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December 9, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Valen Tasser v. Duquesne Light Company
Docket No. F-2024-3050302

Dear Secretary Chiavetta:

Attached for filing please find Duquesne Light Company's Brief in Opposition to the Complainant's Petition for Interlocutory Review and Answer to Material Question in response to the Petition for Reconsideration of Interim Order Denying Application for a Subpoena of Valen Tasser ("Complainant") in the above-referenced proceeding. Because the Complainant is challenging an interim order issued by the presiding officer, Duquesne Light is treating the Complainant's filing as a petition for interlocutory review and answer to material question. *See* 52 Pa. Code §§ 5.301-5.302.

Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Megan E. Rulli

MER/kl
Attachment

Rosemary Chiavetta
December 9, 2024
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cc: Honorable Mary D. Long (*w/ enclosures*)
Office of Special Assistants (*via e-mail*)
Certificate of Service

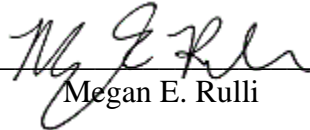
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST-CLASS MAIL

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Date: December 9, 2024


Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Valen Tasser,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2024-3050302
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

**DUQUESNE LIGHT COMPANY'S
BRIEF IN OPPOSITION TO THE COMPLAINANT'S
PETITION FOR INTERLOCUTORY REVIEW AND
ANSWER TO MATERIAL QUESTION**

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I. INTRODUCTION

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files this Brief in Opposition to the Petition for Reconsideration of Interim Order Denying Application for a Subpoena (“Petition”) filed by Valen Tasser (“Complainant”). In her Petition, the Complainant asks the Pennsylvania Public Utility Commission (“Commission”) to review and reverse Administrative Law Judge Mary D. Long’s (the “ALJ”) November 22, 2024 Interim Order Denying Application For a Subpoena. Because the Complainant is challenging an interim order issued by the presiding officer, Duquesne Light is treating the Complainant’s filing as a petition for interlocutory review and answer to material question. *See* 52 Pa. Code §§ 5.301-5.302.

As explained in this Brief, the Complainant’s Petition should be denied because: (1) the Petition fails to meet the standard for certification for interlocutory review due to the Complainant’s failure to explain why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings; and (2) the Complainant’s arguments lack merit. Furthermore, a stay of the proceedings is not required to protect the substantial rights of any party.

II. BACKGROUND

On July 25, 2024, Duquesne Light was served with the Complainant’s Formal Complaint, which is an appeal of a decision of the Commission’s Bureau of Consumer Services (“BCS”) at BCS Case No. 3982003.

On August 14, 2024, the Company timely filed its Answer denying the material allegations in the Formal Complaint.

On August 21, 2024, a Call-In Telephone Hearing Notice was issued scheduling a telephonic evidentiary hearing for October 3, 2024 at 10:00 AM before the ALJ.

Also on August 21, 2024, the ALJ issued a Prehearing Order, which confirmed the call-in details for the hearing and set forth certain procedural rules in this proceeding.

By emails dated September 25, 2024, the Complainant requested Company information related to her Complaint and Duquesne Light agreed to provide that information.

On September 26, 2024, the Complainant requested a continuance of the hearing so that she could review the information provided by the Company and prepare for the hearing. Duquesne Light did not oppose the request.

Also on September 26, 2024, the ALJ issued an Interim Order Granting Continuance, which granted the Complainant's requested continuance; a Hearing Cancellation Notice was also issued cancelling the evidentiary hearing.

On October 21, 2024, a Call-In Telephone Hearing Notice was issued rescheduling the telephonic evidentiary hearing for January 15, 2025 at 10:00 AM before the ALJ.

Also on October 21, 2024, the ALJ issued a Prehearing Order, which confirmed the call-in details for the rescheduled hearing.

On November 12, 2024, the Complainant submitted a request for a subpoena for Holly Pyle, an investigator with the BCS, seeking to require Ms. Pyle to offer testimony and documentation relating to a telephone conversation between the Complainant and Ms. Pyle that allegedly took place on June 10, 2024.

On November 18, 2024, the BCS objected to the subpoena request.

On November 22, 2024, the ALJ issued an Interim Order Denying Application For A Subpoena ("Interim Order"), which denied the Complainant's subpoena request.

On November 27, 2024, the Complainant filed a "Petition for Reconsideration of Interim Order Denying Application For a Subpoena," which requested interlocutory review of ALJ

Long's Interim Order. Because the Complainant is challenging an interim order issued by the presiding officer, Duquesne Light is treating the Complainant's filing as a petition for interlocutory review and answer to material question. *See* 52 Pa. Code §§ 5.301-5.302.

For the reasons explained below, the Complainant fails to meet the high standard for the Commission to grant interlocutory review. Therefore, the Complainant's Petition for Interlocutory Review and Answer to Material Question should be denied.

III. STANDARD OF REVIEW

Under Section 5.302 of the Commission's regulations, a party may file a petition requesting interlocutory "review and answer to a material question which has arisen or is likely to arise." 52 Pa. Code § 5.302(a). Such a petition must present "the question to be answered" and provide "the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." *Id.* (emphasis added). A stay of the proceedings during interlocutory review only can be granted when it is "required to protect the substantial rights of a party." *Id.* § 5.302(b).

Moreover, it is well-established that the Commission generally disfavors petitions for interlocutory review because "the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage."¹ As a result, in determining "substantial prejudice," the Commission considers whether the

¹ *City of Reading & Centre Park Historic District v. UGI Utilities, Inc.*, Docket Nos. C-2015-2516051, *et al.*, p. 7 (Order entered Feb. 9, 2017) ("*City of Reading*") (citing *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021, p. 3 (Order entered Oct. 23, 2009)).

alleged error, and any prejudice flowing from that issue, could not be satisfactorily cured during the normal Commission review process.²

IV. ARGUMENT

In her Petition, which is styled as a Petition for Reconsideration, the Complainant does not explicitly ask the Commission to answer a material question. (*See* Petition, pp. 1-3.) However, she generally avers that ALJ Long incorrectly denied her application for a subpoena. (*See id.*) The Complainant raises three principal arguments in support of her position. First, she alleges that the testimony of the BCS investigator Ms. Pyle is critical to presenting her case and sustaining her burden of proof in this proceeding. (*See* Petition, p. 2.) Second, the Complainant contends that the ALJ erred in ruling that the testimony of Ms. Pyle is not relevant to the instant proceeding, citing the relevance standard contained in Pennsylvania Rule of Evidence 401. (*See* Petition, p. 2.) According to the Complainant, during a June 10, 2024 phone call Ms. Pyle reported to her that “Duquesne Light Company did not set up the correct budget for [her] account in accordance with §56.12.” (Petition, p. 2.) As such, the Complainant concludes that the testimony of Ms. Pyle is relevant and material to her case because it could provide support for her claim that the Company set up her budget billing incorrectly. (*See* Petition, p. 2.) Finally, the Complainant claims that the denial of her subpoena “may also violate [her] due process rights” by hindering her ability to present her case and carry her burden of proof. (*See* Petition, p. 2.) The Commission should deny the Complainant’s Petition for Interlocutory Review and answer this alleged material question in the negative for several reasons.

² *City of Reading*, p. 7 (Order entered Feb. 9, 2017) (citing *Joint Application of Bell Atlantic Corp. & GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered Feb. 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985)).

First, nowhere in the Petition does the Complainant provide compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding. The Complainant also fails to explain how any substantial prejudice allegedly created by the Interim Order cannot be satisfactorily cured during the normal Commission review process. As explained previously, the Complainant claims that the ALJ incorrectly determined that the hypothetical testimony of Ms. Pyle is not relevant. Even if this claim were correct, which it is not, it is well established that BCS decisions are reviewed *de novo*³ and that “no part of the record in the informal complaint proceeding can be relied upon in the formal complaint proceeding.”⁴ Thus, the Complainant’s disagreement with the merits of the ALJ’s ruling does not warrant additional review. Moreover, interlocutory review will not prevent substantial prejudice or expedite the proceeding. Instead, interlocutory review would only work to delay the evidentiary hearing, which has already been continued once to allow the Complainant further time to prepare her case.

Second, the Petition should be denied on the merits. Contrary to the Complainant’s allegations, the ALJ correctly found that “[r]eview of a timely appeal of a decision by the BCS is *de novo*” and that “[n]o part of the record in the informal complaint proceeding can be relied upon in the formal complaint proceeding.” (See Interim Order, p. 4) (citing 52 Pa. Code §§ 56.173(a), 56.403(a), *Leung v. Philadelphia Gas Works*, Docket F-2020-3020041 (Opinion and Order entered October 28, 2021)). As the Commission has explained:

A timely appeal from an informal decision of the BCS is reviewed *de novo*. *De novo* means that the review is based on the

³ See 52 Pa. Code § 56.173(a) (“Review of informal complaint decisions will be heard *de novo* by a law judge or special agent.”).

⁴ *Leung v. Philadelphia Gas Works*, 2021 Pa. PUC LEXIS 519, Docket F-2020-3020041 (Opinion and Order entered October 28, 2021), at *7 (citing *Kelvin Thomas v. Philadelphia Gas Works*, Docket Nos. F-2017-2611788 and C-2017-2621275 (Order entered August 31, 2018)) (“*De novo* means that the review is based on the evidentiary record created at the hearing and no part of the record in the informal complaint proceeding can be relied upon in the formal complaint proceeding.”).

evidentiary record created at the hearing and no part of the record in the informal complaint proceeding can be relied upon in the formal complaint proceeding. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint.⁵

Indeed, the Complainant does not dispute that the ALJ is tasked with a *de novo* review of her Complaint, but instead insists that the applicable standard to determine the relevance of Ms. Pyle's hypothetical testimony is Pennsylvania Rule of Evidence 401.⁶ While the Complainant correctly cites this standard, she fails to consider the inability of the ALJ to rely on the record from the BCS decision in the instant formal complaint proceeding, which is precisely what renders the hypothetical testimony of Ms. Pyle irrelevant. Because any testimony of Ms. Pyle could be afforded no weight or deference by the ALJ (*see* Interim Order, p. 4), it would not meet the evidentiary standard of Rule 401 because it would *not* "tend to make a fact more or less probable than it would be without the evidence."⁷ As stated correctly by the ALJ, the Complainant, "as the party with the burden of proof, must develop a record which supports the relief she seeks in her complaint." (Interim Order p. 4.) Thus, it is the Complainant who must establish support for her claims. She cannot rely on the alleged statements of a BCS investigator as evidence in support of her claims in this proceeding. Therefore, the ALJ properly denied the Complainant's request for a subpoena.

⁵ *Silver Valley Apartments v. PPL Electric Utilities Corporation*, 2020 Pa. PUC LEXIS 311, Docket No. F-2019-3008686 (Order entered March 26, 2020), at *2 (internal citations omitted).

⁶ *See* 225 Pa. Code Rule 401 ("Evidence is relevant if: (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.").

⁷ *See id.* *See also* 52 Pa. Code § 5.421(b)(1) (requiring the application for the issuance of a subpoena to "specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought"); *see also Seese v. PPL Electric Utils. Corp.*, 2016 Pa. PUC LEXIS 171, Docket No. C-2015-2500818 (Initial Decision issued March 17, 2016) *became final without further action by* (Order entered April 29, 2016), at *5 (denying application for the issuance of a subpoena that failed to "specify the relevance or scope of testimony or documentary evidence sought from the[] proposed witnesses").

Finally, a stay of the proceedings is not required to protect the substantial rights of a party, including the Complainant's due process rights.⁸ "The Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness."⁹ "Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal."¹⁰ The hearing in this case is currently scheduled for January 15, 2025, and has already been continued once to allow the Complainant more time to develop her case. The Complainant will have the opportunity to be heard at the scheduled hearing and to present evidence in support of her case at that time. The denial of the Complainant's application for a subpoena does not hamper the Complainant's ability to present her case. Indeed, as the subpoena would not elicit relevant testimony that could be admitted in an evidentiary hearing, as correctly determined by the ALJ, the denial of the request for a subpoena in fact has no effect on the Complainant's due process rights. Thus, ALJ Long's properly rejected the Complainant's request for subpoena.

For these reasons, the Complainant's Petition is without merit and should be denied.

⁸ See 52 Pa. Code § 5.302(b).

⁹ *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted).

¹⁰ *Id.* (citations omitted).

V. **CONCLUSION**

WHEREFORE, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration of Interim Order Denying Application for a Subpoena filed by Valen Tasser.

Respectfully submitted,



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