

August 7, 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**

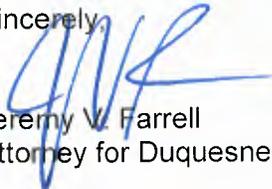
Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Response to Complainants' Objection to ALJ Watson's July 29, 2019 Interim Order Denying Request for a Continuance.

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 enclosure)

TADMS:5181089-1 014657-158498

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainants,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**RESPONDENT'S RESPONSE TO  
COMPLAINANTS' OBJECTION TO ALJ  
WATSON'S JULY 29, 2019 INTERIM  
ORDER DENYING REQUEST FOR A  
CONTINUANCE**

Filed on behalf of Respondent  
Duquesne Light Company

Counsel of Record for this Party:

Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)

Paul Shane Miller, Esquire  
PA I.D. No. 319174  
[smiller@tuckerlaw.com](mailto:smiller@tuckerlaw.com)

(412) 566-1212  
1500 One PPG Place  
Pittsburgh, PA 15222

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainants,

v.

No: C-2016-2571726

DUQUESNE LIGHT COMPANY,

Respondent.

**RESPONDENT'S RESPONSE TO COMPLAINANTS' OBJECTION TO ALJ WATSON'S  
JULY 29, 2019 INTERIM ORDER DENYING REQUEST FOR A CONTINUANCE**

Respondent Duquesne Light Company files this Response to Complainants' Objections to ALJ Watson's July 29, 2019 Interim Order Denying Request for a Continuance:

1. The Presiding ALJ properly concluded that Complainants had not established good cause to continue this nearly three year old case for a fourth time. See 52 Pa. Code. §1.15. Nothing in Complainants' Objections undermines the validity of that determination.

2. The majority of points raised in Complainants' Objections have already been briefed and adjudicated in connection with Complainants' original request for a continuance, so Duquesne Light will not entertain a point-by-point response here. Instead, Duquesne Light incorporates its Brief in Opposition to Complainants' Amended Request for a Continuance of the Hearing, attached as Exhibit A, as if it were restated in its entirety.

3. Before addressing the two primary arguments advanced by Complainants in support of their continuance request, Duquesne Light feels compelled to point out that the August 18 and 19 hearing dates were neither unilaterally imposed nor a surprise to Complainants. Complainants *agreed* to those hearing dates, in writing, more than four months ago. See

Complainants' April 2, 2019 Status Report at ¶ 13. Complainants reaffirmed their agreement during the Prehearing Conference on April 24, 2019. See Tr. at 12-13, attached as Exhibit B.

4. Complainants contend that those hearing dates are no longer feasible for two reasons, both of which are insufficient to establish good cause. First, they object to a hearing on August 18 and 19 because they were ordered to provide expert reports by July 10. Second, they claim a continuance is warranted because they need to transcribe the videos they want to offer as exhibits at the hearing. Duquesne Light will address each argument in turn.

5. As to the expert reports, Duquesne Light reiterates that it first requested Complainants' expert reports in discovery nearly two years ago. Complainants have long been on notice of the need to provide them. And while Complainants contend they should not have been ordered to produce these reports, the fact is that the Presiding ALJ disagreed and ordered Complainants to produce the reports. It is not appropriate for Complainants to obtain a continuance because they improperly delayed providing their expert reports. Furthermore, it is not clear how producing the reports prejudiced Complainants' ability to prepare for the hearing. Complainants only wrote one report -- the other reports were (presumably) prepared by Complainants' witnesses -- and the Presiding ALJ gave Complainants over a month to do so.

6. With respect to the video transcriptions, the Presiding ALJ told Complainant Francis Hriadil during on the prehearing conference on April 24, 2019, that any videos that Complainants intended into offer into evidence had to be transcribed. Tr. at 57; Ex. B. Complainants had two months to transcribe the videos before the July 26 exhibit deadline. Yet Complainants did not submit a single transcription, or even a single exhibit, to Duquesne Light by that deadline.<sup>1</sup> (Complainants do not explain why they could not have at least submitted their non-transcript exhibits by the July 26 deadline.) Moreover, Complainant's transcription of these videos cannot justify good cause for continuing the hearing. The transcriptions and the videos

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<sup>1</sup> As of the time Duquesne Light submits this Response, less than two weeks before the hearing, Complainants have still not identified or provided a single hearing exhibit.

themselves are hearsay that fall within the scope of Duquesne Light's pending February 1, 2019 Motion in Limine to Bar Complainants from Introducing or Relying Upon Inadmissible Evidence. As objected-to hearsay, the videos and the transcriptions cannot form the basis for a finding of fact or conclusion of law under the *Walker* rule. Duquesne Light should not be forced to endure another continuance while Complainants continue to transcribe videos they have already had months to transcribe and that will carry little weight at the hearing.

7. Complainants, even as *pro se* parties, do not have an inherent right to a continuance. They need to establish good cause to obtain one, and the Presiding ALJ properly exercised his discretion in concluding they had not. Complainants have been given nearly three years to build their case. Duquesne Light has made a commitment – which this Commission has duly reviewed and approved – to deploy smart meters to all customers by the end of 2019. For the time-being, Duquesne Light has held off installing a smart meter at Complainants' residence during the pendency of this complaint. This forbearance now risks bumping up against Duquesne Light's regulatory commitment. It is time to resolve this case on its merits.

8. For those reasons, Duquesne Light respectfully requests that Complainants' Objections be overruled and that the hearing proceed as scheduled on August 18 and 19.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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

Paul Shane Miller, Esquire  
PA I.D. No. 319174  
(412) 594-5503  
Counsel for Respondent,  
Duquesne Light Company



Jeremy V. Farrell 412.594.3938  
jfarrell@tuckerlaw.com

Paul Shane Miller 412.594.5503  
smiller@tuckerlaw.com

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

Counsel of Record for this Party:

Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)

Paul Shane Miller, Esquire  
PA I.D. No. 319174  
[smiller@tuckerlaw.com](mailto:smiller@tuckerlaw.com)

(412) 566-1212  
1500 One PPG Place  
Pittsburgh, PA 15222

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainants,

v

No: C-2016-2571726

DUQUESNE LIGHT COMPANY,

Respondent.

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

Duquesne Light Company ("Duquesne Light") opposes the request by Complainants Michele Hriadil and Francis Hriadil ("Complainants") to continue this hearing. The hearing already has been continued three times, and Complainants fail to demonstrate that there is "good cause" to continue it yet again. Duquesne Light respectfully requests that the hearing proceed as scheduled on August 19-20, 2019.

**I. Factual Background**

This case has a long procedural history. Duquesne Light will only discuss the relevant portions here.

*The Original Hearing Date*

On October 3, 2016, Complainants filed this Formal Complaint against Duquesne Light. The Presiding Administrative Law Judge ("Presiding ALJ") scheduled a hearing for January 3-4, 2018. See Hearing Notice dated September 15, 2017.

*The First Continuance*

Complainants claimed they could not attend a hearing in the winter due to their advanced age, and requested a continuance "to a time when the weather conditions would be

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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Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
(412) 594-3938  
Paul Shane Miller, Esquire  
PA I.D. No. 319174  
(412) 594-5503

1500 One PPG Place  
Pittsburgh, PA 15222  
Counsel for Respondent,  
Duquesne Light Company

TADMS:5174413-1 014657-158498

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHELE HRIADIL and  
FRANCIS HRIADIL,

Complainants,

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DUQUESNE LIGHT COMPANY,

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No: C-2016-2571726

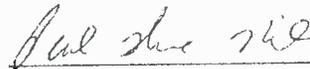
CERTIFICATE OF SERVICE

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  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222

Dated this 19<sup>th</sup> day of July 2019.



Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
(412) 594-3938  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)

Paul Shane Miller, Esquire  
PA I.D. No. 319174  
(412) 594-5503  
[smiller@tuckerlaw.com](mailto:smiller@tuckerlaw.com)

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-5619 (fax)  
Counsel for Respondent,  
Duquesne Light Company

TADMS:5173939-1 014657-158498

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Michele and Francis  
Hriadil,  
v.  
Duquesne Light Company  
Telephonic Prehearing  
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Docket No.: C-2016-  
2571726

Pages 1 - 86

PUC - Pittsburgh  
Piatt Place  
301 Fifth Avenue, Suite 220  
Pittsburgh, PA 15222

Wednesday, April 24, 2019  
Commencing at 9:09 a.m.

BEFORE:

JEFFREY A. WATSON, Administrative Law Judge

APPEARANCES:

FRANCIS HRIADIL, Pro Se

JEREMY V. FARRELL, Esquire  
Tucker Arensberg, P.C.  
One PPG Place  
Suite 1500  
Pittsburgh, PA 15222  
For the Respondent

REPORTER: KAYLYN SHAFFER

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(814) 536-8908

EXB

1                   You're talking about an Order. Give  
2 me the date of the Order.

3                   MR. HRIADIL: I apologize.

4                   JUDGE: No apologies necessary.

5                   If you find the Order and you want to  
6 address it, then we'll address it at that point,  
7 once everybody has it in front of them.

8                   But I'm not going to sit here for ten  
9 minutes and wait for somebody to go through their  
10 paperwork.

11                   Go ahead.

12                   Anything else, Mr. Hriadil?

13                   MR. HRIADIL: Nothing for me, sir.

14                   JUDGE: Mr. Farrell, any preliminary  
15 matters before I start with the agenda that I have  
16 for today?

17                   ATTORNEY FARRELL: Nothing  
18 preliminary, Your Honor.

19                   JUDGE: Okay.

20                   Thank you, Mr. Farrell.

21                   I reviewed the status reports from the  
22 parties. It's my understanding that the parties  
23 have agreed upon hearing dates August 19th and  
24 August 20th in person, in Pittsburgh.

25                   Is that correct, Mr. Hriadil?

1                   MR. HRIADIL: Yes. I will be there in  
2 person, as well as Michele Hriadil.

3                   JUDGE: Mr. Farrell? Is that  
4 acceptable to the Company?

5                   ATTORNEY FARRELL: We've also add,  
6 Your Honor, that - that's certainly acceptable to  
7 us. We've also add that, to the extent, Mr.  
8 Hriadil's expert witnesses are permitted to testify,  
9 they are there in person as well.

10                   JUDGE: All right.

11                   There's a request by the Company  
12 that - and Mr. Farrell, just to be clear, the  
13 Company is requesting that all witnesses testify in  
14 person?

15                   ATTORNEY FARRELL: Correct.

16                   JUDGE: Okay.

17                   Mr. Hriadil, there's a request by the  
18 Company that all witnesses testify in person.

19                   Do you have a response to that?

20                   MR. HRIADIL: That's unacceptable,  
21 Your Honor.

22                   JUDGE: It's what?

23                   MR. HRIADIL: That is unacceptable for  
24 the reasons I've submitted along with my status  
25 report. I am not a multibillion dollar company. I

1 DVD.

2 I don't know what the use of a DVD,  
3 under any particular circumstances, could cause the  
4 Commonwealth technology resources. So I'm telling  
5 you any exhibits provided to me must be documentary  
6 evidence.

7 Now, with regard to any documents such  
8 as videos or anything of that nature, that's  
9 something that you and Counsel will address  
10 together. If you all can agree to how those  
11 documents and proposed exhibits will be presented,  
12 that's great. Provide me with your joint  
13 stipulation on that issue and I'll consider it.

14 I don't know what the Company's  
15 position is in regard to security and whatnot with  
16 regard to their IT resources. But that's something  
17 that they can look at. That's something that you  
18 can look at, Mr. Hriadil.

19 And you all can talk and work that out  
20 amongst yourselves, and advise me in advance.

21 I will tell the parties that, in the  
22 event that any videos are going to be offered, those  
23 videos had better be transcribed as well, if there's  
24 any audio.

25 Because the Court Reporter can't take

**BEFORE THE  
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Complainants,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

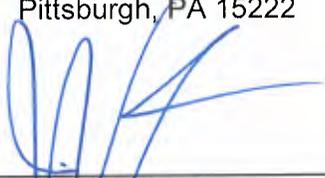
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Response to Complainants' Objections to ALJ Watson's July 29, 2019 Interim Order Denying Request for a Continuance was served 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 August, 2019

  
\_\_\_\_\_  
Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
(412) 594-3938  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)

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1500 One PPG Place  
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(412) 594-5619 (fax)  
Counsel for Respondent,  
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