

July 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 Duquesne Light Company's Brief in Opposition to Complainants' Amended Request for a Continuance of the Hearing.

A copy of this document has been served upon Complainants and Administrative Law Judge Jeffrey 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

cc: Michele Hriadil and Francis Hriadil (with enclosure)
Administrative Law Judge Jeffrey Watson (with enclosures)

TADMS:5174413-1 014657-158498

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and
FRANCIS HRIADIL,

Complainants,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**BRIEF IN OPPOSITION TO
COMPLAINANTS' AMENDED REQUEST
FOR A CONTINUANCE OF THE HEARING**

Filed on behalf of Respondent
Duquesne Light Company

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less inclimate.” See Request for Clarification and an Extension dated September 22, 2017, ¶ 9. Duquesne Light consented to a two-month continuance. See Consent to a Continuance and Motion for Litigation Schedule dated October 4, 2017, ¶ 4. The Presiding ALJ rescheduled the hearing from January 3-4, 2018 to April 26-27, 2018. See Prehearing Order dated December 15, 2017. He also issued a detailed litigation schedule. Id. Under the schedule, the parties were required to serve all discovery requests by January 2, 2018. Id.

The Second Continuance

On December 30, 2017 -- just three days before discovery closed -- Complainants served nearly 200 discovery requests on Duquesne Light, along with a Motion to Compel. See Motion to Compel Discovery dated December 30, 2017. Duquesne Light moved to strike the Motion to Compel and sought a protective order from the discovery requests. See Motion to Strike and Motion for Protective Order dated January 5, 2018. After ruling on these motions, the Presiding ALJ issued a revised Litigation Schedule. See Interim Order Denying Complainants’ Motion to Compel, Denying Respondent’s Motion to Strike, Granting Respondent’s Motion for Protective Order and Modifying the Litigation Scheduled dated February 5, 2018; First Supplemental Prehearing Order dated February 6, 2018. He rescheduled the hearing from April 26-27, 2018 to July 18-19, 2018. See First Supplemental Prehearing Order dated February 6, 2018.

The Third Continuance

Roughly two months before the July 2018 hearing, Complainants requested a new hearing date because one of their expert witnesses could not testify on the scheduled dates. See Request for Schedule Accommodation dated April 30, 2018. Duquesne Light objected to the request. The Presiding ALJ continued the hearing scheduled for July 18-19, 2018 after Duquesne Light moved for summary judgment. See Interim Order Granting Complainants’ Request for an Additional Extension of Time to File Response to Respondent’s Motion for

Summary Judgment and Continuing the Evidentiary Hearing Scheduled for July 18-19, 2019 dated June 29, 2018. After denying Duquesne Light's motion, the Presiding ALJ instructed the parties to select a mutually-agreeable hearing date. After much discussion, the parties agreed to hold the hearing on August 19-20, 2019, which was the only dates that all parties and witnesses were available. The Presiding ALJ subsequently scheduled an in-person hearing for August 19-20, 2019. Complainants now seek to continue this hearing.

II. Argument

Requests for continuance of hearings are considered only for "good cause." 52 Pa. Code 1.15. The Commission generally does not let cases languish and thus is reluctant to grant multiple continuances, unless special circumstances apply. See Application of Cent. Pa Cab LLC for Approval to Provide Taxi Serv. Upon Call or Demand in the City of Harrisburg, Dauphin Cty. & in the City of Lancaster, Lancaster Cty., No. A-2017-2606752, 2018 WL 1744781, at *2 (Mar. 12, 2018) (in granting a second continuance request, the Commission informed the requesting party that a third request was unlikely to be granted because the Commission does not like to let cases languish).

Here, there is no "good cause" explaining why Complainants cannot proceed with this hearing on August 19-20, 2019. This case has been active for nearly three years. It already has been continued three times. Complainants expressly requested two of these continuances; further, they caused the other continuance by serving voluminous discovery requests just days before the discovery deadline. In addition, Duquesne Light provided its last supplemental discovery responses and its expert reports to Complainants in April 2018, more than a year ago.

Complainants' justifications for delaying this hearing yet again are unconvincing. Although Complainants were required to file expert reports by July 10, 2019, they fail to mention in their Amended Request for a Continuance that Duquesne Light requested their expert reports in discovery nearly two years ago. Complainants refused to produce the reports until last week.

Complainants cannot be permitted to delay for nearly two years, and now argue that the hearing should be postponed because they are being rushed.

Further, it is unclear why Complainants believe they could not prepare for the hearing until all motions were resolved, or why they waited until now to prepare their exhibits. As noted above, the case has been active for nearly three years and Duquesne Light provided its last supplemental discovery responses and expert reports to Complainants more than a year ago. Complainants have had plenty of time to prepare their case. And in fact, Complainants still have time to prepare their case because the hearing will not occur for another month.

Moreover, Complainants often claim they cannot prepare for this hearing due to their advanced age, poor health, and lack of resources. Other than these general statements, Complainants never explain how their medical conditions or lack of resources actually impair their ability to prepare for the hearing. The record shows quite the opposite. Complainants have routinely filed voluminous motions, briefs, and discovery requests, which demonstrates they possess the ability and resources to proceed with this matter.

Finally, Duquesne Light will be saddled with a significant logistical and scheduling burden if this hearing is rescheduled for a fourth time. Given the breadth of issues raised by Complainants, Duquesne Light has identified - and may be required to call - up to nine witnesses at the hearing. At least four of the witnesses reside outside of Pennsylvania. It has been extremely challenging for Duquesne Light to coordinate schedules and ensure that all of these witnesses are available for the hearing. Duquesne Light should not be forced to rearrange its witnesses' schedules yet again. The parties agreed to hold the hearing on August 19-20, 2019, and it should proceed as planned.

III. Conclusion

Duquesne Light respectfully contends that the time has come to hold this hearing. The case has been active for nearly three years. It has already been continued three times.

Complainants received Duquesne Light's discovery responses and expert reports more than a year ago. Duquesne Light thus requests that the Amended Request for a Continuance be denied, and that this case proceed to a hearing on August 19-20, 2019.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Brief in Opposition to Complainants' Amended Request for a Continuance of the Hearing 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
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Dated this 19th day of July 2019.



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