

331 Shady Ridge Drive
Monroeville, Pennsylvania

August 17, 2020

Via eMail Filing per Direction of Dan Pallas, PA PUC

Judge Jeffrey Watson
PA PUC Pittsburgh Administrative Law Judge Office
301 Fifth Ave, Suite 220
Piatt Place
Pittsburgh, PA 15222

RE: **Michele Hriadil and Francis Hriadil v. Duquesne Light Company**
Docket No. C-2016-2571726

Cc: Jeremy V Farrell, Esquire, Counsel for Duquesne Light Company
Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission

Dear ALJ Watson:

Enclosed please find a copy of Complainants'

Response and Motion
to Deny Respondent's Motion Requesting Telephonic Hearing,
and Grant Complainants' Countermoditon

A copy of this document along with its certificate of service has been served upon the Respondent's Counsel, Jeremy V Farrell, Esquire, and provided to PUC Secretary Chiavetta, in accordance with Commission regulations.

Please feel free to contact me if you have any questions.

Sincerely,



Francis Hriadil
Complainant
(412) 779-3314
hriadil@attglobal.net

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Michele Hriadil and
Francis Hriadil,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**RESPONSE AND MOTION
TO DENY RESPONDENT'S MOTION
REQUESTING TELEPHONIC HEARING,
AND GRANT COMPLAINANTS'
COUNTERMOTION**

Filed by Michele and Francis Hriadil

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Monroeville, Pennsylvania

**RESPONSE AND MOTION
TO DENY RESPONDENT'S MOTION REQUESTING TELEPHONIC HEARING,
AND GRANT COMPLAINANTS' COUNTERMOTION**

TO: THE HONORABLE ALJ JEFFREY A. WATSON

ENCLOSED IS COMPLAINANTS' RESPONSE TO RESPONDENT'S MOTION
REQUESTING TELEPHONIC HEARING.



Francis Hriadil
August 17, 2020

3. The Respondent has had those re-confirmed October dates since July 15, a full three (3) weeks, without doing anything. And, instead of contacting their witnesses to assess their availabilities on these October dates, and keeping the Complainants and our witnesses expecting and awaiting its response, the Respondent, to our surprise, files its Motion on August 5. This is indicative of a continuing pattern of untimely correspondence with regards to potential hearing dates on the part of the Respondent.

4. The record of the communications with the Respondent concerning potential Hearing dates is as follows:

- In March 2020, as a result of the COVID-19 pandemic, and the Governor's Proclamation of a Disaster Emergency in the state of Pennsylvania, the PA PUC closed its offices and temporarily suspended scheduled Hearing proceedings.
- As both Complainants, and both of our expert witnesses, are elderly and in high risk groups, we have been following all protective protocols and precautions that have been available, and have been awaiting the resolution of the pandemic and the re-start of our Hearing process. We have and continue to be constrained by the pandemic and its restrictions.
- On June 2, 2020, the Respondent contacted us and informed us that it has been in contact with "Judge Watson's chambers about possible hearing dates", asking us if we and our witnesses are available from August 17-21 and September 8-9, and requested a response from us "as soon as possible".
- On June 3, 2020, I immediately responded with the following message:
"I will contact my expert witnesses to see when they will be available. As you know, we and our expert witnesses are all over 60 years old. As such, we are all in the high risk group for COVID-19, and are subject to the shutdown restrictions, and risk reduction protocols, currently being applied in our various locations. We will do everything we can to respond in a timely and reasonable manner without incurring risks to our persons."
- On June 8, 2020, I contacted the Respondent with a status indicating that I was still awaiting responses from our expert witnesses, and informed the Respondent,
"... as I have informed you repeatedly in the past, Dr Carpenter has teaching commitments that prevent participation in any Hearing scheduled on a Monday - Tuesday or Tuesday - Wednesday. The only days that a Hearing can occur for us then is either a Wednesday - Thursday or a Thursday - Friday. So, the M-Tu and Tu-W dates you have proposed are not doable. Are there any W-Th or Th-F dates in Sept or even Oct that are available for you?"

- On June 12, 2020, I contacted the Respondent again with our availability dates at that time, stating the following:

"Any dates that overlap Dr Carpenter's teaching commitments are not doable, and we have stated this repeatedly. So, proposing those dates is not particularly helpful or useful when you know ahead of time that they are not doable.

Your email stated that Judge Watson's office informed you that Aug and Sept are the earliest months where new Hearing dates are available.

I am trying to respond in as timely of a manner as possible per your request, with dates that are definitely doable for us and can be committed to, and I thank you for your patience.

I have been in communication with all of our witnesses.

The occurrence of COVID-19 and the uncertainties that it has imposed on everyone's access, schedules, and availability has made this a somewhat more difficult issue to address quickly and with certainty. These are not normal times and normal circumstances. As you know, many prior scheduled activities and commitments during the last few months have had to be cancelled, and are still in the process of being rescheduled.

Nevertheless, we have determined that the following dates are doable for us and all of our witnesses.

We can definitely commit at this time that we are all available during 2 consecutive days, either a W - Th or a Th - F, for a Hearing during the following periods:

| | |
|--------------------------|-------------------------|
| <i>Sept 16-17; 17-18</i> | <i>Oct 14-15; 15-16</i> |
| <i>Sept 23-24; 24-25</i> | <i>Oct 21-22; 22-23</i> |
| | <i>Oct 28-29; 29-30</i> |

which comprises 10 consecutive 2 day periods in Sept and Oct.

Please check to see which of the above windows of time is doable for yourselves and Judge Watson. We look forward to finding a mutually available and agreeable time."

- On July 8, 2020, 26 days later, the Respondent finally contacted us indicating that their witnesses are available during Sept 23-25, and also indicating that as an option, the Respondent would request that Judge Watson require the parties to submit dates when they are available in October 2020. I then re-contacted all of our participants to re-confirm what dates were still viable.
- On July 15, 2020, after hearing back from our witnesses I contacted and informed the Respondent that the dates still viable are
"Oct 14-15; 15-16; 21-22; 22-23; 28-29; 29-30"
which comprises 6 consecutive 2 day periods in Oct., and asked which of these dates in Oct are doable for the Respondent and ALJ Watson. We expected a timely response.

- On August 5, 2020, after not hearing anything for 3 weeks, and after being informed that the dates still available are in October, the Respondent filed its Motion for a Hearing during a Sept 23-25 time period.

This is the record of our correspondence regarding this issue of Hearing dates.

5. The Complainants have been trying to work earnestly and in good faith with the Respondent to determine availability dates that accommodate everyone's schedules. But, there have been unhelpful proposals from the Respondent and there have been long periods of time where the Complainants have submitted available dates, and heard nothing back from the Respondent.

For example, the Respondent proposed Monday-Tuesday and Tuesday-Wednesday Hearing dates, knowing full well that those days are not doable because of our expert witnesses' schedules and commitments. Also, the Respondent has had the available dates in October from the Complainants since June 12 and as of the Respondent's August 5 filing (a full 2 months later at this point), the Complainants still have received no October availability dates from the Respondent. The Respondent simply did nothing with regard to that.

It is unreasonable to expect, especially during these uncertain times, that all dates submitted in June would remain open, available, and still viable now in August. With a timely response, those dates could have been agreed to and scheduled. It cannot be expected that those dates can or could be kept open indefinitely, especially with the extended periods of silence from the Respondent.

6. The Complainants have had to re-confirm our submitted October dates multiple times, and as of this date, those October dates are still viable Hearing dates for us and our expert witnesses.

II. CONCERNING A COMPLETELY TELEPHONIC HEARING

7. The Pennsylvania Public Utility Commission Consumer Complaint Procedures Guide (http://www.puc.state.pa.us/filing_resources/filing_complaints.aspx) plainly states,

“A hearing is held before a Presiding Officer (either an ALJ or a Special Agent). A hearing looks a lot like a trial but there is no jury. The Presiding Officer will schedule a hearing, and you must be present to give testimony and provide proof about your case.”

8. The Respondent has insisted on an in-person hearing from the start. We agreed as we believe in our right to appear, with the understanding that our out-of-state expert witnesses could participate by telephone, as we do not have the resources to arrange having them appear in person to testify, etc.

9. We have gone to considerable time, effort, and expense, per ALJ Watson's specific proceeding requirements requiring all evidence be submitted in hard-copy format, rejecting any submission of evidentiary documentation by electronic media, etc., to prepare for the agreed upon in-person hearing. We still believe in our right to appear, and still want and intend to do so. The Respondents have been informed of this.

[References, including but not limited to: ALJ Watson's June 7, 2019 Interim Order Requiring Distribution of Proposed Exhibits and Other Materials Prior to Evidentiary Hearing; April 24, 2019 Prehearing Conference Call; February 6, 2018 First Supplemental Prehearing Order; December 15, 2017 Prehearing Order; the June 5, 2019 Hearing Notice; and Complainants' April 30, 2019 Status Report After the April 24, 2019 Prehearing Conference Call.]

10. The Complainants have no knowledge of telephonic hearings, their unique and special requirements, the limitations they impose, the impact on our preparations that are in progress and have already been made for an in-person hearing, and the additional work and time that would be needed to prepare for this new and different venue. The Complainants will not and do not agree to any late changes that will compromise, either intentionally or unintentionally, our preparations and our due process rights to present the fullest case possible, or that will incur an unnecessary and undue burden on the Complainants in violation of PA Code § 5.361(a)(2).

11. During the advent of the pandemic, the Complainants have been focused primarily on our personal health and safety. But, it is the hope and expectation of the Complainants that this virus situation will be resolved in a reasonable time and manner, to everyone's relief and benefit. It does not appear to be an unreasonable expectation that the PUC will resume normal operations in the not too distant future. The Governor has indicated that the state is in the process of returning to normal operation. And, the PA PUC has not stated that it will remain closed.

III. CONCERNING OTHER STATEMENTS
MADE BY THE RESPONDENT
IN ITS MOTION

12. In its Motion, the Respondent specifically makes the following statement,
(Refer to Section 10. therein)

“...This case already has been active for nearly four years. During that time, Complainants requested that the hearing be continued at least four times. It has, in fact, been continued four times. Allowing this case to languish until in-person hearings resume at an unknown future date would be unfair to everyone involved, including Duquesne Light.”

Unfair to everyone? It is not unfair to anyone. Denying the right of a full and proper hearing to the Complainants, one that is in the interest of the public welfare, and one that the Complainants have spent and are spending a great deal of effort preparing for, is inherently unfair, no matter the date of the Hearing.

13. The Complainants object to this type of inappropriate and inflammatory comment that is intended to cloud the court's judgment and goad the court into making an unfair and unjust ruling against the Complainants. It is an irrefutable fact, and a documented part of the court record, that the continuances that occurred were necessary and appropriate considering, and driven solely by, the timing, nature, and number of documents and filings submitted by the Respondent, which the Respondent has used and deployed as a weapon to overwhelm the Complainants. The Respondents detailed documents and filings had to be reviewed and comprehended, and required complete and comprehensive responses.

14. And, though this should not have to be stated, it will be stated, for the record, due of the nature of present and prior fallacious accusations made by the Respondent regarding the Complainants and our integrity, that the Complainants assert that we played no part in the creation or spread of the COVID-19 pandemic that has affected the scheduling of proceedings.

15. The court and the Respondent are fully aware of our ages, physical and financial limitations, and personal circumstances, as well as my disabled condition. And, the court and the Respondent are fully aware that the Complainants are not attorneys, have no legal backgrounds, and are representing ourselves as *pro se* complainants. The Complainants have done nothing but proceed in a sincere good-faith manner in our participation and obligations in this proceeding, and have done nothing to disrespect or be disobedient to this court and this proceeding, although we have been accused by the Respondent of doing so.

16. As such, the Respondent's comment is inappropriate, immaterial, and irrelevant, It is not a justifiable reason or legal foundation upon which to grant the Respondent's motion. To do so would compromise our due process rights, leading to a whole new complaint and Hearing, which would definitely be unfair to everyone involved.

17. In its Motion, the Respondent also specifically makes the following statement,
(Refer to Section. 11. therein)

"Further, there is no guarantee that Complainants will participate in an in-person hearing even if they resume soon. Complainants informed Duquesne Light that they want to appear in-person 'unless prevented from doing so by our ages, unforeseen worsening of my disabilities, or a change in the health status of my sister or myself.' These exceptions are so broad that even if in-person hearings resume soon, Complainants may seek to delay this proceeding for other reasons, such as their ages, alleged disabilities, or health."

18. This is another inflammatory and unprofessional statement by the Respondent, with no basis in fact. It is abject speculation intended to impugn the integrity and intention of the Complainants in the eyes of the court. It is nothing short of a direct assault on the character of the Complainants. And, to be frank it is insulting.

19. Complainant Francis Hriadil is an engineer by training. As such, he is used to considering and presenting worst case scenarios. The comment by Francis Hriadil acknowledging the possibility, as remote and unlikely as it is, that unforeseen circumstances related to the Complainants' physical conditions or health can occur, is no profound admission, nor is it an excuse to question the Complainants' integrity or intentions. And, it is not a justifiable reason or legal foundation upon which to grant the Respondent's motion.

20. The Complainants acknowledge that the Respondent's attorneys can have unforeseen circumstances occur in their lives that could impact the timing and venue of a planned hearing. This is a simple statement of possibility, not probability. There is nothing profound in this acknowledgement. The Respondent routinely disregards the background, ages, physical and financial limitations, and personal circumstances, and routinely argues that we be treated as professional attorneys, and afforded no consideration or accommodation. As such, the Complainants simply feel compelled to repeatedly remind the Respondent and the court of the reality of our circumstances, of our status as *pro se* complainants, and of the US Supreme Court ruling in *Haines v. Kerner*, 404 U.S. 520 (1971)), that

"plaintiffs representing themselves should not be treated the same as professional attorneys and pleadings from plaintiffs pleading as themselves should be held to "less stringent standards" than those drafted by attorneys."

21. As has been stated to the Respondent on numerous occasions, the Complainants continue to look forward to finding a mutually available and agreeable time and circumstance that is acceptable to all parties concerned.

MOTION TO DENY RESPONDENT'S MOTION REQUESTING TELEPHONIC HEARING, AND TO GRANT COMPLAINANTS' COUNTERMOTION

WHEREFORE, in light of these circumstances, Complainants aver that

that the Complainants have a right to appear as stated in the PA PUC Consumer Complaint Procedures;

that any inference by the Respondent that the Complainants are acting in a manner that is disingenuous, duplicitous, or with improper intentions is without merit;

that the Respondent's claims and arguments, concerning the Complainants and this proceeding, are without merit;

that the Complainants have tried to work earnestly and in good faith with the Respondent to determine availability dates which accommodate everyone's schedules;

that the Respondent submitted possible dates that it knew were untenable, "sat" on most of the possible dates submitted by the Complainants in June, did not respond in a timely manner to the Complainants to come to a timely agreement (with some of those dates, Sept 23-25, no longer remaining open), caused the Complainants to have to go back to our witnesses unnecessarily and multiple times to re-confirm submitted dates, and still has not supplied viable dates in October though it has had our available October dates since June;

and that the Complainants continue to look forward to finding a mutually available and agreeable time and circumstance that is acceptable to all parties concerned.

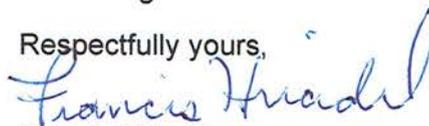
As a result, the Complainants Michele Hriadil and Francis Hriadil respectfully motion

Your Honor:

- to rule to this affect,
- to rule that the Respondent's Motion Requesting Telephonic Hearing during Sept 23-25 be denied, as it is no longer feasible,
- to rule that the Respondent be required to supply availability dates in October or November to the Complainants for a normal in-person Hearing, in a timely manner, for review, to conclude this business of scheduling in a reasonable manner.
- and, to rule that the Respondent's false accusations disparaging the Complainants, to willfully and knowingly mislead the Court, and its failure to provide available October dates, as of this date, after months of knowing the Complainants available October dates, etc. was inappropriate, unnecessarily delayed matters, and at a minimum is worthy of admonishment.

Complainant's response and Certificate of Service have been filed with the Commission's Secretary, in accordance with Commission Regulations.

Respectfully yours,



Francis Hriadil,
(412) 779-3314
331 Shady Ridge Drive
Monroeville, Pennsylvania
August 17, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele Hriadil and
Francis Hriadil,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Complainants' Response and Motion to Deny Respondent's Motion Requesting Telephonic Hearing, and Grant Complainants' Counter-motion upon the participants listed below in accordance with the requirements of 52 PA.

Code § 1.54 (relating to service by a participant):

Via eMail Filing per Direction of Dan Pallas, PA PUC
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Counsel for Respondent, Duquesne Light Company

Dated this 17th day of August, 2020



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