

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALDERWOODS (PENNSYLVANIA), INC., a
wholly owned subsidiary of SERVICE
CORPORATION INTERNATIONAL, t/a
BURTON L. HIRSCH FUNERAL HOME,

No. C-2016-2522634

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

**RESPONDENT'S PREHEARING
MEMORANDUM**

Respondent.

Filed on Behalf of the Respondent,
Duquesne Light Company

Counsel of Record for This Party:

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RESPONDENT'S PREHEARING MEMORANDUM

Pursuant to Administrative Law Judge Conrad A. Johnson's (the "ALJ") Second Interim Order Concerning Prehearing Conference and Third Interim Order Granting the Parties' Consent Motion to Continue Prehearing Conference, Respondent Duquesne Light Company ("Duquesne Light" or the "Company") submits this Prehearing Memorandum.

I. BRIEF HISTORY OF THE PROCEEDING

On January 9, 2009, an unidentified vehicle crashed into a utility pole on Forward Avenue in Pittsburgh. The pole carried Duquesne Light electrical lines. The crash broke the pole and caused several local buildings, including the Burton L. Hirsch Funeral Home ("Hirsch"), to lose power. A Duquesne Light crew worked overnight to restore service. Soon after power was restored to the funeral home, a fire broke out inside. Hirsch's insurer filed this subrogation action against Duquesne Light in August 2009, claiming that Duquesne Light incorrectly attached wires in restoring power. When discovery developed no evidence to support this theory, Hirsch then claimed that Duquesne Light should have inspected the Hirsch's internal electrical system before restoring service.

Duquesne Light moved for summary judgment because under a century of Pennsylvania precedent, it owed Hirsch no legal duty to enter or inspect Hirsch's facilities before restoring

service and, therefore, as a matter of law could not be found negligent. The Allegheny County Court of Common Pleas granted Duquesne Light's motion. Hirsch appealed to the Superior Court, which reversed the trial court's decision, holding that an electric utility company may have to inspect and warn prior to restoring service. Alderwoods (Pa.), Inc. v. Duquesne Light Co., 52 A.3d 347 (Pa. Super. 2012). The Pennsylvania Supreme Court granted Duquesne Light's petition for allowance of appeal and affirmed in part, holding that electrical service providers have a duty "to take reasonable measures to avert harm in a scenario in which the utility has actual or constructive knowledge of a dangerous condition impacting a customer's electrical system, occasioned by fallen and intermixed electrical lines proximate to the customer's premises." Alderwoods (Pa.), Inc. v. Duquesne Light Co., 106 A.3d 27, 42 (Pa. 2014). This duty may encompass an obligation to provide "some form of warning" to its customers prior to restoring power if such actual or constructive knowledge is present. Id. at 39 (emphasis added). The case was remanded for further proceedings.

After remand, Hirsch filed a Second Amended Complaint in the Court of Common Pleas. Hirsch amended its pleading to "leave no doubt that it alleges a failure to warn as well as a failure to inspect. Hirsch therefore amended its claim regarding the specifics of Duquesne Light's alleged negligence -- paragraph 22 of the Second Amended Complaint -- to state the specifics of Duquesne Light's failure to warn, and to make clear from Hirsch's perspective that Duquesne Light's negligence was more in its overall **restoration of service** rather than mere physical reconnection." Hirsch's Motion for Leave to File Second Amended Complaint, ¶ 19 (emphasis added).

Because Hirsch's new theory of liability placed at issue subjects that are regulated by the Pennsylvania Public Utility Commission ("Commission") -- restoration of electrical service and communications with customers before restoring service -- Duquesne Light moved for bifurcation and transfer of the liability phase of this action to the Commission under the primary jurisdiction rule. Hirsch opposed Duquesne Light's motion to bifurcate, arguing that the primary

jurisdiction rule did not apply. The Allegheny County Court of Common Pleas (Lutty, J.) disagreed with Hirsch, bifurcated the action, and transferred the liability portion to the Commission for resolution. Judge Lutty's Order was entered on September 14, 2015.

Since that time, Hirsch has made several attempts to overturn the Allegheny County Court of Common Pleas' decision, asserting that the Commission lacks jurisdiction to determine Duquesne Light's liability. Hirsch's Petition for Review to the Commission is pending. All of Hirsch's earlier attempts have failed.

Duquesne Light submits that the matter is properly before the Commission and after discovery and potential submittal of written testimony by the parties, proposes to proceed to a hearing on the merits with respect to Duquesne Light's liability. Duquesne Light intends to conduct discovery in preparation for hearing, given that Hirsch's theory of liability has changed. Duquesne Light intends to take the deposition of Hirsch's expert, Richard Wunderley.

II. COUNSEL

Duquesne Light will be represented by the following counsel in the above-captioned proceeding:

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Duquesne Light's counsel are authorized to receive copies of all documents served in this proceeding.

III. THE ISSUES DUQUESNE LIGHT INTENDS TO PRESENT

The Pennsylvania Supreme Court ruled that electrical service providers have a duty "to take reasonable measures to avert harm in a scenario in which the utility has actual or constructive knowledge of a dangerous condition impacting a customer's electrical system, occasioned by fallen and intermixed electrical lines proximate to the customer's premises." Alderwoods (Pa.), Inc. v. Duquesne Light Co., 106 A.3d 27, 42 (Pa. 2014). This duty may encompass an obligation to provide "some form of warning" to its customers prior to restoring power if such actual or constructive knowledge is present. Id. at 39 (emphasis added).

The test enunciated by the Supreme Court poses three issues for determination with respect to Duquesne Light's liability:

First, whether Duquesne Light's electrical lines were in fact "fallen and intermixed" near the customer's premises. The preponderance of the evidence will show that they were not.

Second, whether Duquesne Light had actual or constructive knowledge of any dangerous condition impacting the customer's electrical system. The evidence will show that Duquesne Light had neither actual nor constructive knowledge of any dangerous condition in the customer's electrical system on the night in question. Nothing perceptible at the scene gave the Duquesne Light line workers any reason to suspect that the customer's electrical equipment was in a dangerous condition.

Third, whether the facts perceptible at the scene imposed upon Duquesne Light an obligation to provide "some form of warning" to its customer prior to restoring power. The evidence will show that because Duquesne Light had neither actual nor constructive knowledge of any dangerous condition in the customer's electrical system on the night in question. Therefore, Duquesne Light had no reason to issue any warning to the customer before restoring power. Duquesne Light's line crews have substantial experience in restoring power after various kinds of outages. The line workers present at Hirsch's premises on the night in question had no reason to believe that Hirsch's electrical system, which was located inside the building was in an unsafe condition.

IV. LISTING OF POTENTIAL DUQUESNE LIGHT WITNESSES AND THEIR TESTIMONY

1. Joseph G. Frankhauser, Senior Operator, Duquesne Light Company.
2. Timothy Kevin Shields, Senior Hot Stick Lineman, Duquesne Light Company.
3. Robert Joseph Pierce, Journeyman Hot Stick Worker, Duquesne Light Company.
4. Brandon Boehm, Journey Line Worker, Duquesne Light Company.
5. Brian Michael Novak, Journey Line Worker, Duquesne Light Company.
6. Rick Sipe, Journey Line Worker, Duquesne Light Company.
7. Dave Wilker, Crew Leader, Duquesne Light Company.
8. Donald Lewis, Line Construction Supervisor, Duquesne Light Company (by deposition).

These witnesses were present at the scene the night power was interrupted and restored. They will testify about what they saw and did. They will explain the condition of the Duquesne Light pole, transformers and conductors at the time they arrived at the scene. They will explain why they had no reason to suspect any dangerous condition in the customer's electrical facilities and therefore no reason to give the customer any warning about the customer's electrical facilities. They will describe observations at the scene that contradict the

theories of Complainant's expert, Mr. Richard Wunderley. They will testify about their training and experience with respect to restoring power after outages. They will explain their training with respect to the National Electric Safety Code ("NESC") and that the customer's facilities are governed by the National Electrical Code ("NEC"). They will explain that their supervisor was encouraging them to finish their work as soon as possible because Hirsch had called several times, demanding to know when power would be restored. They will describe the work they accomplished at the scene. They will describe their observations with respect to the start of the fire.

9. Ruth Crowe, Duquesne Light Company.

Ms. Crowe received several calls from Hirsch on the night in question asking how soon power would be restored. Her testimony will describe those calls.

10. Patrick J. Conti, Director of the Operations Center, Duquesne Light Company.

Mr. Conti will describe the process by which Duquesne Light becomes aware of customer outages and restores power. Mr. Conti will explain that he serves as a Duquesne Light liaison with the Commission, especially with respect to storms and outages. Mr. Conti will explain how Duquesne Light endeavors to furnish electrical service that is safe, reasonably continuous and without unreasonable interruptions or delay, in conformity with the Public Utility Code and Commission regulations pursuant to the Public Utility Code. Mr. Conti will describe Duquesne Light's efforts to improve reliability and reduce customer outage times. Mr. Conti will explain that the customer's primary concern during an outage is the Estimated Time of Restoration ("ETR"), and that the Commission has enacted policies to encourage utilities to provide better public notification to customers regarding service outages and estimated restoration times. Mr. Conti will explain that the Public Utility Code adopts the NESC, which demarcates responsibility for the condition of electrical facilities at the service point, which is the point of connection between the utility's distribution facilities and the customer's wiring. Mr. Conti will explain Duquesne Light's efforts to assure customer safety in restoring power after outages.

12. Mark White, fire investigator.

Mr. White will testify about the fire investigation of Hirsch's premises that he conducted in conjunction with James A. Warren (deceased) and identify the photos he and Mr. Warren took of the scene following the fire.

13. John L. Shaner, independent energy consultant.

Mr. Shaner will testify as an expert witness to address the question whether Duquesne Light, based on the information available at the scene the night of the fire, should have notified or warned its customer prior to restoring power. Mr. Shaner will address best practices in the industry, the jurisdictional demarcation between utility and customer created by the NESC, and other relevant factors in support of his opinion that the Duquesne Light crew acted properly.

The issues listed above, the list of witnesses, and the exhibits provided with this Prehearing Memorandum represent Duquesne Light's statement of the issues, witnesses and exhibits at this time. Further definition of the issues will be developed by the parties during the course of this proceeding. Duquesne Light reserves the right to call additional witnesses, to address additional issues, and to present additional exhibits with respect to additional issues and subject matters that may arise during the course of this proceeding.

V. COPIES OF EXHIBITS OR DOCUMENTS

The ALJ requested that the parties submit copies of exhibits that they intend to present at the hearing. A preliminary list of the Company's exhibits is provided below and submitted with this Prehearing Memorandum. Because the case is not yet ready for hearing, Duquesne Light reserves the right to select from among these exhibits for its presentation of evidence at the hearing, and to supplement them with additional documents that come to counsel's attention during the course of preparation for the hearing.

Exhibit No.	Bates No.	<u>DATE</u>	<u>DESCRIPTION</u>
A (James A. Warren Photos)			
A-3	JAW3	1/19/2009	Three phase power bank and secondary
A-6	JAW6	1/19/2009	Pole; connections
A-12	JAW12	1/19/2009	Service drop
A-17	JAW 17	1/19/2009	Service drop
A-33	JAW 33	1/19/2009	Damaged roof of building; connection
A-37	JAW37	1/19/2009	Damaged roof of building; connection
A-41	JAW41	1/19/2009	Damaged roof of building; connection
A-45	JAW45	1/19/2009	Damaged breaker panel; open
A-48	JAW48	1/19/2009	Outside corner of damaged building; showing connection
A-52	JAW52	1/19/2009	Connection
A-56	JAW56	1/19/2009	Connection
A-89	JAW 89	1/19/2009	Interior damages; wires
A-124	JAW124	1/19/2009	Damaged side of building; interior looking outside
A-130	JAW130	1/19/2009	Massive wires exposed/damaged
A-138	JAW138	1/19/2009	Massive wires exposed/damaged
A-142	JAW142	1/19/2009	Multiple phase breaker panels with panel door closed
A-145	JAW145	1/19/2009	Single phase breaker box with panel door open
A-152	JAW152	1/19/2009	Multiple panel boxes
A-153	JAW153	1/19/2009	Multiple panel boxes; Meter
A-154	JAW154	1/19/2009	Multiple panel boxes
A-155	JAW155	1/19/2009	Multiple panel boxes
A-156	JAW156	1/19/2009	Multiple panel boxes
A-157	JAW157	1/19/2009	Multiple panel boxes
A-159	JAW159	1/19/2009	Multiple panel boxes (open/closed)
A-161	JAW161	1/19/2009	Meter; Panel boxes
A-163	JAW163	1/19/2009	Pipe connection
A-168	JAW168	1/19/2009	Weather Head
A-174	JAW174	1/19/2009	Wires/pipes

Exhibit No.	Bates No.	DATE	DESCRIPTION
A-182	JAW182	1/19/2009	Panel Box; closed
A-190	JAW190	1/19/2009	Weather Head
A-208	JAW208	1/19/2009	Connection point
A-216	JAW216	1/19/2009	Multiple panel boxes
A-220	JAW220	1/19/2009	Meters/closed panel boxes
A-221	JAW221	1/19/2009	Massive exposed wires
A-222	JAW222	1/19/2009	Meters/panel
A-223	JAW223	1/19/2009	Meters/panel
A-224	JAW224	1/19/2009	Meter/panel
A-225	JAW225	1/19/2009	Single phase panel box with cover removed
A-228	JAW228	1/19/2009	Single phase panel box with cover removed
A-241	JAW241	1/19/2009	Open side of damaged building
A-254	JAW254	1/19/2009	Panels/meters removed from building
A-256	JAW256	1/19/2009	Single phase meter socket
A-257	JAW257	1/19/2009	Single phase meter socket
A-336	JAW336	1/19/2009	Single phase panel box with cover removed
A-339	JAW339	1/19/2009	Single phase panel box with cover removed
A-392	JAW392	1/19/2009	Single phase panel box with cover removed
Exhibit B (Mark White Photos)			
B-1	MW01	1/2009	Three phase power bank new construction
B-3	MW03	1/2009	Three phase power bank and secondary
B-4	MW04	1/2009	Sheared pole
B-5	MW05	1/2009	Service Drop
B-7	MW07	1/2009	Service Drop
B-11	MW11	1/2009	Service drop to Funeral Home
B-13	MW13	1/2009	Single phase transformer feeding secondary
B-14	MW14	1/2009	Single phase transformer feeding secondary
B-16	MW16	1/2009	Single phase transformer feeding secondary
B-22	MW22	1/2009	Service drop through trees to Funeral Home

Exhibit No.	Bates No.	DATE	DESCRIPTION
Exhibit C (Hirsch Photos)			
C-1159	HIR001159	1/19/2009	Interior damaged building
C-1195	HIR001195	1/19/2009	Damaged interior
C-1206	HIR001206	1/19/2009	Massive wire exposed
C-1210	HIR001210	1/19/2009	Multiple closed panels; damage
C-1211	HIR001211	1/19/2009	Multiple closed panels; damage
C-1212	HIR001212	1/19/2009	Connection
C-1218	HIR001218	1/19/2009	Connection
C-1219	HIR001219	1/19/2009	Connection
C-1223	HIR001223	1/19/2009	Open Panel; meter
C-1228	HIR001228	1/20/2009	Open Panel
C-1229	HIR001229	1/20/2009	Open Panel
C-1237	HIR001237	1/20/2009	Single Phase Triplex - 8 connection
C-1238	HIR001238	1/20/2009	Closed panel
C-1256	HIR001256		Fire on roof
C-1257	HIR001257		Fire on roof
C-1258	HIR001258		Fire on roof
C-1264	HIR001264		Fire on roof
C-1265	HIR001265		Fire on roof
C-1274	HIR001274		Connections/wire
C-1280	HIR001280		Open/closed panels
C-1282	HIR001282		Open/closed panels
C-1283	HIR001283		Close up Open/closed panels
C-1285	HIR001285		Open panel; wires
Exhibit D (Duquesne Light Trouble Tickets and Computer Printouts)			
D-1	DLC000001	01/10/2009	DLC Report of Accidents and Unusual Circumstances
D-2	DLC000002	01/09/2009	Report of Property Damage, pole shear
D-3	DLC000003	01/10/2009	Supervisor Log
D-4	DLC000004	01/10/2009	Unusual Legal/Media Event Call List

Exhibit No.	Bates No.	DATE	DESCRIPTION
D-5-6	DLC000005-6	01/10/2009	Emails detailing events and times related to control room
D-7	DLC000007	01/10/2009	Email re: fire, provides times and ticket numbers
D-8-13	DLC000008-10	01/09/2009	Trouble tickets
D-11-13	DLC000011-13	01/10/2009	Work Management Timecard
D-14-18	DLC000014-18	01/09/2009	Work Management Timecards
D-19-21	DLC000019-21	04/01/2005	Circuit Outage Report for 4329
D-22	DLC000022	11/05/2009	Google map, shows pole prior to hit with all of the upper equipment intact
D-23	DLC000023		Construction diagram for Three Phase to Three Phase Delta Transformer Installation
D-26-55	DLC000026-55	01/10/2009	Printouts from Disus, info on customer account going back to 1993
D-56-61	DLC000056-61		Trouble call printouts from WMIS, fire related and pole down (see duplicates with color coding – yellow is Hirsch fire, green is downed wires)
D-62-66	DLC000062-66	02/03/2004	Trouble call printout from WMIS, downed wires
D-67	DLC000067	01/21/2009	Trouble call printout from WMIS, fire, became available on 11/23/09
D-68-71	DLC000068-71	01/09/2009	Trouble tickets, same as DLC8-10 but 71 was not in that group
D-72	DLC000072	01/02/2002	Circuit Map for 4329
D-73-77	DLC000073-77	01/09/2009	Callout sheets for Penn Hills (shows who was called and who was able to come in and cover)
D-78	DLC000078	01/10/2009	Noble to Kuruce, Lee, Valarian re: Squirrel Hill Fire, Gilkey ruling cause undetermined
D-79	DLC000079	01/13/2009	Noble to Gilkey, Kuruce re: Squirrel Hill Fire, call from PUC
D-80	DLC000080	01/13/2009	Noble to Gilkey, Kuruce re: Squirrel Hill Fire, leaving for day

Exhibit No.	Bates No.	DATE	DESCRIPTION
D-81	DLC000081	01/28/2009	Noble to Cuff (DLC) re: Hard hat, requesting one after site visit to fire
D-178-179	DLC000178-179		Transcription of voice recordings of call to operations center (<i>Taken from DLC00082, CD not included</i>) ¹
D-83	DLC000083	02/04/1952	DLC Distribution Instructions – Installation of Lighting Arresters Cutouts and Grounds (TD-111-1) drawing
D-84	DLC000084	01/10/1952	DLC Distribution Instructions – Bolted Connections (TD-140-2)
D-85	DLC000085	04/01/1931	Three Phase Star to Three Phase Delta Transformer Installation (D-203-2)
D-86	DLC000086		Standard Transformer Bank Connections (WD-113)
D-87	DLC000087	06/01/2001	Circuit Map for 4329
D-88-150	DLC000088 - DLC000150		Electrical Safety Installation Rules and Guidelines
D-151-152	DLC000151 - DLC000152	01/21/2009	Detail Charge Report For Damage Claims, Work Order No. 328927
D-153	DLC000153	Rev. 12/20/1993	Diagram of Direct Pole Mounting of 15 and 25 KVA Protected-Type Transformer (OH-10-3)
D-154	DLC000154	Rev. 12/06/2001	Circuit Map for. 4329 Area (Greenfield and Squirrel Hill)
D-155-157	DLC000155 - DLC000157	04/01/2005	Circuit Outage Report for 4329
D-158	DLC000158		Diagram of Three Phase Star to Three Phase Delta Transformer Installation (D-203-1)
D-159-163	DLC000159 - DLC000163	02/20/2009	Examination Protocol with attached EFI Evidence List and Evidence Exam/Record - EFI File No. 94211-02344
D-164-174	DLC000164 - DLC000174	01/05/1952	Diagrams of D-200 and similar old standard transformers Installation
D-176-177	DLC000176 - DLC000177		Transcribed excerpt of voice recordings of call to operations center (<i>Taken from DLC00175, CD not included</i>)

¹ Duquesne Light will also present the audio of each call identified in this exhibit list during the hearing.

Exhibit No.	Bates No.	DATE	DESCRIPTION
D-180	DLC000180		Drawing that illustrates service point between DLC equipment and customer equipment
D-181-182	DLC000181-182		Customer Service page to Duquesne Light's website
D-183-184	DLC000183-184		General Demarcation Reference
Exhibit E (Reports)			
E-1-2	POLICE1-2	1/09/2009	City of Pittsburgh Bureau of Police Investigative Report
E-38-49	GILKEY 0038-49	1/10/2009	City of Pittsburgh Bureau of Police Offense/Incident Report
E-67-79	GILKEY 0067-79	3/20/2009	City of Pittsburgh Bureau of Police Supplemental Report
E-57-66	GILKEY 0057-66		City of Pittsburgh Fire Investigation Unit Preliminary Fire Investigation Report
Exhibit F (Construction Standards)			
F-153	DLC000153		OH-10-3 (see also D-153)
F-164	DLC000164		D200 (see also D-164)
Exhibit G (PA Electric Reliability Standards)			
D-185-187	DLC000185-187		PUC - Reliability
D-188-203	DLC000188-203		PA CODE - Reliability Standards

VI. SCHEDULE

Duquesne Light will work with counsel for Hirsch to attempt to develop a mutually agreeable schedule.

Respectfully submitted,

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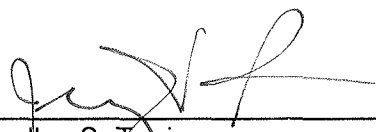
CERTIFICATE OF SERVICE

I certify that on this 27TH day of May, 2016, I served a true and correct copy of Respondent's Prehearing Memorandum, in accordance with the requirements of §1.54 (relating to service by a party) by email (without exhibits) and by FedEx (with exhibits), as follows:

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This document (without exhibits) was also filed on the Commission's electronic filing system.



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