

April 23, 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 Duquesne Light Company's Answer in Opposition to Complainants' Petition/Motion to Reopen Discovery and Revisit/Reconsider Complainants' February 20, 2018 Motion to Compel Discovery. 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 enclosures)

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ordered Duquesne Light to respond to approximately 22 discovery requests, but relieved Duquesne Light of any obligation to respond to Complainants' remaining 143 discovery requests.

Complainants now contend that the Presiding ALJ should reconsider this year-old order and reopen discovery because Complainants believe that the Presiding ALJ did not read or sufficiently consider their reply brief in support of the Second Motion to Compel. See Petition/Motion to Reopen Discovery and Revisit/Reconsider Complainants' February 20, 2018 Motion to Compel Discovery ("Petition to Reopen"), ¶¶ 5-8. This, Complainants believe, tainted the entire discovery process such that it must now be reopened. Id. at ¶ 8. As explained in more detail below, Complainants' motion should be denied because the Presiding ALJ's order from March 27, 2018 was correct as rendered, and the points raised in Complainant's reply brief to their Second Motion to Compel neither warranted a different decision from the Presiding ALJ back then nor provide a basis to reconsider that decision now.

II. BACKGROUND

Pennsylvania law requires Duquesne Light to install a smart meter at Complainants' residence. Complainants filed this action more than two years ago to prevent Duquesne Light from doing so. Given that Complainants' Petition to Reopen stems from the Presiding ALJ's interim order on March 27, 2018, a brief review of the relevant procedural history is necessary to illustrate why there is no reason to reopen discovery in this case, which is already more than two years old.

On October 5, 2017, Complainants served Duquesne Light with Set #1 of Discovery Requests ("Complainants' First Set of Discovery Requests"). These requests contained more than **150** interrogatories and document requests (including all subparts) and covered a broad range of subject matters about Duquesne Light and its smart meter program, including smart meter capabilities, smart meter transmission data, smart meter construction information, radiofrequency emissions data, smart meter installation procedures, and Duquesne Light's data

security measures. Although Complainants' First Set of Discovery Requests were often argumentative, vague, and hard to comprehend, Duquesne Light provided complete responses to each question and produced more than 900 pages of documents to Complainants.

On the final day of the first discovery period (January 2, 2018),² Complainants served a 41-page document titled Follow-Up to Set #1 of Discovery Requests ("Complainants' Supplemental Discovery Requests"). Complainants simultaneously served a Motion to Compel ("First Motion to Compel"). In effect, Complainants served Duquesne Light with nearly **200** new discovery questions on the last day of discovery through their Supplemental Discovery Requests, then demanded immediate answers through their First Motion to Compel. Duquesne Light requested a protective order, and moved to strike Complainants' First Motion to Compel.

The Presiding ALJ granted the protective order and denied the First Motion to Compel. Interim Order Denying Complainants' Motion to Compel, Denying Respondent's Motion to Strike, Granting Respondent's Motion for Protective Order and Modifying the Litigation Schedule, Feb. 5, 2018. The Presiding ALJ also extended the discovery deadline to March 16, 2018, and gave Complainants permission to file a more specific motion to compel. *Id.*; First Supplemental Prehearing Order, Feb. 6, 2018.

About two weeks later, Complainants filed a 48-page Motion to Compel ("Second Motion to Compel"). Even though Duquesne Light had already provided complete responses to **150** discovery requests, the Second Motion to Compel sought answers to roughly **165** additional discovery requests (including all subparts). Duquesne Light opposed the motion. Complainants filed a reply brief on March 23, 2018.

On March 27, 2018, the Presiding ALJ granted in part and denied in part Complainants' Second Motion to Compel ("the Discovery Order"). Duquesne Light was ordered to respond to approximately 22 discovery requests, but Complainants' other 143 requests were stricken.

² See Prehearing Order, Dec. 15, 2017, ¶ 1 (establishing January 2, 2018 as the close of discovery).

Duquesne Light provided the required responses. ***Complainants raised no objection to the Discovery Order until filing this motion more than a year later.*** Discovery closed on March 16, 2018. See First Supplemental Prehearing Order, Feb. 6, 2018.

Approximately one year later, on March 15, 2019, in response to a motion filed by Complainants, the Presiding ALJ reopened discovery until April 17, 2019. Interim Order Scheduling Prehearing Conference and Extending the Deadline to Complete Discovery, Mar. 15, 2019. Notably, Complainants served no new discovery requests while discovery was reopened.

III. ARGUMENT

The Presiding ALJ should deny Complainants' Petition to Reopen because the Discovery Order was correct as rendered on March 27, 2018, and nothing in Complainants' reply brief warranted a different decision then or now. Although a party may obtain discovery regarding any non-privileged matter which is relevant to the subject matter in the pending action and reasonably calculated to lead to the discovery of admissible evidence (52 Pa. Code § 5.321(c)), discovery does not allow "fishing expeditions" and may be denied if it would cause unreasonable annoyance, expense, burden, or investigation by the opposing party. See Johnson v. Lightcap, No. 467 C.D. 2008, 2008 WL 9405102, at *1 (Pa. Commw. Ct. July 11, 2008) ("Discovery is not intended to allow parties to embark upon "fishing expeditions," and the reasonableness of a given request . . . are matters for the trial court to determine in the exercise of its sound discretion."); 52 Pa. Code § 5.361(a). When the Presiding ALJ considered Complainants' Second Motion to Compel, Duquesne Light had already provided Complainants with responses to more than **150** discovery requests. Moreover, the Company had produced more than **900** pages of documents to Complainants. Duquesne Light's written discovery responses and document production covered many topics relating to Complainants' allegations, including smart meter capabilities, smart meter transmission data, meter construction information, radiofrequency emissions data, smart meter installation procedures, and Duquesne

Light's data security measures. Despite Duquesne Light's voluminous responses, Complainants sought an order through the Second Motion to Compel requiring responses to another **165** discovery requests. In this context, the Presiding ALJ's decision to requiring Duquesne Light to respond to an additional 22 discovery questions was reasonable and squarely within the boundaries of the Presiding ALJ's discretion and the discovery rules. And Complainants apparently did not disagree with the Presiding ALJ's decision, given that they waited more than a year to request reconsideration.

In addition, discovery should not be reopened even if the Presiding ALJ failed to review Complainants' reply brief before issuing the Discovery Order. Parties have no right to submit reply briefs, and Complainants' reply brief simply restates the main points from Complainants' 48-page Second Motion to Compel. See 52 Pa. Code 5.502(c) (stating that parties may file initial briefs and response briefs in non-rate cases, but making no mention of reply briefs).

Finally, Complainants have proved that additional discovery is unnecessary. Just last month, the Presiding ALJ reopened discovery until April 17, 2019. Complainants filed this Petition to Reopen asking for discovery to be reopened **while discovery was already reopened**. Complainants served no new discovery requests during the reopened discovery period. This case should proceed to hearing.

WHEREFORE, Duquesne Light Company respectfully requests that the Presiding Administrative Law Judge deny Complainants' Petition/Motion to Reopen Discovery and Revisit/Reconsider Complainants' February 20, 2018 Motion to Compel Discovery and rule that discovery is closed.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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