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File #: 207465

December 23, 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 Answer to the Petition for Reconsideration of Interim Order Denying Application for a Subpoena of Valen Tasser ("Complainant") in the above-referenced proceeding, which is being filed in accordance with the Interim Order on Complainant's Request for Reconsideration issued by Administrative Law Judge Mary D. Long dated December 11, 2024.

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

Respectfully submitted,



Megan E. Rulli

MER
Attachment

cc: Honorable Mary D. Long (w/ *enclosures*)
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).

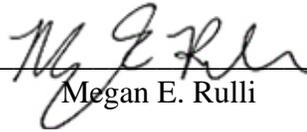
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Date: December 23, 2024


Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF DUQUESNE LIGHT COMPANY
TO THE COMPLAINANT'S
PETITION FOR RECONSIDERATION**

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Date: December 23, 2024

Attorney for Duquesne Light Company

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.61, Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files this Answer to the Petition for Reconsideration of Interim Order Denying Application for a Subpoena (“Petition”) filed by Valen Tasser (“Complainant”) in the above-captioned proceeding. In her Petition, the Complainant requests reconsideration of Administrative Law Judge Mary D. Long’s (the “ALJ”) November 22, 2024 Interim Order Denying Application For a Subpoena (“Interim Order”). On December 11, 2024, the ALJ issued a further order, the Interim Order on Complainant’s Request for Consideration, which clarified that she would treat the Complainant’s Petition as a request to revisit her ruling in the Interim Order issued November 22, 2024.

For the reasons explained below, the Complainant’s Petition should be denied.

II. BACKGROUND

Duquesne Light is a “public utility,” an “electric distribution company,” and a “default service provider” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803.

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 the Interim Order Denying Application For A Subpoena, which denied the Complainant's subpoena request. A true and correct copy of the Interim Order is attached hereto as **Appendix A**.

On November 27, 2024, the Complainant filed a "Petition for Reconsideration of Interim Order Denying Application For a Subpoena," which requested reconsideration of ALJ Long's Interim Order.

On December 9, 2024, Duquesne Light filed a Brief in Opposition to Petition for Interlocutory Review, which treated the Complainant’s filing as a petition for interlocutory review and answer to material question because it challenged an interim order of the ALJ. *See* 52 Pa. Code §§ 5.301-5.302.

On December 11, 2024, the ALJ issued an Interim Order on Complainant’s Request for Reconsideration, which clarified the procedure regarding the Complainant’s Petition. Specifically, the ALJ clarified that she would treat the Complainant’s Petition as a request to revisit her ruling in the Interim Order and set a December 23, 2024, deadline for filing responses to the Complainant’s Petition.

For the reasons explained below, the Complainant has failed to meet her burden to demonstrate that she is entitled to the relief requested and the Petition should be denied.

III. ARGUMENT

The Complainant has the burden of proof in this Formal Complaint proceeding. *See* 66 Pa. C.S. § 332(a). Moreover, the Complainant, by petitioning for reconsideration of the Interim Order, is the “proponent of a rule or order” for the instant Petition and, therefore, has the burden to demonstrate that she is entitled to the relief requested. *See id.* For the reasons explained below, the Complainant fails to meet this burden and her Petition seeking reconsideration of the Interim Order should be denied.

In her Petition, the Complainant 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, 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.) Second, 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 id.*) 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.” (*Id.*) 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 id.*) 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 id.*) Although the Complainant may disagree with the ALJ’s denial of her application for a subpoena, her arguments fail to justify reconsideration of the Interim Order and, therefore, her Petition should be denied.

First, the Petition should be denied on the merits because the ALJ properly found that the testimony of Ms. Pyle would not be relevant to the instant proceeding. 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 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.¹

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

¹ *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).

hypothetical testimony is Pennsylvania Rule of Evidence 401.² 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.”³ Thus, the ALJ correctly found that Ms. Pyle’s testimony is not relevant and properly denied the request for a subpoena on that basis.

Second, the testimony of Ms. Pyle is not critical to establish the Complainant’s direct case in this proceeding. 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.) It is the Complainant who must establish support for her claims through relevant evidence and testimony that demonstrates she is entitled to the relief requested. The Complainant cannot rely on statements made by the BCS during the investigation of her informal complaint in this Formal Complaint proceeding, which is subject to *de novo* review. *See* 52 Pa. Code § 56.173(a). Therefore, the ALJ’s proper denial of the Complainant’s request for a subpoena will not impair the Complainant’s ability to present relevant evidence in support of her claims.

Finally, reconsideration is not required to protect Complainant’s due process rights. “The Commission, as an administrative body, is bound by the due process provisions of constitutional

² *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.”).

³ *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”); *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”).

law and by the principles of common fairness.”⁴ “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.”⁵ 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 proper rejection of the Complainant’s request for subpoena does not impede the Complainant’s due process rights.

For these reasons, the Complainant has failed to show that she is entitled to the relief requested, *i.e.*, reconsideration of the Interim Order, and the Petition should be denied.

⁴ *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014) (citations omitted).

⁵ *Id.* (citations omitted).

IV. 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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Date: December 23, 2024

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APPENDIX A
Interim Order Issued
November 22, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Valen Tasser	:	
	:	
v.	:	F-2024-3050302
	:	
Duquesne Light Company	:	

**INTERIM ORDER
DENYING APPLICATION FOR A SUBPOENA**

On July 12, 2024, Valen Tasser (Complainant) filed a formal complaint against Duquesne Light Company. Ms. Tasser alleged that her bills are too high, and among other things, Duquesne Light is not calculating her budget bill correctly and her payments are not being correctly applied to her balance. Her formal complaint is an appeal of a determination by the Bureau of Consumer Services (BCS) at 3982003. Duquesne Light filed an answer on August 14, 2024, which denied the material allegations of the complaint. A hearing is scheduled on the complaint on January 15, 2025.

On November 12, 2024, Ms. Tasser emailed a request for a subpoena for Holly Pyle, an investigator with the BCS. On November 18, 2024, BCS objected to the subpoena request.

Ms. Tasser requested a subpoena for BCS Investigator Holly Pyle to offer testimony regarding a telephone conversation between Ms. Tasser and Ms. Pyle that took place on June 10, 2024. According to Ms. Tasser, Ms. Pyle’s testimony is essential to her claim that Duquesne Light incorrectly calculated her budget bill. According to Ms. Tasser, Ms. Pyle “advised me during this call that she was going to cite Duquesne Light for having [her] on an incorrect budget plan.”

BCS objects to the subpoena and contends that Ms. Tasser’s request should be stricken because she did not file an “application” as required by Section 5.421 of the Commission’s regulations.¹

There is no reason to strike Ms. Tasser’s request. While not styled as an “application,” Ms. Tasser’s request includes the information required by the regulation. The Commission’s rules state that an application for a subpoena:

- (1) Must specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.
- (2) Must list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents.
- (3) Must contain a notice that a response or objection to the application shall be filed with the Commission and presiding officer within 10 days of service of the application.
- (4) Must include a certificate of service.
- (5) May attach the proposed subpoena to the application.

Ms. Tasser’s request includes an explanation of why she believes Ms. Pyle’s testimony is relevant under “Addition #2 on Subpoena.” She explained that she believes that Ms. Pyle’s testimony that Duquesne Light had her “on an incorrect budget plan. If the budget was incorrect, like she stated, then I would not have an outstanding balance” Ms. Tasser identifies the date and time of the conversation that she had with Ms. Pyle. On the subpoena form itself.² Ms. Tasser included a notice that “any response or objection to this application shall be filed with the Commission and presiding officer within ten (10) days of service of the application.”³

¹ 52 Pa. Code § 5.421.
² 52 Pa. Code § 5.421(b)(1) and (b)(2).
³ 52 Pa. Code § 5.421(b)(3).

Ms. Tasser also included a certificate of service stated that she served her subpoena request on me, counsel for the utility, Ms. Pyle and the Chief Counsel for the Commission.⁴

BCS has failed to point to any essential information that is required by the regulation that is missing from Ms. Tasser's subpoena request, other than the fact that it does not contain the title "application." BCS not only fails to explain what information is missing, but also does not explain how it is prejudiced by the defect. BCS was clearly able to respond to Ms. Tasser's request and lodge an objection to the issuance of the subpoena. While it is true that self-represented litigants are not excused from ignoring rules and of the Commission, it is also true that this Commission has a tradition of construing the filings of self-represented litigants liberally. Indeed, this tradition is codified in the Commission's regulations:

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(b) The singular includes the plural, and the plural, the singular. Words used in the masculine gender include the feminine and neuter. Words used in the past or present tense include the future.

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.^[5]

⁴ 52 Pa. Code § 5.421(b)(4) and (c). It is not clear that Ms. Tasser filed her application with the Secretary's Bureau. As a courtesy, I have requested the Secretary's Bureau to add it to the docket for this case.

⁵ 52 Pa. Code § 1.2. Indeed, in *Seese v. PPL Electric Utilities Corp.*, the presiding officer did not deny the request for a subpoena because it did not include an application. Instead, the presiding officer deemed the request by the complainant as an application but denied it because it had not been served on the non-party witness. See *Seese v. PPL Electric Utilities Corp.* Docket C-2015-25000818, Tr. 4-5.

F-2024-3050302 - VALEN TASSER v. DUQUESNE LIGHT COMPANY

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