

March 4, 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 Respondent's Reply to Response to Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence. 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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two different things used for two different purposes. The former seeks to dismiss a case on the basis that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law; the latter seeks to exclude certain evidence at the hearing. In denying Duquesne Light's motion for summary judgment, the Presiding ALJ did not rule that Complainants' exhibits were admissible or even relevant. In fact, the Presiding ALJ explicitly recognized that "the majority of the information and documentation identified by Complainants do not address the potential harm alleged by Complainants ... or relate any such claims to the smart meter installation proposed by Respondent in this proceeding...." Interim Order Denying Motion for Summary Judgment Dated November 30, 2018 at pp. 11-12.¹ Duquesne Light merely seeks to preclude such documents from being offered and relied upon at the hearing.

2. Records from non-Commission proceedings to which Duquesne Light was not a party must be barred under the plain language of Commission regulations. Complainants contend they should be permitted to offer into evidence hearings and proceedings that occurred before entities other than the Public Utility Commission. Under 52 Pa. Code § 5.407, records from other proceedings may be admitted into evidence if the proceeding occurred before the Commission and the evidence and relevant and material to the case. Hearings and proceedings that occurred before entities other than the Commission do not qualify under this rule and are not admissible under any other rule.

3. Articles or documents that do not address Duquesne Light or its smart meter program are irrelevant because they do not make it more or less likely that

¹ Duquesne Light also feels compelled to note that in virtually every recent document that Complainants have filed, they call Duquesne Light's Motion for Summary Judgment "massive" and "consisting of over 300 pages." See Complainants' Response, ¶¶ 3, 4. To be clear, Duquesne Light's Brief in Support of Motion for Judgment was just 22 pages. And any insinuation from Complainants that Duquesne Light was wrong to file that motion or pursued it for ulterior motives is vigorously rejected. Dispositive motions are a commonly-used procedural tool that are expressly permitted by both the Commission regulations and the Presiding ALJ's orders in this case.

Duquesne Light has violated the Code, its associated regulations, or the Company's tariff. Complainants also argue that the articles, videos, and things that are the subject of Duquesne Light's motion in limine are relevant because "[t]here is nothing patently unique or exclusive to the Respondent's Smart Meter program and how it is being operated." Complainants' Response, ¶ 13. That argument is as flawed as Complainants' contention that Duquesne Light's cybersecurity protections violate the Code because electronic data at other companies, like Target, have been hacked and because Complainants suppose that Duquesne Light's cybersecurity protections are "no better than" those companies. Response to Respondent's Second Set of Discovery Requests Directed to Complainants, ¶ 16. Simply put, the fact that some article or report said that there was some problem with some smart meter or practice from some other utility or company in some other jurisdiction is not proof that Duquesne Light has done anything wrong. Complainants have been given ample opportunity to seek discovery into Duquesne Light's practices and programs, and the evidence they rely upon at the hearing should be restricted to those issues.

4. Articles or documents drafted by individuals who will not testify at the hearing are hearsay and are unreliable because Duquesne Light cannot cross-examine the author and thus cannot test the reliability of the evidence. Complainants admit they did not write or create most of the exhibits that they plan to introduce at the hearing. Complainants' Response, ¶ 28. They nonetheless assert that these articles and documents should be admitted into evidence because they "have all been published, and are public documents that are part of the public record." *Id.* at ¶ 29. That argument completely misses the point. Documents that have been published are still hearsay if they are offered for the truth of the matter asserted, which Complainants clearly intend to do. Moreover, even if admitted into evidence, hearsay cannot form the basis of a finding of fact if properly objected to unless supported by other competent evidence, making such evidence all the more appropriate for

exclusion under the considerations set forth in 52 Pa. Code § 5.401. See Hoffman-Lorah v. PPL Elec. Util. Corp., Docket No. C-2018-2644957, 2018 WL 6124349, at *11 (Pa. P.U.C. Nov. 14, 2018) (Barnes, ALJ).

In sum, contrary to Complainant's statement that Duquesne Light is seeking to deny them a full and fair hearing, Duquesne Light is actually seeking a fair hearing by asking that the evidence presented at the hearing relate to the sole issue to be decided at the hearing, which is whether Duquesne Light is doing or has done anything in violation of the Public Utility Code, an associated regulation, or its tariff by attempting to install a smart meter approved by the Commission at Complainants' residence. The right to a fair hearing -- a right which extends as equally to Duquesne Light as it does to Complainants -- does not mean that a party gets to offer whatever it wants into evidence at the hearing. The evidence must be relevant and admissible, and the things that are the subject of Duquesne Light's motion in limine simply are not. For those reasons and those in Duquesne Light's motion in limine, Duquesne Light respectfully requests an order precluding Complainants from introducing or referencing any of the documents, videos, or things listed in Exhibit B to Duquesne Light's Motion in Limine.

Respectfully submitted,

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