	:	
Complainant,	:	
	:	
vs.	:	Docket No. C-2018-3004042
	:	
DUQUESNE LIGHT COMPANY	:	
	:	
Respondent.	:	

**COMPLAINANT'S PETITION TO REOPEN THE
PROCEEDING FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE**

Complainant Pamela Scott, in accordance with 52 Pa. Code § 5.571, hereby submits to the Commission the following Complainant's Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence.

Complainant hereby petitions Chairman Stephen M. DeFrank, Vice Chair Kimberly M. Barrow, Commissioner Kathryn L. Zerfuss, Commissioner John F. Coleman, Jr, and Commissioner Ralph V. Yanora to reopen the proceeding for the purpose of taking additional evidence for the reasons set forth below.

Many material changes of fact and and changes of law have occurred since the conclusion of the 12 March 2020 Evidentiary Hearing. The Code clearly states that a petition to reopen "must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing." See 52 Pa. Code § 5.571(b). Further, the Code clearly states that the record may be reopened for the reception of further evidence "if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding." See 52 Pa. Code § 5.571(d).

Since March 2020, additions to the scientific and medical bodies of knowledge have ballooned regarding 1) Electromagnetic Hypersensitivity Syndrome ("EHS"), and 2) biological effects from microwave radio frequency ("RF") radiation emissions.

Critically, since March of 2020 there have been new rulings in the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania ("PASC") that created numerous new changes in the criteria that Complainants did or did not have to meet in order for their cases to prevail.

The landscape in other jurisdictions has changed as well since 2020. For example, California found that EHS may qualify as a disability under the California Fair Employment and Housing Act, and can be a triable issue. See *Brown v. Los Angeles Unified School District* (2021) 60 Cal.App.5th 1092.

Complainant seeks to be given the opportunity to meet the new standard that the PAPUC has imposed upon cases whose evidentiary record was closed years before the new standard was implemented by the Supreme Court of Pennsylvania. See *Opinion and Order, Povacz, et al. v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (Argued December 7, 2021; Decided August 16, 2022.) ("Povacz II").

After the stay on Section 1501 smart meter cases was lifted by the PAPUC in November 2023, unlike fellow Administrative Law Judges such as Gail M. Chiodo who allowed an opportunity for complainants and respondents to reopen the evidentiary record in order to present additional or new evidence, Administrative Law Judge Jeffrey A. Watson only allowed Complainant and Respondent to submit supplemental briefs based on the evidentiary record that had been closed years earlier on March 12, 2020.

As explained in Complainant's Exceptions to the Initial Decision (p. 8) dated November 15, 2024, fully incorporated by reference herein (available in the public docket online):

In 2022, the PASC set a new bar of requiring complainants to have both a scientific expert witness and a medical expert witness testify:

The PASC wrote: "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. See Popowsky v. Pa. Pub. Util. Comm'n, 937 A.2d 1040, 1055 n.18 (Pa. 2007) ("This Court has characterized a preponderance of the evidence as tantamount to a 'more likely than not' inquiry[.]"). 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, caused them harm. See PA SSJI (Civ) § 4.80 ("An expert witness gives his or her opinion, to a reasonable degree of professional certainty, based upon the assumption of certain facts."). Once the customer produces such evidence, the utility may then defend by providing scientific and/or medical expert testimony that, within a reasonable degree of certainty, the RF emissions from smart meters did not cause the alleged harm. The fact finder must then weigh the evidence and decide whether it is more likely than not that the smart meter causes harm to the customer." (p. 48-49, Povacz II)

Back in 2019 and 2020, Complainant did not hire the two expert witnesses which are required by Povacz II because it was not required back in March of 2020. Complainant did not foresee that two years and five months later it would be decided by the Supreme Court of Pennsylvania that she would need to hire two expert witnesses in order to carry her burden of proof that installation of a smart meter would for her be unreasonable and unsafe and thus establish a violation of Section 1501 due to the level of her EHS.

Regarding the adverse health effects Complainant experiences from wireless technology in general, and Respondent's smart meters specifically, Complainant in 2019 and 2020 reasoned that she would be able to prove her Section 1501 claim through her own personal testimony, fully incorporated by reference herein (transcript not publicly available online but excerpts are contained in Complainant's Exceptions to the Initial Decision, November 15, 2024, pages 2-7).

Since that time, in response to other utilities wishing to place a smart meter on her property, Complainant has sought and received a medical diagnoses of EHS and asks for the opportunity -- allowed to her in 52 PA Code § 5.571 -- to present such evidence in this Duquesne Light Company case. She would also hire expert witnesses that would pass the bar raised by the PASC in Povacz II.

Thus, Complainant petitions the Commission to reopen the proceeding for the purpose of

taking additional evidence, including allowing her to hire a scientific expert witness and a medical expert witness so that she may have the due process of law and the opportunity to prove her Section 1501 case.

Respectfully submitted,

/s/

Pamela Scott, Complainant (E-filed on December 3, 2024)
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT	:	
	:	
Complainant,	:	
	:	
vs.	:	Docket No. C-2018-3004042
	:	
DUQUESNE LIGHT COMPANY	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I, Pamela Scott, hereby certify that I have this day served a true copy of the December 3, 2024, Complainant's Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence upon the parties, listed below, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

VIA ELECTRONIC FILING, REGULAR MAIL, AND ELECTRONIC MAIL:

Jeremy V. Farrell, Esq., Tucker Arensberg, P.C.
1500 One PPG Place
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Administrative Law Judge Jeffrey A. Watson
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222
layfoster@pa.gov

VIA ELECTRONIC FILING AND ELECTRONIC MAIL:
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411 Seventh Avenue
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efarah@duqlight.com, bhargenrader@duqlight.com

VIA ELECTRONIC FILING AND ELECTRONIC MAIL:
PAPUC Office of Special Assistants
ra-OSA@pa.gov

Dated this 3rd day of December, 2024

/s/

Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880