

January 15, 2019

**Via Electronic Filing**

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. C-2018-3004871  
Chet and Michele Duffy v. Pennsylvania Power Company  
Response to Letter/Motion**

Dear Secretary Chiavetta:

Attached for filing is the Response of Pennsylvania Power Company (Penn Power), to the Letter/Motion, dated January 7, 2019, filed by Chet and Michele Duffy (Complainants) in the above referenced proceeding.

A copy of the Response to Letter/Motion has been forwarded to the Complainants in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lam  
Attachment

cc: The Hon. Katrina L. Dunderdale, PA Public Utility Commission [w/encls.]  
Teresa K. Harrold, Esquire, FirstEnergy Service Company [w/encls.]  
Chet and Michele Duffy [w/encls.]

**Re: Docket No. C-2018-3004871  
Chet and Michele Duffy v. Pennsylvania Power Company  
Response to Letter/Motion**

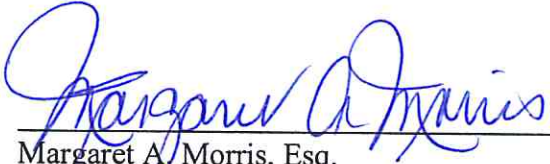
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via First Class Mail**

Chet and Michele Duffy  
P.O. Box 295  
Harmony, PA 16037  
[mad24@zoominternet.net](mailto:mad24@zoominternet.net)  
[ceduffy@zoominternet.net](mailto:ceduffy@zoominternet.net)

Dated: January 15, 2019

  
Margaret A. Morris, Esq.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CHET AND MICHELE DUFFY	:	
	:	
v.	:	Docket No. C-2018-3004871
	:	
PENNSYLVANIA POWER COMPANY	:	

**RESPONSE OF PENNSYLVANIA POWER COMPANY  
TO THE LETTER/MOTION OF CHET AND MICHELE DUFFY**

Pennsylvania Power Company (Respondent or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.103, hereby submits its Response to the hand-written letter filed by Chet and Michele Duffy (Complainants) on January 7, 2019 which the Company is treating as a motion. The Complainants' requests can be categorized into three subject matters, to wit: request for another continuance, *ex parte* allegation and request that Presiding Officer Katrina Dunderdale (Judge Dunderdale) recuse herself from presiding over the January 24, 2019 scheduled hearing on the Formal Complaint filed by the Complainants on September 19, 2018. In response thereto, Respondent avers and represents as follows:

**Continuance Request**

This is the Complainants' third requested continuance providing yet a different reason. The first request was based on the contention that their witnesses were not available for the previously scheduled hearing on January 3, 2019. Prior to any disposition of that request, the Complainants only notified counsel for the Company of a medical situation. Counsel forwarded

the email request to Judge Dunderdale who granted the unopposed request. The continued hearing is scheduled for hearing on January 24, 2019. The latest reason for a continuance is so the Complainants can order, install and gather data from a sub-meter they intend to purchase and install at the Service Location.

The Company respectfully opposes the requested continuance. Clearly the Complainants are not ready to proceed with their Complaint since, as admitted, they still need to purchase the sub-meters and collect data as well as confirm the availability of their witnesses. Commission regulations provide two options to the Complainants.

52 Pa. Code § 5.94 provides for the filing of a petition requesting leave to withdraw the matter. The petition must specifically state the reason for the requested withdrawal. The Company does object to the request to withdraw the Complaint without prejudice.

52 Pa. Code § 5.24(b)(2) provides for the filing of a certified statement that the Complainants no longer wish to pursue the complaint. The Company does object to the closing of the present docket without prejudice. If authorized, the Respondent would file the appropriate document with the Commission with copy to the Complainants.

Either option permits the Complainants to file a complaint when they believe they have evidence to proceed to hearing. A protracted continuance wastes the resources of the Commission and the Company. The requested continuance should be denied.

### ***Ex Parte Allegation***

The Complainants allege that there was *ex parte* communication between Judge Dunderdale and counsel for the Company “negotiating a revised hearing date” without involving them in the selected date. This allegation is without merit and should be summarily dismissed. The Complainants’ allegation is entirely fabricated. The email exchange between Judge Dunderdale and counsel regarding a conflict with the hearing date of February 24, 2019 included the Complainants. Judge Dunderdale did not seek, nor did counsel for the Company suggest/negotiate, the rescheduled hearing date of January 24, 2019. A copy of the email exchange between Judge Dunderdale and both parties regarding the rescheduled hearing is provided as Attachment 1.

### **Recusal**

Section 5.482 of the Commission’s regulations provides for the disqualification of a presiding officer. Any request must be accompanied by affidavits alleging personal bias or other disqualification.

The Complainants’ request that Judge Dunderdale recuse herself from the present proceeding based on her ruling in the Formal Complaint filed by the Complainants in Docket No. C-2008-2063047 (2008 Formal). The Complainants opine they felt that the treatment of Judge Dunderdale in the 2008 Formal was “unfair.”

The fact that Judge Dunderdale presided over the 2008 Formal and found that the Complainants did not meet their burden to sustain the 2008 Formal is not sufficient grounds for

disqualification. Judge Dunderdale's ruling in the 2008 Formal was based on the record evidence in that proceeding. Furthermore, the Commission unanimously denied the Complainants' Exceptions and adopted Judge Dunderdale's Initial Decision in their Opinion and Order entered August 20, 2010 (*Order*). It should be noted that in their Exceptions, the Complainants also alleged that the Initial Decision was riddled with bias and personal opinion. The Commission specifically rejected that Exception and found that certain testimony of the Complainants did not appear credible. *Order* at 10.

The Complainants provide no support for their recusal request. The Complainants' request does not contain the required affidavit. Judge Dunderdale has presided over this present proceeding in a professional and unbiased manner. The determination to be made in the present proceeding will be based on the record evidence in the present docket. Finally, the Company avers that it is not uncommon for a complainant to have the same judge preside over subsequent complaints. The Complainants' request should be denied.

**WHEREFORE**, Respondent, Pennsylvania Power Company, requests the relief sought by Chet and Michele Duffy be denied and the allegation of an *ex parte* communication be dismissed in its entirety.

Respectfully submitted,

Date: January 15, 2019



Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 tel.  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

*Counsel for Pennsylvania Power Company*

**ATTACHMENT 1**

**Email exchange re: hearing date**

## Margaret A. Morris, Esquire

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**From:** Dunderdale, Katrina <kdunderdal@pa.gov>  
**Sent:** Thursday, January 03, 2019 2:03 PM  
**To:** Margaret A. Morris, Esquire  
**Cc:** ceduffy@zoominternet.net  
**Subject:** RE: [External] CM Duffy v PP rescheduled hearing 2/26/19 conflict with another PUC hearing

The hearing will be rescheduled to January 24<sup>th</sup>.

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**From:** Margaret A. Morris, Esquire <mmorris@regerlaw.com>  
**Sent:** Thursday, January 03, 2019 1:54 PM  
**To:** Dunderdale, Katrina <kdunderdal@pa.gov>  
**Cc:** ceduffy@zoominternet.net  
**Subject:** RE: [External] CM Duffy v PP rescheduled hearing 2/26/19 conflict with another PUC hearing

Thank you.

*Margie Morris*

	Cira Centre, 13th Floor 2929 Arch Street Philadelphia, Pa 19104 Phone: 215.495.6500 Fax: 215.495.6600 Web: www.regerlaw.com	Margaret A. Morris, Esquire <a href="mailto:mmorris@regerlaw.com">mmorris@regerlaw.com</a> Direct: 215.495.6524 Cell: 215.870.5785
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**From:** Dunderdale, Katrina [mailto:kdunderdal@pa.gov]  
**Sent:** Thursday, January 03, 2019 1:53 PM  
**To:** Margaret A. Morris, Esquire  
**Cc:** ceduffy@zoominternet.net  
**Subject:** RE: [External] CM Duffy v PP rescheduled hearing 2/26/19 conflict with another PUC hearing

Your entry in appearance came late in the prehearing process and too close to the holidays. OALJ did not change the hearing room calendar to reflect the new attorney.

We will reschedule the Duffy hearing.

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**From:** Margaret A. Morris, Esquire <mmorris@regerlaw.com>  
**Sent:** Thursday, January 03, 2019 1:38 PM  
**To:** Dunderdale, Katrina <kdunderdal@pa.gov>  
**Cc:** [ceduffy@zoominternet.net](mailto:ceduffy@zoominternet.net)

**Subject:** RE: [External] CM Duffy v PP rescheduled hearing 2/26/19 conflict with another PUC hearing  
**Importance:** High

Your Honor:

Attached please find the EOA for Matkosky matter which was efiled on 12/20/18 with receipt of filing. Please reconsider the request.

*Margie Morris*

	Cira Centre, 13th Floor 2929 Arch Street Philadelphia, Pa 19104 Phone: 215.495.6500 Fax: 215.495.6600 Web: <a href="http://www.regerlaw.com">www.regerlaw.com</a>	Margaret A. Morris, Esquire <a href="mailto:mmorris@regerlaw.com">mmorris@regerlaw.com</a> Direct: 215.495.6524 Cell: 215.870.5785
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**From:** Dunderdale, Katrina [<mailto:kdunderdal@pa.gov>]  
**Sent:** Thursday, January 03, 2019 1:34 PM  
**To:** Margaret A. Morris, Esquire  
**Cc:** [ceduffy@zoominternet.net](mailto:ceduffy@zoominternet.net)  
**Subject:** RE: [External] CM Duffy v PP rescheduled hearing 2/26/19 conflict with another PUC hearing

Ms. Morris,

Our records do not reflect that you are appearing to represent Penn Power in the Matkosky proceeding.

Therefore, your request is denied.

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**From:** Margaret A. Morris, Esquire <[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)>  
**Sent:** Thursday, January 03, 2019 11:35 AM  
**To:** Dunderdale, Katrina <[kdunderdal@pa.gov](mailto:kdunderdal@pa.gov)>  
**Cc:** [ceduffy@zoominternet.net](mailto:ceduffy@zoominternet.net)  
**Subject:** [External] CM Duffy v PP rescheduled hearing 2/26/19 conflict with another PUC hearing  
**Importance:** High

**ATTENTION:** *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to [CWOPA\\_SPAM@pa.gov](mailto:CWOPA_SPAM@pa.gov).*

Your Honor:

I received the attached Notice of Hearing for 2/26 at 10 am. I am already scheduled for a hearing, that day and time, in the matter of Matkosky v , Penn Power, Docket No. C-2018-3005906.

Please advise if the Duffy hearing can be rescheduled for different day or at least moved to afternoon. Thank you.

Mr. Duffy is copied on the email.