

January 9, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: Miranda Edwards v. Duquesne Light Company
Docket No. C-2018-3002741

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Answer in Opposition to Motion to Stay of Proceedings.

A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell, Esquire
Paul Shane Miller, Esquire
Attorneys for Duquesne Light Company

Enclosure

c: Miranda Edwards (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5250562-1 014657-158498

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MIRANDA EDWARDS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3002741

**ANSWER IN OPPOSITION TO MOTION
TO STAY OF PROCEEDINGS**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

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ANSWER IN OPPOSITION TO MOTION TO STAY OF PROCEEDINGS

I. Introduction

The Presiding ALJ should deny the request of Complainant Miranda Edwards to stay this proceeding until the Pennsylvania Commonwealth Court renders a decision in an unrelated case that was recently filed in that court. Complainant fails to show that there is a compelling reason to stay this case, and Duquesne Light would be harmed by a stay. The unrelated Commonwealth Court case could be pending for *at least* another year, and likely even longer. In the meantime, Duquesne Light is required by Act 129 of 2008 and its Smart Meter Plan to install a smart meter at Complainant's residence. Duquesne Light cannot sit idly by for a year or more while an unrelated case winds its way through the judicial system to an uncertain result. Accordingly, the Presiding ALJ should deny Complainant's motion.

II. Relevant Facts

On June 14, 2018, Complainant filed a Formal Complaint against Duquesne Light. About nine months later, she filed an Amended Formal Complaint. Both pleadings aver, in sum, that Duquesne Light's planned installation of a smart meter at Complainant's residence will harm her health, threaten her safety, and infringe upon her right to privacy. See Complaint, ¶ 4; Amended Complaint, ¶¶ 23-28. She seeks to prevent Duquesne Light from installing a smart meter at her residence. Amended Complaint, ¶¶ 36-42.

The hearing in this matter is scheduled for February 27, 2020. Complainant has not filed a status report in advance of the hearing, despite the Presiding Administrative Law Judge's order requiring the parties to do so. On December 20, 2019, Complainant filed a Motion to Stay of Proceedings ("Motion to Stay"). Complainant asserts in the Motion to Stay that a case recently filed in the Pennsylvania Commonwealth Court captioned Haas v. Pa. Public Utilities Commission, Docket No. 658 MD 2019, "seeks to establish that Act 129 as interpreted and promulgated in regulations by the PA PUC is unconstitutional as to Pennsylvanians, which

includes me and my family...” See Motion to Stay, p. 1. Complainant asserts that “it is most prudent to postpone unnecessary and costly activities of this proceeding until after the Commonwealth Court has made a ruling in [Haas].” Id. Complainant asserts that she will be forced to waste time and money pursuing this case she filed if the Commonwealth Court ultimately rules in Haas that Act 129 is unconstitutional. Id. at 2. Complainant has a full-time job and numerous family and community obligations and thus has “no resources or time to waste.” Id. Further, she contends that the parties will not be harmed by a delay in this case because “Duquesne Light Company will have ample time to produce rebuttal testimony well in advance of a hearing.” Id. For these reasons, Complainant requested that the Presiding ALJ grant a stay of this case. Id.

III. Argument

The Presiding ALJ should deny Complainant’s Motion to Stay. The relevant question in evaluating whether to stay a pending proceeding until a different case is resolved is whether there is a “compelling reason” to stay the pending proceeding. Brunn v. Pa. Power Co., Docket No. C-20066209, 2006 WL 2846261, at *2 (Pa. P.U.C. Sept. 29, 2006); see also Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., Docket No. C-2014-2422723, 2014 WL 3834558, at *1 (Pa. P.U.C. July 25, 2014) (Long and Watson, ALJ) (finding there were no “compelling reasons” to grant a stay of the proceedings). The following factors are relevant in evaluating whether a pending proceeding should be stayed:

- (1) whether the petitioner makes a strong showing that he is likely to prevail on the merits;
- (2) the petitioner has shown that without the requested relief he is likely to suffer irreparable harm;
- (3) the issue of a stay will not substantially harm other interested parties to the proceeding; and
- (4) the issuance of a stay will not adversely affect the public interest.

Brunn, 2006 WL at *2 n.1 (referencing Pa. Public Utility Commission v. Process Gas Consumers Group, 467 A.2d 805 (Pa. 1983)).

Here, Complainant presents no evidence or argument suggesting that she is likely to prevail on the merits of her case. In fact, the opposite is true. The Commission has repeatedly held, with good reason, that Act 129 requires electric distribution companies like Duquesne Light to install smart meters at their customers' service addresses and that customers cannot opt-out of receiving a smart meter. See Hoffman-Lorah v. PPL Elec. Util. Corp., Docket No. C-2018-2644957, 2019 WL 2325713, at *28 (Pa. P.U.C. May 23, 2019); Paul v. PECO Energy Co., Docket No. C-2015-2475355, 2018 WL 3093596, at *4-5 (Pa. P.U.C. June 14, 2018); Povacz v. PECO Energy Co., Docket No. C-2012-2317176, 2013 WL 392699, at *6 (Pa. P.U.C. Jan. 24, 2013). The Presiding ALJ likely will reach the same conclusion in this case under the rule of *stare decisis*. See Bervinchak v. PPL Elec. Utilities Corp., Docket No. C-2016-2577527 and Docket No. C-2016-2572824, 2018 WL 4185438, at *15 (Pa. P.U.C. Aug. 16, 2018) (Barnes, ALJ) (*stare decisis* precedent at the Commission level requires a finding that Act 129 contains no opt-out); Zimmerman v. PPL Elec. Utilities Corp., Docket No. C-2017-2615038, 2018 WL 4185439, at *15 (Pa. P.U.C. Aug. 16, 2018) (Barnes, ALJ) (same).

In addition, Complainant fails to present sufficient evidence or argument establishing that she is likely to suffer irreparable harm if a stay is not granted in her case. "Irreparable harm" is "non-speculative harm that that cannot be compensated by monetary damages." See, e.g., Re Service Electric Telephone Company, LLC, Docket No. P-2013-2349801 (Order entered April 4, 2013) at 15; Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North, LLC, Docket No. P-2011-2253650 (Order entered September 23, 2011); Americus Centre, Inc. v. PPL Electric Utilities Corp., Docket No. C-20077427 (Order entered May 15, 2007). Complainant claims that proceeding with this matter while the Haas case is pending before the Commonwealth Court would be a waste of time and money, but "[i]t is well settled in the law that

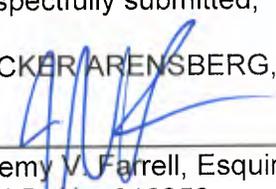
financial harm is not considered irreparable.” SBG Management Services, Inc. v. Phila. Gas Works SBG Management Services, Inc., Docket Nos. C-2012-2304183, and C-2012-2304324, 2019 WL 1506820 (Pa. P.U.C. Mar. 28, 2019). Moreover, it’s not clear that Complainant would incur financial expense at all since she is not calling any witnesses at the hearing. In addition, she provides no evidence suggesting that proceeding with this case, which she chose to file, will require a large investment of time or that the investment of time is “irreparable harm.”

Finally, Duquesne Light will be harmed by the issuance of a stay. Duquesne Light is required by Act 129 and its Smart Meter Plan (which was filed with the Commission on June 29, 2012 and amended on April 7, 2017) to install smart meters at its customers’ service addresses, which includes Complainant’s residence. Haas is in its early stages; the Petitioners Petition for Review was only filed on November 27, 2019. It could take a year or more before it is ruled upon by the Commonwealth Court and then could be appealed to the Pennsylvania Supreme Court. Duquesne Light cannot be required to sit idly by while Haas works its way through Pennsylvania’s appellate court system for a year or more, especially since it is pure speculation to conclude that Haas will ever have any impact on Complainant’s case or turn out the way that Complainant wants it to.

WHEREFORE, Duquesne Light Company respectfully requests that the Presiding ALJ deny the Motion to Stay of Proceedings.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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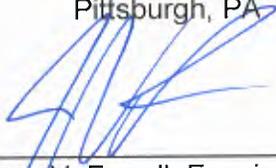
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Answer in Opposition to Motion to Stay of Proceedings upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Miranda Edwards
3835 Acorn Street
Pittsburgh, PA 15207

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

Dated this 9th day of January, 2020



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