

May 1, 2019

Via Electronic Filing

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

RE: Daniel Eaby v. Duquesne Light Company
Docket No. C-2018-3005043

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
Jeremy V. Farrell
Attorneys for Duquesne Light Company

Enclosure

c: D. Scott Eaby (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5138263-1 014657-158498

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DANIEL EABY,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3005043

**MOTION TO COMPEL DISCOVERY
RESPONSES**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

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NOTICE TO PLEAD

TO COMPLAINANT DANIEL EABY:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION TO COMPEL DISCOVERY RESPONSES WITHIN FIVE DAYS OF SERVICE PURSUANT TO 52 PA CODE § 5.342.

TUCKER ARENSBERG, P.C.



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

MOTION TO COMPEL DISCOVERY RESPONSES

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

I. Introduction

1. Duquesne Light seeks an order requiring Complainant Daniel Eaby (“Complainant”) to fully respond to seven discovery requests previously submitted by Duquesne Light.

II. Relevant Factual Background

2. Complainant filed a Formal Complaint against Duquesne Light to prevent the Company from installing smart meters at 5417 Butler Street, Pittsburgh, PA 15201. Complaint at ¶¶ 4-5. Complainant is represented by counsel, D. Scott Eaby.

3. On February 28, 2019, Duquesne Light served its First Set of Discovery Requests Directed to Complainant (“Discovery Requests”). See Duquesne Light Company’s Certificate of Service dated March 1, 2019.

4. Complainant’s discovery responses were due on or before March 20, 2019. See 52 Pa. Code § 5.342 (providing 20 days for discovery responses).

5. On March 22, 2019, Complainant’s counsel contacted Duquesne Light’s counsel and requested that the discovery response deadline be extended so that Complainant could complete his responses to the Discovery Requests. Complainant’s counsel did not indicate or suggest that he planned to raise objections to any Discovery Requests.

6. Duquesne Light had no objection to Complainant’s request for an extension to respond to the Discovery Requests.

7. On March 27, 2019, Complainant's counsel notified the Presiding Administrative Law Judge ("Presiding ALJ") that the parties had agreed to extend Complainant's discovery response deadline to April 22, 2019.

8. On April 22, 2019, Complainant served Duquesne Light with Response [sic] of Complainant to Respondent's First Set of Discovery Requests ("Complainant's Discovery Responses").

9. Complainant's Discovery Responses failed to provide complete responses to the following requests: #2, #5, #8, #9, #11, #22, and #23.

10. For the reasons set forth below, Duquesne Light contends that Complainant should be ordered to provide complete responses to these requests.

III. Argument

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

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

13. 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).

Discovery Request #2

14. Discovery Request #2 contained the following question and answer:

Question: For each Residential Dwelling Unit at the Property, please provide:

- a. the certificate of occupancy; and
- b. any deed or lease pursuant to which the occupant(s) occupy the Residential Dwelling Unit.

Answer: Occupancy permit is not available or needed for someone to work in their basement.

15. Duquesne Light contends that Complainant's answer is deficient because he failed to provide the requested information. Complainant should be ordered to provide a complete response because he alleged in his Formal Complaint that Duquesne Light's installation of smart meters at 5417 Butler Street, Pittsburgh, PA 15201 will harm the building's tenants. In addition, Complainant asserted in his discovery responses that Janice Eaby "resides on the property approximately two weeks per month." Duquesne Light has a right to know who is residing at the Property, and in which units at the Property, to evaluate these statements.

Discovery Request #5

16. Discovery Request #5 contained the following question and answer:

Question: Produce all Documents, including but not limited to hospital and/or medical records, that relate to Your Answers to Discovery Request Nos. 3 and 4

Answer: Janice Eaby has recently returned from traveling Monday, April 15th, 2019 and at this time has not secured the cardiac reports.

17. Duquesne Light contends that Complainant's answer is deficient because he did not produce the requested Documents, including hospital or medical records, even though Duquesne Light agreed to provide him with a 30-day extension to respond to the Discovery Requests. Complainant should be ordered to provide the requested information because he has alleged that radiofrequency emitted from Duquesne Light's smart meters will cause health

problems to Janice Eaby. Duquesne Light has a right to obtain all Documents (including hospital and/or medical records) that support this claim.

Discovery Request #8

18. Discovery Request #8 contained the following question and answer:

Question: For each resident of the Property that You contend will be adversely affected, or that You contend is vulnerable to being adversely affected, by the installation of a Smart Meter (as identified in Your Answer to Discovery Request No. 3), identify the type (with make and model) of all devices, appliances, and equipment used by that individual that produce radio frequency or low frequency fields, including, but not limited to, cell phones, microwave ovens, wireless internet, and WI-FI routers.

Answer: There is no microwave in the space occupied by Janice Eaby. There is no internet service in the space occupied by Janice Eaby. Janice Eaby has a cell phone which she does not keep on her person. This phone's billing is combined with three other users. Janice Eaby does not have her cell phone bills. However she does believe this is out of the scope of this investigation since: 1. Comparing one cell phone to FOUR smart meters is not equal [and] 2. Cell phone use and placement is elective. Meter use and placement is not.

19. Duquesne Light contends that Complainant's answer is deficient because he did not identify the type of all devices, appliances, and equipment used by Janice Eaby that produce radio frequency or low frequency fields; instead, Complainant just stated that a microwave and internet service are not present in the space occupied by Janice Eaby and that comparing a cell phone to smart meters is not equal. Duquesne Light, however, did not only ask about exposure to radiofrequency radiation in the space that Janice Eaby occupies at the subject property. Rather, Duquesne Light asked Complainant to identify all radiofrequency-emitting devices, appliances, and equipment used by any resident of the Property that Complainant alleges will be harmed by Duquesne Light's smart meters. Complainant should be

ordered to provide the requested information because it is relevant in evaluating whether any alleged negative health effects from radiofrequency are caused by a source other than Duquesne Light's smart meters. Moreover, Complainant failed to address any individuals other than Janice Eaby in this answer. If Complainant contends that Janice Eaby is the only individual who may be harmed by the installation of Duquesne Light's smart meters at the subject property, he should explicitly say so in this answer.

Discovery Request #9

20. Discovery Request #9 contained the following question and answer:

Question: 9. Produce all Documents, including, but not limited to, user manuals and instructional materials, relating to each device identified in response to Discovery Request No. 8.

Answer: The cell phone used by Janice Eaby is "used "and passed down by her mother. A users Manuel did not accompany this gift.

21. Duquesne Light contends that this answer is deficient because Complainant's answer only addresses a cell phone manual. Duquesne Light, however, requested user manuals and instructional materials for each device identified in response to Discovery Request No. 8, not just cell phone manuals. Complainant should be ordered to provide the requested information because Duquesne Light has a right to compare the radiation emitted from its smart meters to radiation emitted from other devices used by any individual that Complainant claims will be harmed by Duquesne Light's smart meters. In addition, cell phone manuals are generally readily available online, and Complainant should be ordered to identify and produce the relevant cell phone manual to Duquesne Light.

Discovery Request #11

22. Discovery Request #11 contained the following question and answer:

Question: For each cell phone identified in response to Discovery Request No. 7, produce the last six months of bills or other usage records for the phone with sufficient detail to show actual usage for that period.

Answer: Janice Eaby's cell phone is relevant as she does own one. However, the billing is inclusive with other phones and has not been separated. She can provide the amount of time the phone was used but does not feel comfortable giving out private information on who she has spoken to. Again she feels her cell phone use is elective and not forced upon her. She can tum [sic] it off. She can keep it far away from her body. Again unless data is provided to compare 4 smart meters to one cell phone it appears not to be a legitimate comparison.

23. Duquesne Light contends that this answer is deficient because Complainant failed to provide the requested cell phone bills or usage records. Complainant should be ordered to provide the requested information because Duquesne Light has a right to know how frequently Janice Eaby (or anyone Complainant alleges will be harmed by Duquesne Light's smart meters) uses her cell phone. This information is relevant in evaluating whether another source (other than Duquesne Light's smart meters) caused the alleged harm.

Discovery Request #22

24. Discovery Request #22 contained the following question and answer:

Question: 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: Xiaonan Lu (S' 12-M' 13) received his B.E. and Ph.D. degrees in electrical engineering from Tsinghua University, Beijing, China, in 2008 and 2013, respectively. From September 2010 to August 2011, he was a guest Ph.D. student at the Department of Energy Technology, Aalborg University, Denmark. From October 2013 to December 2014, he was a Postdoc Research Associate at the Department of Electrical Engineering and Computer Science, University of Tennessee, Knoxville. From January 2015 to July 2018, he was with Argonne National Laboratory, first as a Postdoc Appointee and then as an Energy Systems Scientist. In July 2018, he joined the College of Engineering at Temple University.

Dr. Lu received Outstanding Reviewer Award for IEEE Transactions on Power Electronics in 2013, Outstanding Reviewer Award for IEEE Transactions on Smart Grid in 2015, and Outstanding Postdoctoral Performance Award at Argonne National Laboratory in 2016.

Dr. Lu is the Associate Editor of IEEE Transactions on Industrial Electronics, the Associate Editor of IEEE Transactions on Industry Applications, and the Editor of IEEE Transactions on Smart Grid. He is a member of IEEE Power Electronics Society (PELS), Industrial Electronics Society (IES), Industry Applications Society (IAS), and Power and Energy Society (PES). He is also serving as the Secretary of Industrial Power Converters Committee (IPCC) in IEEE IAS.

Telephone number: 215-204-7800

Address is given as Temple University

Will testify to the following:

- a. The dangers of smart meters to health
- b. The dangers of smart meters to wiring not calibrated to carry the impulses
- c. The significant impact of multiple smart meters

25. Duquesne Light contends that this answer is deficient because Complainant identified two other expert witnesses (other than Dr. Lu) in the exhibit list that it sent to Duquesne Light on or about January 25, 2019: Catherine Frompovich and Thomas McCarey.

A copy of Complainant's witness list is attached as Exhibit A. Complainant stated that both witnesses will provide "expert opinion based on factual specifics of the location of the current and proposed meters in regard to the several individuals using the space in close proximity to the meters and studies, research and reports highlighting the adverse effect and danger of smart meters and RF exposure to human health and wellbeing." Discovery Request #22 requests that Complainant provide for each expert witness (i) the subject matter on which the expert is expected to testify (ii) the substance of the facts and opinions to which the expert is expected to testify, and (iii) a summary of the grounds for each expert opinion. Complainant failed to provide this information for Catherine Frompovich or Thomas McCarey. In addition, although Complainant provided some background information in this response about Dr. Lu and the subject matter of his testimony, he failed to provide the substance of the facts and opinions to which he is expected to testify or a summary of the grounds for Dr. Lu's opinions. Complainant should be ordered to provide this information.

Discovery Request #23

26. Discovery Request #23 contained the following question and answer:

Question: Produce the curriculum vitae of any expert that You intend to call to testify on Your behalf at the hearing.

Answer: Included in biography

27. Duquesne Light contends that this answer is deficient because Complainant failed to provide a curriculum vitae for Catherine Frompovich and Thomas McCarey. Complainant has identified both individuals as expert witnesses. Duquesne Light is entitled to this information because it is relevant in evaluating the merits of these experts' opinions, and preparing for cross-examination.

WHEREFORE, Duquesne Light Company respectfully requests that the Presiding ALJ grant its Motion to Compel Discovery Responses and require Complainant Daniel Eaby to provide complete answers to Discovery Requests Nos. 2, 5, 8, 9, 11, 22, and 23.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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January 25, 2019

Paul Shane Miller, Esquire
Tucker Arensberg, Attorneys
1500 One PPG Place
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Via First Class Mail and Email (smiller@tuckerlaw.com)

Re: Daniel Eaby v. Duquesne Light Company- Docket No. C-2018-3005043

Dear Mr. Miller:

We last spoke concerning the above matter by phone on December 18, 2018 at which time we discussed the possibility of resolving the matter by relocating the proposed smart meters to another location on my client's property. I understood that you were going to try to set a date for Duquesne Light representatives to come to the property to investigate that possibility and also perhaps an electronic shield. We also discussed a continuance of the various deadlines in the Interim Order. I have not heard from you since then.

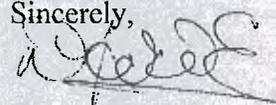
My client is certainly open to trying to resolve this matter without protracted litigation. To that end, I called and left a message at your office today to see where we stand. I appreciate that we are both busy with many matters, but unfortunately since I did not hear from you and given the schedule established in the Interim Order, I have no choice but to proceed as required. I therefore submit the following list of witnesses:

1. Janice Eaby- 733 Spring Garden Street, Ephrata, PA 17522. Expected testimony includes factual specifics of the location of the current and proposed meters in regard to the several individuals using the space in close proximity to the meters and studies, research and reports highlighting the adverse effect and danger of smart meters and RF exposure to human health and wellbeing.

2. Catherine Frompovich- 23 Cavendish Drive, Ambler, PA 19002; and Thomas McCarey- 285 Daylview Road, Berwyn, PA 19313; Expected testimony includes expert opinion based on factual specifics of the location of the current and proposed meters in regard to the several individuals using the space in close proximity to the meters and studies, research and reports highlighting the adverse effect and danger of smart meters and RF exposure to human health and wellbeing. The Complainant reserves the right to identify other expert witnesses to testify as set forth above.

I hope we can continue to discuss this issue and look at ways to resolve it amicably. I look forward to hearing from you for that purpose.

Sincerely,


D. Scott Eaby



Of Counsel to JMH Law, P.C.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DANIEL EABY,

Complainant,

vs.

No: C-2018-3005043

DUQUESNE LIGHT COMPANY,

CERTIFICATE OF SERVICE

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

D. Scott Eaby
29 South State Street
Ephrata, PA 17522

Administrative Law Judge Jeffrey Watson
Pennsylvania Public Utility Commission
Piatt Place - 301 Fifth Avenue
Suite 220
Pittsburgh, PA 15222

Dated this 1st day of May, 2019



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