

February 24, 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 Second 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:5281765-1 014657-158498

ANSWER IN OPPOSITION TO SECOND MOTION TO STAY OF PROCEEDINGS

I. Introduction

The Presiding ALJ should deny Complainant's Second Motion to Stay of Proceedings ("Second Motion to Stay") for the same reasons that Complainant's first Motion to Stay Proceedings ("First Motion to Stay") was denied just a few days ago. As in her First Motion to Stay, Complainant argues that the hearing in this matter should be stayed until the Commonwealth Court renders a decision in a different case involving different parties. As in her First Motion to Stay, Complainant again fails to show that there is a compelling reason to stay this case.

Further, a stay would harm Duquesne Light. The Commonwealth Court case that Complainant refers to as the basis for her Second Motion to Stay – Povacz v. Pa. Public Utility Commission, Docket No. 492 CD 2019 – may be pending before Pennsylvania's appellate courts for an undetermined period of time. Meanwhile, 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 while an unrelated case winds its way through Pennsylvania's appellate court system to an uncertain result. Accordingly, the Presiding ALJ should deny Complainant's Second Motion to Stay.

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. On December 20, 2019, Complainant filed the First Motion to Stay. Complainant asserted in the First 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 First 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 thus requested that the Presiding ALJ grant a stay of this case. Id. Duquesne Light filed an Answer in Opposition to Stay of Proceedings.

Before receiving a ruling from the Presiding ALJ on the First Motion to Stay, Complainant filed the Second Motion to Stay on February 12, 2020. Like the First Motion to Stay, it requested that the Presiding ALJ stay this proceeding until the Commonwealth Court renders a decision in a different case involving different parties.

On February 21, 2020, the Presiding ALJ denied the First Motion to Stay. See Interim Order Denying Complainant’s Motion to Stay Proceedings (issued on Feb. 21, 2020). The Interim Order held that Complainant failed to aver sufficient facts, legal principles, or precedent to support her request for a stay. Id. at *2. Further, the ALJ ruled that “it would be unfair...to stay this proceeding, given the expenditure of time, money and resources over the past year and a half, by Complainant, Respondent, counsel and the Commission.” Id. Finally, the Presiding ALJ ruled that “action should not be taken based on speculation,” and it would not be prudent to delay this proceeding based on an uncertain result in a different case. Id. at *2-3.

III. Argument

The Presiding ALJ should deny Complainant’s Second Motion to Stay for the same reasons that Complainant’s First Motion to Stay was denied. In both motions, Complainant

argues that this case should be stayed until the Commonwealth Court renders a decision in a different case involving different parties. However, 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, as in her First Motion to Stay, 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 suggests that proceeding with this matter while the Povacz case is pending before the Commonwealth Court would be a waste of time and resources, 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 is 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. Duquesne Light cannot be required to sit idly by while the Povacz case (or any other case) works its way through Pennsylvania’s appellate court system,

especially since it is pure speculation to conclude that Povacz 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 Second Motion to Stay of Proceedings.

Respectfully submitted,

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