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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' Response and Motion to Deny Respondent's Motion Requesting Telephonic Hearing and Grant Complainants' Countermotion.

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,

/s/ Paul Shane Miller

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)

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a telephonic hearing is now the safest, most practical way to move this matter forward, without harming anyone.¹

4. To move this matter forward, Duquesne Light's in-state witnesses will agree to appear and testify in-person if the Presiding ALJ schedules an in-person hearing for October 21-23, 2020, and the Commission resumes in-person hearings by then. If the Commission has not resumed in-person hearings by October 21-23, 2020, then this matter should be converted to a telephonic hearing for those same dates. Duquesne Light is entitled to be heard on its defenses to Complainants' claims.

BACKGROUND

5. As stated in Duquesne Light's Motion, Duquesne Light believes that a hearing in this matter should take place soon because this case has been active for almost four years and has been continued several times at Complainants' request. Duquesne Light's Motion proposed that the hearing take place via telephone on September 23-25, 2020 or in October 2020 because both parties' witnesses were available and the Commission's telephonic hearing process offers a safe way to hold the hearing during the COVID-19 pandemic.

6. Complainants' response indicated that they and their witnesses are available on October 21-23, 2020, and Duquesne Light's witnesses are also available those dates.

7. Complainants want an in-person hearing. Normally, Duquesne Light would also prefer an in-person hearing. But these are not normal times.

8. The Commission currently is not holding in-person hearings due to COVID-19. It appears unlikely that in-person hearings will resume soon. Indeed, some medical experts warn that the pandemic may *worsen* in the coming months, which could delay this nearly four-year old case even further. See Dr. Maria Simbra, *Flu Season Could Pose 'Twindemic' For 2020, Doctors*

¹ If Complainants would like, Duquesne Light will participate in a prehearing conference to discuss the procedures for a telephonic hearing so they are comfortable with the process.

Say, KDKA CBS 2 Pittsburgh (Aug. 19, 2020), <https://pittsburgh.cbslocal.com/2020/08/19/twindemic-flu-and-coronavirus/> (“There is a concern that as flu season approaches that we could potentially be dealing with both COVID-19 as well as the flu...”); Kyle Mullins, *An autumn overlap of COVID-19 and influenza could be deadly, experts warn*, Pittsburgh Post-Gazette (April 29, 2020), <https://www.post-gazette.com/news/health/2020/04/29/autumn-confluence-overlap-COVID-19-pandemic-influenza-flu-deadly-warnings-health/stories/202004290087> (“There’s a possibility that the assault of the virus on our nation next winter will actually be even more difficult than the one we just went through...”).

9. In addition, Duquesne Light’s in-office employees – including some of its witnesses in this case – are currently working remotely due to COVID-19. They will continue to work remotely through the end of the year.

10. Duquesne Light thus prefers to participate in a telephonic hearing for the safety of its witnesses and for practical scheduling reasons.

11. If, however, the Commission is conducting in-person hearings on October 21-23, 2020, and the Presiding ALJ orders the parties to appear in-person, Duquesne Light’s in-state witnesses will appear and testify in-person to move this case forward. But if the Commission is not holding in-person hearings on October 21-23, 2020, then Duquesne Light requests that the hearing proceed entirely by telephone on those dates.

12. Duquesne Light further requests that its out-of-state witnesses be permitted to testify by telephone, regardless of whether the hearing is conducted in-person or by telephone. Duquesne Light has no objection if Complainants’ out-of-state witnesses also testify by telephone.²

² Duquesne Light has long requested that its out-of-state witnesses be permitted to testify by telephone if Complainants’ out-of-state witnesses were permitted to do so. See *Respondent’s Status Report* (filed on April 3, 2019) (requesting that Duquesne Light’s out-of-state witnesses be permitted to testify by telephone

13. Finally, Complainants' Response asserts that Duquesne Light's Motion made "inappropriate," "inflammatory," "immaterial," "irrelevant," and "unprofessional" remarks that were a "direct assault on the character of the Complainants." Complainants' Response, ¶¶ 13, 16, 18. Complainants appear to take offense with Duquesne Light's assertion that they have already requested at least four continuances and that they may not attend an in-person hearing due to their ages, alleged disabilities, or health concerns.

14. Duquesne Light did not intend for Complainants to take offense to its Motion, but respectfully contends that discussing this case's procedural history in a motion relating to possible hearing dates is proper and does not impugn Complainants' character. This case's long procedural history explains why Duquesne Light believes that the hearing should occur soon. And it is a simple fact that Complainants requested at least four continuances and stated they may not attend an in-person hearing if their ages, alleged disabilities, or health issues prevent them from doing so.

15. Finally, Complainants accuse Duquesne Light of failing to attempt to find mutually-agreeable hearing dates. Complainants' Response, ¶¶ 2-6. Duquesne Light will not recite every communication exchanged with Complainants in trying to schedule this hearing, but there have been many. The parties' fundamental dispute is not about *when* the hearing should occur, but *how*. Duquesne Light believes that the hearing should proceed by telephone; Complainants want an in-person hearing. That has been the sticking point between the parties, not the specific dates. Duquesne Light repeatedly tried to schedule a hearing with Complainants, but their desire to

if Complainants' out-of-state witnesses were permitted to do so); *Respondent's Supplemental Status Report* (filed on May 9, 2019) (same). The Presiding ALJ previously ruled that at least some out-of-state witnesses could testify by telephone. See *Interim Order Permitting the Expert Witnesses Previously Identified by Complainants and Respondent to Appear Telephonically at the Hearing Scheduled For August 19-20, 2019* (issued on June 6, 2019) (stating that the parties' expert witnesses could testify by telephone). Duquesne Light also notes that conducting a telephonic hearing rather than an in-person hearing will not create any extra work for the parties. They have already exchanged exhibits, which can be used regardless of whether the hearing proceeds in-person or by phone. Duquesne Light also can participate in a pre-hearing conference with Complainants and the Presiding ALJ to review the relevant procedures and address Complainants' questions.

attend an in-person hearing -- *at a time when the Commission is not holding in-person hearings* -
- has made it difficult to reach an agreement.

CONCLUSION

16. Although Duquesne Light's Motion requested a hearing date of September 23-25, 2020, Duquesne Light is willing to proceed with a hearing on October 21-23, 2020, which are dates that Complainants stated they are available. If the Commission has not resumed in-person hearings at least 10 calendar days before the scheduled hearing in this matter, this hearing should automatically be converted to a telephonic hearing at the same dates and times.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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