

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

Public Meeting held January 8, 2025

Commissioners Present:

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

Miranda Edwards

C-2018-3002741

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 Reconsideration (Petition), filed by Miranda Edwards (Ms. Edwards or Complainant) on November 18, 2024, seeking reconsideration of the Commission's Opinion and Order entered November 7, 2024 (*November 2024 Order*). On November 29, 2024, Duquesne Light Company (Duquesne or the Company) filed its Answer to the Reconsideration Petition. For the reasons stated below, we shall deny the Complainant's Petition.

I. History of the Proceeding¹

On June 14, 2018, Miranda Edwards filed her Complaint against Duquesne with the Commission at Docket No. C-2018-3002741 seeking to prevent the installation of a smart meter at the service address due to alleged health, safety, and privacy concerns. I.D. at 1-2.

On July 5, 2018, Duquesne filed its Answer and New Matter denying the material allegations in the Complaint and requesting the scheduling of a prehearing conference. On July 5, 2018, Duquesne also filed Preliminary Objections. I.D. at 2.

On October 24, 2018, an Interim Order was entered, granting in part and denying in part Duquesne's preliminary objections and granting Duquesne's request for a prehearing conference. The preliminary objections were granted to the limited extent that the Complainant claimed that Duquesne has violated her rights under the Fourth Amendment to the United States Constitution. I.D. at 3.

On or about March 4, 2019, the Complainant served Duquesne with an Amended Complaint. On March 25, 2019, Duquesne filed an Answer and New Matter to the Amended Complaint.² I.D. at 5.

¹ A more complete discussion of the history of this proceeding is presented in the *November 2024 Order*.

² The Amended Complaint was not initially served upon the ALJ, nor was it filed in the Commission's online docket for this case. Prior to the evidentiary hearing, the ALJ's office contacted the parties who provided a copy of the Amended Complaint served upon Duquesne. At the hearing, the ALJ questioned the parties about the Amended Complaint. (Tr. at 51-59). The Complainant explained that she e-filed her Amended Complaint with the Commission's Secretary's Bureau and had a confirmation number. (*Id.* at 54-55). Duquesne's counsel advised that he had received the Amended Complaint, filed an Answer and New Matter in response and did not object to moving forward with the Amended Complaint. (*Id.* at 55). The Amended Complaint was marked as Exhibit ALJ-1. I.D. at 5, n. 12 (citing Tr. at 59-60).

On February 27, 2020, the evidentiary hearing was convened at 10 a.m., as scheduled. The Complainant presented her case through her own testimony and offered Exhibits A through I into evidence. Complainant Exhibits A and B were admitted into the record. Duquesne presented its case through the testimony of Mr. Michael Belanger, Mr. Steven Wright, Mr. Michael Tallent, Dr. Benjamin Cotts, Dr. Gabor Mezei, Mr. Michael Secchiutti, and Ms. Roxanne Morris, and offered Exhibits B-1, D-2, E-2, F-8, G-1, G-3, G-7, I-1, H-1, H-2, H-6, M-1, M-2, N, O, and Q, which were admitted into evidence. Prior to receiving evidence, the ALJ advised the Parties that they would address a proposed protective agreement and any other preliminary matters.³ I.D. at 8.

The record in this case closed on October 16, 2020.

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 Electric Distribution Company (EDC) deployment of smart meter technology as being in violation of Section 1501 of the Public Utility Code (Code) (*November 4, 2020 Stay Order*). The *November 4, 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 of the Code, 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. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and her procedural rights and obligations under the Commission's regulations.

In the Initial Decision, issued on June 24, 2024, the ALJ found that the Complainant failed to satisfy her burden of demonstrating that the Company violated the

³ Tr. at 9. I.D. at 8, n. 16.

Code, a Commission Order, or Regulation with regard to the installation of a smart meter. I.D. at 47. Accordingly, the ALJ denied and dismissed the Complaint.

On July 9, 2024, the Complainant filed Exceptions to the Initial Decision. On July 24, 2024, Duquesne filed Replies to Exceptions.

On November 7, 2024, the Commission entered the *November 2024 Order* that denied the Complainant's Exceptions and adopted the ALJ's Initial Decision that dismissed the Complaint.

As noted, Ms. Edwards filed a Petition for Reconsideration of the *November 2024 Order* on November 18, 2024. Duquesne filed its Answer to the Reconsideration Petition on November 29, 2024. By Opinion and Order entered December 5, 2024, the Commission granted the Reconsideration Petition, pending further review of, and consideration on, the merits.

II. Discussion

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).⁴ Upon the filing of a petition for relief pursuant to Section 703(f) the Commission may affirm, rescind, or

⁴ 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.C.S. § 703(f); *See West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055 (Cmwlth. 1995).

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.

The standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Philip Duick et al. v Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982) (*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).

Application of the considerations of *Duick* essentially requires a two-step analysis. *See, e.g.*, *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Opinion and Order entered May 19, 2019) (*SBG Order*)⁵ (discussing *Application of La Mexicana Express Service, LLC, to transport persons in paratransit service, between points within Berks County*, Docket No. A-2012-2329717; A-6415209 (Opinion and Order entered September 11, 2014)).

The first step is to determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous Order. This initial step precludes a party from raising the same questions which were specifically considered and decided against

⁵ *Affirmed, Phila. Gas Works v. Pa. PUC*, 249 A.3d 963 (2021); No. 14 EAP 2020 (April 29, 2021); 2021 WL 1681311; *remand granted, in part* (June 15, 2021); 2021 WL 2697432 (Table).

them by a prior Order of the Commission. *Duick* (citing *Pennsylvania Railroad Co. v. Public Service Commission*, 118 Pa. Super. 380 (1935)). The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration that is alleged, to determine whether to modify our previous decision. We further note that while the Commission retains the discretion to modify its prior orders whether a party offers a new or novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous Order,⁶ we will not necessarily exercise that discretion just because a party raises such arguments. *See, SBG Order*. The ultimate question under *Duick* is one of persuasion, that is: whether the petition persuades the Commission to exercise its discretion to grant the requested relief.

Duick also held that reconsideration based on newly discovered evidence must allege newly discovered evidence *not discoverable through the exercise of due diligence prior to the close of the record*. *Duick* at 558. In this same respect, a Petition for Reconsideration cannot be used to raise new arguments or issues that *should have been raised previously*. As the Commission determined in *Pa. PUC v. PPL Elec. Utils. Corp.*:

...the *Duick* standard does not permit a petitioner to raise questions considered and decided below such that the petitioner obtains a second opportunity to argue properly settled matters. Indeed, the Pennsylvania Supreme Court has noted that petitions that request modification or rescission of a final agency order may only be granted judiciously and under appropriate circumstances because such an action results in the disturbance of final agency orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980).

Pa. PUC v. PPL Elec. Utils. Corp., Docket No. R-2012-2290597 (Opinion and Order entered February 28, 2013) at 3.

⁶ *See* 66 Pa.C.S. § 703(f) and (g).

B. The November 2024 Order

In the *November 2024 Order*, we denied the Complainant's Exceptions, adopted ALJ Watson's Initial Decision, and dismissed the Complaint.

First, based on our review of the record, and in response to the Complainant's Exceptions, we concluded, in concurrence with the ALJ's Initial Decision, that the Complainant was not entitled to an opt-out of the installation of a smart meter at the service address. *November 2024 Order* at 23-24 (citing *Povacz, et al. v. Pa. PUC*, 280 A.3d 975 (Pa. 2022) (*Povacz II*) (The Pennsylvania Supreme Court held that there is no opt-out permitting a customer to refuse smart meter installation.)).

Second, based on our review of the record, and in response to the Complainant's Exceptions, we agreed with the ALJ's conclusions regarding data privacy. The ALJ provided that the Company established that it collects only aggregated household data, not data about specific appliances the Complainant uses. *November 2024 Order* at 27. Further, we agreed with the ALJ's determination that the installation of a smart meter does not constitute a violation of the Complainant's constitutional rights. *Id.* at 27 (citing *Povacz II* at 985, n. 8) (the Supreme Court acknowledged that the holding of the Commonwealth Court concluded that, in the circumstances, the assertion of a constitutional right to refuse installation of a smart meter predicated upon an asserted violation of "bodily integrity" was unfounded).

Third, based on our review of the record, and in response to the Complainant's Exceptions, we determined that the Complainant is incorrect in her assertion that the Company cannot lawfully terminate her electric service for failure to provide access to the meter. *November 2024 Order* at 28 (citing *Frompovich v. PECO Energy Company*, Docket No. C-2015-2474602 (Order entered May 3, 2018) at 59 (*Frompovich*); 66 Pa.C.S. § 1406(a)(4)).

Fourth, based on our review of the record, and in response to the Complainant's Exceptions, we determined that the Complainant (1) failed to satisfy her burden of proof regarding her claim that the smart meter will cause, or contribute to, adverse health effects for the Complainant, and (2) failed to satisfy her burden of demonstrating that Duquesne has violated the Code, a Commission Order or Regulation or a Commission-approved tariff of the Company. *November 2024 Order* at 30-32 (citing *Povacz II* at 1006). We found that, in that context, the lay opinion of the Complainant did not provide a conclusive, causal connection between the harm to human health and the radio frequency (RF) from the smart meter. *November 2024 Order* at 30-32. We agreed with the ALJ that the Complainant provided no expert testimony or other credible evidence that establishes her claims. *Id.* at 31 (citing I.D. at 41).

Finally, based on our review of the record, we denied the Complainant's Exceptions regarding due process and allegations of favoritism. *November 2024 Order* at 34-40. We found that the Complainant fully participated in the proceeding regarding her Amended Complaint. We found nothing in the record that suggested the ALJ exhibited bias or preferential treatment and concluded that the Complainant's Motion to Recuse the ALJ was appropriately denied. *Id.* at 40.

For all the above reasons, we denied the Complainant's Exceptions, adopted the ALJ's Initial Decision, and denied and dismissed the Complaint. *Id.*

Before addressing the Petition, we note that any issue not specifically discussed 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).

C. The Petition, Duquesne’s Answers, and Disposition

In the Petition, the Complainant proffers thirteen arguments that can be grouped into four categories that, the Complainant avers, justify reconsideration of our *November 2024 Order*. These arguments along with Duquesne’s answers and our dispositions are summarized and addressed in numeric order below.

1. Installation of the Smart Meter

a. The Petition

In the first group of assertions in the Petition, the Complainant challenges the legality of the installation of a smart meter. First, the Complainant avers that the Federal Communications Commission (FCC) regulations applicable to smart meters have been “called into question in federal court.” The Complainant generally asserts that the FCC limits on emissions from RF sources such as smart meters have been “called into question” in a United States Court of Appeals case. Petition at 5-7 (citing *Environmental Health Trust, et al v. Federal Communications Commission and United States of America*, District of Columbia Circuit, No. 20-1025, Decided August 13, 2021 (*Environmental Health Trust*)).

The Complainant proffers that the Court found that the “FCC ignored scientific evidence and failed to provide a reasoned explanation for its determination that its 1996 regulations adequately protect the public against all the harmful effects of wireless radiation.” Petition at 6. The Complainant argues that “[u]ntil the outcome of *Environmental Health Trust* is known, the [Commission] cannot make a sound decision about Complainant’s case and should consider putting a stay on Complainant’s case until results are known.” According to the Complainant, the stay could apply to “all current smart meter complainants.” Petition at 7.

Next, the Complainant argues that the EDCs have not conducted safety testing on the smart meters they use. The Complainant contends that the Commission should institute a stay on the Complainant’s case until such testing is completed. Petition at 8.

The Complainant also contends that the Supremacy Clause of the United States Constitution applies, and the Commission has failed to take *Environmental Health Trust* into consideration in the *November 2024 Order*. Petition at 6. The Complainant further asserts a Pennsylvania Constitutional right to be free from electromagnetic pollution, as an environmental right. Petition at 9.

b. Duquesne’s Answer

In its Answer, Duquesne provides that the Complainant’s argument that *Environmental Health Trust* is “new and novel” should be rejected. Duquesne notes that *Environmental Health Trust* was decided prior to *Povacz II* and was fully addressed in *Povacz II*. Duquesne provides that the Supreme Court evaluated and rejected the Complainant’s argument related to *Environmental Health Trust*. Answer at 9 (citing *Povacz II* at 1008).

Duquesne avers that the Complainant misunderstands the Supremacy Clause of the United States Constitution. Duquesne contends that the Commission has the authority to regulate electrical utilities and implement Act 129. Duquesne provides that this is not a Supremacy Clause issue. Answer at 10 (citing 66 Pa.C.S. § 2807).

According to Duquesne, the Complainant’s requested stay must be denied as the Complainant has had years to develop her case and failed to satisfy her evidentiary burden. Answer at 10.

Duquesne submits that the Complainant's arguments related to 42 U.S.C. § 4332 as relied upon in *Environmental Health Trust* must fail as they were considered in *Povacz II* and rejected by the Court and are inapplicable to the Commission. Answer at 11.

Duquesne claims that despite the Complainant's characterization of her environmental concerns as a "new argument," this is essentially the same argument the Complainant has made throughout this proceeding. Answer at 11-12 (citing Petition at 9).

According to Duquesne, the Complainant's attempt to supplement her arguments related to health and safety with additional articles and case law, which could have been made previously at the Evidentiary Hearing and/or any time prior to the close of the record, is improper at this stage of this proceeding and should be rejected. Answer at 12.

While the Complainant relies on *Environmental Health Trust* to support her argument regarding the right to a pollution-free environment, Duquesne provides that no such right was established by that case. Duquesne submits that the Court in *Povacz II* found *Environmental Health Trust* to be irrelevant and unpersuasive as it relates to utility customers. Similarly, Duquesne maintains that the Complainant's reliance on Section 27 of the Pennsylvania Constitution is misplaced and unsupported by case law. Answer at 13.

c. Disposition

Before we address our disposition on this first issue, we note, as stated previously, that Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new and

novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous Order. We will generally not reconsider our previous decision based on arguments that have already been expressly considered and rejected by our prior Opinion and Order. The second step of the *Duick* analysis, therefore, is to evaluate the new or novel argument, or overlooked consideration, to determine whether to modify our previous decision. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous Order. Further, we note that *Duick* held that a petition for rehearing under Subsection 703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick* at 558. Based upon our evaluation of the record and the parties' positions in each particular case, we will determine if there is a sufficient basis which persuades us to exercise our discretion to amend or rescind a prior Order, in whole or in part.

Upon consideration of the record evidence in this proceeding, we will deny the Complainant's Petition on the grounds that it fails to persuade us that reconsideration is warranted. *Duick*. We also note that, in her Petition, the Complainant has attempted to include extra-record evidence regarding several matters. This extra-record information, submitted after the close of the record, will not be considered in this decision.

52 Pa. Code § 5.431. We reject the Complainant's attempt to relitigate her Complaint and introduce new issues and exhibits after the close of the record.

Proceeding to the Complainant’s first issue in which she argues that the “FCC regulations have been questioned in federal court,” we note that Ms. Edwards has cited to *Environmental Health Trust*.⁷

This issue was raised in *Povacz II*, where the Court concluded that *Environmental Health Trust* provides no guidance because it did not reach the merits of the FCC standards and did not constitute “a game changer” as alleged by appellants in that case. *Povacz II* at 1009, n. 34. *Environmental Health Trust* “does not support a claim that [radio frequency] emissions at or below the 1996 FCC limits cause adverse human health effects and in no way overcomes the record facts that [Complainant] failed to adduce sufficient evidence to meet the preponderance of the evidence standard.” *Povacz II* at 1009. Therefore, we are not persuaded to exercise our discretion to reconsider our *November 2024 Order* based on *Environmental Health Trust*.

Ms. Edwards argues here, for the first time, that EDCs must warn and protect the public from danger. Petition at 7-8. Ms. Edwards has not shown that a smart meter will harm the public, and therefore, a warning from the EDCs about a potential danger from the installation of a smart meter is not required. Ms. Edwards did not provide this argument prior to the close of the record. Again, we find that the Complainant fails to satisfy the *Duick* standards.

⁷ In December 2019, the FCC decided, after issuing a Notice of Inquiry in March 2013 requesting comment on, *inter alia*, its existing exposure guidelines, and evaluating those comments, to keep its existing guidelines in place. The Environmental Health Trust challenged the FCC’s decision.

With regard to Ms. Edwards' reference to Article 27 of the Pennsylvania Constitution,⁸ we note that the Environmental Rights Amendment existed at the time of her evidentiary hearing. If she wanted to make this argument, she could have done so at the hearing. Because she did not raise this argument at the hearing, the issue is waived and offers no persuasive value for changing the *November 2024 Order*.

Therefore, we find the Complainant's first group of assertions fails to provide any persuasive basis upon which to grant reconsideration. Accordingly, this group of assertions, as set forth in the Complainant's Petition, is denied.

2. Accommodation by Duquesne

a. The Petition

In the second group of assertions in the Petition, the Complainant argues that she is entitled to an accommodation. Petition at 9-12. The Complainant repeats her argument from her Exceptions that Duquesne is a state actor and installation of a smart meter would violate the U.S. Constitution. Exc. at 16. In addition, the Complainant contends that "the Commission's rulings on all constitutional issues in this case must be reexamined." Petition at 12-17.

⁸ Article I, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment (ERA). The ERA states: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people." Pa. Const. Art. I, § 27.

b. Duquesne's Answer

In its Answer, Duquesne avers that the Complainant's argument that she is entitled to an accommodation is flawed. While the Complainant relies on *Povacz v. Pa. PUC* (241 A.3d 481) (*Povacz I*), Duquesne provides that *Povacz I* was overruled by *Povacz II* and thus is no longer applicable law. Answer at 13 (citing Petition at 9). Duquesne submits that the Commission properly considered *Povacz II* and relied on this holding to support its conclusion that the Complainant failed to meet her burden of proof. Answer at 13 (citing *November 2024 Order* at 23-24).

Duquesne states that *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. Duquesne offers that the only accommodation permitted under the Company's tariff is relocation of the meter at the service address. Answer at 13 (citing I.D., Finding of Fact No. 17). While the Complainant has failed to meet her evidentiary burden to prove that the installation of a smart meter would violate Section 1501, Duquesne asserts that the accommodation allowed in the Company's tariff has been available to the Complainant throughout the proceeding. Answer at 13-14.

Next, Duquesne asserts that in its *November 2024 Order*, the Commission properly considered and rejected the Complainant's argument that the Company is a state actor. Therefore, Duquesne contends that in the instant Opinion and Order, the Commission should reinforce its decision to reject this argument. *Id.* at 15 (citing Exc. No. 2). Duquesne avers that it is not a state actor, and thus cannot violate the Complainant's constitutional rights by installing a smart meter. Answer at 16 (citing Duquesne Reply Exceptions at 11-14; *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").

c. Disposition

We note that Ms. Edwards has not availed herself of the possible accommodation that Duquesne can provide – *i.e.* the relocation of the meter in accordance with its tariff. Ms. Edwards is essentially requesting an opt-out of the installation of a smart meter as an accommodation. Because it was established under *Povacz II*, that there is no opt-out for smart meter installation, Ms. Edwards’ request must be denied. Accordingly, this argument is rejected, as it neither raises any persuasive new or novel arguments pertinent to the decision in this proceeding, nor does it have any relevance to the findings in this proceeding.

Ms. Edwards cites to *Povacz II* and argues that “the Supreme Court opened the door for utilities to provide an accommodation without proving a Section 1501 violation...” Petition at 10. *Povacz II* states “This holding does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.” *Povacz II*, at 983, n. 5. Duquesne can only offer an accommodation that is allowed by its tariff. As Duquesne observed, the relocation of the meter has been available to Ms. Edwards throughout this proceeding, but she has chosen not to proceed with this accommodation.

Regarding the Complainant’s assertion that the Commission must “re-examine” its rulings on Constitutional issues, we disagree. This issue has already been expressly considered and rejected by the Commission in our *November 2024 Order’s* rejection of Complainant’s Exception raising the same argument. *November 2024 Order* at 25-27 (denying Complainant’s Exceptions).

Further, in *Povacz II*, the Supreme Court acknowledged that the Commonwealth Court concluded that, in the circumstances, the assertion of a constitutional right to refuse installation of a smart meter predicated upon an asserted

violation of “bodily integrity” was unfounded. *See, Povacz II* at 985, fn. 8. As the Supreme Court denied allocatur as to any constitutional claims, the Commonwealth Court’s holding stands. *Linda and Hubert Beck v. PPL Electric Utilities Corporation*, Docket No. C-2018-3002924 at 27.

Therefore, we find the Complainant’s second group of assertions fail to provide any persuasive basis upon which to grant reconsideration. Accordingly, this group of assertions, as set forth in the Complainant’s Petition, is denied.

3. The Commission and its Office of Administrative Law Judge

a. The Petition

In her third group of assertions, the Complainant provides arguments related to (1) the undue burden standard; (2) the major questions doctrine; and (3) the Commission’s jurisdiction. Petition at 18-20. The Complainant argues that (1) the Commission has shown favoritism to Duquesne (Petition at 23); (2) the funding sources of the Commission “may compromise its ability to be impartial” (*Id.* at 22-23); and (3) the Commission should void the Implementation Order.⁹ *Id.* at 23-24.

b. Duquesne’s Answer

Duquesne avers that the Complainant’s argument regarding the undue burden standard established by the United States Supreme Court is not “new or novel”

⁹ We note that the Complainant’s citation to the Implementation Order in her Petition may be incorrect. The Docket number in the cite is related to the approval of the FirstEnergy Smart Meter Plan at Docket No. M-2009-2123950, while the Petition refers generally to the “Implementation Order.” *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Installation Order*).

and is meritless. Answer at 16 (citing Petition at 17-18). According to Duquesne, the “undue burden” test has not been applied to smart meter cases in Pennsylvania and is immaterial to the matter at issue in this case. Rather, the Company argues, *Povacz II*, which is settled law, sets the standard for resolution of these cases. Answer at 16.

Similarly, Duquesne notes that the “major questions” doctrine is inapplicable to Act 129, which is a state law. Additionally, Duquesne stresses its position that the “major questions” doctrine has existed for years, such that the Complainant could have brought this argument before the Commission previously. Answer at 17.

The Company provides that the Complainant’s argument regarding the Commission’s jurisdiction should be rejected. Duquesne notes that the Complainant relies on the assertion in *Jarkesy v. Sec. & Exch. Comm’n.*, 34 F4th 446 (5th Cir. 2022) (*Jarkesy*) that Administrative Law Courts do not afford petitioners some legal protections such as the right to a jury trial. Duquesne explains that *Jarkesy* analyzed where a federal agency could deprive the petitioner of a jury trial where the case was criminal in nature unlike the Complainant’s present action. Answer at 18 (citing 34 F4th at 453). Duquesne explains further that no right to a jury trial exists at the Commission. Answer at 18 (citing *Vertis Group v. Pa. PUC*, 840 A.2d 390, 398 (Pa. Cmwlth. 2003)).

Duquesne avers that the Complainant’s concerns regarding partiality are not supported by the evidence in the record. Duquesne asserts that the Commission properly ruled against the Complainant due to the well-established law in *Povacz II* and the competent evidence provided by the Company. Answer at 18. Additionally, Duquesne notes that the Complainant could have brought these allegations prior to the close of the record. Answer at 19.

Duquesne submits that the Complainant’s argument that the implementation of Act 129 was taken *ultra vires* should be rejected. Duquesne notes that

the Complainant's argument has been refuted by the court in *Povacz II* which specifically considers the General Assembly's intent in interpreting Act 129. Answer at 19 (citing *Povacz II* at 992).

c. Disposition

The Complainant contends that the section of Act 129 that requires installation of smart meters should be nullified. As such, the Complainant is continuing her efforts to opt out of installation of a smart meter. Petition at 19. *Povacz II* states that there is no opt-out available for the Complainant. *Povacz II* at 280 A. 3d at 983-984.

Regarding the "undue burden," major questions doctrine and the Commission's jurisdiction, we disagree with the Complainant's arguments. The Commission's jurisdiction in this matter is well-established. We agree with Duquesne, there is no legal basis to apply the "undue burden" standard here. Answer at 16. We also agree with Duquesne regarding the "major questions" doctrine. Answer at 17. It is inapplicable here as Act 129 was enacted by the Pennsylvania legislature, not Congress. Further, the Complainant could have raised these issues at the evidentiary hearing but chose not to do so. Accordingly, we conclude that the Complainant's arguments are unpersuasive and fail the *Duick* standard.

We expressly reiterate that there is no support in the record of this proceeding for the Complainant's arguments that the Commission or the ALJ has been biased in the Complainant's case or other smart meter cases. To the extent Ms. Edwards' Petition includes commentary alleging bias without foundation, such commentary is deemed to be immaterial, impertinent, and otherwise irrelevant to the disposition of this matter. Therefore, pursuant to 52 Pa. Code § 1.4(e), we shall strike such statements from our consideration of the Complainant's Reconsideration Petition.

We agree with Duquesne that the Complainant's argument that implementation of Act 129 was not taken *ultra vires*. Answer at 19 (citing Petition at 23). This argument was considered and rejected in *Povacz II* as follows:

[the Court's] comprehensive reading of Act 129 leads us 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] have considered Section 2807(f)(2) in its context as the implementation provision of Act 129.

Povacz II at 992.

Therefore, we find the Complainant's third group of assertions fail to provide any persuasive basis upon which to grant reconsideration. Accordingly, this group of assertions, as set forth in the Complainant's Petition, is denied.

4. Matters the Complainant Alleges Were Overlooked or Not Addressed

a. The Petition

The Complainant argues that Duquesne should have the burden of proof in this proceeding and alleges that several regulations were not considered by the Commission in assigning the burden of proof here. Petition at 24-25.

b. Duquesne's Answer

In response, Duquesne argues that the Complainant is attempting to improperly shift the burden of proof in this matter. Answer at 20 (citing Petition at 24). Duquesne explains that the Code makes it clear that the Complainant bears the burden of

proof in this proceeding. Answer at 20 (citing 66 Pa.C.S. § 332(a)). Duquesne explains further that Section 332 of the Code is established precedent and applies generally to all proceedings before the Commission. The burden of proof only shifts to the Company if the Complainant established a *prima facie* case that the Company violated the Public Utility Code, the Commission’s regulations, or a Commission order. Answer at 20 (citing *November 2024 Order* at 12). Duquesne avers that it 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 the Commission’s Regulations or the Code. Answer at 20.

c. Disposition

We agree with Duquesne’s position that in a complaint proceeding challenging smart meter installation, the Complainant retains the burden of proof. We reject the Complainant’s argument and note that it could have been brought up prior to the close of the record, is not new or novel, and therefore fails the *Duick* standard. Accordingly, we shall deny the Complainant’s request for reconsideration on this basis.

Therefore, we find the Complainant’s fourth group of assertions fail to provide any persuasive basis upon which to grant reconsideration. Accordingly, this group of assertions, as set forth in the Complainant’s Petition, is denied.

For all of the forgoing reasons, we shall deny the Complainant’s Petition and affirm our *November 2024 Order*.

III. Conclusion

Upon our review and consideration of the Petition for Reconsideration and the record evidence in this proceeding, we shall deny the Complainant’s Petition because

the Complainant has not provided sufficient grounds under the *Duick* standards to support the request for reconsideration; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration of Miranda Edwards, filed on November 18, 2024, at Docket No. C-2018-3002741, is denied, consistent with this Opinion and Order.

2. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 8, 2025

ORDER ENTERED: January 8, 2025