

May 7, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Keystone Bldg. 2nd Floor W  
400 N. Street  
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 Supplemental Status Report which was served via First-Class, U.S. Mail today May 7, 2019, in this matter. A copy of this correspondence and document has been served upon Complainants and Administrative Law Judge Watson 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

c: Michele Hriadil and Francis Hriadil (with enclosure)  
ALJ Jeffrey Watson (with enclosure)

TADMS:5140498-1 014657-158498

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainants,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**RESPONDENT'S SUPPLEMENTAL  
STATUS REPORT**

Filed on behalf of Respondent  
Duquesne Light Company

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### Written Direct Testimony vs. Expert Reports

The Presiding ALJ's order from the prehearing conference on April 24, 2019, requiring written direct expert testimony from both parties is fair and should be enforced. Duquesne Light proposes that written direct expert testimony (with all accompanying exhibits) be submitted on or before June 15, 2019.

Written direct testimony is encouraged in Commission proceedings, especially for expert witnesses. 52 Pa. Code 5.412(a) ("Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses."). The Presiding ALJ can order parties to present direct expert testimony in written form. 52 Pa. Code 5.412(b) ("The presiding officer may direct that expert testimony to be given upon direct examination be submitted as prepared written testimony.").

Requiring written direct expert testimony is fair and makes sense in this case because it resolves both parties' concerns about expert testimony. On the one hand, Duquesne Light contends that Complainants failed to provide sufficient information to notify the Company about (i) the subject matter on which each expert witness is expected to testify, (ii) the substance of the facts and opinions to which the expert is expected to testify, and (iii) a summary of the grounds for each expert opinion. Duquesne Light requested this information in discovery more than 18 months ago. Complainants never produced it. Instead, they gave Duquesne Light short letters and internet articles by their out-of-state experts that barely address Complainants or Duquesne Light. These documents provide little to no information about the facts and opinions to which Complainants' experts will testify, or the grounds for their opinions. Moreover, their internet articles fail to comply with 52 Pa. Code § 5.324(a)(1)(ii) because they were unsigned and were not authored in connection with this litigation. Their experts' brief letters also do not outline any opinions with a reasonable degree of scientific or medical certainty regarding Duquesne Light's smart meter program or practices. See Betz v. Erie Ins. Exchange, 957 A.2d

1244, 1258 (Pa. Super. Ct. 2008) (expert testimony must be expressed with a reasonable degree of certainty to be competent"). Duquesne Light cannot prepare to cross-examine Complainants' experts based on the sparse information in these letters and internet articles. This puts Duquesne Light at a significant disadvantage at the hearing.

Complainants, on the other hand, claim they do not fully understand what must be included in an expert report, and believe they have provided adequate reports to Duquesne Light through their letters and internet articles.<sup>1</sup> See Complainants' Status Report, ¶¶ 8, 13.

The Presiding ALJ's order requiring written direct testimony is reasonable because it resolves both parties' concerns. Written direct testimony informs Duquesne Light about the substance of Complainants' experts' direct testimony. It thus allows Duquesne Light to prepare for cross-examination. Written direct expert testimony also renders Complainants' confusion about providing expert reports moot because they no longer have to provide any such reports. They must submit written direct expert testimony instead.

Complainants also argue that written direct testimony creates additional work and costs. Complainants' Status Report, ¶¶ 12, 18. This argument should be rejected. Expert witnesses must prepare for and provide direct testimony at some point, whether before or during the hearing. Requiring written direct testimony does not create extra work. It just shifts the same work (providing direct expert testimony) to an earlier time (before the hearing rather than during the hearing).

In addition, Complainants, who are hoping to offer themselves as expert witnesses, never explain why *they personally* cannot provide written direct testimony. Given the volume of documents Complainants have already filed in this case (including their 17-page Status Report),

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<sup>1</sup> As in previous filings, Complainants' Status Report contains several baseless claims against Duquesne Light, including that the Company has repeatedly impugned their "integrity and intentions" and that it has delayed this case by filing many "large, complicated motions." See Complainants' Status Report, ¶¶ 9, 10. Duquesne Light has responded to similar false accusations in previous filings, and thus will not do so again in detail here, other than to reiterate that Duquesne Light strongly disagrees with Complainants' characterization of the Company's conduct throughout this proceeding.

they surely can submit written direct testimony, assuming they are even allowed to testify as experts.

All told, the Presiding ALJ's decision to require written direct testimony from all expert witnesses (including Complainants) is a reasonable decision. It is well within the Presiding ALJ's authority. It should be enforced.

Conclusion

Duquesne Light respectfully suggests that the Presiding ALJ issue an order establishing the following deadlines:

- June 15, 2019: the parties must submit written direct testimony for all expert witnesses, with any exhibits relating to the written direct testimony.
- July 31, 2019: the parties must submit their exhibit lists and exchange any exhibits not previously exchanged as part of written direct testimony.
- August 19-20, 2019: the parties appear in person for a hearing before the Presiding ALJ.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainants,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Respondent's Supplemental Status Report upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

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

Administrative Law Judge Jeffrey Watson  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222

Dated this 7<sup>th</sup> day of May 2019.

  
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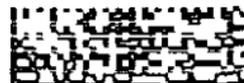
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