

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

Public Meeting held May 8, 2025

Commissioners Present:

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

Pamela R. Scott

C-2018-3004042

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 Ms. Pamela R. Scott (Petitioner, Complainant or Ms. Scott) on April 23, 2025, seeking reconsideration of the Commission's Opinion and Order at Docket No. C-2018-3004042 entered April 10, 2025 (*April 2025 Order*). On May 5, 2025, Duquesne Light Company (Duquesne or the Company) filed its Answer to the Petition (Answer to Petition). For the reasons discussed below, we shall deny Ms. Scott's Petition.

I. Background

This case involves a Formal Complaint (Complaint) concerning the safety of the advanced metering infrastructure (AMI), or smart meter, that Duquesne uses in the ordinary course of business to measure electricity consumption. Duquesne, an electric distribution company (EDC) subject to the jurisdiction of the Commission, furnishes, owns, and maintains the meters in its distribution system. The Petitioner is a Duquesne customer who objects to the installation of a smart meter at her property due to health and safety concerns. Formal Complaint (Complaint) at 2.

Act 129 of 2008 (Act 129 or Act), *inter alia*, amended Chapter 28 of the Public Utility Code (Code) and required EDCs with more than 100,000 customers to file smart meter technology procurement and installation plans for Commission approval and to furnish smart meter technology within its service territory in accordance with the provisions of the Act. Section 2807(f) of the Code provides as follows:

(f) *Smart Meter technology and time of use rates.*

(1) Within nine months after the effective date of this paragraph, electric distribution companies shall file a Smart Meter technology procurement and installation plan with the commission for approval. The plan shall describe the Smart Meter technologies the electric distribution company proposes to install in accordance with paragraph (2).

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.

(ii) In new building construction.

(iii) In accordance with a depreciation schedule not to exceed 15 years.

66 Pa.C.S. § 2807(f). The General Assembly found that it was “in the public interest” to implement the measures set forth in Act 129 and that the universal installation of smart meters would enhance the “health, safety and prosperity” of Pennsylvania’s citizens through the “availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost.” *See* H.B. 2200, 192d Gen. Assemb., Reg. Sess. (Pa. 2008).

By Order entered in 2009, the Commission directed all EDCs subject to Act 129’s smart meter requirements, including Duquesne, to universally deploy smart meter technology within their respective service territories in the Commonwealth in accordance with a depreciation schedule not to exceed fifteen years and in accordance with other guidelines established therein. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Implementation Order entered June 24, 2009) (*Smart Meter Implementation Order*). Duquesne sought and obtained the Commission’s approval to complete the installation of AMI meters with substantially all customers to receive an AMI meter by late 2018. *Petition of Duquesne Light Company for Approval of Its Final Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2123948 (Opinion and Order entered May 6, 2013) (*2013 Smart Meter Order*); *See also, Petition of Duquesne Light Company for Approval to Modify its Smart Meter Procurement and Installation Plan*, Docket No. P-2015-2497267 (Opinion and Order entered April 7, 2017) (*2017 Smart Meter Order*).

II. History of the Proceeding¹

On August 16, 2018, the Petitioner filed the instant Complaint, indicating that Duquesne was threatening to shut off her electric service because she was refusing the installation of a smart meter at her home. The Complainant averred, *inter alia*, that smart meters cause her adverse health conditions. Complaint at 2. As relief, Ms. Scott requested that the Commission not allow Duquesne to shut off her service until this matter is resolved or until a state law is passed permitting an opt-out of smart meter installation. Complaint at 2-3; I.D. at 1-2.

On September 5, 2018, Duquesne filed an Answer and New Matter to the Complaint (Answer), essentially denying the material allegations in the Complaint while also contending that the Company is required by Act 129 to install smart meters at the Complainant's residence. I.D. at 2; Answer at 1-4. Duquesne averred that the Company notified the Complainant, via letters dated May 29, 2017, August 2, 2017, and May 3, 2018, of its plan to install a smart meter at the service address. Duquesne noted that on June 18, 2018, a field technician attempted to exchange the meter but discovered a lock on the meter. Duquesne continued that on or about July 17, 2018, the Company advised Ms. Scott, via a letter, that the Company requires clear access to its meters. Duquesne further noted that after the Complainant had contacted the Company and scheduled a meter exchange appointment, Ms. Scott filed the instant Complaint and, consequently, the Company has ceased all attempts to exchange the meter or terminate the Complainant's service. Answer at 3.

Also, on September 5, 2018, Duquesne filed Preliminary Objections in response to the Complaint (Preliminary Objections). On September 17, 2018, the

¹ See *April 2025 Order* at 2-13 for a comprehensive summary describing the procedural history of this proceeding, which is incorporated herein by reference.

Complainant filed an Answer to Duquesne's Preliminary Objections (Answer to PO).² On September 25, 2018, the Complainant filed a Reply to Duquesne's Answer (Reply to Answer).³ I.D. at 2.

On October 15, 2018, Administrative Law Judge (ALJ) Jeffrey A. Watson issued an Interim Order Denying Duquesne's Preliminary Objections (October 15, 2018 Interim Order). I.D. at 2.

On October 16, 2018, Duquesne filed a Motion to Compel Discovery Responses (Duquesne Motion to Compel).⁴ On October 22, 2018, the Complainant filed an Answer to the Duquesne Motion to Compel. On November 8, 2018, the ALJ issued an Amended Interim Order Granting Duquesne's Motion to Compel Discovery Responses (November 8, 2018 Amended Interim Order), which, *inter alia*, directed the Complainant to serve, upon counsel for Duquesne, full and complete responses to the

² Although the Initial Decision indicates that the Answer to PO was received on September 15, 2018, the Commission's case management system indicates that it was received on September 17, 2018. *See* I.D. at 2.

³ Although the Initial Decision indicates that the Reply to Answer was received on September 24, 2018, the Commission's case management system indicates that it was received on September 25, 2018. *See* I.D. at 2.

⁴ On September 24, 2018, Duquesne served its First Set of Discovery Requests Directed to Complainant upon Ms. Scott (Duquesne Discovery Requests). On September 28, 2018, Duquesne filed a Certificate of Service (COS) certifying that a true copy of the Duquesne Discovery Requests was served on the Complainant. According to the Duquesne Motion to Compel, Ms. Scott objected to four of the Duquesne Discovery Requests, and the Company averred that the Complainant should be required to respond to those Discovery Requests. Duquesne Motion to Compel at 4-6.

subject Duquesne Discovery Requests no later than November 30, 2018.⁵
November 8, 2018 Amended Interim Order at 3.

Also, on November 8, 2018, a prehearing conference was held as scheduled.⁶ The Complainant appeared *pro se* and the Company was represented by counsel. Additionally, on November 8, 2018, the ALJ issued an Interim Order Amending the Initial Litigation Schedule, which required the Parties to provide information about anticipated witnesses and testimony, conclude discovery, and file a status report by April 15, 2019.⁷ I.D. at 3.

⁵ On November 7, 2018, the ALJ issued an Interim Order Granting Duquesne's Motion to Compel (November 7, 2018 Interim Order). According to the November 8, 2018 Amended Interim Order, the November 7, 2018 Interim Order incorrectly stated that the Complainant did not file a response to the Duquesne Motion to Compel. November 8, 2018 Amended Interim Order at 2-3.

⁶ On September 24, 2018, Duquesne filed a Motion for Prehearing Conference (Motion for Prehearing Conference). On October 15, 2018, the Complainant filed an Answer to the Motion for Prehearing Conference. On October 17, 2018, the ALJ issued an Interim Order Granting Duquesne's Request for a Prehearing Conference. Consequently, by Prehearing Conference Notice dated October 17, 2018, a Telephonic Prehearing Conference was scheduled for November 8, 2018.

⁷ On October 15, 2018, the ALJ issued an Interim Order Establishing an Initial Litigation Schedule. I.D. at 2.

On April 5, 2019, the Complainant filed a Motion to Compel Discovery Responses (Complainant Motion to Compel).^{8,9} On March 22, 2019, Duquesne filed an Answer to the Complainant's Motion to Compel. On April 3, 2019, the ALJ issued an Interim Order Granting In Part and Denying In Part Complainant's Motion to Compel Discovery Responses, which, *inter alia*, directed Duquesne to serve upon the Complainant full and complete responses to four Complainant Discovery Requests no later than April 15, 2019.

On September 25, 2019, the ALJ issued an Amended Interim Order Establishing a Revised Litigation Schedule which provided, *inter alia*, that discovery would be completed before October 1, 2019.¹⁰ I.D. at 3.

On October 1, 2019, Duquesne filed a second Motion to Compel Discovery Responses (Duquesne Second Motion to Compel) and a Motion to Preclude Witnesses

⁸ On February 16, 2019, the Complainant served her First Set of Discovery Requests Directed to Respondent upon the Company (Complainant Discovery Requests). On February 21, 2019, Ms. Scott filed a COS certifying that a true copy of the Complainant Discovery Requests was served on counsel for the Company. According to the Complainant's Motion to Compel, the Company objected to fourteen of the Complainant Discovery Requests, and Ms. Scott averred that the Company should be required to respond to those Discovery Requests. Complainant Motion to Compel at 3-4, 11. *See* Complainant Motion to Compel at 4-11.

⁹ We note that the Complainant's Motion to Compel is stamped multiple times, including once indicating "RECEIVED Pittsburgh Office of A.L.J." on March 18, 2019. However, according to the Commission's case management system, the Complainant's Motion to Compel was received on April 5, 2019.

¹⁰ On April 15, 2019, Duquesne filed a Status Report, which indicated, *inter alia*, that the Complainant had not provided the Company with a witness list. On April 17, 2019, the Complainant filed a Status Report (Complainant Status Report). Although the Initial Decision indicates that the Complainant Status Report was received on April 13, 2019, the Commission's case management system indicates that it was received on April 17, 2019. *See* I.D. at 3. On July 23, 2019, the ALJ issued an Interim Order Establishing a Revised Litigation Schedule, which extended the Complainant's deadline to identify her fact and expert witnesses until August 16, 2019. I.D. at 3.

Identified in Complainant's List of Potential Witnesses from Testifying (Duquesne Motion to Preclude).¹¹ On October 10, 2019, the Complainant filed a COS certifying service upon counsel for the Company of Ms. Scott's supplemental answers to Duquesne's Discovery Requests (Complainant COS). Consequently, on October 16, 2019, the ALJ issued an Interim Order which: (1) denied Duquesne's Second Motion to Compel as moot based upon the Complainant COS; and (2) provided that, if the Complainant failed to provide the Company with full and complete responses to its Discovery Requests, then Duquesne may file a new or supplemental motion to compel on or before October 31, 2019, and any response from the Complainant shall be filed on or before November 7, 2019. I.D. at 3-4.

On October 25, 2019, the Complainant provided an Answer to Duquesne's Second Motion to Compel and Motion to Preclude. On October 28, 2019, the ALJ issued an Interim Order which granted, in part, and denied, in part, without prejudice, the Duquesne Motion to Preclude (October 28, 2019 Interim Order).

On October 30, 2019, Duquesne filed a third Motion to Compel Discovery Responses (Duquesne Third Motion to Compel), seeking an order compelling the Complainant to provide full and complete responses to Duquesne's Discovery Request Nos. 22, 23, and 24. The Complainant did not file a response. On December 20, 2019, the ALJ issued an Interim Order granting Duquesne's Third Motion to Compel, which, *inter alia*, directed the Complainant to serve upon counsel for Duquesne full and complete responses to Duquesne Discovery Request Nos. 22, 23, and 24. I.D. at 4.

On January 24, 2020, Duquesne filed a Motion *in Limine* to Preclude Mr. Joshua Hart from Testifying as an Expert Witness (Motion *in Limine*). In its Motion

¹¹ Although the Initial Decision indicates that the Duquesne Motion to Compel and Motion to Preclude was received on September 30, 2019, the Commission's case management system indicates that it was received on October 1, 2019. *See* I.D. at 3.

in Limine, Duquesne averred, *inter alia*, that: (1) Joshua Hart was not qualified to offer expert testimony about alleged “adverse health effects from smart meter installations;” and, (2) in response to the Company’s request for Mr. Hart’s expert report, the Complainant provided an email from Mr. Hart to the California Council on Science and Technology, dated January 27, 2011 (Hart Email). The Motion *in Limine* included a Notice to Plead directing the Complainant to file a response within twenty (20) days of service (*i.e.*, no later than February 13, 2020). I.D. at 4-5.

By Telephonic Hearing Notice dated January 30, 2020 (Hearing Notice), an Initial Telephonic Hearing was scheduled for March 12, 2020. I.D. at 5. The Hearing Notice instructed the Parties, *inter alia*, that all copies of any hearing exhibits to which the Party will refer during the hearing must be sent to every other party at least five (5) business days before the hearing. Hearing Notice at 2.

On February 18, 2020, the Complainant filed an untimely Answer to Duquesne’s Motion *in Limine*. On February 25, 2020, the ALJ issued an Interim Order granting, in part, and denying, in part Duquesne’s Motion *in Limine* (February 25, 2020 Interim Order), which, *inter alia*, precluded the Complainant from presenting testimony from Mr. Hart beyond the fair scope of the Hart Email. I.D. at 5.

On March 3, 2020, the ALJ issued a Corrected Supplemental Interim Order granting, in part, and denying, in part, Duquesne’s Motion *in Limine* (March 3, 2020 Corrected Supplemental Interim Order).¹² The March 3, 2020 Corrected Supplemental Interim Order acknowledged the Complainant’s Answer to Duquesne’s Motion

¹² On March 3, 2020, the Complainant filed correspondence in response to the February 25, 2020 Interim Order. Consequently, on March 3, 2020, the ALJ issued a Supplemental Interim Order granting, in part, and denying, in part, Duquesne’s Motion *in Limine*, which addressed the correspondence, but included a typographical error. The March 3, 2020 Corrected Supplemental Interim Order corrected the typographical error.

in Limine, and directed the Parties to comply, in all respects, with the February 25, 2020 Interim Order. March 3, 2020 Corrected Supplemental Interim Order at 4.

On March 4, 2020, the ALJ issued an Interim Order Confirming the Requirements for the Evidentiary Hearing, which, *inter alia*, restated the directive of the Hearing Notice that the Parties exchange documents and proposed exhibits at least five (5) business days before the hearing. I.D. at 5-6.

On March 12, 2020, the evidentiary hearing was held as scheduled. I.D. at 6. The Company was represented by counsel and presented the testimony of two expert witnesses (Dr. Benjamin Cotts and Dr. Gabor Mezei) and four fact witnesses (Mr. Michael Belanger, Mr. Steve Wright, Mr. Michael Secchiutti, and Mr. Ronald Dornin). I.D. at 10-11, Finding of Fact (FOF) Nos. 15, 23 (citing Tr. at 183-208, 211-28, 288, 324-37, 339-47). The Complainant appeared *pro se* and testified as a fact witness on her own behalf. I.D. at 9, FOF No. 9 (citing Tr. at 99-182). Although the Complainant offered Mr. Hart as an expert witness, Duquesne moved to preclude Mr. Hart from testifying as an expert witness, and Mr. Hart was not accepted as an expert witness. However, Mr. Hart was allowed to testify as a fact witness. I.D. at 25 (citing Tr. at 40, 46-47, 54-55, 64, 77, 76-79).

On June 15, 2020, the ALJ issued an Interim Order permitting the Parties to file briefs on or before July 24, 2020 (June 15, 2020 Interim Order).¹³ I.D. at 6.

On July 1, 2020, the ALJ issued an Interim Order Closing the Hearing Record (July 1, 2020 Interim Order). On July 6, 2020, Duquesne filed correspondence in response to the July 1, 2020 Interim Order. Consequently, on or about July 6, 2020, the

¹³ Although the Initial Decision indicates that the June 15, 2020 Interim Order was issued June 11, 2020, it is dated June 15, 2020, and it was added to the Commission's case management system on June 15, 2020. *See* I.D. at 6.

ALJ issued an Interim Order Re-Opening the Hearing Record and Permitting the Parties to File Main Briefs (July 6, 2020 Interim Order).¹⁴

On July 15, 2020, the Complainant filed a Petition for Extension of Time to File a Main Brief (Petition for Extension). Also, on July 15, 2020, Duquesne filed an Answer to the Complainant's Petition for Extension. On July 24, 2020, Duquesne filed a Brief. On July 27, 2020, the Complainant untimely filed a brief (Complainant Brief).¹⁵ On September 24, 2020, the ALJ issued a second Interim Order Closing the Hearing Record. I.D. at 6.

On November 4, 2020, the Commission entered an Order and Notice, at Docket No. M-2009-2092655, pursuant to 66 Pa.C.S. § 501, instituting a stay of certain formal complaint proceedings then pending before the Commission involving challenges to EDC deployment of smart meter technology as being in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501 (*November 2020 Stay Order*). The *November 2020 Stay Order* also directed that the stay would apply to any new formal complaints filed with the Commission claiming that EDC deployment of smart meter technology was a violation of Section 1501, and that the stay would remain in place until it was lifted by further Commission action. By Order entered November 14, 2023, at Docket No. M-2009-2092655, the Commission lifted the stay of pending smart meter complaints. Notice was provided on November 14, 2023, informing the Complainant of the lifting of the stay and their procedural rights and obligations under the Commission's Regulations. I.D. at 6-8.

¹⁴ Although July 6, 2020 Interim Order is dated "June 6, 2020," it was added to the Commission's case management system on *July* 6, 2020. Given the context and circumstances of the July 6, 2020 Interim Order, we consider the date of "June 6, 2020" to be an inadvertent misstatement.

¹⁵ Although the Initial Decision indicates that the Complainant Brief was received on July 24, 2020, the Commission's case management system indicates that it was received on July 27, 2020. *See* I.D. at 6.

On December 1, 2023, the ALJ issued a second Interim Order Reopening the Hearing Record (December 1, 2023 Interim Order), which: (1) ordered that the evidentiary hearing record be reopened; and, (2) directed the Parties to file their supplemental briefs and other appropriate requests for relief, if any, on or before January 8, 2024. I.D. at 8; December 1, 2023 Interim Order at 5, Ordering Paragraph Nos. 1, 2.

On January 8, 2024, the Complainant filed a Supplemental Brief (Complainant Supplemental Brief). Also, on January 8, 2024, Duquesne filed a Supplemental Brief (Duquesne Supplemental Brief). On June 3, 2024, the ALJ issued an Interim Order Closing the Hearing Record. I.D. at 8.

In the Initial Decision, issued on October 29, 2024, the ALJ dismissed, with prejudice, the Complaint, finding that the Complainant failed to carry her burden of proof establishing that Duquesne: (1) violated the Code or a Commission Regulation or Order in requiring installation of a smart meter at her property; and, (2) provided unsafe or unreasonable service, in violation of 66 Pa.C.S. § 1501. I.D. at 1, 32, 34-35.

On November 15, 2024, the Petitioner filed Exceptions. On November 27, 2024, Duquesne filed Replies to Exceptions. On December 3, 2024, the Petitioner filed a Petition to Reopen the Proceeding for the Purpose of Taking Additional Evidence (Petition to Reopen). On December 13, 2024, Duquesne filed an Answer to the Petition to Reopen.

As previously noted, on April 10, 2025, the Commission issued its *April 2025 Order, inter alia*, denying the Complainant's Exceptions and adopting the ALJ's Initial Decision, without modification.

Also as previously noted, Ms. Scott filed her Petition on April 23, 2025, seeking reconsideration of the Commission's *April 2025 Order*, and Duquesne filed its Answer to the Petition on May 5, 2025. The Company did not file an Answer.

III. 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).¹⁶ Upon the filing of a petition for relief pursuant to Section 703(f), the Commission may affirm, rescind, or modify its original order. 66 Pa.C.S. § 703(f). The Code further provides that the Commission may, at any time, after notice and opportunity to be heard by all affected parties, rescind, or amend any order made by the Commission, pursuant to Section 703(g). 66 Pa.C.S. § 703(g) (relating to rescission and amendment of orders). A request for relief pursuant to § 703(f) or § 703(g) must be brought as a petition for relief consistent with Section 5.572 of Commission Regulations. 52 Pa. Code § 5.572 (relating to petitions for relief).

Petitions for relief predicated upon Sections 703(f) and 703(g) of the Code, whether brought under Section 5.572(c) of Commission Regulations as a petition for reconsideration, rehearing, reargument, clarification, supersedeas or others within fifteen days of the service of a Commission order, or under Section 5.572(d) as a petition for

¹⁶ Petitions under this section which do not allege new evidence are typically treated as petitions for reconsideration. Petitions for rehearing pursuant to Section 703(f) of the Code typically include an allegation of new evidence. 66 Pa. Code § 703(f); *see West Penn Power Co. v. Pa. PUC*, 659 A. 2d 1055 (Cmwlth. 1995).

rescission or amendment filed at any time following service of a Commission order, are reviewed by the Commission under the same standard.

In exercising Commission authority to amend or rescind an order pursuant to Section 703(g) of the Code, the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” *See City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *see also, West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*); *see also Richard Feleccia v. PPL Electric Utilities Corporation, d/b/a PPL Utilities and Barbara A. Lima*, Docket No. C-20016210 (Opinion and Order entered March 7, 2003) (*Feleccia*).

The Commission’s application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 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). With respect to petitions for rescission, specifically, we have stated that in order “[t]o establish a proper basis for rescission, a petitioner must first establish the existence of newly discovered evidence, a substantial change in circumstances, or an error of fact or law.” *Feleccia*, slip op. at 3 (citing *Duick* at 559).

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

Finally, we note that any argument or Exception that we do not specifically delineate 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).

B. The *April 2025 Order*

In the *April 2025 Order*, we, *inter alia*, denied Ms. Scott's Exceptions, adopted ALJ Watson's Initial Decision, and dismissed the Complaint.¹⁷ Specifically, we agreed with the ALJ that there is no specific provision in the Code or the Commission's Regulations or Orders that provides for customers to opt-out of smart meter installation; and that Ms. Scott is attempting to opt-out of receiving a smart meter based on her interpretation of Act 129, which is inconsistent with Commission precedent. *April 2025 Order* at 30-31. Further, we agreed with Duquesne that: (1) the Company's Commission-approved tariff, *inter alia*, requires that smart meters be installed at each customer-metered premises; and (2) the Company was required by its Commission-approved smart meter deployment plan (SMDP) to install a smart meter at Ms. Scott's service address. *Id.* at 35,41. Moreover, we agreed with the ALJ's analysis and conclusion that: (1) under the provisions of Act 129, Duquesne is required to deploy smart meters, consistent with 66 Pa.C.S. § 2807(f)(2); and (2) Ms. Scott presented no evidence to support the conclusion that Duquesne, which is required to comply with Act 129 and 66 Pa.C.S. § 2807 by installing smart meters at his residence, violated the Code, a Commission Regulation, or a Commission Order. *Id.* at 30-31; 35, 41. Accordingly, we found no error in the ALJ's determination that the installation of the smart meter was mandatory and agreed with the Company that Ms. Scott's request for an opt out of smart meter installation must be rejected.

¹⁷ We also denied Ms. Scott's Petition to Reopen, as no good cause was shown to reopen the record at the Exceptions stage of the proceeding. *April 2025 Order at 50.*

C. The Petition¹⁸

In her Petition, the Petitioner repeatedly asserts that ALJ Watson, the Commission, and Duquesne are engaged in “practicing medicine without a license.” Petition at ¶¶1-6, 14 and 16. Ms. Scott also restates several assertions which she posited in her Exceptions. Namely, the Petitioner maintains that Tariff Rule 9B in Duquesne’s Commission-approved tariff conflicts with the Supreme Court’s ruling in *Povacz II*. Petition at 1. Additionally, Ms. Scott challenges the ALJ’s rejection of the Complainant’s health-based claims and repeats that: (1) she suffers from electro-hypersensitivity syndrome (EHS); (2) the ALJ ignored her claims regarding adverse health effects and her exposure to radio frequency fields (RFs); (3) she presented evidence that represents a causal connection between her adverse health effects and exposure to the RF of the Company’s smart meter; and (4) she demonstrated that has been, and will continue to be, adversely affected by the Company’s smart meter mesh network. Petition at ¶¶ 7-11.

To the extent that Ms. Scott’s Petition includes derogatory commentary regarding the ALJ, the Company’s representatives, and Commission staff, 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 Petition.

¹⁸ We acknowledge that the format of the Petition does not strictly comply with Section 5.572(a) of our Regulations, 52 Pa. Code § 5.572(a), which requires that petitions “specify, in numbered paragraphs, the findings or orders involved and the points relied upon by the petitioner, with appropriate record references and specific requests for findings or orders desired.” 52 Pa. Code § 5.572(a). Nevertheless, particularly because the Petitioner is appearing *pro se*, we will accept the Petition as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

D. Answer to the Petition

In its Answer to the Petition, Duquesne argues that the Petition is without merit, both because the Petition is essentially a regurgitation of the arguments that the Commission previously considered and rejected in the *April 2025 Order*, and where the Petitioner's accusations regarding the practicing medicine without a license are unfounded. In this regard, Duquesne asserts that the Petitioner has failed to demonstrate that there has been any newly discovered evidence, a substantial change in circumstances, or an error of fact or law that would entitle Ms. Scott to reconsideration. Answer to Petition at 1-3, 7-9 (citing Petition at 2; *Althea Poe-Henderson v. Philadelphia Gas Works*, Docket No. F-2019-3010206 (Opinion and Order entered August 6, 2020)).

Duquesne disagrees with the Petitioner's argument that the Company and the Commission ignored all of the alleged record evidence of harm to Ms. Scott. Answer to Petition at 9 (citing Petition at 2). Duquesne counters that both the ALJ and the Commission thoroughly considered all of the evidence presented at the evidentiary hearing. Answer to Petition at 9. Further, Duquesne argues that in the Initial Decision, the ALJ properly weighed the evidence presented by both the Complainant and the Company, and both the ALJ and the Commission determined that Ms. Scott's lay opinion testimony was unpersuasive and insufficient to carry her burden of proof. *Id.* at 10-12 (citing I.D. at 9-10, 17, 19, FOF Nos. 6-11, 15, 67-69, 81; *Mosley v. Metropolitan Edison Company*, Docket No. C-2018-3001526 (Opinion and Order entered August 1, 2024); *EnergyMark, LLC, et al. v. Nat'l Fuel Gas Distribution Corp.*, Docket No. C-2020-3019621 (Opinion and Order entered April 14, 2022)). Moreover, Duquesne argues that contrary to the Petitioner's accusation that the Commission and the Company are practicing medicine without a license, the Commission, as a regulatory body, is permitted to evaluate and weigh the evidence presented and draw conclusions accordingly, and personal beliefs do not constitute evidence. As such, Duquesne submits

that the ALJ and the Commission properly concluded that there is no record evidence to support Ms. Scott's claims. Answer to Petition at 12-13 (citing *April 2025 Order* at 24).

Additionally, Duquesne argues that contrary to Ms. Scott's assertions of suffering with adverse health symptoms, she has repeatedly failed to produce a single medical record in support of an alleged diagnosis of EHS or physical harm, or to connect any of her alleged symptoms to RF exposure in a manner that complies with the applicable evidentiary standard. Further, Duquesne contends that Ms. Scott's lay opinion, that she experiences these symptoms, absent expert testimony or medical records indicating the same and making the requisite causal connection, is insufficient to establish her burden of proof. Answer to Petition at 13. Moreover, Duquesne disagrees with the Petitioner's assertions that the Commission, in its *April 2025 Order*, ignored the Exceptions and Petition to Reopen, and did not evaluate the hearing transcript and record evidence. *Id.* at 13-14 (citing *April 2025 Order* at 15, 20-22, 28, 47). Accordingly, Duquesne submits that the Petitioner fails to meet the strict standard for reconsideration and the Petition should be denied. Answer to Petition at 15.

Duquesne also challenges the Petitioner's attempt to shift the burden of proof to the Company by presenting additional questions and arguments regarding the Company's expert witness, Dr. Mezei, and including extra-record material. Answer to Petition at 15-16 (citing Petition at 4-5; 66 Pa.C.S. § 332(a)). Duquesne argues that the burden only shifts to the Company if the Complainant establishes a *prima facie* case that the Company violated the Code, the Commission's Regulations, or a Commission Order, and the Company's burden would be limited to producing rebuttal evidence. Answer to Petition at 16 (citing *April 2025 Order* at 13-16). Here, Duquesne continues, Ms. Scott bears the burden of proof, which she failed to carry in this case. Further, Duquesne contends that the ALJ and the Commission both properly credited the testimony of the Company's expert witnesses. Answer to Petition at 16 (citing *April 2025 Order*; I.D. at 10-11). Moreover, Duquesne argues that it was Ms. Scott's burden to present

evidence in support of her alleged health conditions, but she failed to do so. Accordingly, Duquesne submits that the Petitioner's argument that Dr. Mezei's testimony should not be credited because he was not Ms. Scott's treating physician does not constitute grounds for reconsideration and should be rejected. Answer to Petition at 16.

Duquesne further asserts that the Complainant's argument regarding an extra record immaterial medical opinion should be rejected. Specifically, Duquesne submits that the Complainant's reference to an excerpt from a 2024 consulting physician's letter to another utility on behalf of the Complainant seeks to undermine Duquesne's testimony and evidence. Duquesne claims that this does not meet the strict *Duick* standard for reconsideration. Duquesne asserts: (1) that the Complainant's attempt to introduce the alleged "medical opinion" for the very first time, seven years into this proceeding, does not constitute a new and novel argument; (2) her delay in seeking a medical diagnosis is not a basis for reconsideration; (3) she has failed to produce a single medical record to substantiate her diagnosis or alleged adverse health conditions; and, (4) the alleged medical opinion is immaterial to the issue, as the Complainant admits it was sent to a separate utility company. Answer to Petition at 16-17.

Finally, Duquesne asserts that the Complainant's argument that Duquesne's Tariff defies the Supreme Court of Pennsylvania's prescription for medical exemptions from smart meters should be rejected. Duquesne avers that the argument should be rejected on, *inter alia*, the following grounds: (1) the argument was properly addressed and rejected in the Commission's *April 2025 Order*, such that the Complainant cannot attempt to re-raise the same argument here by labelling it as a "new argument;" (2) the Commission approved Duquesne's Tariff Rule 9B, which is consistent with the decision in *Povacz II*, where, as here, the Complainant has failed to establish a violation of Section 1501 of the Code in any way and thus is not entitled to an accommodation; and, (3) even if the Complainant had established a violation, the Supreme Court of

Pennsylvania has clarified that the Complainant would still not be entitled to an “opt-out” or medical exemption but the only remedy would be a reasonable accommodation as neither Act 129 nor the Company’s tariff permit an “opt-out” of a smart meter installation. Answer at 17-19.

E. Disposition

Before we address our disposition of the Petition, we note, as stated previously, that Petitions for Reconsideration are governed by *Duick*, under which the Commission applies 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 exercise our discretion 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 Petition and the record evidence in this proceeding, we will deny the Petition on the grounds that it fails to persuade us that reconsideration is warranted. *Duick*. We note that the substance of the Petition consists

of a restatement of arguments previously raised by the Complainant regarding Tariff Rule 9B in Duquesne's tariff and smart meter installation, which the Complainant raised in opposition to Duquesne's smart meter installation. *See April 2025 Order at 40-41; I.D. at 12-13; Complaint at 3.*

In summary, the Petition echoes the arguments expressed by Ms. Scott in support of her Complaint – premised on her claim that Tariff Rule 9B in the Company's Commission-approved tariff somehow constitutes a violation of the Supreme Court's ruling in *Povacz II*, which the Complainant argues permits a customer to “opt-out” of smart meter installation. In her Petition, Ms. Scott also reiterates the arguments regarding the Complainant's claims of adverse health impact due to smart meter installation. As discussed, *supra*, these arguments have been previously considered and rejected.

In the *April 2025 Order*, we, *inter alia*, adopted the ALJ's Initial Decision, wherein the ALJ dismissed the Complaint based upon his finding that Ms. Scott failed to meet her burden of proof. Specifically, with regard to a request for opt-out, the ALJ found that: (1) there is no specific provision in the Code or the Commission's Regulations or Orders that provides for customers to opt-out of smart meter installation; and (2) no evidence was presented to support the conclusion that Duquesne's refusal to allow Ms. Scott to opt-out of smart meter installation violates any law, Commission Regulation, or Order. *See April 2025 Order at 41; I.D. at 30-32, 34.* With respect to the Complainant's claims of adverse health effects, we adopted the ALJ's disposition which specifically found that : (1) the Complainant presented no expert testimony to corroborate her asserted health concerns; and, (2) the Complainant failed to demonstrate that installation of a smart meter would constitute unsafe, unreasonable or inadequate service under Section 1501 of the Code. *April 2025 Order at 33-37; I.D. at 28-29*

Regarding the claim for an opt-out, we note that in her Petition, Ms. Scott never specifically addresses the findings and conclusions of the *April 2025 Order* or the

underlying Initial Decision. Instead, Ms. Scot, essentially, repeats her argument that the Company's Tariff Rule 9B is in violation of *Povacz II*. Similarly, regarding the Petitioner's health-related claims, the Petitioner reiterates her position before the ALJ and urges that the Commission reweigh the evidence presented on the issue. However, as the Petitioner's arguments have been previously considered and rejected, we find that the Petitioner fails to raise any new or novel arguments that would persuade us to reverse, modify, or amend the *April 2025 Order*, or that the ALJ erred in recommending that the Commission dismiss Ms. Scott's Complaint.

Given that in the content of the Petition, the Petitioner does not allege any new or novel arguments that would persuade us to reverse, modify, or amend the *April 2025 Order*, we perceive no grounds on which to rescind or reconsider the dismissal of Ms. Scott's Complaint. Indeed, the Petitioner's repeated assertion that she is constitutionally permitted to opt-out of smart meter installation is insufficient to justify reconsideration of the *April 2025 Order*. Therefore, we shall deny Ms. Scott's Petition, as it does not raise any new or novel arguments or other basis that persuades us to rescind the *April 2025 Order*. Accordingly, we believe that it is reasonable to deny the Petition under the circumstances in this case.

Further, Ms. Scott's contention that the ALJ, the Commission, and the Company were engaged in "practicing medicine without a license" is not meritorious. Petition at 4-9. *Povacz II* is clear that the Commission has authority to evaluate her claims along with medical evidence and it provides a framework to do so, which the Commission followed.

Therefore, we find that the Petitioner's averments fail to provide any persuasive basis upon which to grant reconsideration of the *April 2025 Order*. Accordingly, we shall deny the Petition.

IV. Conclusion

For the reasons set forth above, we shall deny the Petition for Reconsideration filed by Pamela R. Scott, consistent with this Opinion and Order;
THEREFORE,

IT IS ORDERED:

1. That the Petition for Reconsideration, filed by Pamela R. Scott on April 23, 2025, seeking Reconsideration of the Opinion and Order, entered on April 10, 2025, at Docket No. C-2018-3004042, is denied, consistent with this Opinion and Order.
2. That this proceeding, at Docket No. C-2018-3004042, be marked closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: May 8, 2025

ORDER ENTERED: May 8, 2025