

April 9, 2019

Via Electronic Filing

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

RE: Michal Bruce v. Duquesne Light Company
Docket No. C-2018-3005754

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion to Compel Discovery Responses.

A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

c: Michal Bruce (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5122647-1 014657-158498

MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to 52 Pa. Code. § 5.342, Duquesne Light Company (“Duquesne Light”) files this Motion to Compel Discovery Responses (“Motion to Compel”):

I. INTRODUCTION

1. In this Motion to Compel, Duquesne Light seeks an order requiring Complainant Michal Bruce (“Complainant”) to provide complete responses to two discovery requests submitted by Duquesne Light in its First Set of Discovery Requests.

II. RELEVANT FACTUAL BACKGROUND

2. On February 8, 2019, Duquesne Light sent its First Set of Discovery Requests to Complainant. Complainant provided initial responses about a month later. The initial responses did not fully answer every question in Duquesne Light’s First Set of Discovery Requests.

3. Duquesne Light requested supplemental responses from Complainant prior to the close of discovery. Complainant provided some supplemental responses, but failed to provide complete responses to Request Nos. 13 and 16 in Duquesne Light’s First Set of Discovery Requests.

4. In Request No. 13, Duquesne Light set forth the following question:

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

5. Complainant responded as follows:

Although we take every effort to reduce the RF exposure in our home, one of our complaints with the forced installment of a smart meter is privacy concerns. To protect our personal privacy, we will not be responding to this question.

6. Duquesne Light informed Complainant that he failed to adequately respond to Request No. 13, and asked him to provide a complete response.

7. Complainant provided the following supplemental response:

Anything we own that emits wifi or RF is on a power strip and is turned off at all times unless in use, including our wifi router, desktop computer, and printer. Many other lesser used electronics are also on power switches that are turned off when not in use like our television, DVD player, surround sound, and exercise equipment. Devices such as cell phones, laptops, tablets are turned off, on airplane mode, or used with protective gear such as a Defender Pad EMF blocker, Defender Air Tube headphones (keeps device and wires safely away from head), or hardwired with all Bluetooth and Wifi settings disabled. Cell phone use is limited to speakerphone or use of Air Tube headphones as much as possible. Cell phones are also turned on airplane mode at night. Our appliances, all of which are too old to have wifi or RF to speak with a smart meter, include two refrigerators, an electric stove, a microwave (which does not get used for anything other than a timer and light), washer and dryer, hot water heater, chest freezer, an oil furnace, and a heat pump (which I rarely turn on). As you can see, we are very committed to reducing our exposure in every area that we can control.

8. In Complainant's initial and supplemental responses, he failed to identify (with make and model) all cell phones that are used in his home or by him, as requested by Request No. 13.

9. In Request No. 16 of Duquesne Light's First Set of Discovery Requests, Duquesne Light set forth the following question:

For each cell phone identified in response to Request No. 13, 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.

10. Complainant provided the following response: "Not applicable."

11. Duquesne Light informed Complainant that he failed to adequately respond to Request No. 16, and asked him to provide a complete response.

12. Complainant provided the following supplemental response:

We will not be providing personal cell phone records. As stated in question #13, we use every possible precaution when using our cell phones and electronics.

III. ARGUMENT

13. Under 52 Pa. Code § 5.341(a), a party may serve upon another party written interrogatories to be answered by the party served.

14. Under 52 Pa. Code § 5.349, a party may serve on another party a request to produce documents.

15. A party may obtain discovery about any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition, and location of any documents. 52 Pa. Code § 5.321(d).

16. In this case, Discovery Request Nos. 13 and 16 seek non-privileged information that is relevant to the subject matter involved in the pending action.

17. The information sought by Duquesne Light in these Requests is relevant because Complainant contends that radiofrequency emitted from a smart meter will cause himself or his family members to suffer bodily harm. See Response to Duquesne Light's Answer and New Matter. Duquesne Light is entitled to know if Complainant uses other devices that emit radiofrequency radiation (such as a cell phone), and how often Complainant uses such devices.

18. The Commission has ruled that a complainant's cell phone usage is relevant is determining whether any alleged health effects from radiofrequency radiation were caused by a smart meter. See Kline v. PPL Elec. Utilities Corp., Docket No. C-2017-2621071, 2018 WL 4185436, at *9-10 (Pa. P.U.C. Aug. 16, 2018) (Barnes, ALJ) (rejecting the complainant's claims a smart meter would cause illness or disease because, in part, the levels of radiofrequency from

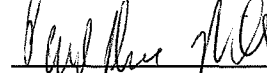
a smart meter would be much lower than his exposure from a cell phone); Torres v. PPL Elec. Util. Corp., Docket No. C-2018-2641883, at *10 (Pa. P.U.C. Oct. 17, 2018) (Barnes, ALJ) (rejecting the complainant's claim that a smart meter would cause problems because, in part, radiation from smart meters was much lower than from everyday sources like cell phones).

19. Accordingly, Duquesne Light seeks an order compelling Complainant to provide complete responses to Request Nos. 13 and 16.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission grant its Motion to Compel Discovery Responses and require Complainant Michal Bruce to provide complete answers to Discovery Requests Nos. 13 and 16 within 10 days from the date of the order.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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