

April 22, 2019

Via Electronic Filing

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

RE: Miranda Grace Edwards v. Duquesne Light Company
Docket No. C-2018-3002741

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion to Strike Complainant's Request for Summary Judgment.

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

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

cc: Miranda Grace Edwards (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5133438-1 014657-158498

II. BACKGROUND

3. On June 14, 2018, Complainant filed a Formal Complaint against Duquesne Light to prevent the Company from installing a smart meter at her home.

4. Duquesne Light filed a timely Answer and New Matter, as well as Preliminary Objections.

5. On March 4, 2019, Complainant filed an Amended Complaint. It raised the same basic allegations as her initial Complaint, but at greater length.

6. Duquesne Light filed a timely Answer and New Matter to the Amended Complaint.

7. On April 2, 2019, Complainant filed Complainant's Response. For the most part, it responded to Duquesne Light's Answer and New Matter to the Amended Complaint. But in the last two paragraphs of Complainant's Response, she stated that summary judgment should be entered in her favor. It is unclear whether Complainant intended for these paragraphs to serve as a motion for summary judgment. Duquesne Light, however, must treat it as such and thus files this Motion out of an abundance of caution.

8. Complainant's Response did not contain a notice stating that an answer or other responsive pleading shall be filed within 20 days of service.

III. ARGUMENT

9. Under 52 Pa. Code § 5.102(a), a party may move for summary judgment "[a]fter the pleadings are closed, but within a time so that the hearing is not delayed."

10. "Pleadings" include a reply to new matter. 52 Pa. Code § 5.1(a)(2).

11. A motion for summary judgment must contain "a notice which states that answer or other responsive pleading . . . be filed within 20 days of service of the motion." 52 Pa. Code § 5.102(a).

12. A presiding officer may grant summary judgment to the moving party only if “the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is not genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.” 52 Pa. Code § 5.102(d)(1).

13. Here, Duquesne Light requests that the Presiding Administrative Law Judge strike Complainant’s request for summary judgment, or alternatively, deny her request for summary judgment.

14. Complainant’s request for summary judgment should be stricken because she failed to follow the proper procedure for requesting summary judgment in two ways. First, she did not move for summary judgement “after the pleadings are closed”; instead, she requested summary judgment in a pleading. Second, she failed to include a notice stating that Duquesne Light must file an answer or other responsive pleading to her request for summary judgment within 20 days.

15. Complainant’s request for summary judgment also should be denied because the parties disagree about many material facts, and she is not entitled to judgment as a matter of law.

16. The Presiding ALJ has already ruled that there are material factual disputes between the parties. See Interim Order Granting Respondent’s Motion to Compel, p. 4 (Oct. 24, 2018); see also Amended Complaint, ¶¶ 12, 14, 15, 21, 23, 24; Answer and New Matter to Amended Formal Complaint, ¶¶ 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 53; Complainant’s Response, pp. 6-7, 15.

17. Complainant also clearly is not entitled to judgment as a matter of law.

18. The Commission and administrative law judges have repeatedly held that Pennsylvania law requires utility companies like Duquesne Light to install smart meters at their customers’ residences; no opt-out is available. See Lamagna v. Pa. Elec. Co., Docket No. C-

2017-2608014, 2018 WL 6124353, at *15 (Pa. P.U.C. Oct. 30, 2018) (Watson, ALJ) (ruling that Pennsylvania law required the utility to install a smart meter at the complainant's residence); Hanley v. Pa. Power Co., Docket No. C-2016-2557487, 2018 WL 5994765, at *17-18 (Pa. P.U.C. Oct. 24, 2018) (Watson, ALJ) (same); Fiorito v. Pa. Elec. Co., Docket No. C-2017-2610125, 2018 WL 5082016, at *14 (Pa. P.U.C. Sept. 18, 2018) (Watson, ALJ) (same).

19. Moreover, Duquesne Light's tariff -- which has the force of law -- expressly requires that the Company install a smart meter at all metered service premises. See Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147, 1151 (Pa. Commw. Ct. 1997) (holding that a utility's tariff provisions are legally binding on the customer and the utility once they have been approved by the Pennsylvania Public Utility Commission); Duquesne Light Company's Tariff, Rule 9(B) ("[s]mart meters conforming to Company standards must be installed at each metered service premises. Customers may not decline smart meter installation for any reason.").

20. Accordingly, Complainant's request for summary judgment should be stricken from Complainant's Response, or alternatively, denied.

21. If Complainant's request for summary judgment is not stricken from Complainant's Response or denied, Duquesne Light requests an additional 20 days from the date of the Presiding ALJ's order to file a substantive reply to Complainant's request for summary judgment.

WHEREFORE, Duquesne Light respectfully requests that Complainant's request for summary judgment be stricken from Complainant's Response to Answer and New Matter to Amended Complaint, or alternatively, that Complainant's request for summary judgment be denied. If the Presiding Administrative Law Judge declines to grant this relief, Duquesne Light respectfully requests that the Company be given 20 days from the date of the order to file a substantive response to Complainant's request for summary judgment.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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