

December 6, 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 To Complainants' Motion for Reconsideration.

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:5241389-1 014657-158498



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHELE HRIADIL and	:	
FRANCIS HRIADIL,	:	
	:	
Complainants,	:	
	:	
v.	:	No: C-2016-2571726
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**ANSWER TO COMPLAINANTS’ MOTION FOR RECONSIDERATION**

Pursuant to 52 Pa. Code § 5.61(a), Duquesne Light Company (“Duquesne Light”) files this Answer to Complainants’ Motion for Reconsideration:

**I. Introduction**

On November 12, 2019, Complainants Michele Hriadil and Francis Hriadil (“Complainants”) filed three motions that respectively sought to (i) continue the hearing in this matter; (ii) obtain summary judgment in their favor; and (iii) quash Duquesne Light’s two previously-filed motions in limine. The Presiding ALJ denied these motions in three separate orders issued on November 15, 2019. The Presiding ALJ also issued two other orders stating that he would hold Duquesne Light’s motions in limine in abeyance until the hearing. On November 17, 2019, Complainants filed a Motion for Reconsideration, which asked the Presiding ALJ to reconsider these five orders.

As explained in more detail below, three of the Presiding ALJ’s orders are moot because he continued the hearing after Complainant filed the Motion for Reconsideration. The two other orders – which denied Complainants’ Motion for Summary Judgment and their Motion to Quash, respectively – should be upheld because Complainants’ Motion for Reconsideration presents no new or novel arguments that provide a plausible basis to reconsider these rulings.

## II. Factual Background

On September 30, 2019, the Presiding ALJ scheduled the hearing in this matter for November 20-21, 2019. See Hearing Notice Dated September 30, 2019. About a month later, Duquesne Light filed two motions in limine. See Duquesne Light Company's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence (filed on Oct. 28, 2019); Duquesne Light Company's Motion in Limine to Preclude Complainants' Purported Expert Testimony (filed on October 30, 2019). The first motion sought to preclude Complainants from introducing or relying upon inadmissible evidence. See Duquesne Light Company's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence (filed on Oct. 28, 2019). The second motion sought to preclude Complainants from offering improper expert witness testimony. See Duquesne Light Company's Motion in Limine to Preclude Complainants' Purported Expert Testimony (filed on October 30, 2019). On November 12, 2019, Complainants responded to Duquesne Light's motions in limine by filing three motions of their own.

First, Complainants filed a Motion for a Continuance to Provide the Complainants With Sufficient Time to Both Properly Review and Address the Respondent's Detailed, Concurrent Motions in Limine and Complete Our Final Hearing Preparations ("Motion for a Continuance"). It requested that the hearing be continued for at least 90 days. See Motion for a Continuance at p. 3.

Second, Complainants filed a Motion for Summary Judgment. It requested that judgment be entered in their favor and against Duquesne Light. See Motion for Summary Judgment at p. 2.

Finally, Complainants filed a Motion to Quash the Respondent's Untimely, Concurrent Motions in Limine and Restore Lost Final Hearing Preparation Time to the Complainants ("Motion to Quash"). It requested that Duquesne Light's two motions in limine be quashed and that the hearing be continued until April 2020. See Motion to Quash at p. 3.

On November 15, 2019, the Presiding ALJ issued three orders that denied Complainants' Motion for a Continuance, Motion for Summary Judgment, and Motion to Quash, respectively. See Interim Order Denying Complainants' Request for a Continuance; Interim Order Denying Complainant's Motion for Summary Judgment Filed on November 12, 2019; and Interim Order Denying Complainant's Motion to Quash Respondent's Untimely, Concurrent Motions in Limine and Restore Lost Final Hearing Preparation Time to the Complainants. Around the same time, the Presiding ALJ also issued two orders stating that Duquesne Light's motions in limine would be held in abeyance until the hearing on November 20, 2019. See Interim Order Holding in Abeyance Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence Filed on October 28, 2019; Interim Order Holding in Abeyance Respondent's Motion in Limine to Preclude Complainants' Purported Expert Testimony Filed on October 30, 2019.

The table below lists these five orders issued by the Presiding ALJ:

DATE ISSUED	TITLE OF ORDER
November 14, 2019	Interim Order Holding in Abeyance Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence Filed on October 28, 2019
November 15, 2019	Interim Order Denying Complainant's Motion for Summary Judgment Filed on November 12, 2019
November 15, 2019	Interim Order Holding in Abeyance Respondent's Motion in Limine to Preclude Complainants' Purported Expert Testimony Filed on October 30, 2019
November 15, 2019	Interim Order Denying Complainant's Motion to Quash Respondent's Untimely, Concurrent Motions in Limine and Restore Lost Final Hearing Preparation Time to the Complainants
November 15, 2019	Interim Order Denying Complainants' Request for a Continuance

A few days later, Complainants filed a motion requesting that the Presiding ALJ reconsider these five orders. See Objection to ALJ Watson's Two (2) November 14 and 15

Interim Orders Holding in Abeyance Respondent's Two Motions in Limine Until the Morning of Our Hearing and Three (3) November 15 Interim Orders Denying a Summary Judgment Because of the Circumstances or Even a Continuance, and Motion for Reconsideration ("Motion for Reconsideration"). On November 19, 2019, the Presiding ALJ continued the hearing in this matter to an unspecified future date. See Second Interim Order Granting Complainants' Request for a Continuance.

### III. Argument

The Presiding ALJ should decline to reconsider his denial of Complainants' Motion for Summary Judgment and their Motion to Quash, respectively, because their Motion for Reconsideration raises no new or novel arguments that would merit reconsideration of these orders. Further, the Presiding ALJ's three remaining orders are moot because the hearing was continued after Complainants filed their Motion for Reconsideration. Therefore, these three orders should not be reconsidered.

#### ***A. The Presiding ALJ should not reconsider his denial of Complainants' Motion for Summary Judgment because the Motion for Reconsideration raises no new or novel arguments.***

In order to be granted, a motion for reconsideration must make new and novel arguments that were not previously considered or must raise matters that are designed to convince the court to exercise its discretion to rescind or amend the order under consideration. Duick v. PG & W, C-R0597001 et al., 1982 WL 993413 (Pa. P.U.C. Dec. 17, 1982); In Re Energy Co-Op. Ass'n, No. P-00021980, 2003 WL 22908783 (Pa. P.U.C. Oct. 7, 2003). Here, Complainants' Motion for Reconsideration simply presents the same arguments that were already rejected by the Presiding ALJ in his Interim Order Denying Complainants' Motion for Summary Judgment Filed on November 12, 2019. For example, Complainants asserted in their Motion for Summary Judgment that summary judgment should be granted because Duquesne Light filed two motions in limine before the hearing. Complainants make the same claim in their

Motion for Reconsideration, asserting that Duquesne Light's motions in limine impaired their ability to prepare for the hearing. The Motion for Reconsideration fails to present any new or novel reason explaining why the Presiding ALJ's decision to deny Complainants' Motion for Summary Judgment should be rescinded or amended.

Further, a party is entitled to summary judgment only if "the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law." 52 Pa. Code § 5.102(d)(1); Perry v. Public Power, LLC, No. C-2018-3003086, 2019 WL 764560, at \*4 (Pa. P.U.C. Jan. 30, 2019) (Jones, ALJ). In this case, even a cursory review of the applicable pleadings and discovery responses reveals that there are plenty of disputed material facts between the parties, as the Presiding ALJ pointed out in denying Duquesne Light's Motion for Summary Judgment. In addition, Complainants are not entitled to judgment as a matter of law because, as the Commission has repeatedly held, Act 129 requires Duquesne Light to install a smart meter at Complainants' service address.

Finally, to the extent that Complainants claim they are entitled to summary judgment because Duquesne Light filed two motions in limine, the Presiding ALJ's order continuing the hearing mitigated any harm that Complainants claim to have suffered. In light of the continuance, Complainants will have ample time to review and respond to Duquesne Light's motions in limine.

For all of these reasons, the Presiding ALJ should decline to reconsider his Interim Order Denying Complainant's Motion for Summary Judgment Filed on November 12, 2019.

***B. The Presiding ALJ should not reconsider his denial of Complainants' Motion to Quash because the Motion for Reconsideration raises no new or novel arguments.***

The Presiding ALJ also should decline to reconsider his denial of Complainants' Motion to Quash. Complainants argued in the Motion to Quash that Duquesne Light's motions in limine

should be quashed because Complainant Francis Hriadil has a disability that impairs his ability to appear at a hearing during the winter months. In the Motion for Reconsideration, Complainants simply repeat that Francis Hriadil allegedly suffers from a disability and that he cannot prepare for the hearing due to Duquesne Light's motions in limine. And given that the Presiding ALJ ultimately continued the hearing to an unspecified future date, the basis for Complainants' Motion to Quash no longer applies. Given the continuance, Complainants will have plenty of time to review and respond to Duquesne Light's motions in limine. Therefore, the Presiding ALJ should decline to reconsider his Interim Order Denying Complainant's Motion to Quash Respondent's Untimely, Concurrent Motions in Limine and Restore Lost Final Hearing Preparation Time to the Complainants.

***C. The Presiding ALJ's denial of Complainants' Motion for a Continuance and his orders holding Duquesne Light's motions in limine in abeyance are moot.***

Finally, the Presiding ALJ should decline to reconsider the three remaining orders: (i) Interim Order Holding in Abeyance Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence Filed on October 28, 2019; (ii) Interim Order Holding in Abeyance Respondent's Motion in Limine to Preclude Complainants' Purported Expert Testimony Filed on October 30, 2019; and (iii) Interim Order Denying Complainants' Request for Continuance. After Complainants filed their Motion for Reconsideration, the Presiding ALJ continued the hearing through an order on November 19, 2019. The Presiding ALJ has not scheduled a new hearing date yet. Accordingly, there is no longer a need to rule on Complainants' Motion for Continuance or to hold Duquesne Light's motions in limine in abeyance until the hearing.<sup>1</sup>

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<sup>1</sup> Duquesne Light reserves the right to refile and/or request a ruling on its two motions in limine once the hearing is rescheduled.

WHEREFORE, Duquesne Light respectfully requests that the Presiding Administrative Law Judge deny Complainants' Motion for Reconsideration.

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

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