

March 5, 2019

*Via Electronic Filing*

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

**RE: Sage Gardner v. Duquesne Light Company**  
Docket No. C-2018-3003550

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion to Dismiss Formal Complaint for Failure to Answer Discovery and Prosecute Formal Complaint.

A copy of this document has been served upon Complainant and Administrative Law Judge Jeffrey Watson in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell  
Attorney for Duquesne Light Company

Paul Shane Miller  
Attorney for Duquesne Light Company

Enclosure

c: Sage Gardner (with enclosure)  
ALJ Jeffrey Watson (with enclosure)

TADMS:5106807-1 014657-158498



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SAGE GARDNER	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3003550
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION TO DISMISS FORMAL COMPLAINT FOR FAILURE TO ANSWER DISCOVERY  
AND PROSECUTE FORMAL COMPLAINT**

Pursuant to 52 Pa. Code §§ 5.371-5.372, Duquesne Light Company (“Duquesne Light”) files this Motion to Dismiss Formal Complaint for Failure to Answer Discovery and Prosecute Formal Complaint (“Motion to Dismiss”):

**I. INTRODUCTION**

1. In this Motion to Dismiss, Duquesne Light requests that the Formal Complaint filed by Complainant Sage Gardner (“Complainant”) be dismissed for failing to answer discovery requests and otherwise failing to prosecute her Formal Complaint.

2. Complainant has not responded to any of Duquesne Light’s discovery questions, despite being ordered to do so. She did not provide a list of potential witnesses, despite being instructed to do so by the litigation schedule. She has not otherwise prosecuted or pursued her case.

3. Accordingly, Duquesne Light requests that the case be dismissed under 52 Pa. Code §§ 5.371-5.372.

## II. BACKGROUND

4. On July 17, 2018, Complainant filed a Formal Complaint against Duquesne Light, seeking to keep her current analog meter rather than receiving a “smart meter.”

5. On August 14, 2018, Duquesne Light filed an Answer and New Matter, as well as Preliminary Objections.

6. Complainant did not file a response to Duquesne Light’s New Matter or Preliminary Objections.

7. On September 4, 2018, in accordance with 52 Pa. Code § 5.341, Duquesne Light served its First Set of Discovery Requests Directed to Complainant (“Duquesne Light’s Discovery Requests”).<sup>1</sup>

8. In the Discovery Requests, Duquesne Light sought information and documents from Complainant relating to her allegations about Duquesne Light, its smart meters, and its smart meter program.

9. On September 17, 2018, Administrative Law Judge Jeffrey A. Watson was assigned as the Presiding Officer in this proceeding (“the Presiding ALJ”).

10. On October 3, 2018, the Presiding ALJ issued an Interim Order Granting in Part and Denying in Part Respondent’s Preliminary Objections.

11. On the same date, the Presiding ALJ issued an Interim Order Establishing Litigation Schedule (“the Litigation Schedule”).

12. Under the Litigation Schedule, the parties were required to provide a list of factual witnesses and a summary of each witness’s testimony to the opposing party on or before

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<sup>1</sup> A copy of Duquesne Light’s Discovery Requests are attached as Exhibit A.

January 4, 2019; in addition, the parties were required to conclude discovery on or before February 25, 2019.

13. Complainant did not respond to Duquesne Light's Discovery Requests. Duquesne Light thus filed a Motion to Compel Discovery Responses on November 13, 2018.

14. On January 7, 2019, the Presiding ALJ issued an Interim Order Granting Motion of Duquesne Light Company to Compel Responses to Interrogatories and Document Requests. The Presiding ALJ ordered Complainant to "serve upon counsel for Respondent, full and complete responses to all of the Interrogatories and Request For Production of Documents served upon Complainant by Respondent and file a certificate of service with the Commission's Secretary not later than February 1, 2019."

15. Complainant did not respond to Duquesne Light's Discovery Requests on or before February 1, 2019, or at any time thereafter.

16. On February 5, 2019, Duquesne Light's counsel sent a letter to Complainant requesting that she provide "complete responses to our interrogatories and request for production of documents by **February 13, 2019**."<sup>2</sup> (emphasis in original).

17. Complainant still has not provided any response to Duquesne Light's Discovery Requests.

18. In addition, Complainant has failed to provide Duquesne Light with a list of factual witnesses, or a summary of each witness's testimony.

19. Complainant has taken no other steps to prosecute this Action since filing the Formal Complaint.

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<sup>2</sup> A copy of this letter is attached as Exhibit B.

### III. MOTION TO DISMISS

20. The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c).

21. In general, the Commission applies a standard of relevance that is less restrictive than that required by parties to present information into the evidentiary record. It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

22. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make an act at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not provide an absolute test of relevancy, the Pennsylvania Supreme Court has set forth a two-part test: "[i]t must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case, and, second, whether the evidence renders the desired inference more probable than it would be without the evidence." Commonwealth v. Stewart, 336 A.2d 282, 284 (Pa. 1975).

23. The information and documents sought from Complainant in Duquesne Light's Discovery Requests is simple and straightforward. Each request directly relates to Complainant's claims against Duquesne Light relating to its smart meters or smart meter program.

24. The Commission's regulations at 52 Pa. Code § 5.371 address the consequences of a participant's failure to comply with the Commission's discovery regulations.

25. Under 52 Pa. Code § 5.371, the Commission or the presiding officer may, on motion, make an appropriate order if a party fails to appear, answer, file sufficient answers, file objections, make a designation, or otherwise respond to discovery requests.

26. Further, under 52 Pa. Code § 5.372, the presiding officer may impose appropriate sanctions upon a party found to be in violations of the obligations set forth in the Commission's regulations.

27. The case law establishes that dismissal of a complaint is warranted if there is any violation of the presiding officer's order, including orders governing discovery. See Randal v. Metropolitan Edison Co., Docket No. C-2013-2367046, 2013 WL 4717036, at \*2 (Aug. 27, 2013) (Salapa, ALJ) ("Failure to comply with a presiding officer's order directing an action to be taken can warrant the dismissal of a formal complaint") (citing Snyderville Community Development Corp. v. Phila. Gas Works, Docket No. C-20055032 (July 31, 2006)); Sojda v. Metropolitan Edison Co., Docket No. C-2017-2638350, 2019 WL 365643, at \*1 (Jan. 9, 2019) (Watson, ALJ) (dismissing Formal Complaint for failure to comply with orders of presiding officer requiring Complainants to provide discovery responses to Respondent); Wolfgang v. Pa. Elec. Co., Docket No. C-2017-2613989, 2018 WL 6931952, at \*1 (Dec. 10, 2018) (Watson, ALJ) (dismissing Formal Complaint for failure to comply with orders requiring Complainant to provide discovery responses and witness identification to Respondent).

28. Here, Complainant has failed to provide a single response to Duquesne Light's Discovery Requests, even though the Presiding ALJ ordered her to provide "full and complete responses" by February 1, 2019.

29. Complainant also failed to provide a list of her factual witnesses and a summary of each witness's testimony by January 4, 2019, as required by the Litigation Schedule.

30. Complainant has not prosecuted this case in any other way.

31. Complainant's failure to provide any response to Duquesne Light's Discovery Requests (especially given that the Presiding ALJ ordered her to respond), her failure to provide a witness list, and her failure to otherwise prosecute this case demonstrates her lack of cooperation and willingness to participate in this proceeding.

32. Accordingly, the Formal Complaint should be dismissed.

Respectfully submitted,



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Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)

Paul Shane Miller, Esquire  
PA I.D. No. 319174  
[smiller@tuckerlaw.com](mailto:smiller@tuckerlaw.com)

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 566-1212  
(412) 594-5619 (fax)  
Counsel for Respondent

TADMS:5105663-1 014657-158498

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SAGE GARDNER

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3003550

FIRST SET OF DISCOVERY REQUESTS  
DIRECTED TO COMPLAINANT

Filed on behalf of Respondent  
Duquesne Light Company

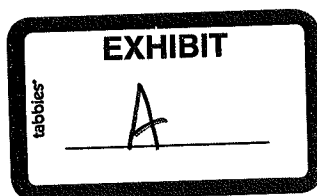
Counsel of Record for this Party:

Paul Shane Miller, Esquire  
PA I.D. No. 319174  
(412) 594-5503

Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
(412) 594-3938

1500 One PPG Place  
Pittsburgh, PA 15222  
Counsel for Respondent

TADMS:1004376-1 014657-158498





copy from any person or entity that has possession of it. The term "Document" includes, but is not limited to, electronic mail or email, text messages, social media postings, comments, and messages, medical records, articles, studies, word processed documents, digital presentations, facsimiles, instant messages, calendars, diaries, appointment books, agendas, journals, drafts, voicemail messages, post cards, post-it notes, reports, logs, message slips, invoices, checks, paystubs, letters, memoranda, agreements, contracts, tax returns, bank statements, spreadsheets, video recordings, audio recordings, computer programs, printouts, and all other written, graphic, or electronic materials of any nature whatsoever.

D. The term "Property" shall mean Your residence at 4134 Gladstone Street, Pittsburgh, Pennsylvania 15207.

E. The term "Smart Meter" shall mean the digital electric meter that Duquesne Light is seeking to install at the Property pursuant to Pennsylvania Act 129 of 2008.

### **INSTRUCTIONS**

A. You must provide all information that is available to You. This includes not only Your personal knowledge but also all information that is reasonable available to You.

B. You are requested to produce all responsive Documents that are in Your possession, custody, or control. All Documents must be produced in the same order that they are normally maintained. For each Document, identify which specific discovery request it responds to.

C. If You object to any discovery request, You must explain the reason(s) for Your objection.

D. If You do not have any Documents in Your possession, custody, or control that are responsive to a discovery request, You must say so.

E. In responding to these discovery requests, include all Documents that were obtained by You and anyone acting on Your behalf. If You state that any Document(s) are not

within Your possession, custody, or control, describe what effort You made to locate each such Document.

F. If You state that a Document is not under Your control, identify who has control of the Document and state the Document's location.

G. You must produce each Document in its entirety even if only part of the Document is responsive to the document request.

H. These discovery requests are continuing in nature. This means that if You receive or become aware of information that is responsive to any discovery request after You have served Your original answers, You must promptly supplement Your answer and provide that information.

#### **DISCOVERY REQUESTS**

1. State all facts that support Your claim that Duquesne Light's installation of a Smart Meter at the Property will negatively affect Your health.

**ANSWER:**

2. Produce all Documents, including but not limited to hospital and/or medical records and studies, that relate to Your answer to Discovery Request No. 1.

**ANSWER:**

3. State all facts that support Your claim that Duquesne Light's installation of a Smart Meter at the Property will infringe upon Your privacy and/or violate Your rights under the Fourth Amendment to the United States Constitution.

**ANSWER:**

4. Produce all Documents that relate to Your answer to Discovery Request No. 3.

**ANSWER:**

5. State all facts that support Your claim that Duquesne Light's installation of a Smart Meter at the Property poses a potential fire hazard.

**ANSWER:**

6. Produce all Documents that relate to Your answer to Discovery Request No. 5.

**ANSWER:**

7. To the extent not previously requested or produced, produce all Documents that You intend to offer into evidence at any hearing in this matter.

**ANSWER:**

8. State the full name, address, and telephone number of each person who You expect to call to testify at any hearing of this matter.

**ANSWER:**

9. State the full name, address, and telephone number of each person who You expect to call to testify as an expert witness at any hearing of this matter and, for each expert witness, state:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify;  
and
- c. A summary of the grounds for each expert opinion.

**ANSWER:**

10. Produce the report of any expert You intend to call to testify on Your behalf at trial.

**ANSWER:**

11. Produce the curriculum vitae of any expert that You intend to call to testify on Your behalf at trial.

**ANSWER:**

12. Provide Your age and educational background, including but not limited to all colleges or universities that You attended and all degrees and/or certifications You have received.

**ANSWER:**

13. Produce a copy of Your current resume and/or curriculum vitae.

**ANSWER:**

14. Have You ever performed work or been employed in the scientific or medical fields?

**ANSWER:**

15. If the answer to the preceding request was in the affirmative, state:
- a. The name of each employer that You performed work for in the scientific or medical fields;
  - b. Describe, in as much detail as possible, the specific duties that You performed for each employer; and
  - c. State the dates on which You performed those duties.

**ANSWER:**

16. Identify the type (with make and model) of all devices, appliances, and equipment used in Your home or by You in Your daily life that produce radio frequency or low frequency fields, including, but not limited to, cell phones, microwave ovens, wireless internet, and WI-FI routers.

**ANSWER:**

17. For each cell phone identified in response to the preceding request, produce the last six months of bills or other usage records for the phone with sufficient detail to show Your actual usage for that period.

**ANSWER:**

18. Produce all Documents, including, but not limited to, user manuals and instructional materials, relating to each device identified in response to Discovery Request No. 16.

**ANSWER:**

19. Do You claim that there has been a fire(s) caused by an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter installed by Duquesne Light or its contractors? If so, for each such fire, state:

- a. The date of the fire;
- b. The address of the location where the fire happened; and
- c. All facts that support Your contention or belief that the fire was caused by an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter installed by Duquesne Light or its contractors.

**ANSWER:**

20. Produce all Documents that relate to Your response to the preceding request.

**ANSWER:**

21. Do You claim there has been a privacy, data, or security breach to Duquesne Light's customers caused by an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter? If so, for each such breach, state:

- a. The date of each breach;
- b. The nature of information breached; and
- c. All facts that support Your contention or belief that the breach was caused by an

Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

**ANSWER:**

22. Produce all Documents that relate to Your response to the preceding request.

**ANSWER:**

23. Outside of the Documents and pleadings already produced in connection with Your Formal Complaint, produce any Document(s) that You have prepared in whole or in part that relates to the subject of radio frequency or Your Formal Complaint.

**ANSWER:**

24. Have You ever performed any job responsibilities or engaged in a course of study specifically relating to radio frequency or low frequency radiation? If so, describe each job responsibility and/or course of study in detail.

**ANSWER:**

25. Produce all Documents that relate to Your response to the preceding request.

**ANSWER:**

26. Are You a certified electrician? If so, state the date of certification.

**ANSWER:**

27. Identify all medical conditions that make You vulnerable to, or that would be aggravated by, proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

**ANSWER:**

28. Produce all Documents, including but not limited to hospital and/or medical records and studies, demonstrating that You suffer from the medical condition(s) identified in Your response to Discovery Request No. 27.

**ANSWER:**

29. Produce all Documents, including but not limited to hospital and/or medical records and studies, demonstrating the relationship between the medical condition(s) identified in Your response to Discovery Request No. 27 and Your proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

**ANSWER:**

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Paul Shane Miller, Esquire

PA I.D. No. 319174

(412) 594-5503

Jeremy V. Farrell, Esquire

PA I.D. No. 316258

(412) 594-3938

1500 One PPG Place

Pittsburgh, PA 15222

Counsel for Respondent,  
Duquesne Light Company

TADMS:1004376-1 014657-158498

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SAGE GARDNER

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3003550

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing First Set of Discovery Requests Directed to Complainant upon the participant listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Sage Gardner  
4134 Gladstone Street  
Pittsburgh, PA 15207

Dated this 4<sup>th</sup> day of September, 2018

  
\_\_\_\_\_  
Paul Shane Miller, Esquire  
PA I.D. No. 319174  
(412) 594-5503  
[smiller@tuckerlaw.com](mailto:smiller@tuckerlaw.com)

Jeremy V. Farrell, Esquire  
PA I.D. No. 316258  
(412) 594-3938  
[jfarrell@tuckerlaw.com](mailto:jfarrell@tuckerlaw.com)

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-5619 (fax)

Counsel for Respondent,  
Duquesne Light Company

February 5, 2019

Sage Gardner  
4134 Gladstone Street  
Pittsburgh, PA 15207

**RE: Sage Gardner v. Duquesne Light Company**  
Docket No. C-2018-3003550

Dear Ms. Gardner:

On September 4, 2018, we served you with interrogatories and a request for production of documents. You failed to respond. We thus filed a Motion to Compel with Administrative Law Judge Jeffrey A. Watson.

On January 7, 2019, ALJ Watson granted our motion and ordered you to provide "full and complete responses to all of the Interrogatories and Request For Production of Documents served upon Complainant by Respondent . . . not later than February 1, 2019."

The February 1<sup>st</sup> deadline has come and gone, and we still have not received a response from you.

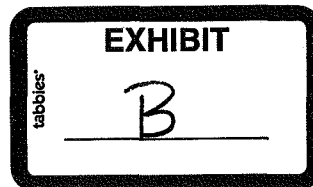
Please provide complete responses to our interrogatories and request for production of documents by **February 13, 2019**. Otherwise, we will seek relief from ALJ Watson.

Sincerely,



Jeremy V. Farrell  
Attorney for Duquesne Light Company

Paul Shane Miller  
Attorney for Duquesne Light Company



TADMS:5094272-1 014657-158498

