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2004 MAR 10 PM 10:55 BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

Irene Preobrazhenskaya

v.

Duquesne Light Company.

DOCUMENT

C-20031085

DOCKETED

APR 15 2004

INTERIM ORDER TWO—
GRANTING MOTION FOR CONTINUANCE IN ANTICIPATION OF
OBJECTIONS TO APPLICATION TO SUBPOENA WITNESSES¹

On August 22, 2003, Irene Preobrazhenskaya (Preobrazhenskaya or Complainant) filed her complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (DLC or Respondent). The complaint alleges, among other things, frequent service interruptions with resulting damage to property, failure to renovate obsolete equipment, failure to improve customer service, and failure to have in place a workable system of investigation and paying damage claims promptly, when liability is reasonably clear. On September 24, 2003, DLC filed a responsive answer. Among other things, DLC's answer notes that there is pending in the Allegheny County Court of Common Pleas, at No. AR-02-6050, a complaint involving some of the same allegations as are contained in the complaint here.

By notice to the parties, dated January 8, 2004, the complaint was set for hearing on March 10, 2004. On February 23, 2004, the Complainant telecopied her Application to Subpoena Witnesses for the March 10, 2004 hearing to the presiding Administrative Law Judge and, apparently, to the Respondent. The application requests subpoenas for the appearance at hearing of Morgan K. O'Brien, CEO of DQE; James Ruhl, apparently an employee of DLC's agent, RSKCo Claims Service; an unidentified "Sr. Vice President of RSKCo Claims Service"; and George Daniels, an employee of DLC's. The application reflects a number of defects,

¹ This Interim Order Two is so titled because the Prehearing Order dated January 15, 2004, is the first interim order.

including the absence of a notice that if there is an answer or objection to the application, the answer or objection must be filed with the Commission and the presiding officer within 10 days of service of the application.² An answer or objection to the application is not due until March 4, 2004.

On or about March 2, 2004, DLC filed its motion for continuance of the March 10, 2004 hearing. The motion correctly notes that even if the defective application for subpoenas is cured, there would be insufficient time for the Complainant to properly serve the non-party proposed witnesses with subpoenas and allow them ten days in which to respond, as permitted under 52 Pa. Code §5.421(b). The motion also notes that a prospective witness who, before his retirement from employment with DLC, became knowledgeable about a service interruption that is at issue is outside of Pennsylvania and is not expected to return until after March 10, 2004.

The Complainant is urged to review and comply with the Prehearing Order, issued January 15, 2004, and with the Commission's regulations pertaining to formal proceedings.

DLC having shown good cause to continue the hearing scheduled for March 10, 2004, its motion for a continuance is granted and the hearing is rescheduled for Monday, April 19, 2004. Notices to the parties will specify the time and place for the hearing.

² See 52 Pa. Code §5.421(b).

ORDER

THEREFORE,

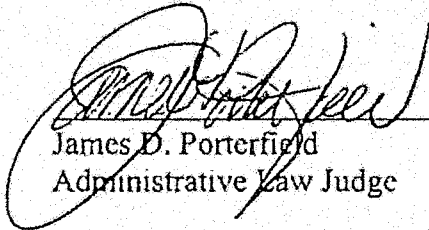
IT IS ORDERED:

1. That Duquesne Light Company's Motion for Continuance of the hearing scheduled for March 10, 2004, is granted.

2. That Irene Preobrazhenskaya must re-file her application for subpoenas, if she wants the application to be considered, in conformity with the Commission's regulations at 52 Pa. Code §1.54(b), §1.57, §5.421, and any other applicable section.

3. That the hearing scheduled for March 10, 2004, is canceled and rescheduled for April 19, 2004, at 10:00 a.m. in an 11th Floor hearing room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh Pennsylvania.

Dated: March 3, 2004


James D. Porterfield
Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 3, 2004

In Re: C-20031085

(See letter of 1-8-04)

DOCUMENT
FOLDER

DOCKETED
MAR 22 2004

Irene Preobrazhenskaya v. Duquesne Light Company

Service dispute.

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial hearing on the above-captioned case previously scheduled for March 10, 2004 has been canceled.

The hearing has been rescheduled as follows:

Type: Initial Hearing
Date: Monday, April 19, 2004
Time: 10:00 a.m.
Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania
Presiding: Administrative Law Judge James D. Porterfield
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Porterfield
Susan Licon
Beth Plantz
Docket Section
Calendar File



Duquesne Light

A DQE Company

Regina M. Sestak
Assistant General Counsel

Legal Department
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219

Tel 412-393-1546
Fax 412-393-1418
rsestak@duqlight.com

ORIGINAL

March 3, 2004

SECRETARY'S BUREAU

MAR -5 AM 8:59

DOCUMENT
FOLDER

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RE: Irene Preobrazhenskaya v. Duquesne Light Company
PUC Docket No. C-20031085

Dear Secretary McNulty:

An original and three copies of Respondent Duquesne Light Company's Objections to Complainant's Application to Subpoena Witnesses are enclosed for filing in the above-captioned matter. Copies have been served upon Complainant and the presiding officer in accordance with Commission Regulations.

Sincerely,

Regina M. Sestak
Attorney for Duquesne Light Company

cc: Irene Preobrazhenskaya (with enclosure)
Administrative Law Judge James D. Porterfield (with enclosure)

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ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU
MAY 5 AM 9:00

IRENE PREOBRAZHENS KAYA,)
)
 Complainant,)
)
 v.)
)
 DUQUESNE LIGHT COMPANY,)
)
 Respondent)

Docket No. C-20031085

DOCKETED
MAY 03 2004

DUQUESNE LIGHT COMPANY'S OBJECTIONS TO COMPLAINANT'S APPLICATION TO SUBPOENA WITNESSES

AND NOW comes the Respondent, Duquesne Light Company, by and through its attorney, Regina M. Sestak, and files the within Objections to Complainant's Application to Subpoena Witnesses (hereinafter "Complainant's Application"), in accordance with Commission Regulation 5.421, 52 Pa. Code §5.421:

DOCUMENT FOLDER

Objections

A. Objections Premised Upon Service and Notice Requirements

- 1. Complainant's Application fails to comply with Commission Regulation 1.54(b), 52 Pa. Code §1.54(b), in that it was not properly served upon Respondent.

Commission Regulation 1.54(b) provides:

Service may be in person, by available delivery service, by mail or as otherwise directed by the Commission. Service may also be by telecopier to those parties who have agreed to accept service in that manner.

A copy of Complainant's Application was faxed to 412/393-1418, a fax machine that serves Respondent's Legal Unit. Respondent has not agreed to accept such service in this matter.

2. **Complainant's Application fails to comply with Commission Regulations 1.57 and 1.58, 52 Pa. Code §§1.57 and 1.58, in that it was not accompanied by a certificate of service.**

Commission Regulation 1.57, 52 Pa. Code §1.57, provides:

A certificate of service in the form prescribed by §1.58 (relating to form of certificate of service) shall accompany and be attached to the original and all copies of pleadings, submittals or other documents filed with the Commission when service is required to be made by the parties.

No such certificate of service is attached to Complainant's Application.

3. **Complainant's Application fails to comply with Commission Regulation 5.421(b), 52 Pa. Code §5.421(b), in that it was apparently not properly served upon the non-participants for whom subpoenas are sought.**

Commission Regulation 5.421(b) provides in relevant part:

When the person for whom a subpoena is sought is not a participant to the case, a copy of the subpoena application shall be served on the person. When the person for whom a subpoena is sought is not a party to the case, the application shall identify the persons – names and addresses – including the Secretary and presiding officer, to whom the answer or objection shall be sent.

Commission Regulation 1.8(a) defines "participant" as:

A party, Office of Trial Staff prosecutor, Law Bureau staff counsel or another person admitted by the Commission to limited participation in a proceeding. . . .

Complainant's Application seeks to subpoena two witnesses identified as James Ruhl of RSKCo and an unnamed "Sr. Vice President of RSKCo." As noted in Respondent's Answer, RSKCo is an independent claims administrator. It is not affiliated with Respondent, nor is it a participant in this matter. The contract between Respondent and RSKCo, a copy of which is attached as Exhibit B to Complainant's Application, clearly provides at 7.1:

RSKCo, at all times, shall be an independent contractor, and employees of RSKCo shall in no event be considered employees of Client.

The term "Client," as used in said contract, is defined as Duquesne Light Company in the first introductory paragraph.

Nothing in Complainant's Application indicates that she ever served a copy upon the RSKCo employees for whom subpoenas are sought, nor that she ever provided notice to them of their right to object or the manner in which their objection should be made.

4. **Complainant's Application fails to comply with Commission Regulation 5.421(b), 52 Pa. Code §5.421(b), in that it does not contain a notice that an answer or objection may be filed.**

Commission Regulation 5.421(b) provides:

The application shall contain a notice that an answer or objection thereto shall be filed with the Commission and presiding officer within 10 days of service of the application.

Complainant's Application contains no such notice.

***B. Objections Premised Upon Relevance, Materiality,
and/or Scope of the Testimony Sought***

5. **Complainant's Application fails to comply with Commission Regulations 5.421(a), 52 Pa. Code §5.421(a), in that it does not specify the relevance, materiality, or scope of the testimony sought any of the listed witnesses.**

Commission Regulation 5.421(a), 52 Pa. Code §5.421(a), provides in pertinent part:

The written application shall specify as nearly as possible the general relevance, materiality and scope of the testimony . . .

Complainant's Application does not specify relevance, materiality or scope of the testimony sought from any of the four individuals for whom subpoenas are sought.

The first two pages of Complainant's Application, and the bottom half of the third page, consist of a series of assertions. Even assuming, for the sake of argument, that these assertions are intended to relate to the proposed witnesses listed on the third page, these assertions fail to establish the general relevance, materiality, or scope of the testimony sought from said witnesses. To the extent that these assertions reiterate matter addressed in Respondent's Answer, and to the extent that a response may be appropriate, Respondent here incorporates said Answer as though set forth fully herein. To the extent that said assertions deny that Respondent has engaged in settlement negotiations, they are denied. On the contrary, Respondent has made reasonable settlement attempts in the context of a civil action that raises substantially the same issues as the instant complaint, *Irene Preobrazhenskaya v. Duquesne Light Company*, filed in the Civil Division of the Allegheny County Court of Common Pleas at Docket No. AR-02-6050. To the extent that said assertions may be intended to set forth a basis for issuing subpoenas to the four individuals for whom subpoenas are sought, Respondent responds in the following sections.

6. **Complainant's Application fails to comply with Commission Regulations 5.421(a), 52 Pa. Code §5.421(a), in that it does not specify the relevance, materiality, or scope of the testimony sought from George Daniels or from the non-participant witnesses for whom subpoenas are sought.**

Complainant begins by asserting that she has been conducting discovery in "this case." If she intends "this case" to mean the Formal Complaint filed at PUC Docket No. C-20031085, this statement is clearly untrue. On the contrary, Complainant has served Respondent with no discovery requests whatsoever in reference to this Formal Complaint. Complainant has, however, engaged in extensive discovery in the above-described civil action, which is presently pending.

The remainder of the first two pages of Complainant's Application consists of assertions and speculations, including wholly unsupported assertions that Respondent and RSKCo, an independent claims administrator, are engaged in some sort of fraud involving a sham contract. A copy of the contract in question is attached to Complainant's Application and labeled "Exhibit B." Complainant goes on to misinterpret this contract by asserting that a limitation of RSKCo's discretionary authority somehow means that no claims are ever paid. In fact, a plain reading of provision 3.1 clearly requires RSKCo to make recommendations to Respondent concerning claims which exceed its discretionary authority.

Complainant does not refer to any of the individuals whose testimony is sought until the second paragraph on the second page of her Application, where she asserts that "the testimonies of the signatories to the DLC - RSKCo agreement are necessary to clarify the intent behind the agreement and remove a cloud of corruption suggesting that no claimant got paid for damages resulting from DLC's negligence." Complainant apparently intends these "signatories" to include: (1) "James Ruhl of RSKCo," whom she identifies as a "claimed signatory;" (2) an unnamed "Sr. Vice President of RSKCo," whom she identifies as "a person who is a real signatory;" and (3) "George Daniels of DLC," whom she identifies as "the signatory." Complainant has set forth no basis for the admission of parol evidence concerning this agreement, other than her assertion that it is a sham in that, as a result of the discretionary limit set for RSKCo, no claimants get paid for damages. The agreement, however, clearly provides a mechanism for payment of damages beyond the discretionary limit set for RSKCo. It is therefore not necessary to clarify the intent behind the agreement. The agreement speaks for itself.

The third paragraph on the second page of Complainant's Application makes reference to "the Unfair Claims Settlement Practices Act." No citation is provided, and a search of both Pennsylvania and Federal Statutes failed to discover any such act. It is possible that Complainant intends to refer to the Unfair Claims Settlement Practices Regulations, 31 Pa. Code §§146.1 through 146.10. If so, these are regulations promulgated by the Pennsylvania Insurance Department for the purpose of regulating the insurance industry.

The Public Utility Commission has no jurisdiction to enforce insurance regulations. It is a fundamental legal concept that the Pennsylvania Public Utility Commission, being an administrative agency created by the State Legislature, possesses only those powers explicitly stated in the statute creating it or fairly implied as being necessary to the exercise of those express powers. *Green v. Milk Control Commission*, 340 Pa. 1, 16 A.2d 9 (1940). Section 501(b) of the Public Utility Code, 66 Pa. C. S. §501(b), grants authority to the Public Utility Commission to:

- (a) enforce the Public Utility Code; and
- (b) supervise and regulate public utilities doing business in the Commonwealth of Pennsylvania.

That authority does not include the enforcement of insurance regulations. Therefore, any testimony sought in support of Complainant's contention of violation of the Unfair Claims Settlement Practices Regulations would be irrelevant and immaterial.

7. Complainant's Application fails to set forth the relevance, materiality and scope of the information sought from Morgan O'Brien, for whom a subpoena is sought

As noted above, Commission Regulation 5.421(a) provides that an application for subpoena must set forth the general relevance, materiality and

scope of the testimony sought. Complainant mentions Morgan O'Brien in the third paragraph on the second page of her Application, asserting: (1) that he failed to reply to a letter; and (2) that his testimony would be of "utmost importance to understand the DLC policies regarding . . . claims . . ."

Neither assertion supports the issuance of a subpoena for Morgan O'Brien. Morgan O'Brien is currently President and Chief Executive Officer of Duquesne Light Company and of its parent, Duquesne Light Holdings. He is not directly involved in the handling of claims matters.

The letter. The letter in question, a copy of which is attached to Complainant's Application as the second page of Exhibit C, is dated July 8, 2002. At that time, Morgan O'Brien was President and Chief Executive Officer of DQE, Inc., Respondent's parent. He had no responsibility for day-to-day operation of Respondent, of which Victor Roque was then President.

Duquesne Light's policies regarding claims. Morgan O'Brien became President and Chief Executive Officer of Respondent effective August 1, 2003. He was not responsible for Respondent's day-to-day operation when the service interruption in question occurred, when the contract with RSKCo was signed, nor when Complainant's claim for damages was denied. Complainant has failed to show that he could offer any testimony that is relevant or material to the issues raised in Complainant's complaint.

WHEREFORE, Respondent respectfully requests that Complainant's
Application for subpoenas be denied.

Respectfully submitted,

DUQUESNE LIGHT COMPANY

By Counsel:



Regina M. Sestak

Pa. I.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU
MARCH 5 11 50 AM '04

IRENE PREOBRAZHENS KAYA,)
)
Complainant,)
)
v.)
)
DUQUESNE LIGHT COMPANY,)
)
Respondent)

Docket No. C-20031085

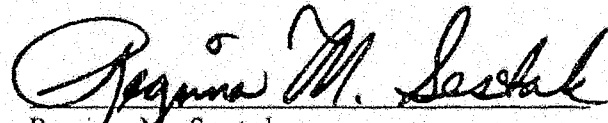
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) by first-class mail upon:

Irene Preobrazhenskaya
5610 Hobart Street, Apt. 1
Pittsburgh, PA 15217

Administrative Law Judge James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Date: March 3, 2004


Regina M. Sestak
Pa. I.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20031085		YES	NO
Case Name:	Irene Preobrazhenskaya v. Duquesne Light Company	Prehearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Location:	Pittsburgh	Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	<i>one</i>	
Date:	March 10, 2004	RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	James D. Porterfield	DATE:		
Reporting Firm:	Sargents Reporting	Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:	<i>Has been rescheduled for 04/19/04 Continuance granted</i>	

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*See Sargents Conference
3/31/04*

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

Name and Telephone Number	Address			Who are you representing?
	City	State	Zip	
Telephone:	E-mail Address:		Fax Number:	
	City	State	Zip	
Telephone:	E-mail Address:		Fax Number:	
	City	State	Zip	
Telephone:	E-mail Address:		Fax Number:	

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.



Duquesne Light

A DQE Company

Regina M. Sestak
Assistant General Counsel

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2004 APR -5 PM 12: 28

SECRETARY'S BUREAU

ORIGINAL

Legal Department
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219

Tel 412-393-1546
Fax 412-393-1418
rsestak@duqlight.com

April 2, 2004

DOCUMENT
FOLDER

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RE. Irene Preobrazhenskaya v. Duquesne Light Company
PUC Docket No. C-20031085

Dear Secretary McNulty:

An original and three copies of Respondent Duquesne Light Company's Objections to Complainant's Petition for Issuance of Subpoena are enclosed for filing in the above-captioned matter. Copies have been served upon Complainant and the presiding officer in accordance with Commission Regulations.

Sincerely,

Regina M. Sestak
Attorney for Duquesne Light Company

cc: Irene Preobrazhenskaya (with enclosure)
Administrative Law Judge James D. Porterfield (with enclosure)

RJP

171

ORIGINAL

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2004 APR -5 PM 12: 28
SECRETARY'S BUREAU

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IRENE PREOBRAZHENS KAYA,)
)
 Complainant,)
)
 v.)
)
 DUQUESNE LIGHT COMPANY,)
)
 Respondent)

Docket No. C-20031085

DOCKETED
JUN 14 2004

**DUQUESNE LIGHT COMPANY'S OBJECTIONS TO COMPLAINANT'S
PETITION FOR ISSUANCE OF SUBPOENA**

AND NOW comes the Respondent, Duquesne Light Company, by and through its attorney, Regina M. Sestak, and files the within Objections to Complainant's Petition for Issuance of Subpoena (hereinafter "Complainant's Petition"), in accordance with Commission Regulation 5.421, 52 Pa. Code §5.421:

**DOCUMENT
FOLDER**

Objections

A. Objection Premised Upon Service and Notice Requirements

1. Complainant's Petition fails to comply with Commission Regulation 5.421(b), 52 Pa. Code §5.421(b), in that it was apparently not properly served upon the non-participants for whom subpoenas are sought.

Commission Regulation 5.421(b) provides in relevant part:

When the person for whom a subpoena is sought is not a participant to the case, a copy of the subpoena application shall be served on the person. When the person for whom a subpoena is sought is not a party to the case, the application shall identify the persons - names and addresses - including the Secretary and presiding officer, to whom the answer or objection shall be sent.

Commission Regulation 1.8(a) defines "participant" as:

A party, Office of Trial Staff prosecutor, Law Bureau staff counsel or another person admitted by the Commission to limited participation in a proceeding. . . .

Complainant's Petition seeks to subpoena two witnesses identified as James Ruhl of RSKCo and an unnamed "Sr. Vice President of RSKCo." As noted in Respondent's Answer, RSKCo is an independent claims administrator. RSKCo is not affiliated with Respondent,¹ nor is it a participant in this matter. The contract between Respondent and RSKCo [hereinafter, "the Contract"], an incomplete² copy of which is attached as Exhibit B to Complainant's Petition, clearly provides at 7.1:

RSKCo, at all times, shall be an independent contractor, and employees of RSKCo shall in no event be considered employees of Client.

The term "Client" is defined as Duquesne Light Company in the first introductory paragraph of the Contract.

Nothing in Complainant's Petition or the Certificate of Service attached thereto indicates that she ever served a copy of the Petition upon the RSKCo employees for whom subpoenas are sought, nor that she ever provided notice to them of their right to object or the manner in which their objection should be made. This is true despite the fact that Plaintiff clearly possesses contact addresses for RSKCo: the Illinois contact addresses for RSKCo and its General Counsel are provided in Paragraph 8.3 of the Contract, Complainant lists RSKCo's Pittsburgh address³ for both James Ruhl and the unnamed Sr. Vice

¹ A copy of the News Release concerning the recent sale of RSKCo by Cunningham Lindsey Claims Management, Inc. to Broadspire Services, Inc. is attached hereto, incorporated herein, and marked Exhibit 1.

² Complainant has failed to attach the final page of Addendum A.

³ In November, 2003, RSKCo relocated its Pittsburgh Office to: Manor Oak One, Suite 110, 1910 Cochran Road, Pittsburgh, PA 15220.

President of RSKCo in Paragraph 3 of her Petition, and Complainant's Exhibit C to her Petition indicates that her husband Alexander Karpan has sent correspondence concerning matters raised in the instant complaint to RSKCo at its Pittsburgh address.

Complainant is apparently attempting to circumvent the requirements of Commission Regulation 5.421(b) by alleging, in Paragraphs 2 and 3 of her Petition, that RSKCo is an "unfunded shell corporation" with which Respondent has entered into a "sham contract." In fact, the Contract itself identifies RSKCo Services, Inc. as an Illinois Corporation and a plain reading of the Contract clearly indicates that it is not a sham but a legitimate contract for the provision of claims administration services. Complainant's assertion that RSKCo is "unfunded" apparently stems from her misreading of the contract terms. The Contract sets RSKCo's discretionary authority at \$0.00, which Complainant misinterprets to mean that no claims are ever paid. In fact, a plain reading of provision 3.1 reveals that the Contract clearly requires RSKCo to make recommendations to Respondent concerning claims that exceed its discretionary authority. In other words, the Contract simply leaves the final decision on the payment of all claims up to Respondent, rather than establishing a threshold amount that RSKCo can pay without consultation with Respondent.

Relying upon her mischaracterization of RSKCO and her erroneous interpretation of the Contract, Complainant irrationally concludes "that RSKCo Claims Service employees designated herein as witnesses were not independent contractors." With no factual basis whatsoever, Complainant goes on to allege that Respondent "exercised utmost control over the performance of RSKCo employees, in particular the control over their decisionmaking, working

arrangements, timing priorities and direction of the job RSKCo employees were hired to perform.”

In fact, the responsibilities of both RSKCo and Respondent are clearly delineated in Articles 3 and 4 of the Contract; Articles 7 and 8 further set forth the rights and obligations of the parties. Nowhere does the Contract provide that RSKCo is anything but an independent contractor, nor has RSKCo at any time acted as anything but an independent contractor in the performance of the Contract.

Mischaracterizing RSKCo employees as Respondent's “*de facto* servants,” Complainant then goes on to assert that “nothing should prevent the Respondent from producing . . . [them] . . . at the hearing before the Public Utility Commission.” As discussed more fully above, RSKCo employees are not Respondent's servants, *de facto* or otherwise. Respondent does not have the authority to “produce them.” Complainant clearly is aware that both James Ruhl and the unnamed Sr. Vice President are not employed by Respondent; she identifies them as “employed by RSKCo Claims Service” in Paragraph 3 of her Petition.

Complainant asserts that “Respondent is presenting the RSKCo employee's testimony in the Allegheny County Court of Common Pleas.” As noted in Respondent's Answer, Complainant filed a civil action that raises substantially the same issues as the instant complaint, *Irene Preobrazhenskaya v. Duquesne Light Company*, filed in the Civil Division of the Allegheny County Court of Common Pleas at Docket No. AR-02-6050. Respondent filed a Pretrial Statement in that action that lists Carolyn Cingel, the RSKCo employee who

investigated Complainant's claim,⁴ as a witness. Complainant's Petition seeks to subpoena two other RSKCo employees, James Ruhl and an unnamed Sr. Vice President (see further discussion, below).

Nothing in Complainant's Petition relieves her of her obligation to comply with Commission Regulation 5.421(b). Due to her failure and/or refusal to properly serve a copy of her Petition on the non-participants, her request to subpoena James Ruhl and the unnamed Sr. Vice President of RSKCo must fail.

*B. Objections Premised Upon Relevance, Materiality,
and/or Scope of the Testimony Sought*

2. Complainant's Petition fails to comply with Commission Regulations 5.421(a), 52 Pa. Code §5.421(a), in that it does not specify the relevance, materiality, or scope of the testimony sought of any of the listed witnesses.

Commission Regulation 5.421(a), 52 Pa. Code §5.421(a), provides in pertinent part:

The written application shall specify as nearly as possible the general relevance, materiality and scope of the testimony . . .

Complainant's Petition does not specify relevance, materiality or scope of the testimony sought from any of the four individuals for whom subpoenas are sought. Instead, Complainant strings together conclusory statements and generalities, which will be discussed in greater detail in the following sections.

The section of Complainant's Petition labeled "2" consists of a series of assertions. Even assuming, for the sake of argument, that these assertions are intended to relate to the proposed witnesses listed the section labeled "3," these assertions fail to establish the general relevance, materiality, or scope of the

⁴ A copy of Carolyn Cingel's letter to Complainant and her husband explaining the reason for denial of their damage claim is attached to Respondent's Answer as Exhibit 1. The damage claim was denied in accordance with Respondent's Tariff Rule 19, Electric - PA. P.U.C. No. 23, Original Page No. 25, which provides in pertinent part that Respondent "will use all reasonable care to provide safe and continuous delivery of electricity but shall not be liable for any damages arising through interruption of the delivery of electricity."

testimony sought from said witnesses. To the extent that these assertions reiterate matters addressed in Respondent's Answer, and to the extent that a response may be appropriate, Respondent here incorporates said Answer as though set forth fully herein. To the extent that said assertions may be intended to set forth a basis for issuing subpoenas to the four individuals for whom subpoenas are sought, Respondent responds in the following sections.

3. Complainant's Petition fails to set forth the relevance, materiality and scope of the information sought from Morgan O'Brien, for whom a subpoena is sought

As noted above, Commission Regulation 5.421(a) provides that an application for subpoena must set forth the general relevance, materiality and scope of the testimony sought. Complainant's alleged basis for the issuance of a subpoena for Morgan O'Brien [hereinafter "O'Brien"] identifies him as an employee of Respondent, then reads:

Mr. O'Brien is an essential witness with the relevant knowledge of material fact sought by Complainant (Complaint at ¶2). Morgan K. O'Brien shall provide the testimony which is highly relevant and material to the outcome of the case, in particular, concerning the appropriateness of the remedies sought and their effect on the determination of the specific remedies as well as the first hand information used in arriving at the Respondent's conclusions.

These conclusory statements and generalities do not support the issuance of a subpoena for O'Brien. Nowhere does Complainant specify what "relevant knowledge of material fact" O'Brien allegedly has. In particular, it is not clear how O'Brien could testify concerning "appropriateness of remedies sought and their effect on the determination of the specific remedies," as this would appear to require a legal analysis of Complainant's case rather than the presentation of facts.

It is unclear why Complainant references Paragraph 2 of her Complaint, since Paragraph 2 of her Formal Complaint in this matter provides only Respondent's name: Duquesne Light.

Complainant mentions O'Brien in the section of her Petition labeled "2," but only to pose speculative questions:

Who can testify better than the Morgan O'Brien himself as to procedures he set in place? Who can explain better why did he neglected customers complaints? Therefore, the testimony of Morgan O'Brien would be of utmost importance to understand the DLC's policies regarding the claims arising out of Respondent's practices and procedures. The buck stops at the Morgan O'Brien's desk. No one else can do deciding for him. That's his job and he cannot pass the responsibility on to someone else.

Nothing in the Petition or in Complainant's Formal Complaint, however, supports the assertions upon which these speculations are premised. The Formal Complaint alleges that Complainant suffered equipment damage due to a cable failure on April 7, 2002, and speculates that this was caused by Respondent choosing to set up a sham contract to stonewall customers rather than fixing a substation. In 2002, however, O'Brien was President and Chief Executive Officer of DQE, Inc., Respondent's parent. He had no responsibility for day-to-day operation of Respondent, of which Victor Roque was then President. O'Brien became President and Chief Executive Officer of Respondent effective August 1, 2003. He was not responsible for Respondent's day-to-day operation when the service interruption in question occurred, when the contract with RSKCo was signed, nor when Complainant's claim for damages was initially denied. Complainant has not only failed to show that O'Brien "set procedures," she has failed to show that he has any actual knowledge of, or could offer any testimony that is relevant or material to, the issues raised in Complainant's Formal Complaint. This is despite the

fact that Complainant has engaged in extensive discovery in the civil action that would presumably have uncovered any facts that could provide such a basis:⁵

- On or about April 22, 2003, Complainant served Respondent's attorney⁶ with 38 Interrogatories; Respondent provided Answers on June 23, 2003 and Amended Answers on August 5, 2003
- On or about May 27, 2003, Complainant served Respondent's civil attorney with 35 Requests for Admission; Respondent provided its Response on June 26, 2003
- On or about August 5, 2003, Complainant served Respondent's civil attorney with 91 Interrogatories; Respondent filed a Motion for Protective Order that was scheduled for argument before the Honorable R. Stanton Wettick on October 10, 2003; despite the fact that this motion was pending, Complainant filed a Motion to Compel Answers to Interrogatories that was scheduled for argument before Judge Wettick on October 3, 2003; Respondent filed an Answer and New Matter to Complainant's Motion to Compel; Complainant filed a Response to New Matter; on October 10, 2003, Judge Wettick issued an order providing that Respondent was not required to answer any of the second set of interrogatories because said interrogatories were unduly burdensome and oppressive, and the expense and resources used would be unnecessary and unreasonable.
- On or about September 12, 2003, Complainant served Respondent's civil attorney with 9 Requests for Production of Documents; Respondent filed a Motion for Protective Order that was scheduled for argument before Judge Wettick on November 7, 2003; on or about October 31, 2003, Judge Wettick issued an order directing Respondent to produce all documents relating to the incident
- On or about December 12, 2003, Complainant noticed the deposition of Morgan K. O'Brien for January 13, 2004; Respondent filed a Motion for Protective Order that was scheduled for argument before Judge Wettick on January 9, 2004; Complainant cancelled the proposed deposition
- On or about February 2, 2004, Complainant served Respondent's civil attorney with 6 Requests for Production of Documents; Respondent filed a Motion for a Protective Order and an Amended Motion for Protective Order; by Order dated February 18, 2004, the Honorable Eugene B. Strassburger III granted said Motion as to 4 of the 6 Requests.
- On or about February 13, 2004, Complainant served Respondent's civil attorney with 9 Requests for Production of Documents
- On or about March 9, 2004, Complainant served Respondent's civil attorney with Requests to Enter Upon Land; Respondent filed a Motion for Protective Order on March 31, 2004, seeking to preclude

⁵ This list includes only discovery matters; it does not include numerous other pleadings and amended pleadings filed in the civil action, nor court appearance concerning matters not directly related to discovery.

⁶ Kenneth G. Scholtz, Tucker Arensberg, P.C., represents Respondent in the civil action.

Complainant from entering the substation in question for her own protection.

Despite this extensive discovery, Complainant has failed to assert any factual basis in support of her request to subpoena O'Brien.

It is significant that O'Brien is Respondent's highest ranking corporate officer. He clearly has no actual knowledge of, or involvement in, this matter, which arose at a time prior to his assuming office. By insisting on subpoenaing O'Brien, Complainant is apparently attempting to "up the ante" of her litigation for the purpose of extorting an unjustified settlement payment from Respondent. As a matter of public policy, the Commission should not permit a party to use its subpoena powers in such a manner.

4. **Complainant's Petition fails to comply with Commission Regulations 5.421(a), 52 Pa. Code §5.421(a), in that it does not specify the relevance, materiality, or scope of the testimony sought from George Daniels.**

As noted above, Commission Regulation 5.421(a) provides that an application for subpoena must set forth the general relevance, materiality and scope of the testimony sought. Complainant's alleged basis for the issuance of a subpoena for George Daniels [hereinafter "Daniels"] identifies him as Respondent's employee and a signatory of the Contract, then reads:

Mr. Daniels is an essential witness (re: remedy sought in Complaint at ¶3).

There is no mention whatsoever of Daniels in Paragraph 3 of the Formal Complaint. Further, it is not clear what Complainant intends to mean by "remedy sought in Complaint at ¶3." No remedy is clearly sought in Paragraph 3 of the Formal Complaint. Instead, Paragraph 3 references an attached page that is filled with irrational and unsupported speculations attacking Respondent (example: "From a social point of

view, Duquesne Light is worse than a common burglar"). Complainant concludes said attached page, "Can you help?" It is impossible to imagine how Daniels' testimony could support this "remedy."

5. **Complainant's Petition fails to comply with Commission Regulations 5.421(a), 52 Pa. Code §5.421(a), in that it does not specify the relevance, materiality, or scope of the testimony sought from James Ruhl and/or the unnamed Sr. Vice President of RSKCo.**

As noted above, Commission Regulation 5.421(a) provides that an application for subpoena must set forth the general relevance, materiality and scope of the testimony sought. Complainant's alleged basis for the issuance of a subpoena to James Ruhl, who is identified as a "claimed signatory to the RSKCo agreement," reads:

Mr. Ruhl is an essential witness. (re: remedy sought in Complaint at ¶3).

Similarly, Complainant's alleged basis for the issuance of a subpoena to the unnamed Sr. Vice President of RSKCo, who is identified as "a real signatory to the RSKCo-DLC agreement," reads:

Sr. Vice President is an essential witness (re: remedy sought in Complaint at ¶3).

There is no mention whatsoever of Ruhl or the unnamed Sr. Vice President in Paragraph 3 of Complainant's Formal Complaint. Further, it is not clear what Complainant intends to mean by "remedy sought in Complaint at ¶3." As noted above, there is no clear remedy sought in Paragraph 3 of the Formal Complaint; it is therefore unclear how the testimony of either RSKCo witness could support this "remedy."

WHEREFORE, Respondent respectfully requests that Complainant's
Petition for Issuance of Subpoena be denied.

Respectfully submitted,

DUQUESNE LIGHT COMPANY

By Counsel:



Regina M. Sestak

Pa. I.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418

LINDSEY MORDEN GROUP INC.

News Release: March 9, 2004
Listed: The Toronto Stock Exchange
Stock Symbol: LM

FOR IMMEDIATE RELEASE
LINDSEY MORDEN DIVESTS OF THIRD PARTY CLAIMS ADMINISTRATION BUSINESS
IN THE UNITED STATES

Dateline – Toronto, Ontario

Lindsey Morden Group Inc. announces that Cunningham Lindsey U.S., Inc. has agreed to sell its third party claims administration business, consisting of RSKCo Services, Inc. (RSKCo) and Cunningham Lindsey Claims Management, Inc. (CMI), to Broadspire Services Inc. (Broadspire), a Platinum Equity company. Broadspire will service the existing claims obligations of both RSKCo and CMI in exchange for a payment by Cunningham Lindsey U.S. of U.S.\$22.0 million. Broadspire will also acquire U.S.\$4.0 million in net working capital of the claims administration business. Lindsey Morden expects to borrow U.S.\$22.0 million from its parent company, Fairfax Financial Holdings Limited, to finance the transaction. The transaction is expected to close March 15, 2004.

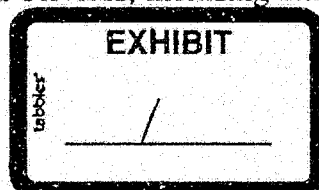
Cunningham Lindsey U.S.'s loss adjusting business and Vale National Training Centers Inc. are not affected by this transaction and will continue to operate under their existing trade names. These operations as well as each of the Cunningham Lindsey operations worldwide are profitable.

Lindsey Morden Group Inc. previously disclosed that a restructuring of its United States operations commenced on February 2, 2004 and that restructuring costs to be incurred in the first two quarters of 2004 were estimated to be at least \$8.0 million. The sale of the claims administration business is expected to improve operating performance and reduce estimated future restructuring costs of the U.S. operations.

Broadspire is the former service platform of Kemper Insurance Companies in North America. Broadspire provides claims management services; disability, integrated return to work and absentee management programs; medical management services; and risk and safety consulting services to Fortune 500 enterprise customers. Platinum Equity, a global acquisition company headquartered in Los Angeles, owns Broadspire. Platinum's current operating portfolio comprises 19 companies with aggregate revenue of U.S.\$5.5 billion and more than 32,000 employees worldwide.

This press release may contain "forward-looking statements" within the meaning of applicable securities legislation. Such statements involve certain risks, assumptions, uncertainties and other factors that may cause actual results or anticipated events to differ materially from those expressed or implied herein. These factors include the extent to which the transaction described above will reduce the otherwise anticipated costs of restructuring the United States operations. Lindsey Morden disclaims any intention and undertakes no obligation to update or revise any forward-looking statements to reflect subsequent information, events, results, circumstances or otherwise.

Lindsey Morden Group Inc. is a holding company which, through its subsidiaries, provides a wide range of independent insurance claims services, including claims adjusting, appraisal and claims and



risk management services. It has a worldwide network of branches in Canada, the United States, the United Kingdom, continental Europe, the Far East, Latin America and the Middle East. Lindsey Morden also provides claims adjusting and appraisal training courses in the United States.

For further information, please contact Karen Murphy, President & CEO of Cunningham Lindsey U.S., Inc. at (214) 488 6712 or Peter Fritze, Corporate Secretary of Lindsey Morden Group Inc. at (416) 596 8020.

RECEIVED

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2004 APR -5 PM 12: 28

SECRETARY'S BUREAU

IRENE PREOBRAZHENS KAYA,)
)
 Complainant,)
)
 v.)
)
 DUQUESNE LIGHT COMPANY,)
)
 Respondent)

Docket No. C-20031085


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) by first-class mail upon:

Irene Preobrazhenskaya
5610 Hobart Street, Apt. 1
Pittsburgh, PA 15217

Administrative Law Judge James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Date: April 2, 2004


Regina M. Sestak
Pa. I.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20031085		YES	NO
Case Name:	Irene Preobrazhenskaya v. Duquesne Lght Company	Prehearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Location:	Pittsburgh	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Date:	April 19, 2004	Testimony Taken:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	James D. Porterfield	Transcript Due:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Reporting Firm:	Sargents Reporting	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	<i>one</i>	
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:	<i>is 04/12/04 Dawn R OALJ H.C. and she would cancel & reschedule Discovery matters outstanding</i>	

DOCUMENT FOLDER

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MAY - 3 2004

PA PUC
PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

OFFICE OF THE CLERK
640 AT & CO. ST. 2:44

PLEASE PRINT CLEARLY - Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
	City State Zip	
Telephone:	E-mail Address:	Fax Number:
	City State Zip	
Telephone:	E-mail Address:	Fax Number:
	City State Zip	
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.

RJP

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

ORIGINAL

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JUN 1 9:37
Duquesne Light
A DGC Company
REGINA M. SESTAK'S BUREAU
SECURITY

Legal Department
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219

Tel 412-393-1546
Fax 412-393-1418
rsestak@duqlight.com

Regina M. Sestak
Assistant General Counsel

DOCUMENT

June 1, 2004

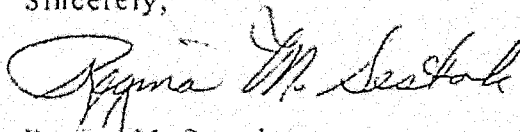
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RE: Irene Preobrazhenskaya v. Duquesne Light Company
PUC Docket No. C-20031085

Dear Secretary McNulty:

An original and three copies of Respondent Duquesne Light Company's Objections to Complainant's Request for Entry Upon Designated Land are enclosed for filing in the above-captioned matter. Copies have been served upon Complainant and the presiding officer in accordance with Commission Regulations.

Sincerely,



Regina M. Sestak
Attorney for Duquesne Light Company

cc: Irene Preobrazhenskaya (with enclosure)
Administrative Law Judge James D. Porterfield (with enclosure)

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2004 JUN -3 AM 9:37
SECRETARY'S BUREAU

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IRENE PREOBRAZHENS KAYA,)
)
Complainant,)
)
v.)
)
DUQUESNE LIGHT COMPANY,)
)
Respondent)

Docket No. C-20031085

DOCUMENT

DOCKETED

JUN 30 2004

**DUQUESNE LIGHT COMPANY'S OBJECTIONS TO COMPLAINANT'S
REQUEST FOR ENTRY UPON DESIGNATED LAND**

AND NOW comes the Respondent, Duquesne Light Company, by and through its attorney, Regina M. Sestak, and files the within Objections to Complainant's Request for Entry Upon Designated Land (hereinafter "Complainant's Request"), in accordance with Commission Regulation 5.349(d), 52 Pa. Code §5.349(d):

Objections

1. Justice requires that Complainant's Request be denied due to the danger inherent in an untrained person "inspecting" an energized substation.

Controlling Regulations

Commission Regulation 5.349(a)(2), 52 Pa. Code §5.349(a)(2), provides that a participant may serve a request upon another participant:

To permit entry upon designated land or other property in the possession or control of the participant upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of §§5.321(b), 5.323 and 5.324.

Neither §5.323 (relating to trial preparation material) nor §5.324 (relating to discovery of expert testimony) apply to Complainant's request. Commission Regulation 5.321(b), however, does apply. Commission Regulation 5.321(b) provides that the presiding officer may vary the Commission's discovery-related regulations as justice requires. For the reasons set forth below, it is Respondent's position that justice requires the denial of Complainant's Request. Further, because Complainant is requesting entry upon the land for the purpose of inspecting an energized substation, justice requires that, if Complainant's Request is granted, it be granted only if:

- (1) Complainant and/or anyone who enters with her or at her behest agree/s to abide by all applicable safety rules and regulations, including the use of protective equipment, and to follow all instructions given by Respondent's personnel;
- (2) Complainant executes a release absolving Respondent of liability, and holding it harmless, for any injury she may suffer as a result of her entry upon said designated land;
- (3) Complainant obtains the execution of a release as described in (2) by anyone who enters upon said designated land with her or at her behest; and
- (4) Complainant posts a bond sufficient to cover any damage to Respondent's equipment, injury to Respondent's employee(s), and/or injury or damage to third parties that result from said entry upon land.

Response to Factual Assertions

In the unnumbered paragraphs contained on the first page of Complainant's Request, Complainant makes various assertions that are apparently intended to support her Request for Entry upon Designated Land. Respondent addresses each of these assertions below:

Complainant asserts that the "crucial issue in the within action is the actual physical condition of the Oakland-Wightman Substation."¹ Complainant has apparently premised this conclusion upon her assertions that:

(1) practically every month there is a power outage at Complainant's residence serviced by the Oakland-Wightman substation; and (2) the reason for these power outages is the old and inadequate condition of the Oakland-Wightman Substation. Neither of these assertions, however, is true, as can be shown by Complainant's Exhibit A.

Complainant has attached a copy of an Interruption Record Detail as Exhibit A to her Request. This document was prepared by Respondent and was provided to Complainant in the course of discovery in the civil action she filed against Respondent in the Allegheny County Court of Common Pleas,² and which is presently pending. Exhibit A provides information concerning outages that occurred from April 1, 2001 through September 2, 2003, and does not, contrary to Complainant's assertions, show seven power outages in a six-month period. On the contrary, it shows seven outages in a 29-month period. The outages were clustered in a seven-month period during these 29 months.

¹ It is important to note that the substation involved is the Wightman Substation, as is clear from Complainant's Exhibit A. Complainant is apparently applying the name "Oakland-Wightman" based upon the use of that term in a letter sent to her by RSKCO (Exhibit 1 to Respondent's Answer). As noted in Respondent's Answer and in Respondent's Objections to Complainant's Subpoena Request and Subpoena Application, RSKCO is an independent claims administrator.

² Irene Preobrazhenskaya v. Duquesne Light Company, Docket No. AR02-6050.

A plain reading of the entries in the "Reason" column of Complainant's Exhibit A clearly demonstrates that none of the seven outages was caused by the condition of the Wightman Substation. On the contrary, all of the listed outages were caused by loss of power supply to the substation due to cable failures in various locations. For example, Complainant's Formal Complaint, as well as her civil action, focuses on a service interruption that occurred on April 7, 2002. Complainant's Exhibit A clearly indicates that this service interruption was caused by a loss of supply to the Wightman Substation due to a cable failure on Washington Boulevard in East Liberty. Other cable failures causing loss of power supply to the Wightman Substation occurred on Shady Avenue in Squirrel Hill (March 29, 2002), McKee Place in Oakland (June 6, 2002), Bennett Street in Homewood (July 17, 2002), North Braddock Avenue in Homewood (August 14, 2002), Shady Avenue in Oakland (September 21, 2002), and Darragh Street in Oakland (October 16, 2002). Contrary to Complainant's assertion, this pattern of power outages does not show any inadequacy of the Wightman substation, nor does it support a need for any inspection of said substation.

Complainant further asserts that there "were also numerous power outages that either were not recorded because they were shorter than 17 minutes or Respondent simply failed to record them." This assertion is blatantly false. Complainant's Exhibit A clearly indicates the exclusion of only outages of less than two minutes duration. It is specifically denied that Respondent has failed to record outages of more than two minutes duration.

Safety Concerns

"Inspection" of an energized substation by an untrained individual is inherently dangerous. The Federal Occupation Safety and Health

Administration (OSHA) has issued detailed regulations governing training, work practices, and protective equipment for persons performing work at distribution substations at 29 CFR §1910.269. Any "inspection" conducted from within the substation enclosure should be performed only by someone who has the proper training, who uses protective equipment, and who follows the appropriate work practices.

Proposed Inspection

Complainant asserts that she wants to enter upon designated land for the purpose of inspecting and photographing the substation. It is important to note that the Wightman Substation is surrounded by a chain-link fence. It can be visually inspected and photographed from outside this enclosure. Two photographs of the Wightman Substation, taken from outside the fence, are attached hereto, incorporated herein, and marked Exhibits 1 and 2, respectively.

Complainant's Exhibit B purports to describe a proposed inspection program to be undertaken by Complainant and/or her Expert. Complainant's Exhibit B contains a list labeled "PURPOSE OF INSPECTION PROGRAM." Respondent responds to the listed purposes as follows:

- Determine the operating condition of the Oakland-Wightman Substation.

A determination of the operating condition at the substation may be made by simple observation: the substation is operating. Therefore, it is operational. If Complainant intends to determine the "operating condition" in a manner that requires the testing of energized equipment, it is imperative that only a qualified individual who meets the OSHA requirements be permitted to contact substation equipment in any manner. Improper contact with substation equipment may result in serious injury or death to the inspecting individual, as

well as other persons in the vicinity, and may result in damage to the property of Respondent and others.

- Determine whether or not the explanation given in the accident reports issued by Respondent is a plausible reason to cause a loss of electricity to the Complainant's circuit.

If Complainant intends "accident reports" to mean the reasons for outages listed in her Exhibit A, it is impossible to comprehend how an inspection of the Wightman substation would shed any light on whether or not a cable failed at another location, such as Bennett Street in Homewood, for example.

- Determine whether or not the Respondent did "everything in its power to provide Complainant with continuous, quality service", particular while operating the electrical equipment at Oakland-Wightman Substation.

Complainant is apparently quoting from the letter she received from RSKCo (Exhibit 1 to Respondent's Answer), which reads in pertinent part:

Duquesne Light Company does everything in its power to provide you with continuous, quality service. However, it cannot and does not guarantee uninterrupted service.

Complainant has not provided any specific information concerning how an inspection of the Wightman Substation would determine the accuracy of this statement. As noted above, it is imperative that any inspection involving contact with energized equipment be performed only by a qualified individual who meets the OSHA requirements. Improper contact with substation equipment may result in serious injury or death to the inspecting individual, as well as other persons in the vicinity, and may result in damage to the property of Respondent and others.

- Determine the normal circuit operation and other electrical equipment in and around Oakland-Wightman Substation.

Complainant has not provided any specific information concerning how an inspection of the Wightman Substation would determine the "normal circuit

operation and other electrical equipment." As noted above, it is imperative that any inspection that involves contact with energized substation equipment be performed only by a qualified individual who meets the OSHA requirements. This is true of energized equipment on Respondent's distribution circuits, as well. Improper contact with substation or distribution system equipment may result in serious injury or death to the inspecting individual, as well as other persons in the vicinity, and may result in damage to the property of Respondent and others.

2. **Complainant's Request must be denied because it is sought in bad faith and would cause unreasonable annoyance, burden and expense to Respondent.**

Controlling Regulations

Commission Regulation 5.361(a), 52 Pa. Code §5.361(a), provides that no discovery is permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or participant.

As discussed in greater detail above, Complainant has failed to show any basis for her request to enter upon land. She has not indicated that she possesses the expertise to assess the operating condition of the Wightman Substation, nor has she indicated that she has retained an expert who possesses such expertise. Permitting her to enter on the designated land would pose an unreasonable danger to Respondent's equipment, personnel, and third parties, as well as to Complainant herself and to anyone who enters with her. In addition, permitting her to enter the substation enclosure would require Respondent to make personnel available to permit entry, to escort Complainant and anyone who accompanies her, and to take steps to safeguard her/them. Based upon Complainant's pleadings to date, it is not clear that she comprehends the danger

of contacting energized substation equipment, nor is it clear that she would follow instructions issued by Respondent's personnel.

WHEREFORE, Respondent requests that this Honorable Commission:

- (1) deny Complainant's Request for Entry Upon Land; or, in the alternative,
- (2) if Complainant's Request is granted, that it be granted only if the following conditions are met:
 - (a) Complainant and/or anyone who enters with her or at her behest agree/agrees to abide by all applicable safety rules and regulations, including the use of protective equipment, and to follow all instructions given by Respondent's personnel;
 - (b) Complainant executes a release absolving Respondent of liability, and holding it harmless, for any injury she may suffer as a result of her entry upon said designated land;
 - (c) Complainant obtains the execution of a release as described in (b) by anyone who enters upon said designated land with her or at her behest;
 - (d) Complainant reimburses Respondent for any personnel costs incurred in providing access to said substation; and

- (e) Complainant posts a bond in the amount of no less than one million dollars (\$1,000,000) to cover any damage to Respondent's equipment, injury to Respondent's employee(s), and/or injury or damage to third parties that result from said entry upon land.

Respectfully submitted,

DUQUESNE LIGHT COMPANY
By Counsel:



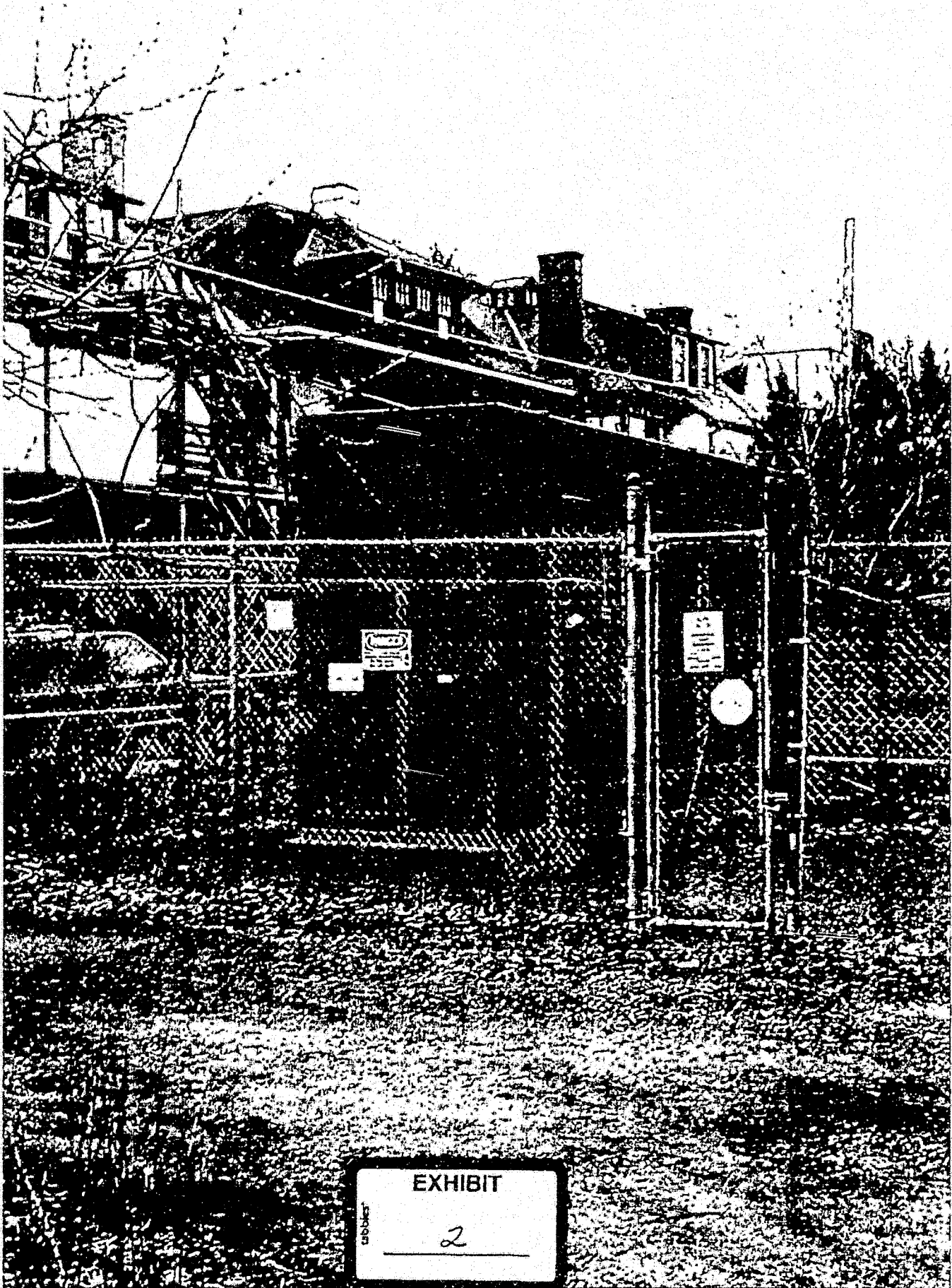
Regina M. Sestak
Pa. R.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418



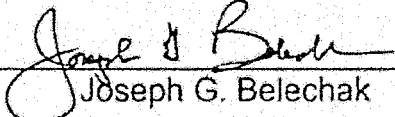
EXHIBIT
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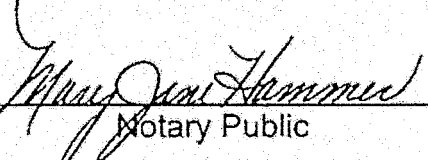
AFFIDAVIT

I, Joseph G. Belechak, being duly sworn according to law depose and say that I am authorized to make this affidavit on behalf of Duquesne Light Company being the holder of the office of Senior Vice President and Chief Operations Officer with that corporation, and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and Duquesne Light Company expects to be able to prove the same at any hearing hereof.



Joseph G. Belechak

Sworn and subscribed before me this 1st day of June, 200~~6~~⁷.



Notary Public

My Commission Expires Oct. 6, 2007

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary Jane Hammer, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Oct. 6, 2007
Member, Pennsylvania Association Of Notaries

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IRENE PREOBRAZHENSAYA,)
)
 Complainant,)
)
 v.)
)
DUQUESNE LIGHT COMPANY,)
)
 Respondent)

Docket No. C-20031085

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) by first-class mail upon:


Irene Preobrazhenskaya
5610 Hobart Street, Apt. 1
Pittsburgh, PA 15217

Administrative Law Judge James D. Porterfield
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Date: June 1, 2004

Respectfully submitted,

DUQUESNE LIGHT COMPANY
By Counsel:


Regina M. Sestak
Pa. I.D. # 23632

Duquesne Light Company
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219
Telephone: (412) 393-1546
FAX (412) 393-1418

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2004 JUN 16 PM 1:07

SECRETARY'S BUREAU

Irene Preobrazhenskaya
5610 Hobart Street
Apartment 1
Pittsburgh, PA 15217
(412) 422-0764

June 10, 2004

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

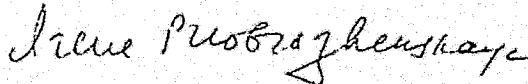
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RE: Irene Preobrazhenskaya v. Duquesne Light Company
Docket No. C-20031085

Dear Secretary McNulty:

An original and three copies of Complainant's Response to Respondent's Objections to Complainant's Request for Entry upon Designated Land are enclosed for filing in the above-captioned matter. Copies have been served upon Respondent and the presiding officer in accordance with Commission Regulations.

Sincerely,



Irene Preobrazhenskaya

cc: Regina Sestak (with enclosure)
Administrative Law Judge James D. Porterfield (with enclosure)

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION JUN 15 PM 1:07

Irene Preobrazhenskaya,)
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 Complainant,)
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 Duquesne Light Company)
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 Respondent)

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Docket No. C-20031085

DOCUMENT

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JUN 30 2004

**COMPLAINANT'S RESPONSE TO RESPONDENT'S OBJECTIONS TO
COMPLAINANT'S REQUEST FOR ENTRY UPON DESIGNATED LAND**

AND NOW, comes the Complainant, Irene Preobrazhenskaya, and files the within Response to Respondent's Objections to Complainant's Request for Entry upon Designated Land, as follows:

On May 19, 2004, Complainant filed her Request for Entry upon Designated Land. On or about June 1, 2004, Respondent filed, by its attorney Regina Sestak, its Objection to inspect the substation that serves the area where respondent lives. In support of its Motion Respondent avers that Complainant is "untrained" to inspect "an energized substation and entry on the designated land "would pose an reasonable danger" for "Complainant herself or anyone who enters with her". (Respondent's Objections at 1 and 7). Further, attorney Sestak inoculated a false premise around which she built her entire argument. Sestak claims that the Complainant "has not indicated that she possesses the expertise" to work with, or being exposed to, high voltage electrical equipment. *Id.* She conjured up the image of an "untrained individual" who does not appreciate that her undertaking is "inherently dangerous" *Id.* at 4. Don't Mess Up This Good Substation! "The substation is operating" *Id.* at 5. No matter that the area serviced by the

substation is losing power for 30 minutes one weekend a month and had many blinks where the power was out for shorter periods. Traffic lights on Wightman Street are out even on beautiful, sunny, windless days? "This substation is operating"! Id at 5. Take attorney Sestak's word for it and learn to enjoy gooey ice cream.

Attorney Sestak concludes, "Complaint has failed to show any basis for her request to enter upon land. She has not indicated that she possesses the expertise to assess the operating condition of the Wightman Substation, nor has she indicated that she has retained an expert who possesses such experience". Id at 7. Guess What? Attorney Sestak's facts and suppositions are wrong again. Attorney Sestak should know better. Attorney Sestak monitors the civil case, her objections are filled with the references and built around the civil case docketed as No. AR02-6050 Id at 3. She knows or should have known from the civil case that the Complainant is a professional trained in electrical engineering. Complainant is majored in High Voltage Electrical Machines and Transformers when she received her Master Degree in Electrical Engineering. This Complainant was designing as well as supervising the installation, maintenance and operation of transformers and other electro-mechanical systems for number of years. The Complainant has plenty of expertise.

Worst gets worse. Attorney's Sestak Response to Factual Assertions are factually inaccurate. For example, attorney Sestak makes a big deal out her baseless assertion that the Interruption Record Detail attached as Exhibit "A" to the Complainant's Request for Entry is not applicable because "The Document was prepared by Respondent and was provided to Complainant in the course of discovery in the civil action". Id at 3. Bluntly false. The Interruption Record Detail was provided by her colleague, Gary Miller, as a part of the response to the PUC inquiry (Complaint #4005253). Gary prepared his response on September 15, 2003,

conveniently omitting another 35 minute power outage that happened just two days before, on Sunday, September 14, 2003 at 2:25pm. The Interruption Record Detail clearly covers power outages between 3/29/02 and 10/16/02, a six to seven-month period. To say that there were no power outages during the other 22 months is not a stretch or wishful thinking, it is a deliberately deceptive statement. Complainant is living in the area servicing by the Oakland-Wightman substation. The power outages are a reoccurring event, it happens an average once a month. The latest string of power outages for the months February'04 through now at Complainant's place of residence is, as follows, Sunday, May 9, 2004, Sunday, April, 18 2004, Monday, February, 23, 2004, Sunday February, 8, 2004. Four months – Four power outages in excess of 30 minutes. Because the power outages are so frequent in the area of South Squirrel Hill, this Complainant, through the Pennsylvania Utility Commission, was pushing for renovation of electrical equipment at Oakland-Wightman substation for the last two years.

However, the inaccurate assertions made by attorney Sestak's throughout her objections are not always that blatant. Attorney Sestak mastered a wicked skill of deceptive miscommunication of "Say not to Say". In that context, the majority of deceptive messages throughout her Objections involve subtle and complex combinations of unarguably truthful and perniciously deceptive information. For example, to deny inspection of operation conditions at the Oakland –Wightman Substation, Attorney Sestak argues to this tribunal as she would to her five-year old niece. "A determination of the operating condition at the substation may be made by simple observation: the substation is operating". Eureka! Attorney Sestak concludes "Therefore, it is operational" (Respondent's Objections at 5). Attorney Sestak also suggests to "visually inspect and photograph from outside" and provides two photographs "taken from outside of the fence". Id. Unarguably truthful facts told in a plain and simple manner, with no

substance as to why the inspection was proposed. In particular, the deception is perpetrated by omitting a relevant purpose of the substation inspection by crossing the broad distinction between *omission into the concealment*. Attorney Sestak withholds and hides some information by giving this tribunal some other divergent and diversionary information that is true but not relevant, in order to perpetuate her false assumptions. What concealed in Sestak's objections is the true purpose of the inspection.

The Complainant never asserted that that the Oakland -Wightman Substation is inoperational. Rather the way it operates is troublesome. Agreed. The power company cannot guarantee uninterrupted supply of electricity when the circumstances led to the power outage are beyond the company's control (such would include acts of God, negligent or crimes or intentional torts of third persons, etc.). However, the patterns of the outages occurring on the monthly basis is highly suggestive that the company's controlled instrumentality's either improperly maintained/operated or simply became obsolete and unable to cope with the today's demand for electricity. It is particularly significant that power outages normally occurred over weekend when the demand for electricity reaches its pick. Apparently, the substation used to switch generators, equipment, and circuits or lines in and out of a system is unable to cope with the ever-growing demand. If it's true that a chain is only as strong as its weakest link, then it's also true that an electricity supply chain is only as strong as the logistics processes behind it. If one link fails, then the entire chain fails. If a company fails to timely update the equipment and renovate the obsolete substation to cope with ever-growing thirst for electricity from the bill paying end users, then the electricity supply chain fails. It fails at point of its weakest link, a cable along the transmission line. However, the true reason for the system failure is inadequate infrastructure at the servicing substation which failed to timely switch circuits or lines to avoid

the overburdening of the weakest link, normally the transmission cables. The Oakland-Wightman Substation is old; it is equipped with obsolete instrumentality and needs renovation. The pattern of the power outages shows that the electrical equipment is unable to meet rising demands for electricity. The Respondent, Duquesne Light Company is in denial. Attorney Sestak's lengthy objections failed to point out to any feasible reason(s) causing frequent power outages other than the obsolete infrastructure along with the worn out equipment. The explanation is simple. There aren't any except for the outdated infrastructure at the Oakland-Wightman Substation! Instead of modernizing its infrastructure, the Respondent built legal fortifications to fence against frustrated customers. Duquesne Light Company does not work in a vacuum. There are much too few of them to do their real damage unaided. Duquesne Light Company has conspired with RSKCo Claims Services to create a fantastic illusion of space where there is no damages, claimants where there aren't any, and liability where none exist while power outages occurring every month. It might help bottom line in a short run, but how does it help bill-paying customers who are got hit with another power outage every months of the year? A legion of law license caring yappers for hire would not help to install a single new piece of equipment. These ankle biters would not assist with the modernizing of substation necessary to stop power outages. Even Respondent's retained attorney, Ken Scholtz admits privately that he does not remember a single power outage in Shadyside area of Pittsburgh where he lives for last three or four years. Yet, in Squirrel Hill, the power outages are monthly event. Shadyside area is serviced by different substation and that makes all the difference. Our substation grew old and in dire need of renovation.

The proposed inspection would help Duquesne Light Company realize the problem. Power outages are devastating to our electrical appliances and cause great deal of inconvenience. In light of a recent widespread blackout, which struck the Northeast and Midwest parts of the

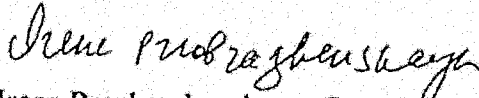
U.S. and Canada, a problem at power substation should be a wake-up call for the need to modernize our electricity delivery systems, particular infrastructure. Time has come for Duquesne Light Company to get out of denial. Please let the Respondent get out of denial and let the public utility try to find more dignified and humane ways of honoring all its bill paying customers, including misfortunate ones who happen to be serviced by the Oakland-Wightman substation.

The sole purpose of the Respondent's Objections is to cover up system failures at the Oakland-Wightman substation by constructively denying access to the public utility's infrastructure through imposition of unfulfilled and unacceptable restrictions.

In a case where outdated equipment at the Oakland-Wightman substation is a major culprit, the Complainant, a professional in the pertinent field, should be able to examine the scene of the accident as provided by Commission Regulation.

WHEREFORE, the Complainant respectfully requests this Honorable Commission to deny Respondent's Objection to Complainant's Request For Entry upon Designated Land.

By.


Irene Preobrazhenskaya, Complainant

Dated: June 10, 2004.

Duquesne Light

Our Energy. Your Power

Regina M. Sestak
Assistant General Counsel

Legal Department
411 Seventh Avenue, 8-2
Pittsburgh, PA 15219

Tel 412-393-1546
Fax 412-393-1418
rsestak@duqlight.com

September 28, 2004

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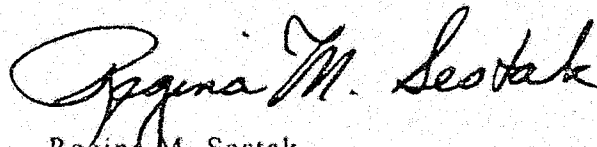
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P O. Box 3265
Harrisburg, PA 17105-3265

RE: Irene Preobrazhenskaya v. Duquesne Light Company
PUC Docket No. C-20031085

Dear Secretary McNulty:

Enclosed for filing in the above-captioned matter are an original and three copies of Complainant's Withdrawal of Formal Complaint and Respondent's consent thereto. Copies of this document are being served upon Complainant and the Presiding Officer in accordance with Commission Regulations.

Sincerely,



Regina M. Sestak
Attorney for Duquesne Light Company

enc

cc: Irene Preobrazhenskaya (with enclosure)
Administrative Law Judge James D. Porterfield (with enclosure)

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IRENE PREOBRAZHENS KAYA,)
)
 Complainant,)
)
 v.)
)
 DUQUESNE LIGHT COMPANY,)
)
 Respondent)

Docket No. C-20031085

WITHDRAWAL OF FORMAL COMPLAINT

I, Irene Preobrazhenskaya, hereby withdraw the above-captioned Formal Complaint against Duquesne Light Company in accordance with the confidential agreement reached on September 22, 2004, at settlement conference before the Honorable Eugene B. Strassburger, III, in Irene Preobrazhenskaya v. Duquesne Light Company, Allegheny County Court of Common Pleas Docket No. AR02-6050.

Irene Preobrazhenskaya 9/24/04
Irene Preobrazhenskaya, Complainant Date

CONSENT TO WITHDRAWAL OF FORMAL COMPLAINT

Duquesne Light Company, by and through the undersigned counsel, hereby consents to the withdrawal of the above-captioned Formal Complaint

DUQUESNE LIGHT COMPANY
By Counsel:

Regina M. Sestak 9-28-04
Regina M. Sestak Date
Attorney for Respondent
Pa. I. D. # 23632

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OCT 14 2004

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: October 4, 2004

SUBJECT: C-20031085 Irene Preobrazhenskaya v. Duquesne Light Company

TO: Wanda Zeiders
Docket Management

FROM: Susan Licon, Scheduling Officer
Office of Administrative Law Judge

On September 30, 2004, a Petition for Leave to Withdraw was filed in the above-captioned proceeding. If no objection is filed to this petition within 10 days of service, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

Attachment

pc: ALJ James D. Porterfield
Beth Plantz
Case File

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OCT 20 2004



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 3, 2004

C-20031085

IRENE PREOBRAZHENSKAYA
5610 HOBART STREET
PITTSBURGH PA 15217

IRENE PREOBRAZHENSKAYA
v.
DUQUESNE LIGHT COMPANY

TO WHOM IT MAY CONCERN:

Please be advised that the Commission has marked closed the above-entitled proceeding.

Very truly yours,

James J. McNulty
Secretary

nvl

cc: All parties of Record
Office of ALJ

DOCKETED
DEC 03 2004

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