

October 30, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: Norbert Sliwinski v. Duquesne Light Company
Docket No. C-2016-2559985

Dear Secretary Chiavetta:

Enclosed please find a copy of Duquesne Light Company's Answer to Complainant's Motion to Compel. A copy of this correspondence has been served upon Complainant in accordance with Commission regulations.

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

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

cc: Norbert Sliwinski (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5052413-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NORBERT SLIWINSKI,

Complainant,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2559985

**ANSWER TO COMPLAINANT'S MOTION
TO COMPEL**

Served on Behalf of Respondent
Duquesne Light Company

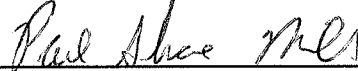
Counsel of Record for this Party:

Jeremy V. Farrell, Esquire
Pa. I.D. No. 316258

Paul Shane Miller, Esquire
Pa. I.D. No. 319174

Tucker Arensberg, P.C.
1500 One PPG Place
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(412) 566-1212

TUCKER ARENSBERG, P.C.



Jeremy V. Farrell, Esquire
Paul Shane Miller, Esquire
Counsel for Duquesne Light Company

6. Complainant did not file a motion to compel, or any other motion, within 10 days after Duquesne Light filed and served its Objections to Discovery.

7. Instead, Complainant filed a Motion to Compel Duquesne Light Company to Fully Answer Complainant's First Set of Discovery Requests and Response to Duquesne Light Company's Objections and Answers (the "Motion to Compel") on September 14, 2018, which is approximately two months after Duquesne Light filed and served its Objections to Discovery.

8. Duquesne Light has reviewed its records and has found no evidence indicating that Complainant ever served the Motion to Compel on Duquesne Light. In addition, the Motion to Compel does not contain a Certificate of Service. Thus, upon information and belief, Duquesne Light asserts that Complainant never served the Motion to Compel on Duquesne Light.

9. In fact, Duquesne Light did not become aware that Complainant had filed the Motion to Compel until Complainant referenced it in a letter to Administrative Law Judge Jeffrey Watson that was filed with the Commission on October 22, 2018.

10. After reviewing that letter, Duquesne Light reviewed the Commission's docket and discovered that Complainant had filed the Motion to Compel on September 14, 2018.

11. Duquesne Light now contends that the Motion to Compel should be denied because (1) Complainant failed to file it within 10 days after Duquesne Light served its Objections to Discovery; (2) Complainant never served the Motion to Compel on Duquesne Light; and (3) Duquesne Light's Objections to Discovery should be sustained on their merits.

II. Law & Argument

A. *Complainant's Motion to Compel should be denied because he did not file it within 10 days after Duquesne Light filed its Objections to Discovery.*

12. Under 52 Pa. Code § 5.342(g), a party submitting interrogatories may file a motion requesting that the presiding officer dismiss an objection and compel that the interrogatory be answered.

13. The motion to compel must be filed within 10 days of service of the objection. 52 Pa. Code § 5.342(g).

14. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed to have been withdrawn. Id.

15. Here, Duquesne Light filed and served its Objections to Discovery on July 13, 2018. See Exhibit A.

16. If Complainant wanted to file a motion to compel, he was required to do so by July 23, 2018.

17. Complainant did not file a motion to compel by July 23, 2018.

18. Rather, Complainant filed the Motion to Compel on September 14, 2018, which is more than seven weeks after the 10-day deadline.

19. Accordingly, the interrogatories that Complainant identifies in the Motion to Compel should be deemed to have been withdrawn, and Duquesne Light is not required to provide a response.

B. *Complainant's Motion to Compel should be denied because he failed to serve a copy on Duquesne Light.*

20. Complainant's Motion to Compel also should be denied because he failed to serve a copy of the motion on Duquesne Light.

21. Under 52 Pa. Code § 1.54, all submittals and documents filed in proceedings pending before the Commission shall be served upon parties in the proceeding.

22. Once Duquesne Light reviewed Complainant's letter to Administrative Law Judge Watson that had been filed with the Commission on October 22, 2018, it reviewed its records to determine if the Motion to Compel had been served upon the Company.

23. Duquesne Light found no evidence suggesting that the Motion to Compel had been served on the Company and thus contends that the Company was never served with the Motion to Compel.

24. Duquesne Light thus contends that the Motion to Compel should be denied or, in the alternative, that the presiding administrative law judge consider the merits of Duquesne Light's Answer to Complainant's Motion to Compel.

C. Complainant's Motion to Compel should be denied because Duquesne Light's Objections to Discovery should be sustained on their merits.

25. Even if the presiding administrative law judge does not dismiss the Motion to Compel on timeliness grounds or because Complainant failed to serve the Motion to Compel on Duquesne Light, it should be dismissed on its merits.

26. As set forth in more detail in Duquesne Light's Objections to Discovery, the objected-to interrogatories identified in the Motion to Compel seek information that is irrelevant, overly broad, and unduly burdensome.

27. For example, in Discovery Request No. 3, Complainant asks Duquesne Light to "provide verifiable (by a non-partisan, impartial witness/observer) evidence/proof that DLC's SM (smart meter) do not have over 100 adverse health effects in light of the studies done by experts below."¹

28. This request is overly broad and unduly burdensome because it would require Duquesne Light to respond to each alleged adverse health effect listed in the many studies

¹ Some of the numbers in Complainant's First Set of Discovery Requests are listed twice. Duquesne Light will refer to the discovery requests as they appear in Complainant's First Set of Discovery Requests, even though they may be incorrectly numbered.

provided by Complainant during discovery, despite the fact that Duquesne Light has already provided Complainant with an expert report by Dr. Gabor Mezei that explains why Duquesne Light believes that its smart meters are safe.

29. In addition, the objected-to interrogatories in Complainant's First Set of Discovery Requests repeatedly ask Duquesne Light to prove a negative, respond to hypotheticals or speculation, issue a warranty, or perform various experiments or tests.

30. For example, in Discovery Request No. 2, Complainant asks Duquesne Light to describe what its response would be if its smart meters caught fire or exploded and who would be financially responsible for the damages caused by this hypothetical explosion.

31. Duquesne Light is not required to speculate about what its response would be if one of its meters caught fire or exploded, especially because there is no evidence that its meters have ever done so.

32. Finally, in other interrogatories, Complainant seeks to compel Duquesne Light to provide an additional answer simply because he is dissatisfied with the answer that the Company has already provided.

33. For example, in Discovery Request No. 12, Complainant asked Duquesne Light how long Duquesne Light's smart meter would last. The Company answered that the expected life is 15 years. Despite this direct response, Complainant claims that Duquesne Light must provide additional information.

34. Accordingly, Duquesne Light contends that Complainant's Motion to Compel should be denied on its merits for the reasons set forth in more detail in Duquesne Light's Objections to Discovery.

WHEREFORE, Respondent, Duquesne Light Company, respectfully requests that the presiding administrative law judge deny the Motion to Compel Duquesne Light Company to

Fully Answer Complainant's First Set of Discovery Requests and Response to Duquesne Light Company's Objections and Answers, which was filed by Complainant, Norbert Sliwinski, on September 14, 2018.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: Paul Shane Miller

Jeremy V. Farrell, Esquire

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(412) 566-1212

Counsel for Respondent,
Duquesne Light Company

July 13, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
2nd Floor, Room-N201
Harrisburg, PA 17120


RE: Norbert Sliwinski v. Duquesne Light Company
Docket No. C-2016-2559985

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Objections to Complainant's First Set of Discovery Requests. A copy of this document has been served upon Complainant in accordance with Commission regulations.

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

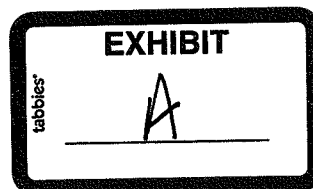
Sincerely,


Lauren N. Rulli
Attorney for Duquesne Light Company

LNR/sls
Enclosure

cc: Norbert Sliwinski (with enclosure)
ALJ Jeffrey Watson (with enclosure)

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discovery of admissible evidence. Also, the study referred to in the Request does not involve the Itron smart meter being installed by Duquesne Light, therefore, any information sought in this Request is irrelevant to the present action.

3. Provide verifiable (by a non-partisan, impartial witness/observer) evidence/proof that DLC's SM do not have over 100 adverse health effects in light of the studies done by experts below.

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. Also, the study referred to in the Request does not involve the Itron smart meter being installed by Duquesne Light, therefore, any information sought in this Request is irrelevant to the present action. To the extent that a response is required, see the expert report of Gabor Mezei, which speaks for itself.

2. [sic]² What will be DLC's response if your Itron SK9AMI7 HW 3.1 OpenWay CENTRON Single Phase Smart Meter would catch fire, or explode? Will you be financially responsible for the damages caused by fire/explosion, regardless of cause? (Lightning strike, power surge, malfunction of internal components, etc).

Response: Duquesne Light objects to this Request on the ground that it seeks hypothetical or speculative information. To the extent that a response is required, Duquesne Light has no knowledge of any of its smart meters catching fire or exploding.

4. Produce documented and visual evidence (actual time stamped video) using a FLUKE 215C Oscilloscope - or equal, connected to DLC's SM - recording the electrical sine waveform. Confirming that the DLC's SM does not produce "dirty electricity" or high voltage transients. Above to be performed at a neutral or private lab, not affiliated or owned by DLC.

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. Duquesne Light additionally objects to this Request on the grounds that it would require an unreasonable investigation.

5. Produce evidence/ proof that DLC's SM need not to be replaced at regular intervals. (My current analog meter has been on my house since I moved in – in July 1971 and probably

² Duquesne Light has kept the numbering of their objections the same as they are listed in Complainant's Discovery Requests for consistency.

was the same one, when installed on the house when it was built in 1959) Produce a written Warranty and Guarantee for a life expectancy at least 10 years for DLC's SM.

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Request asks Duquesne Light to prove a negative, which is a logical impossibility. Finally, to the extent the Request asks Duquesne Light to provide a legally-operative Warranty, discovery is not the appropriate forum in which to make such a request, and Duquesne Light is not obligated to provide such a Warranty.

6. Provide evidence/proof that SM cannot be electrically "hacked".

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Request asks Duquesne Light to prove a negative, which is a logical impossibility.

7. Provide proof and guarantee that DLC's SM cannot be accessed via wireless and/or switched off at will, by DLC employees or any of its affiliates.

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. To the extent the Request asks Duquesne Light to provide a legally-operative guarantee, discovery is not the appropriate forum in which to make such a request, and Duquesne Light is not obligated to provide such a guarantee. Finally, to the extent a response is required, Act 129 of 2008 and corresponding PUC Orders require Duquesne Light's smart meters to be capable of remote connecting and disconnecting electric service. Duquesne Light's smart meters are capable of remote connection and disconnection.

9. Provide proof and guarantee that DLC's SM is in compliance with Public Law 90-602 dated October 18, 1968.

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. The Request asks for a legal conclusion, not facts. To the extent the Request asks Duquesne Light to provide a legally-operative guarantee, discovery is not the appropriate forum in which to make such a request, and Duquesne Light is not obligated to provide such a guarantee.

10. Provide all pertinent data of DLC's SM recording and transmission capabilities of the extent of the data that will be recorded, stored and shared and/or the purpose to which the data will and will not be put.

Response: Duquesne Light objects to this Request on the grounds that it is unduly burdensome, overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence.

14. In reply to Dr. Mezei "Review of RF Health Studies" pge 17 FCC 2.4 GHz is the absorption resonance (or dielectric loss) of the water molecule making it rotate and vibrate in an electric field and humans are 60-70% water.....

Response: Duquesne Light objects to this Request on the grounds that it is ambiguous, incomprehensible, and vague to the point that Duquesne Light is unable to prepare a meaningful response.

15. In reply to Dr. Mezei "Sources of Scientific Evidence for a Weight-of-Evidence Review" I refer to Exhibit B & C

Response: Duquesne Light objects to this Request on the grounds that it is ambiguous, incomprehensible, and vague to the point that Duquesne Light is unable to prepare a meaningful response.

Finally:

Produce a response to my suggestion to my reply to your previous set 2nd set of Discovery where I suggested an alternate way of collecting the electrical consumption of the meter. That suggestion was in response to Judge Watson's letter dated March 28, 2018 per § below:

Response: Duquesne Light objects to this Request on the grounds that it is overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. To the extent the Request asks Duquesne Light to produce materials related to settlement discussions, such discussions are confidential and not subject to discovery.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Lauren N. Ruff, Esquire

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1500 One PPG Place

Pittsburgh, PA 15222

Counsel for Respondent, Duquesne Light Company

July 27, 2018

Via Email - nsliwinski@hotmail.com
and Regular Mail

Norbert Sliwinski
856 Cottonwood Drive
Monroeville, PA 15146

RE: Norbert Sliwinski v. Duquesne Light Company
Docket No. C-2016-2559985

Dear Mr. Sliwinski:

Enclosed please find Duquesne Light's Responses to your First Set of Discovery Requests.

Thank you for your attention to this matter.

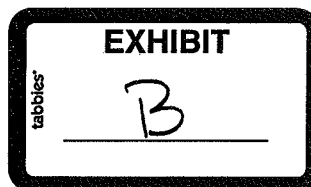
Very truly yours,



Lauren N. Rulli, Esquire
Paul Shane Miller, Esquire

LNR/sls
Enclosures

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information provided and/or documents produced. In the event that any privileged information is divulged by Duquesne Light, its disclosure is inadvertent and does not constitute a waiver of any privilege.

5. Duquesne Light's responses to the specific discovery requests are written in bold font below.

DISCOVERY RESPONSES

3. Provide evidence (Engineering drawings, pictures or videos, showing location of adequately sized surge protector. List part #, Model #, S/N #, Manufacturer's name together with maximum inrush voltage) as installed in DLC's SM.

ANSWER: The OpenWay CENTRON meter is designed to exceed ANSI C12.1 requirements. The attached test report indicates the OpenWay CENTRON meter is in compliance with the following surge or transient conditions outlined in the ANSI C12.1 specification.

4.7.3.3.1 100 kHz ring wave: This test subjects the power input of the meter device to a 100 kHz Ring Wave with a Peak Voltage of 6 kV and Short-Circuit Peak Current of 0.5 kA.

4.7.3.3.2 High Voltage Line Surge - Combination Waveform: This test subjects the AC power input of the metering device to a 1.2/50 μ s – 8/20 μ s combination wave with a peak voltage of 6 kV and peak current of 3 kA.

4.7.3.7 Test No. 21: Effect of current surge in ground conductor: Three metering devices shall be subjected to one transient surge of 20 000 A (20/50 microsecond wave) of either polarity through a conductor placed vertically 1.5 inches (38.1 mm) behind the flat portion of the base of the metering device, with a socket in place. *This test shall not apply for metering devices with terminal compartments (Type A) or for Class 10 or Class 20 metering devices.*

4.7.3.11 Test No. 25: Effect of electrical fast transient/burst test: The metering device shall meet the Fast Transient Surge Test requirements of IEC 61000-4-4. This test subjects the power inputs and the I/O circuits of the metering device to repetitive bursts of 5 ns rise time, 50 ns duration electrical fast transients.

- a. Test voltages on the voltage and current circuits: 4 kV
- b. Test voltage on I/O signal, data and control lines: 2 kV
- c. Repetition rate 5 kHz
- d. Duration of the test: minimum 60 seconds

4.7.3.11a Test No. 25a: Effect of electrical oscillatory SWC test: The metering device shall meet the Electrical Oscillatory SWC Test requirements of IEEE 37.90.1. This test subjects the power inputs and the I/O circuits of the metering device to repetitive bursts damped oscillatory waves with an initial crest of 2.5 kV for a duration of 2 minutes.

8. Acknowledge that Itron's Publication (Exhibit A) confirms that DLC's SM can attain a 0.58% Duty Cycle.

ANSWER: Itron's white paper titled "Wireless Transmissions: An Examination of OpenWay Smart Meter Transmissions in a 24-Hour Duty Cycle" shows that, while meter emission times may vary, the maximum observed transmit duty cycle was found to be 0.58% (or just over 8 minutes per day). This observation was based on a field study of approximately 7,000 meters.

11. Provide the encryption or security methods used for DLC's SM.

ANSWER: With respect to Duquesne Light's Smart Meter system, the system uses advanced and open standard data encryption and authentication techniques that have been approved internationally by bodies such as the National Institute of Standards and Technology and the National Security Agency.

12. Provide records of actual cost of DLC SM and its LiveCycle. How long will it last?

ANSWER: This request seeks confidential information and privileged trade secret information. The cost of the smart meters is part of the purchase order between Duquesne Light and Itron, which is confidential. Therefore, this information is not produced as doing so would violate the confidentiality terms of the purchase order. By way of further response, the expected life as depreciated by Duquesne Light is 15 years.

13. Provide the following information about DLC's SM: intensity of output, duration and frequency of output, and pattern of sending and receiving transmissions to and from all sources.

ANSWER: The peak, radiated output power of the 900MHz radio in the smart meter is 1.14 Watts. The peak, radiated output power of the 2.4GHz radio (Zigbee) is 0.156 Watts.

The duration of each transmission is 150 milliseconds or less.

For the 900MHz radio, the average transmit duty cycle is 53.14 seconds per day. The peak transmit duty cycle is just over 8 minutes per day. This is made up of short duration transmissions (150ms or less) throughout the day.

For the 2.4GHHz, Zigbee radio, the idle transmit duty cycle is 9.9 seconds per day. The duty cycle with one device attached is 132 seconds per day. This is made up of short duration transmissions (150ms or less) throughout the day.

16. In reply to Dr. Cotts "Executive Summary" page viii and his alleged investigation inside or near my home (was he near a home or inside a home?) - provide date, time, and RF frequency for afore mentioned investigation.


ANSWER: The information used by Dr. Cotts in his investigation was provided to him through Complainant's responses to Duquesne Light's discovery requests. Dr. Cotts was not inside Complainant's home or any neighbor's home.

17. In reply to Dr. Cotts "Executive Summary" page viii, provide date, time and location of alleged RF source and substantiate with date stamped meter readings near my home.

ANSWER: The information used by Dr. Cotts in his investigation was provided to him through Complainant's responses to Duquesne Light's discovery requests. Dr. Cotts was not inside Complainant's home or any neighbor's home.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Lauren N. Rulli, Esquire

PA I.D. No. 313768

(412) 594-5510

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PA I.D. No. 319174

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Pittsburgh, PA 15222

Counsel for Respondent, Duquesne Light
Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NORBERT SLIWINSKI, :
 :
 Complainant, :
 :
 vs. : No: C-2016-2559985
 :
 DUQUESNE LIGHT COMPANY, :
 :
 Respondent. :

VERIFICATION

I, Yvonne Phillips, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Yvonne Phillips
Yvonne Phillips

7-23-2018
Date

