

April 16, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: Geoff Day v. Duquesne Light Company
Docket No. C-2018-3003960

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion to Preclude Complainant From Testifying at the Evidentiary Hearing.

A copy of this correspondence and document has been served upon Complainant and Administrative Law Judge Watson in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Jeremy V. Farrell
Attorneys for Duquesne Light Company

Enclosure

c: Geoff Day (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5129443-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GEOFF DAY,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3003960

**MOTION TO PRECLUDE COMPLAINANT
FROM TESTIFYING AT THE
EVIDENTIARY HEARING**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

Paul Shane Miller, Esquire
PA I.D. No. 319174
(412) 594-5503

Jeremy V. Farrell, Esquire
PA I.D. No. 316258
(412) 594-3938

1500 One PPG Place
Pittsburgh, PA 15222
Counsel for Respondent

NOTICE TO PLEAD

TO COMPLAINANT GEOFF DAY:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION TO PRECLUDE COMPLAINANT FROM TESTIFYING AT THE EVIDENTIARY HEARING WITHIN TWENTY DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.103.

TUCKER ARENSBERG, P.C.



Paul Shane Miller, Esquire
Jeremy V. Farrell, Esquire
Attorneys for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GEOFF DAY,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3003960
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION TO PRECLUDE COMPLAINANT FROM TESTIFYING AT THE
EVIDENTIARY HEARING**

Pursuant to 52 Pa. Code. § 5.103, Duquesne Light Company (“Duquesne Light”) files this Motion to Preclude Complainant From Testifying at the Evidentiary Hearing (“Motion”):

1. This Motion seeks to give effect to the interim order issued by the Presiding Administrative Law Judge on April 3, 2019 (“April 3rd Order”). In the April 3rd Order, the Presiding Administrative Law Judge stated that Complainant, Geoff Day (“Complainant”), must provide full and complete responses to ten outstanding discovery questions previously issued by Duquesne Light. Alternatively, if Complainant determined that he did not want to testify at the evidentiary hearing, the Presiding Administrative Law Judge instructed the parties to “file a stipulation, executed by all parties, prior to April 12, 2019, in lieu of full and complete [discovery] responses...”

2. Complainant stated in a written filing on April 8, 2019 that he will not testify at the evidentiary hearing. Duquesne Light sent him a joint stipulation the next day (as required by the April 3rd Order), but Complainant has failed to execute it. Duquesne Light thus files this Motion to give effect to the April 3rd Order and preclude Complainant from testifying at the evidentiary hearing.

3. By way of background, Duquesne Light served its First Set of Discovery Requests Directed to Complainant on October 25, 2018.

4. In a Response to Discovery Request dated November 13, 2018, Complainant stated that “[t]he requested information has limited, or no relevance to the matter at hand.” He did not provide any discovery responses.

5. On November 20, 2018, Duquesne Light filed a Motion to Compel Discovery Responses (“DLC’s First Motion to Compel”), which sought an order requiring Complainant to provide complete responses to Duquesne Light’s First Set of Discovery Responses Directed to Complainant.

6. The Presiding Administrative Law Judge granted DLC’s First Motion to Compel on December 14, 2018. He instructed Complainant to provide complete responses to Duquesne Light’s First Set of Discovery Requests Directed to Complainant by January 4, 2019.

7. On January 2, 2019, Complainant provided partial discovery responses to Duquesne Light. Complainant, however, still refused to answer ten discovery questions, despite being ordered to do so by the order dated December 14, 2018.

8. On March 25, 2019, Duquesne Light filed another Motion to Compel Discovery Responses (“DLC’s Second Motion to Compel”) and sought an order requiring Complainant to provide complete answers to the ten outstanding discovery questions. Alternatively, Duquesne Light stated that if Complainant did not wish to testify at any evidentiary hearing in this matter, Duquesne Light would withdraw the Second Motion to Compel and would not require answers to its ten outstanding discovery questions.

9. The Presiding Administrative Law Judge granted the Second Motion to Compel on April 3, 2019. He ordered Complainant to provide complete responses to the ten outstanding discovery questions. Alternatively, the Presiding Administrative Law Judge’s order stated that “should Complainant determine that he will not provide testimony at the evidentiary hearing, the

Parties may file a stipulation, executed by all parties, prior to April 12, 2019, in lieu of full and complete responses to [Duquesne Light's ten outstanding discovery questions].”

10. On April 8, 2019, Complainant filed a response to the Presiding Administrative Law Judge's order from April 3, 2019, which he titled “Response to Interim Order to Compel.” In this response, Complainant stated, “I, Geoffrey Day . . . submit that it is not necessary for me to testify at the evidentiary hearing. My rights in this matter are clear, as are the responsibilities of the Pennsylvania Public Utility Commission.”

11. Duquesne Light drafted and sent a Joint Stipulation to Complainant the next day. Duquesne Light requested that Complainant sign and return the Joint Stipulation as soon as possible so it could be filed by April 12, 2019 (the deadline set forth by the April 3rd Order). A copy of the Joint Stipulation and Duquesne Light's correspondence to Complainant about the Joint Stipulation are attached as Exhibit A.

12. Complainant did not return a signed Joint Stipulation to Duquesne Light, or otherwise acknowledge Duquesne Light's correspondence. Complainant also did not provide responses to the ten outstanding discovery questions from Duquesne Light. Complainant thus violated the April 3rd Order, which required that he either provide responses to the ten outstanding discovery questions or execute a joint stipulation stating that he did not plan to testify at the hearing on or before April 12, 2019.

13. Given that Complainant stated in his written response on April 8, 2019 that he does not wish to testify at the evidentiary hearing but has refused to sign the joint stipulation, Duquesne Light seeks to give effect to the April 3rd Order by obtaining an order that precludes Complainant from testifying at the evidentiary hearing.

14. The Presiding Administrative Law Judge has the express authority to grant this Motion. See 52 Pa. Code § 5.403 (“The presiding officers shall have all necessary authority to control the receipt of evidence, including ... limitations on the number of witnesses to be heard

... [and] [t]he presiding officer will actively employ these powers to direct and focus the proceedings consistent with due process.”).

WHEREFORE, Duquesne Light respectfully requests that the Presiding Administrative Law Judge enter an order stating that Complainant, Geoff Day, is precluded from testifying at any evidentiary hearing in this matter.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Paul Shane Miller, Esquire
PA I.D. No. 319174
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1500 One PPG Place
Pittsburgh, PA 15222

Counsel for Respondent,
Duquesne Light Company

Miller, Shane

From: Miller, Shane
Sent: Tuesday, April 9, 2019 3:46 PM
To: 'Ceros78@gmail.com'
Cc: Farrell, Jeremy
Subject: Day v. DLC - joint stipulation re: testimony & discovery
Attachments: 5126399_1.pdf

Dear Mr. Day:

I represent Duquesne Light Company in the case you filed with the Public Utility Commission. I received a document today stating that you will not testify at any hearing in this case. Pursuant to Judge Watson's Order from April 3rd, the parties must file a joint stipulation stating that Duquesne Light will not require responses to certain discovery questions given that you don't wish to testify.

I've drafted the joint stipulation. Please sign it and email it to me as soon as possible. I'll then file it by Judge Watson's deadline of **Friday, April 12th**.

Sincerely,

Shane Miller, Esq.
Litigation Associate

TUCKER ARENSBERG
Attorneys

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