

March 19, 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 Response to Petition/Motion to Compel Respondent to Supply its Smart Meter for Examination. 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)

TADMS:5113897-1 014657-158498





More importantly, Complainants' motion rests upon a mistaken premise. Complainants contend that Duquesne Light has repeatedly asserted that its smart meter is "separate and distinct from all other similar smart meters." Id. at ¶ 3. Complainants thus want to conduct their own unidentified tests and experiments on Duquesne Light's smart meter to prove there is a "substantial and relevant commonality" between Duquesne Light's smart meter and other smart meters. Id. at ¶ 4. But Duquesne Light has never asserted that its smart meters are "separate and distinct" from all other smart meters. Duquesne Light has merely raised evidentiary and legal arguments that other companies' smart meter policies and practices are irrelevant in evaluating the sole issue in this case: whether *Duquesne Light* has violated the Public Utility Code, the associated regulations, or the Company's Tariff. See Duquesne Light's Brief in Support of Motion for Summary Judgment, p. 17 ("While Complainants identified various publications they contend support their argument that smart meters are dangerous and subject to hacking, those publications do not relate to Duquesne Light or its smart meter program and, therefore, cannot constitute evidence that Duquesne Light has done something in violation of the Code."); Duquesne Light's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence, p. 2 ("Nearly all documents and videos produced by Complainants are unrelated to Duquesne Light, its smart meters, or its smart meter practices . . . [s]uch documents add nothing to determining whether Duquesne Light has violated the Code, a regulation, or its tariff.").

Moreover, the point that Complainants seek to prove -- that Duquesne Light's smart meter shares "substantial and relevant commonality" with other smart meters -- is irrelevant to this proceeding. Whether Duquesne Light's smart meter is similar to other smart meters does not matter in determining if the Company has violated the Public Utility Code, the associated regulations, or the Company's Tariff, *especially given that the Commission has already*

*approved Duquesne Light's decision to install the Itron smart meters.*<sup>1</sup> Conducting experiments on Duquesne Light's smart meter is yet another circuitous attempt by Complainants to turn this hearing into a referendum on Duquesne Light's smart meter plan and smart meter technology. Complainants should not be given free rein to tamper with Duquesne Light's smart meter to establish an irrelevant point and expand the scope of this hearing.

## **II. ARGUMENT**

A party is not entitled to obtain discovery about a matter that is irrelevant to the subject matter involved in the pending action. 52 Pa. Code § 5.321(c). Similarly, discovery that would cause unreasonable annoyance, burden, or expense also is not permitted. 52 Pa. Code § 5.361(a). Here, the thing sought by Complainants through the Motion to Compel -- a free smart meter to "definitive[ly] assess" (a point in itself that Duquesne Light disputes, since Complainants have no professional experience with smart meters) -- is improper for several reasons.<sup>2</sup>

First, the subject matter of his pending action is whether Duquesne Light has violated the Public Utility Code, its associated regulations, or the Company's Tariff. Testing one of Duquesne Light's smart meters is irrelevant to that topic because the Commission has already

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<sup>1</sup> Duquesne Light's selection of Itron as its smart meter systems vendor, the functionalities and features of the Itron smart meter models, and the Company's proposal to install smart meters at all metered service premises were fully explored through a public proceeding at Docket No. M-2009-2123948. See, e.g., Petition of Duquesne Light Company for Approval of Its Final Smart Meter Procurement and Installation Plan and accompanying testimony, filed June 29, 2012, which identifies and thoroughly discusses Duquesne Light's plans to install Itron meters. Nine parties besides Duquesne Light participated in this proceeding, including through discovery and multiple rounds of testimony. All parties to the proceeding either joined or did not oppose a settlement to resolve all matters associated with the Company's smart meter plan. See Joint Petition for Approval of Full Settlement of All Issues, filed December 7, 2012 ("Settlement"). The Commission approved the Settlement in relevant part by Order entered April 4, 2013. The Settlement provided for, and the Commission's Order approved, Duquesne Light's procurement and deployment of the Itron smart meters that Complainants now challenge.

<sup>2</sup> See Response to Respondent's Second Set of Discovery Requests Directed to Complainants, ¶¶ 20, 22, 24, 25 (admitting that Complainants have never performed any job responsibilities or engaged in a course of study specifically relating to radio frequency or low frequency radiation, and that Complainants are not certified electricians).

approved Duquesne Light's decision to install the meter. Complainants cannot collaterally attack the Commission's decision through this proceeding.

More importantly, allowing Complainants to experiment on Duquesne Light's smart meter will not help Complainants establish that Duquesne Light's smart meter shares "substantial and relevant commonality" with other companies' smart meters. Even if the similarity to other meters were relevant, their request is still improper. To the best of Duquesne Light's knowledge, Complainants have not conducted any tests or experiments on other smart meters. If Complainants had conducted such experimentation and intended to use it at the hearing, they would have had to turn that information over in discovery, and they have not done so. So even if Complainants are permitted to test Duquesne Light's smart meter, they cannot compare their findings with experiments and tests on other smart meters. Accordingly, the whole purpose of Complainants' request -- obtaining a smart meter to show "substantial and relevant commonality" between Duquesne Light's smart meter and other smart meters -- cannot be accomplished even if Duquesne Light provides Complainants with a smart meter.

Complainants' purported rationale for testing Duquesne Light's smart meter is further diminished because the meter would not even be connected to Duquesne Light's network. Duquesne Light cannot simply mail a "fully functional working model" of its smart meter to Complainants, as they demand in the Motion to Compel. Duquesne Light's smart meter only functions if it is connected to the Company's network. Tampering with an uninstalled meter, as Complainants plan to do, is a meaningless exercise, not to mention prohibited by the Company's Tariff. See infra n. 3.

In addition, Complainants lack the necessary qualifications to perform any reliable tests on Duquesne Light's smart meter. During discovery, Complainants admitted that they have never performed any job responsibilities or engaged in a course of study specifically relating to radio frequency or low frequency radiation. See Response to Respondent's Second Set of Discovery Requests Directed to Complainants, ¶¶ 20, 22. They also admitted that they are not

certified electricians. Id. at ¶¶ 24, 25. Without any training or expertise in smart meter technology, Complainants cannot conduct any reliable tests or experiments on Duquesne Light's smart meter, even if such tests and experiments were relevant to this proceeding (which they are not).

Finally, the Motion to Compel should be denied because providing a smart meter to Complainants would cause unreasonable annoyance, burden, and expense to Duquesne Light. First, to force Duquesne Light to provide Complainants with a piece of equipment engineered and built by a third party -- which will ultimately be connected to its electrical grid -- when Duquesne Light denies that Complainants are even qualified to inspect it is entirely improper. And while Complainants assert that the meter can either be installed at their residence or another customer's residence once they finish tampering with it (Motion to Compel, ¶ 9), Duquesne Light obviously cannot do that. The Company will not know whether Complainants have altered or damaged the meter through their unidentified experiments and tests. Thus, for safety reasons, Duquesne Light cannot install any meter that Complainants are permitted to tamper with.<sup>3</sup> It is an unreasonable annoyance, burden, and expense to require Duquesne Light to allow a customer to effectively destroy a smart meter for the purposes of conducting an experiment about an irrelevant issue (whether Duquesne Light's smart meter is similar to other smart meters), especially when Complainants are free to pursue obtaining a smart meter on their own.

### **III. CONCLUSION**

Throughout this proceeding, Duquesne Light has provided comprehensive information about its smart meters and smart meter program to Complainants through the discovery

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<sup>3</sup> Duquesne Light's tariff expressly prohibits customers from tampering with the Company's equipment. See Duquesne Light's Tariff, Rule 34 (available at [https://www.duquesnelight.com/docs/default-source/default-document-library/CurrentTariff.pdf?sfvrsn=e69ca442\\_44](https://www.duquesnelight.com/docs/default-source/default-document-library/CurrentTariff.pdf?sfvrsn=e69ca442_44)).

process. Complainants demand for Duquesne Light to deliver them a smart meter, however, simply goes too far. The Commission has already approved Duquesne Light's decision to install the Itron smart meter, and any purported similarities or differences between this meter and smart meters used by other companies just do not matter. Contrary to Complainants' claims, Duquesne Light has never asserted that its smart meter is distinct from every other type of smart meter. Duquesne Light has simply maintained that purported problems with other companies' smart meters or smart meter programs have no bearing on whether Duquesne Light has violated the Public Utility Code, the associated regulations, or the Company's Tariff. Complainants' desire to conduct unnamed experiments and tests on Duquesne Light's smart meter would simply waste a smart meter in a misguided effort to establish an immaterial point. The Motion to Compel should be denied.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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