

February 15, 2019

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
2nd Floor, Room-N201  
Harrisburg, PA 17120

**RE: Michele Hriadil and Francis Hriadil v. Duquesne Light Company  
Docket No. C-2016-2571726**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Reply to Complainants' Response to Respondent's Answer in Opposition to Complainants' Motion to Allow a Second Expert Witness, Dr. Andrew Michrowski, PhD, and Respondent's Motion in Limine to Preclude Complainants' Purported Expert Testimony For Failure to Produce Required Expert Reports. A copy of this document has been served upon Complainants in accordance with Commission regulations.

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

Sincerely,



Jeremy V. Farrell  
Attorney for Duquesne Light Company

Paul Shane Miller  
Attorney for Duquesne Light Company

Enclosure

cc: Michele Hriadil and Francis Hriadil (with enclosure)  
Administrative Law Judge Jeffrey Watson (with enclosure)

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Complainants have consistently refused to disclose this information. Instead, they have provided Duquesne Light with several internet articles and publications by two of their purported experts -- Drs. Carpenter and Michrowski -- that are unrelated to Duquesne Light or this case. Drs. Carpenter and Michrowski also wrote two-page letters on Complainants' behalf. Complainants believe that these articles and letters constitute "expert reports."<sup>2</sup>

This position must be rejected. The internet articles written by Drs. Carpenter and Michrowski do not satisfy the requirements of 52 Pa. Code § 5.324 because they were not signed and were not authored in connection with this litigation. They provide no insight into the facts and opinions relating to Duquesne Light or Complainants to which they will testify at the hearing, or the grounds for each opinion. They simply are not expert reports and do not provide the information Complainants are required to provide under 52 Pa. Code § 5.324.

The two-page letters are also deficient. Dr. Carpenter's brief letter does not even mention Complainants. Instead, he reviews his qualifications and generally discusses the alleged dangers of radiation from cell phone and electric meters. Just one sentence mentions Duquesne Light: "As a public health physician with specific expertise in the human effects of radiofrequency radiation, I urge you to require Duquesne Light Company to install analog meters where residents request them." This letter provides Duquesne Light with almost no information about what Dr. Carpenter will testify to at the hearing, setting up the classic "trial by ambush" that the discovery rules are meant to prevent. There is no mention of the facts or opinions to which Dr. Carpenter will testify, nor is there a summary of the grounds for those opinions.

Mr. Michrowski's two-page letter contains the same flaw. Most of the letter just discusses Dr. Michrowski's organization, the Planetary Association for Clean Energy. He

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<sup>2</sup> See Response to Respondent's Answer in Opposition to Complainants' Motion to Allow a Second Expert Witness Dr. Michrowski and Motion to Limine to Preclude Complainants' Purported Expert Testimony for Failure to Produce Required Expert Reports ("Respondent's Answer in Opposition"), pp. 4-5.

mentions Complainants in only one paragraph. There, he simply states, without elaborating, that Complainants have raised credible allegations about the health and safety risks of smart meters; that Complainants are vulnerable to such risks because they are elderly and Francis Hriadil has chronic health conditions; and that smart meters, in general, pose safety and fire hazards. This brief letter provides no meaningful insight into the facts and opinions to which Dr. Michrowski will testify, or the grounds for his opinions; therefore, it does not satisfy Complainants' obligations under the Commission's regulations. Drs. Carpenter and Michrowski should be barred from testifying as experts at the hearing.

Complainants try to wriggle out of that fact by relying on the scheduling orders issued by the Presiding Administrative Law Judge, which required production of a summary of the expert's expected testimony. But even if the documents from Drs. Carpenter and Michrowski met the Order's requirements (a conclusion which is itself questionable given their superficial commentary), Complainants fail to recognize that the scheduling orders did not eliminate or minimize their obligation to provide the information under 52 Pa. Code § 5.324. That is a complete and separate issue. Complainants' failure to comply with their discovery obligations warrants preclusion of the testimony of Drs. Carpenter and Michrowski.

Duquesne Light has given Complainants ample opportunity to correct their discovery shortcomings, even going so far in its Motion in Limine to give Complainants until six weeks prior to the hearing date to produce compliant reports or discovery responses. Complainants have nevertheless persisted in their refusal to provide full and complete discovery responses, instead opting to file an opposition brief that is 14 pages longer than the combined length of their so-called expert reports.

Simply put, Complainants are obligated under the Commission's regulations to provide either discovery responses or, alternatively, an expert report that complies with 52 Pa. Code § 5.324. They have persistently refused to do so and should not be permitted to offer the

testimony of expert witnesses for whom they have refused to produce the **required** expert discovery.

**B. Complainants cannot testify as expert witnesses because they failed to produce an expert report and do not possess the necessary qualifications.**

Complainants believe they qualify as expert witnesses and that they have submitted expert reports by filing various pleadings.<sup>3</sup> A pleading, however, clearly does not constitute an expert report. And Complainants have submitted nothing else that qualifies as an expert report or meets the obligations of 52 Pa. Code § 5.324. For this reason alone, they cannot testify as expert witnesses.

The Presiding ALJ should also refuse to accept Mr. Hriadil's argument that he should be qualified as an expert on smart meters because he has worked on "advanced strategic and tactical missile technology" and has generated his own "direct technical analysis, assessments, summarizes, and expert views" on those subjects.<sup>4</sup> It goes without saying that expert witnesses need to have expertise in the field in which they hope to testify. Simply stated, Francis Hriadil lacks a reasonable pretension to specialized knowledge about Duquesne Light's smart meter technology because, among other things, he has never installed a smart meter, has never performed any job responsibilities or engaged in a course of study specifically relating to radiofrequency or low frequency radiation, has no medical training, and he has never published in academic or professional journals about the topic.<sup>5</sup>

If this case centered on "rocket science" or "advanced strategic and tactical missile technology," then perhaps Francis Hriadil would qualify as an expert. But they do not, as Mr. Hriadil himself admits, stating that "[s]mart meter technology can by no means be classified as

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<sup>3</sup> See Response to Respondent's Answer in Opposition, pp. 8-9.

<sup>4</sup> *Id.*

<sup>5</sup> See Response to Respondent's Second Set of Discovery Requests at ¶¶ 4, 20, 24; Response to Respondent's Answer in Opposition, p. 8.

rocket science.”<sup>6</sup> Thus, by his own admission, Francis Hriadil does not have knowledge about the relevant topic (Duquesne Light’s smart meter technology).

One of Mr. Hriadil’s recent filings is illustrative in this regard. In New Matter #5, which was filed on January 24, 2019, and which is an improper pleading (as were New Matters #1 through #4), he asked Duquesne Light to provide him with “a fully functional working model” of its smart meter for his direct examination and use an exhibit.<sup>7</sup> This request shows a basic misunderstanding of how smart meter technology works because Duquesne Light’s smart meter cannot be “fully functional” unless it is installed and connected to the network, which Francis Hriadil filed this action specifically to prevent.

There is even less of a basis to allow Ms. Hriadil to testify as an expert on cybersecurity matters. Like Francis Hriadil, she has submitted no expert report or other discovery responses that comply with 52 Pa. Code § 5.324, which alone disqualifies her from offering expert testimony. Moreover, there is no evidence that she has specialized knowledge about cybersecurity measures in the context of a utility company’s metering infrastructure. Indeed, throughout the entire length of this matter, she has failed to identify even a single aspect of Duquesne Light’s cybersecurity protections that she contends is inadequate or flawed.

## **II. Conclusion**

More than 500 days ago, Duquesne Light asked Complainants for an expert report for each expert witness that they intend to call at the hearing. Duquesne Light has a right to obtain these reports; in fact, it is a fundamental tenet of due process and a fair hearing. For whatever reason, Complainants have repeatedly withheld this information. With the hearing quickly approaching, Complainants cannot be permitted to delay any longer. Duquesne Light thus requests an order that prohibits Complainants from offering expert testimony at the hearing, or,

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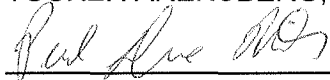
<sup>6</sup> *Id.* at 9.

<sup>7</sup> See New Matter #5, p. 7.

alternatively, that compels Complainants to produce reports for each of their purported experts (including themselves) that comply with 52 Pa. Code § 5.324(a)(1)(ii) at least six weeks prior to the hearing date.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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