

331 Shady Ridge Drive
Monroeville, Pennsylvania

February 27, 2019

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Via Paper Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

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

Dear Secretary Chiavetta:

Enclosed please find a copy of Complainants'

Answer to Respondent's Letter Concerning Complainants' New Matter #5

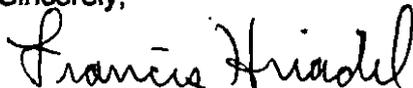
and

Petition/Motion to Compel Respondent to Supply Its Smart Meter for Examination

A copy of this document has been served upon the Judge Jeffrey Watson, Presiding PA PUC Pittsburgh Administrative Law Judge, and the Respondent's Counsel, Jeremy V Farrell, Esquire, in accordance with Commission regulations.

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

Sincerely,



Francis Hriadil
Complainant
(412) 779-3314
hriadil@attglobal.net

Enclosure

Cc: Judge Jeffrey Watson, Presiding PA PUC Pittsburgh Administrative Law Judge

Cc: Jeremy V Farrell, Esquire, Counsel for Duquesne Light Company

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PA PUBLIC UTILITY COMMISSIO
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Michele Hriadil and
Francis Hriadil,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**ANSWER TO RESPONDENT'S LETTER
CONCERNING COMPLAINANTS' NEW
MATTER #5 and PETITION/MOTION
TO COMPEL RESPONDENT TO SUPPLY
ITS SMART METER FOR EXAMINATION**

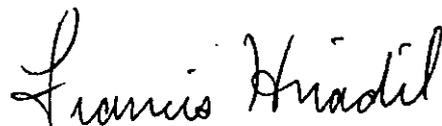
Filed by Michele and Francis Hriadil

hriadil@attglobal.net
(412) 779-3314
331 Shady Ridge Drive
Monroeville, Pennsylvania

**ANSWER TO RESPONDENT'S LETTER
CONCERNING COMPLAINANTS' NEW MATTER #5
and
PETITION/MOTION TO COMPEL RESPONDENT
TO SUPPLY ITS SMART METER FOR EXAMINATION**

TO: THE HONORABLE ALJ JEFFREY WATSON, and the COMMISSION.

**ENCLOSED IS COMPLAINANTS' ANSWER TO RESPONDENT'S LETTER and OUR
PETITION/MOTION FOR THE RESPONDENT TO SUPPLY ITS SMART METER FOR
EXAMINATION, FILED WITHIN TWO (2) DAYS OF RECEIVING RESPONDENT'S LETTER
ON FEBRUARY 25, 2019. ONE (1) EXHIBIT IS ALSO ENCLOSED.**



Francis Hriadil
February 27, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Michele Hriadil and
Francis Hriadil,

Complainant,

vs.

No: C-2016-2571726

DUQUESNE LIGHT COMPANY,

Respondent.

**ANSWER TO RESPONDENT'S LETTER
CONCERNING COMPLAINANTS' NEW MATTER #5
and
PETITION/MOTION TO COMPEL RESPONDENT
TO SUPPLY ITS SMART METER FOR EXAMINATION**

TO the HONORABLE ALJ JEFFREY WATSON, and the COMMISSION:

1. The Complainants are filing this Answer and Petition/Motion within two (2) days of receiving the 2/19/2019 letter from the Respondent.

2. The content and substance of Complainants' New Matter #5 are incorporated here-in by reference as if fully restated.

3. The Respondent has made numerous, repeated arguments in its Motion for Summary Judgment, Motions in Limine, etc., asserting that their meter is separate and distinct from all other similar smart meters operating in a similar smart mesh, and that testing and analysis done on these other similar devices and systems are not pertinent to its Smart Meter and Smart Mesh.

4. The Complainants aver that there is substantial and relevant commonality between the Respondent's Smart Meter and its operation in its Smart Mesh, with other similar RF emitting devices

and Smart Meter programs that have been researched, assessed, analyzed, and reported on. The physics and operational characteristics of these devices remain the same irrespective of housing, location, or jurisdiction. The Respondent continues to deny this commonality and intends to use this claim in an obvious attempt to confuse the issues and cast doubt on the Complainants' evidentiary documentation. This, along with the contradictory nature of at least some of the Respondent's documentation and filings, pre- and post-Discovery, have brought this issue to the forefront.

Complainants raised this matter in our New Matter #5 in an effort to definitively establish the true facts concerning the commonality that the Respondent's Centron / ITRON OpenWay SK9AMI7 Smart Meter in its Smart Mesh shares with these other comparable devices and systems.

5. As part of our New Matter #5 filing, Complainants asked that the Respondent provide the Complainants with a fully functional Smart Meter, chosen randomly from its inventory, and verified in accordance with 52 Pa. Code S 1.36. Complainants provided the Respondent with the standard 20 days to respond. The Respondent did not respond within the allotted 20 days.

The specific timeline of the Complainants' filing and the response by the Respondent is as follows:

- 1/24/2019 - Complainants served our filing by mail.
- 1/25/2019 - Your Honor and the Respondent received Complainants' filing.
- 2/14/2019 - 20 days later, no response was served by the Respondent, or received by the Complainants.
- 2/19/2019 - Respondent generated a one (1) page letter, requiring a signed return receipt (25 days after Complainants' filing).
- 2/21/2019 - Complainants received a notice from the Post Office on Thursday 2/21/2019, indicating an attempt to deliver a letter, asking the Complainants to contact the Post Office for redelivery, which the Complainants did.
- 2/22/2019 - Friday 2/22/2019, redelivery did not occur, Complainants contacted the Post Office again, and were assured that redelivery would occur on Saturday 2/23/2019.
- 2/23/2019 - Saturday 2/23/2019, redelivery again did not occur.
- 2/25/2019 - Complainant Francis Hriadil went to the Post Office and physically signed

for and picked up Respondent's one (1) page letter comprising its response. Thus, we received Respondent's letter 31 days after our filing to Your Honor and the Respondent.

6. Respondent's one (1) page letter contained no certificate of service, nor did it indicate that copies were sent to Your Honor, or Secretary Chiavetta. A copy of Respondent's letter is provided herein for reference, as Exhibit 1.

Respondent's one (1) page letter consists of four (4) points, which the Complainants' will address.

7. Respondent Point #1 - "You can attempt to obtain an uninstalled meter by contacting Itron directly."

Complainants' response:

This statement is patently disingenuous as the Respondent is well aware that its Smart Meter is not available for sale to the general public. You have to be a utility or utility contractor in order to be able to obtain such a meter from Itron. And, the issue at hand is the Respondent's specific smart meter, not some variation of it. The Respondent is the only appropriate and viable source for its Smart Meter.

8. Respondent Point #2 - "a smart meter is 'fully functional' only if connected to the network."

Complainants' response:

This statement is factually and categorically incorrect. It indicates either the Respondent's lack of understanding of what "functional" means or an intention on the part of the Respondent to purposely confuse the issue. The proper phrasing of their statement is that "a functional smart meter is 'fully operational' when connected to their network"; but, this statement is immaterial to our request. Being operational is a separate condition from being functional. To be operating, a meter needs to be functional. To be functional, a meter need not be operating. The meter only needs to be

installed to become operational. A functional meter is essential and required from the Respondent's inventory to address the issues of commonality and uniqueness in a definitive manner. This is of fundamental importance to the truth of the matter and the credibility of this Hearing process.

9. Respondent Point #3 - "The request is improper for several reasons. First, a 'New Matter' cannot be used to gather information or materials. It simply allows a party to raise affirmative defenses and set forth new material facts."

Complainants' response:

Complainants are two (2) elderly individuals, pursuing a complaint *pro se*, who are not experienced with all of the legal language and terminology of this complaint process, as this is the first time the Complainants have been involved in a process such as this. Nonetheless, this does not negate the validity of, nor the importance of, our point and our raised matter/petition/motion. The nature of the commonality of the Respondent's Smart Meter in its Smart Mesh with other similar systems is of critical importance and consequence to our complaint and to the integrity of this Hearing process. It is in the public interest and the interest of the Commission to know the truth. Obtaining the Respondent's specific smart meter for examination is necessary to obtain the truth, the whole truth of the matter and a definitive understanding of the nature of the Respondent's Smart Meter.

If the Respondent is allowed to escape production of its specific Smart Meter for examination, etc. it will harm the Complainants' effort to present the truth, and it will bring into question the credibility of this complaint process. The Complainants' request for production of the Respondent's specific Smart Meter for examination, etc. is neither frivolous, nor is it unreasonable, and it places no undue burden on the Respondent.

10. Respondent Point #4 - "In addition, New Matter #5 is inappropriate even if construed as a discovery request. Discovery closed on March 16, 2018."

Complainants' response:

Your Honor has the authority to grant our motion/petition. The Hearing date has been

significantly delayed, and the Litigation Schedule, in all fairness, should reflect the reality of this delay. The Complainants are proceeding in good faith with the complaint process to the best of our ability and our understanding of the filing requirements, and in a manner that is appropriate to the new Hearing date.

The Complainants should not be penalized for some apparent minor incorrectness in our use of filing title terminology, which is of no consequence. The content and substance of our filing is what carries the validity and purpose of our filing. Our issue is valid, our justification is sound, there is no undue burden being placed upon the Respondent, and the importance of the issue being raised is material, clear, and of utmost consequence to the matter at hand.

It is the Respondent, through its filings, who is chiefly responsible for the significant delay incurred in the Hearing schedule, a delay in the Hearing of 10 months, from July 2018 to May 2019. To expect the Complainants to simply stop in our ongoing preparation efforts and not use the time to continue to refine, strengthen, and substantiate our complaint is not only illogical, it is unreasonable.

11. If the Commission wants to know the full truth, direct examination of the Respondent's specific Smart Meter by the Complainants is necessary. The Respondent is only being asked to produce one (1) functional Smart Meter from its inventory for examination. Should the Complainants ultimately be granted our request for relief, the meter will be returned to the Respondent unharmed and ready for deployment. Should the Complainants ultimately be denied our request for relief, the meter will be available at our residence for installation.

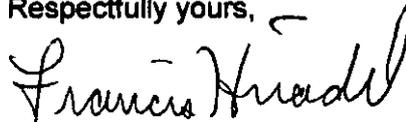
12. It cannot be overemphasized by the Complainants that this type of direct, independent, and definitive assessment of the common and distinctive aspects of the specific form, fit, function, and operating characteristics of the Respondent's Centron / Itron OpenWay SK9AMI7 Smart Meter, is essential for complete openness and credibility in the complaint process, for the accurate assessment of all evidence, for the proper determination of any violation or multiple violations of PA Code, etc. and for

the fair, proper, and just resolution of the Complainant's Formal Complaint, and our request for relief.

In conclusion, it imposes no unfair burden on the Respondent; but, it is a matter of important and significant consequence. Without a definitive assessment of this nature, Your Honor and the Commission cannot accurately and properly assess the pertinence of any evidence that is introduced. It is of utmost consequence to the Complainants, it is in the public interest, and it is in the interest of Your Honor and the Commission to obtain all of the relevant facts.

WHEREFORE, in light of these circumstances, Complainants Michele Hriadil and Francis Hriadil require the Respondent to provide us with a fully functional working model of its Centron / Itron OpenWay SK9AMI7 Smart Meter for direct examination, etc., and for use as an exhibit, that is chosen randomly from its inventory, and is verified in accordance with 52 Pa. Code S 1.36. Since the Respondent in its February 19, 2018 letter has indicated that it is unwilling to do so, the Complainants respectfully request that Your Honor, and the PA PUC, compel the Respondent to do so.

Respectfully yours,



Francis Hriadil
(412) 779-3314
331 Shady Ridge Drive
Monroeville, Pennsylvania
February 27, 2019

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT 1

TUCKER ARENSBERG
Attorneys

Jeremy V. Farrell
jfarrell@tuckerlaw.com

412.594.3938

Paul Shane Miller
smiller@tuckerlaw.com

412.594.5503

February 19, 2019

VIA CERTIFIED MAIL

Michele Hriadil and Francis Hriadil
331 Shady Ridge Drive
Monroeville, PA 15146

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

Dear Michele Hriadil and Francis Hriadil:

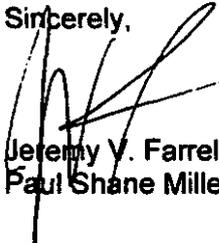
In "New Matter #5," you request a "fully functional working model of its [Duquesne Light Company's] Centron/Itron OpenWay SK9AM17 Smart Meter for direct examination, etc., and for use as an exhibit . . ."

This request is improper for several reasons. First, a "New Matter" cannot be used to gather information or materials. It simply allows a party to raise affirmative defenses and set forth new material facts. See 52 Pa. Code § 5.62.

In addition, New Matter #5 is inappropriate even if construed as a discovery request. Discovery closed on March 16, 2018. See First Supplemental Prehearing Order, p. 1. You sent New Matter #5 approximately ten months after the deadline.

Finally, a smart meter is "fully functional" only if connected to the network. Duquesne Light can install a smart meter at your property, provided that you do not tamper with it or attempt to remove it. It also must remain in place unless the Public Utility Commission or a judge orders otherwise. Duquesne Light, however, will not send you an uninstalled meter. You can attempt to obtain an uninstalled meter by contacting Itron directly.

Sincerely,



Jeremy V. Farrell
Paul Shane Miller

TADMS:5100742-1 014657-158498

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FEB 27 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Michele Hriadil and
Francis Hriadil,

Complainant,

vs.

No: C-2016-2571726

DUQUESNE LIGHT COMPANY,

Respondent.

CERTIFICATE OF SERVICE

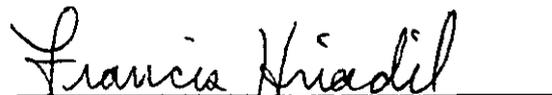
I hereby certify that I have this day served a true copy of Complainants' Answer to Respondent's Letter Concerning Complainants' New Matter #5 and Petition/Motion to Compel Respondent to Supply Its Smart Meter for Examination upon the participants listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

Via Paper Filing
Judge Jeffrey Watson
PA PUC Pittsburgh Administrative Law Judge Office
301 Fifth Ave, Suite 220
Piatt Place
Pittsburgh, PA 15222

Via Paper Filing
Jeremy V Farrell, Esquire
Paul S Miller, Esquire
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5619 (Fax)

Counsel for Respondent, Duquesne Light Company

Dated this 27th day of February, 2019



Michele and Francis Hriadil
331 Shady Ridge Drive
Monroeville, Pennsylvania

(412) 779-3314
hriadil@attglobal.net

CERTIFIED MAIL®

F. Hriadil
331 Shady Ridge Drive
Monroeville, PA 15146



7015 1660 0000 4894 0065

**RETURN RECEIPT
REQUESTED**

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

U.S. POSTAGE PAID
FOXTLE CREEK, PA
15146
FEB 27 19
AMOUNT
\$7.00
R2308M144485-14

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