

Jeremy V. Farrell
jfarrell@tuckerlaw.com

412.594.3938

Paul Shane Miller
smiller@tuckerlaw.com

412.594.5503

September 30, 2019

Via Electronic Filing

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

**RE: Pamela Scott v. Duquesne Light Company
Docket No. C-2018-3004042**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion to Compel Discovery Responses and to Preclude Witnesses Identified in Complainant's List of Potential Witnesses From Testifying. 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,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Pamela Scott (with enclosure)
Administrative Law Judge Jeffrey Watson (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2018-3004042
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION TO COMPEL DISCOVERY RESPONSES AND TO PRECLUDE WITNESSES
IDENTIFIED IN COMPLAINANT’S LIST OF POTENTIAL WITNESSES FROM TESTIFYING**

Respondent Duquesne Light Company (“Duquesne Light”) files this Motion pursuant to 52 Pa. Code § 5.103:

I. INTRODUCTION

In this Motion, Duquesne Light seeks an order compelling Complainant to produce certain hospital and medical records and studies that the Company requested in discovery more than a year ago. Duquesne Light has a right to obtain these records and studies because Complainant has asserted that she suffers from “electromagnetic hypersensitivity” and that the installation of a smart meter at her residence will aggravate this condition and cause her to suffer other health problems. Duquesne Light must obtain the requested records and studies to evaluate the merit of this claim.

In addition, Complainant recently identified three potential expert witnesses and six potential fact witnesses for the hearing in this matter. As explained in more detail below, all of these witnesses should be precluded from testifying for separate and independent reasons. In the alternative, if any of Complainant’s expert witnesses are permitted to testify, she should be compelled to provide Duquesne Light with the following information for each such expert within

15 days from the Presiding ALJ's order: (i) the substance of the facts and opinions to which each expert is expected to testify; (ii) a summary of the grounds for each expert's opinion; (iii) a report for each expert; and (iv) a *curriculum vitae* for each expert.¹ Duquesne Light requested this information in discovery more than a year ago, but Complainant still has not provided it.

II. STATEMENT OF FACTS

On August 15, 2018, Complainant filed a Formal Complaint against Duquesne Light. It alleges that Duquesne Light is threatening to shut off her electric service because she refuses to accept the installation of a smart meter at her residence, "despite state law not banning opt-outs due to medical or other reasons." Complaint, ¶ 4. Complainant claims that smart meters "cause adverse health conditions in me, including heart arrhythmias and palpitations, vertigo, and joint pain." *Id.* She wants Duquesne Light to be barred from terminating her electric service until "this dispute regarding forced participation in their advanced digital smart meter program...is resolved, or until state law is specifically passed to specifically allow opt-out from...smart meter programs." *Id.* at ¶ 5.

On September 24, 2018, Duquesne Light served its First Set of Discovery Requests Directed to Complainant ("Duquesne Light's Discovery Requests"). *See* Duquesne Light's Certificate of Service dated September 24, 2018. Complainant filed objections to four requests; she served Complainant's Answers to Respondent's First Set of Discovery Requests Directed to Complainant ("Complainant's Discovery Responses") for the remaining Discovery Requests.²

¹ Complainant has provided Duquesne Light with the *curriculum vitae* for two of her expert witnesses (Drs. Mowery and Morgan), but not the third expert (Joshua Hart). She informed Duquesne Light that she has requested a *curriculum vitae* from Hart and will provide it to Duquesne Light once she receives it from him. Given that Duquesne Light has not received Hart's *curriculum vitae*, it requests it in this Motion if Hart is to be allowed to testify.

² After filing a Motion to Compel, Duquesne Light ultimately received complete responses from Complainant to the four Discovery Requests that she previously objected to. Those Discovery Requests are not at issue in this Motion.

On August 9, 2019, Complainant served Duquesne Light with Complainant's List of Potential Witnesses ("Complainant's Witness List"). It identifies three potential expert witnesses and six potential fact witnesses.³

In a letter dated August 27, 2019 ("Duquesne Light's Letter"), Duquesne Light asked Complainant to withdraw two of the expert witnesses she identified (Dr. David C. Mowery and Dr. M. Granger Morgan) because their testimony is irrelevant to the matters at issue in this case.⁴ In addition, Duquesne Light's Letter asked Complainant to provide supplemental responses to Discovery Request Nos. 2, 4, 5, 7, 22, 23, and 24 by September 27, 2019.⁵

In a letter dated September 26, 2019, Complainant informed Duquesne Light that she would not withdraw Drs. Mowery and Morgan as expert witnesses, but agreed to "limit their expert testimony and opinion regarding the economic ramifications of mandating smart meters as a condition of electric service to the wastage of dollars prosecuting customers who try to opt out."⁶ Complainant also provided Supplemental Answers to Respondent's First Set of Discovery Requests Directed to Complainant ("Complainant's Supplemental Discovery Responses"). Complainant's Supplemental Discovery Responses, however, did not provide full and complete responses to Duquesne Light's Discovery Request Nos. 2, 4, 5, 7, 22, 23, and 24.⁷

³ A copy of Complainant's Witness List is attached as Exhibit A.

⁴ A copy of Duquesne Light's Letter is attached as Exhibit B.

⁵ Discovery Request Nos. 2, 4, 5, and 7 ask Complainant to produce certain hospital and medical records and studies relating to her claim that the installation of a smart meter at her residence would cause her to suffer adverse health effects. Discovery Request Nos. 22, 23, and 24 ask Complainant to identify or produce the following information about each of her expert witnesses: (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; (iii) a summary of the grounds for each expert opinion; (iv) the report of each expert; and (v) a *curriculum vitae* for each expert.

⁶ A copy of Complainant's letter dated September 26, 2019 is attached as Exhibit C.

⁷ A copy of Duquesne Light's Discovery Request Nos. 2, 4, 5, 7, 22, 23, and 24 are attached as Exhibit D. A copy of Complainant's Discovery Responses to these requests is attached as Exhibit E. A copy of Complainant's Supplemental Discovery Responses to these requests is attached as Exhibit F.

III. ARGUMENT

For the reasons set forth in greater detail below, Duquesne Light requests (i) an order compelling Complainant to provide full and complete responses to Duquesne Light's Discovery Request Nos. 2, 4, 5, and 7 within 15 days from the date of the Presiding ALJ's Order; (ii) an order that precludes all witnesses identified in Complainant's List of Potential Witnesses from testifying at any hearing in this matter; and (iii) in the alternative, if any of Complainant's expert witnesses are permitted to testify at any hearing in this matter, Duquesne Light requests an order compelling Complainant to provide full and complete responses to Duquesne Light's Discovery Request Nos. 22, 23, and 24 for each such expert within 15 days from the date of the Presiding ALJ's Order.

A. COMPLAINANT SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO DISCOVERY REQUEST NOS. 2, 4, 5, AND 7.

Complainant should be compelled to provide full and complete responses to Duquesne Light's Discovery Request Nos. 2, 4, 5, and 7, which Duquesne Light served more than a year ago. These requests contain the following questions and responses:

Discovery Request No. 2

Duquesne Light's Request: "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."⁸

Complainant's Response: "I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request that are not equally available online to Duquesne Light. Further, this request appears to duplicate the burdensome,

⁸ Duquesne Light's Discovery Request No. 1 stated, "Do You contend that the installation of a Smart Meter at the Property will negatively affect your health? If so, state all facts that support Your contention." Complainant responded, in sum, that the installation of a Smart Meter at the Property would negatively affect her health.

unreasonable request for “all facts’ about the health hazards associated with smart meters in Discovery Request #1.”

Complainant’s Supplemental Response: “I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.”

The Presiding ALJ should order Complainant to provide a complete response to Discovery Request No. 2 for three reasons. First, contrary to Complainant’s claims, Duquesne Light does not have equal access to her hospital or medical records and studies. Only Complainant can provide this information to Duquesne Light.

Second, Complainant’s hospital or medical records and studies are relevant because Complainant asserted in her Formal Complaint that the installation of a smart meter at her residence will cause “adverse health conditions.” Complaint, ¶ 4. She later asserted in Complainant’s Discovery Responses that she suffers from “electromagnetic hypersensitivity” and that the installation of a smart meter will aggravate this condition. See Exhibit E, ¶ 3. Given that Complainant has placed her health at issue, Duquesne Light has right to obtain all documents, including her pertinent hospital and medical records and studies, to evaluate the merits of her claim.

Finally, Complainant appears to believe that she is not required to produce any documents to Duquesne Light (including but not limited to her pertinent health and medical records and studies) because information about the alleged adverse health effects from smart meters is readily available on the internet. For example, in her response to Discovery Request No. 1 (which Complainant references in her response to Discovery Request No. 2), Complainant asserts that there are numerous “peer-reviewed journals, World Health Organization press releases, scientific articles, scientific reports, etc.” available online to support her claim that the installation of a smart meter will adversely affect her health; as such, she avers that “It is not the Complainant’s responsibility to attempt to educate Duquesne Light on

matters that Duquesne Light appears to resist education about.” See Exhibit E, ¶ 1. Duquesne Light, however, cannot identify which specific documents Complainant is relying on in support of her contention that the installation of a smart meter will negatively affect her health simply by conducting an internet search. Instead, Complainant must affirmatively identify and produce these documents. Accordingly, she should be required to provide a full and complete response to Discovery Request No. 2.

Discovery Request No. 4

Duquesne Light’s Request: “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. 3.”⁹

Complainant’s Response: “I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.”

Complainant’s Supplemental Response: “I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.”

The Presiding ALJ should order Complainant to provide a complete response to this request. Complainant stated in response to Discovery Request No. 3 that she suffers from “electromagnetic hypersensitivity”; yet in Complainant’s response to Discovery Request No. 4, she claims that she has no documents demonstrating that she suffers from electromagnetic hypersensitivity. If Complainant has not been diagnosed with electromagnetic hypersensitivity by a physician or healthcare professional, she must affirmatively say so; otherwise, Duquesne

⁹ Discovery Request No. 3 contains the following request: “Identify all medical conditions that You contend make You vulnerable to, or that would be aggravated by, proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.” In response, Complainant stated, “My EHS (electromagnetic hypersensitivity) condition would be aggravated by proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter installed anywhere on the Property.”

Light has a right to obtain the documents requested by Discovery Request No. 4 because Complainant claims that proximity to a smart meter will aggravate this condition.

Discovery Request No. 5

Duquesne Light's Request: "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. 3 and Your proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter."

Complainant's Response: "I do not have any Documents currently or formerly in my possession, custody or control that are responsive to this request that are not equally available online to Duquesne Light."

Complainant's Supplemental Response: "I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request."

The Presiding ALJ should order Complainant to provide a complete response to Discovery Request No. 5 for two reasons. First, contrary to Complainant's claims, Duquesne Light does not have equal access to her hospital or medical records and studies. Second, Complainant's hospital or medical records and studies are relevant because Complainant claims that proximity to a smart meter will aggravate her alleged electromagnetic hypersensitivity condition. Duquesne Light has a right to know the basis for her belief.

Discovery Request No. 7

Duquesne Light's Request: "To the extent not previously requested, produce all documents, including but not limited to hospital and/or medical records, from Your treating physicians and/or healthcare professionals that relate to any condition identified in Your response to Discovery Request No. 3."

Complainant's Response: "I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request."

Complainant's Supplemental Response: "I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request."

The Presiding ALJ should order Complainant to provide a complete response to Discovery Request No. 7. In her response to Discovery Request No. 3, Complainant stated that she suffers from electromagnetic hypersensitivity and that this condition will be aggravated by being in proximity to Duquesne Light's smart meter. But in her response to Discovery Request No. 7, Complainant claims she does not have any documents from her treating physician or a healthcare professional relating to this condition. If Complainant has not been diagnosed with electromagnetic hypersensitivity by a physician or healthcare professional, she must affirmatively say so; otherwise, she must produce the requested documents.

B. COMPLAINANT'S FACT WITNESSES MUST BE PRECLUDED FROM TESTIFYING AT ANY HEARING IN THIS MATTER.

In Complainant's Witness List, she identifies six fact witnesses who will testify at the hearing in this matter:

- (1) Thomas L. Stevenson, Esquire;
- (2) Linda Kurtz;
- (3) State Senator Scott E. Hutchinson;
- (4) State Representative Kerry Benninghoff;
- (5) State Representative Stanley E. Saylor; and
- (6) Dr. Robert Sturges, Jr.

As shown below, all of these witnesses should be precluded from testifying for separate and independent reasons.

- a. Attorney Thomas L. Stevenson should be precluded from testifying because his purported testimony about an alleged power surge in Complainant's neighborhood roughly 17 years ago has already been ruled to be outside the scope of discovery and thus is clearly irrelevant for purposes of the hearing.**

Complainant lists Attorney Thomas L. Stevenson as her first potential fact witness. He is an attorney at Thomas L. Stevenson and Associates and will purportedly testify about "a powerful electrical surge, and information and/or misinformation that Duquesne Light provided regarding said surge, in the Markham neighborhood circa 2002." Attorney Stevenson should be precluded from testifying because this alleged power surge is irrelevant to Complainant's claims in this matter.

Although Commonwealth agencies are not bound by technical rules of evidence, irrelevant evidence is inadmissible at an administrative hearing. Pa. R.E. 402; Maleszewski v. Metropolitan Edison Co., No. C-2013-2360862, 2013 WL 6073355, at *7 (Pa. P.U.C. Oct. 31, 2013) (Colwell, ALJ). Evidence is relevant if it "tends to make an act at issue more or less probable." LeRoi v. Pa. State Civil Service Commn., 382 A.2d 1260, 1263 (Pa. Commw. Ct. 1978); Williamson v. Duquesne Light Co., No. C-2009-2138578, 2011 WL 1210916, at *3 (Pa. P.U.C. Feb. 10, 2011); Foursevitch v. Metropolitan Edison Co., No. C-2017-2623270, 2018 WL 2287998, at *5 (Pa. P.U.C. Apr. 27, 2018) (Watson, ALJ). The Pennsylvania Supreme Court has promulgated a two-part test for determining if evidence is relevant:

(1) Does the inference sought to be raised by the evidence bear upon a matter at issue in the case?

(2) If so, does the evidence render the desired inference more probable than it would be without the evidence?

Commonwealth v. Stewart, 336 A.2d 282, 284 (Pa. 1975).

Here, the Presiding ALJ has already ruled that the alleged power surge that Attorney Stevenson plans to testify about is irrelevant. Specifically, on February 16, 2019, Complainant served her First Set of Discovery Requests Directed to Respondent ("Complainant's Discovery Requests"). In Discovery Request Nos. 18-21, she asked Duquesne Light to identify the date

on which it caused a “very large and damaging power surge” in her neighborhood (sometime between 2001-2003); to produce all relevant documents relating to the alleged power surge; and to admit that it provided false information after the alleged power surge. Duquesne Light objected to these discovery requests because, in part, they sought irrelevant information.¹⁰ Complainant moved to compel Duquesne Light to provide responses to Discovery Request Nos. 18-21, but the Presiding ALJ denied her request. See Interim Order Granting in Part and Denying in Part Complainant’s Motion to Compel Discovery Responses, ¶ 3.

Given that the standard for relevance is broader in discovery than at a hearing, Complainant cannot be permitted to present evidence at the hearing that was irrelevant even in discovery. See Foursevitch, 2018 WL at *5 (the Commission generally applies a standard of relevance in discovery which is less restrictive than that required by parties to present information into the evidentiary record). Accordingly, Attorney Stevenson should be precluded from testifying at any hearing in this matter because whatever happened during an alleged power surge nearly two decades ago is – as the Presiding ALJ has already determined – completely irrelevant to whether Duquesne Light violated the Public Utility Code, a regulation, or its tariff in seeking to install a smart meter at Complainant’s residence. See Interim Order Establishing Initial Litigation Schedule, p. 2 (Oct. 15, 2018) (stating that the relevant issue in this case is whether Duquesne Light violated its tariff, the Public Utility Code or a Commission order or regulation).

b. Linda Kurtz should be precluded from testifying because (i) a fact witness cannot testify about the “adverse health effects from smart meter installations” and (ii) her testimony is based entirely on hearsay.

Complainant also plans to call Linda Kurtz as a fact witness. Kurtz is the Director of the “Smart Meter Education Network.” Kurtz purportedly will “offer testimony regarding adverse health effects from smart meter installations.” Kurtz should be precluded from testifying

¹⁰ A copy of Complainant’s Discovery Request Nos. 18, 19, 20, and 21 are attached as Exhibit G. A copy of Duquesne Light’s objections to these Discovery Requests are attached as Exhibit H.

because a lay witness cannot offer a medical diagnosis about the alleged adverse health effects of smart meter installations. Moreover, Kurtz's testimony is based entirely on hearsay and thus cannot form the basis for a finding of fact in this matter.

- i. **Kurtz should be precluded from testifying because a fact witness cannot testify about the alleged "adverse health effects from smart meter installations."**

A lay witness like Kurtz can only offer opinion testimony that is rationally based on the perception of the witness and that does not involve scientific, technical, or other specialized knowledge beyond that possessed by the average layperson. Castaneira v. PPL Elec. Util. Corp., No. F-2014-2404158, 2015 WL 4873763, at *13 (Pa. P.U.C. July 27, 2015) (Colwell, ALJ). Although a lay witness "may testify as to certain matters...[such as] the apparent physical condition of a person, and as to obvious symptoms,...his testimony must be confined to facts within his knowledge, and may not be extended to matters involving the existence or non-existence of a disease, which is only discoverable through the training and experience of a medical expert." Baum v. Metropolitan Life Ins. Co., 19 A. 2d 486, 487 (Pa. Super. Ct. 1941); In re Commitment of Barbour, 733 A.2d 1286, 1288 (Pa. Super. Ct. 1999); Cominsky v. Donovan, 846 A.2d 1256, 1259 (Pa. Super. Ct. 2004).

Here, Kurtz plans to offer opinion testimony on matters that involve scientific, technical, or other specialized knowledge beyond that possessed by the average layperson. Although a fact witness like Kurtz can testify about certain health issues that she has personal knowledge of, her testimony here seeks to go much further by providing a medical diagnosis about whether individuals will suffer "adverse health effects from smart meter installations." This topic requires testimony from a medical expert, not a fact witness like Kurtz.

Moreover, there is no evidence that Kurtz has any personalized knowledge of Complainant's health or medical conditions. Complainant produced no documents or information to Duquesne Light in discovery relating to Kurtz's opinions about Complainant's health or medical conditions, even though Duquesne Light requested this information. For

example, in Discovery Request No. 2, Duquesne Light asked Complainant to produce all documents that support her contention that the installation of a smart meter will negatively affect her health. Complainant produced no documents from Kurtz in response to this request. See Exhibits D and E. Similarly, in Discovery Request No. 5, Duquesne Light requested that Complainant produce all documents demonstrating the link between a smart meter and any medical condition that she claims makes her vulnerable to, or that would be aggravated by, proximity to a smart meter. Again, Complainant produced no documents from Kurtz in response to this request. See Exhibits D and E.

Given that a fact witness like Kurtz cannot offer a medical diagnosis through her testimony and there is no evidence that she possesses any personal knowledge of Complainant's health or medical conditions, she should be precluded from testifying.

ii. Kurtz also should be precluded from testifying because her testimony would be based entirely on hearsay.

In addition, Kurtz should be precluded from testifying because her testimony would be based entirely on hearsay. Hearsay is an out-of-court statement made by a declarant that is offered by a party to prove the truth of the matter asserted in the statement. Pa.R.E. 801; Hoffman-Lorah v. PPL Elec. Util. Corp., C-2018-2644957, 2019 WL 2325713, at *10 (Pa. P.U.C. May 23, 2019) (Barnes, ALJ). Under the evidentiary standards in administrative proceedings, simple hearsay evidence generally may be received into evidence and considered. 2 Pa. C.S. § 505; D'Alessandro v. Pa. State Police, 937 A.2d 404, 411 (Pa. 2007); Hoffman-Lorah, 2019 WL at *11. Hearsay, however, cannot support an administrative agency's finding of fact unless it is corroborated by competent evidence in the record. Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366, 370 (Pa. Cmwlth. Ct. 1976); Chapman v. Unemployment Comp. Bd. of Review, 20 A.3d 603, 610, n.8 (Pa. Cmwlth. Ct. 2011); Hoffman-Lorah, 2019 WL at *11. In other words, "a finding of fact based solely on hearsay will not stand." Walker, 367 A.2d at 370; Hoffman-Lorah, 2019 WL at *11.

In this case, Kurtz's testimony about the "adverse health effects from smart meter installations" would be based entirely on hearsay. Complainant has not identified or produced any documents in discovery that were written by Kurtz, even though Duquesne Light's Discovery Requests asked Complainant to produce all documents that relate to her claim that the installation of a smart meter at her residence will negatively affect her health. See Duquesne Light's Discovery Request, ¶ 1. Given that Complainant provided no evidence that Kurtz has ever published any articles, papers, or research about the subject of her testimony—the "adverse health effects from smart meter installations"—her entire testimony would be based on other individual's opinions and conclusions. Kurtz's testimony thus would be hearsay and cannot support a finding of fact in this case. Accordingly, she should be precluded from testifying.

- c. State Senator Scott E. Hutchinson, State Representative Kerry Benninghoff, and State Representative Stanley E. Saylor should be precluded from testifying because (i) the Presiding ALJ cannot consider legislative intent or history in this case, and (ii) post-act legislative history is not a legitimate tool of statutory interpretation.**

Complainant also lists three fact witnesses who are current members of the Pennsylvania General Assembly: Scott E. Hutchinson (Senator), Kerry Benninghoff (Representative), and Stanley E. Saylor (Representative) (collectively, "State Legislator Witnesses"). They will purportedly testify about "whether forced acceptance of a smart meter as a condition of electric service at 100% of residences in an EDC's service territory was the intent of Act 129 of 2008." Their testimony should be precluded for two reasons.

First, the Presiding ALJ cannot consider Act 129's legislative history or intent because the Commission has already repeatedly held that the statute is unambiguous: customers cannot opt-out of receiving a smart meter. Second, even if the Presiding ALJ could consider Act 129's legislative intent or history, the State Legislator Witnesses still must be precluded because testimony from three members of the General Assembly more than a decade after Act 129's enactment is not a legitimate tool of statutory interpretation.

- i. **The Presiding ALJ cannot consider legislative intent or history in this case because the Commission has repeatedly held that Act 129 is unambiguous.**

Under Act 129, “[e]lectric distribution companies shall furnish smart meter technology ... in accordance with a depreciation schedule not to exceed 15 years.” 66 Pa. C.S.A. § 2807(f)(2)(iii). The Commission and its administrative law judges—including the Presiding ALJ—have repeatedly held that the plain language of Act 129 does not authorize customers to opt-out of receiving a smart meter. Hoffman-Lorah, 2019 WL at *4 (there is no provision in Pennsylvania law that allows a customer to opt-out of receiving a smart meter); Randall & Albrecht, 2019 WL at *53 (same); Hess v. PPL Elec. Util. Corp., Docket No. C-2018-3003337, 2019 WL 2744425, at *8 (Pa. P.U.C. June 11, 2019) (Barnes, ALJ) (same); Lamagna v. Pa. Elec. Co., No. C-2017-2608014, 2018 WL 6124353, at *14 (Pa. P.U.C. Oct. 30, 2018) (Watson, ALJ) (“The final version of Act 129 that was signed into law by the Pennsylvania legislature does not contain a specific opt-out provision.”); Fiorito v. Pa. Elec. Co., No. C-2017-2610125, 2018 WL 5082016, at *10 (Pa. P.U.C. Sept. 18, 2018) (Watson, ALJ) (Act 129 does not provide any language that permits customers to “opt out” from smart meter installation).

The General Assembly, Pennsylvania’s appellate courts, and the Pennsylvania Public Utility Commission all agree that “[w]here the words of a statute are clear and free from ambiguity, the legislative intent is to be gleaned from those very words, and the plain language is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S. § 1921(b); Pa. Financial Responsibility Assigned Claims Plan v. English, 664 A.2d 84, 87 (Pa. 1995); Coretsky v. Bd. of Commissioners of Butler Twp., 555 A.2d 72, 74 (Pa. 1989); Allegheny Cty. Inst. Dist. v. Dep’t of Pub. Welfare, 668 A.2d 252, 257 (Pa. Commw. Ct. 1995); Petition of Metro. Edison Co. for Approval of A Distribution Sys. Improvement Charge Office of Consumer Advocate, No. C-2016-2531019, 2017 WL 3872553, at *18 (Pa. P.U.C. July 26, 2017). Finally, although an administrative agency is not strictly bound by the rule of *stare decisis*, it must render consistent

opinions. Bell Atl.-Pa., Inc. v. Pa. Pub. Util. Comm'n, 672 A.2d 352, 354 (Pa. Commw. Ct. 1995).

The State Legislator Witnesses all plan to testify only about Act 129's legislative intent. See Exhibit A, pp. 2-3. Given that the Commission has repeatedly held that Act 129 is unambiguous—customers cannot opt-out of receiving a smart meter—the Presiding ALJ cannot consider legislative history or intent in this case. The State Legislator Witnesses should be precluded from testifying solely for this reason.

- ii. **Even if the Presiding ALJ can consider Act 129's legislative intent or history, the State Legislator Witnesses still should be precluded from testifying because post-act legislative history is not a legitimate tool of statutory interpretation.**

Even if the Presiding ALJ can consider Act 129's legislative intent or history in this case, testimony from three members of the 253-member General Assembly about a law that was enacted more than a decade ago is an improper way to offer or explore legislative intent. As the Supreme Court of the United States has made clear, post-enactment legislative history—such as a statement by a legislator long after a law was passed—“is not a legitimate tool of statutory interpretation.” Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011) (post-enactment legislative history is not a legitimate tool of statutory interpretation because it took place after the law was passed and thus did not influence the legislature's vote on the law); see also, United States v. Stoerr, 695 F.3d 271, 280 (3d Cir. 2012) (a statement by an individual legislator does not amend the clear and unambiguous language of the statute, especially when the legislator's statement occurred long after the statute was enacted).

Closer to home, the Pennsylvania Supreme Court has held that, when interpreting a statute, a court must “look to what the legislature did, not what a single legislator thought the legislation did.” Com. v. Wisneski, 29 A.3d 1150, 1153 (Pa. 2011). An individual legislator's opinion is just one of many in the General Assembly and thus carries little weight in interpreting a statute, especially if the legislator's opinion is expressed long after the law was enacted.

Hoffman v. Pa. Crime Victim's Comp. Bd., 405 A.2d 1110, 1112 n.2 (Pa. Commw. Ct. 1979) (the remarks or understanding of an individual representative are not binding when endeavoring to ascertain legislative intent); Allegheny Cty. Inst. Dist., 668 A.2d at 257 n.13 (“When ascertaining legislative intent, [the Court] is not bound by the arguments of a single legislator made on the floor in debate of the issue, much less the post-Act expression of opinion by a single legislator.”).

Here, testimony from the State Legislator Witnesses would, at most, establish what three lawmakers currently believe about the General Assembly’s intention more than a decade earlier. Such post-enactment testimony is not a legitimate method of interpreting Act 129. And even if it were, testimony by three lawmakers has little probative value in ascertaining what the entire 253-member General Assembly intended in enacting Act 129.

This situation is almost identical to the circumstances in Allegheny Cty. Inst. Dist., *supra*, and should be resolved in the same way. In that case, the Allegheny County Institution District (“Allegheny County”) received various reimbursements from the state and federal governments for operating several nursing facilities. 668 A.2d at 254. Pennsylvania’s Auditor General disallowed some reimbursements to Allegheny County after conducting an audit. *Id.* Allegheny County argued it was entitled to the reimbursements under a state law called Act 132. *Id.* at 256-57.

To support its argument, Allegheny County (much like Complainant) sought to introduce testimony from Leroy Irvis, who was the Speaker of the Pennsylvania House of Representatives when it adopted Act 132. *Id.* at 257 n.13. The Commonwealth Court ruled that the Department of Public Welfare—which heard the case below—properly excluded Irvis’s testimony because Act 132 was unambiguous. *Id.* But even if Act 132 had been ambiguous, the Commonwealth Court stated that “when ascertaining legislative intent, [the Court] is not bound by the arguments of a single legislator made on the floor in debate of the issue, much less the post-Act expression of opinion by a single legislator” because “[n]o matter how trustworthy that opinion would be, it

would remain but one opinion out of two hundred and fifty-three members of the General Assembly.” Id. The Commonwealth Court concluded that the Department of Public Welfare did not err in excluding Irvis’s testimony.

The Presiding ALJ should make the same decision here. Like Allegheny County, Complainant is seeking to call lawmakers as witnesses to support her interpretation of a statute passed long ago that the Commission has already held to be unambiguous. As the Commonwealth Court held in Allegheny Cty. Inst. Dist., such testimony is irrelevant and must be excluded because it merely expresses the opinions of a very small minority of the state legislature long after a law was adopted. Accordingly, the State Legislator Witnesses should be precluded from testifying at any hearing in this matter.

d. Dr. Robert Sturges Jr. should be precluded from testifying as a fact witness because his testimony is beyond the scope of the Formal Complaint.

Complainant also plans to call Dr. Robert Sturges Jr. as a fact witness. He is a Professor Emeritus in the College of Engineering at Virginia Tech University. He purportedly will testify “as to whether the wiring of the 1938-vintage Property would be compromised by installation of the Smart Meter.”

Dr. Sturges should be precluded because his testimony is beyond the scope of the Formal Complaint. In Complainant’s Formal Complaint and discovery responses, she only avers that the installation of a smart meter will cause her to suffer adverse health effects, such as heart arrhythmias and palpitations, vertigo, joint pain, and an aggravation of her electromagnetic hypersensitivity condition. Complaint, ¶ 4; Exhibit E, ¶ 3. She never averred that the wiring at her home would contribute to these alleged health problems, even though Duquesne Light expressly requested in discovery that Complainant provide all facts that support her claim that the installation of a smart meter at her property will negatively affect her health. See Exhibit D, ¶ 1. Now, through Complainant’s Witness List, she is improperly seeking to broaden the scope of her Formal Complaint to include allegations relating to the wiring at her

residence. Duquesne Light will suffer prejudice if Complainant is permitted to broaden the scope of her Formal Complaint at this late stage because the Company did not have proper notice that she intended to pursue this issue. Accordingly, Dr. Sturges's testimony should be precluded.

C. ALL OF COMPLAINANT'S EXPERT WITNESSES SHOULD BE PRECLUDED FROM TESTIFYING AT ANY HEARING IN THIS MATTER.

In addition to the six fact witnesses identified in Complainant's Witness List, the Presiding ALJ also should preclude her three expert witnesses (Dr. Mowery, Dr. Morgan, and Joshua Hart) from testifying at any hearing in this matter. In the alternative, if the Presiding ALJ allows any of Complainant's expert witnesses to testify, she should be compelled to provide full and complete responses to Duquesne Light's Discovery Request Nos. 22, 23, and 24.

- a. Dr. David C. Mowery and Dr. M. Granger Morgan should be precluded from testifying as expert witnesses because (i) their purported testimony about the inadvisability of mandating smart meters as a condition of electric service is irrelevant to the matters at issue, and (ii) Complainant failed to produce expert reports or a written summary of their testimony to Duquesne Light.**

Complainant lists Dr. David C. Mowery and Dr. M. Granger Morgan as potential expert witnesses. According to Complainant's Witness List, Dr. Mowery is a Professor Emeritus of New Enterprise Development at the University of California, Berkeley; Dr. Morgan is a Professor of Engineering at Carnegie Mellon University. They both will purportedly testify about "the public policy and inadvisability of mandating smart meters as a condition of electric service, including the economic ramifications of doing so." Both witnesses should be precluded for two reasons.

First, the planned testimony by Drs. Mowery and Morgan is irrelevant to the matters at issue because the Commission has repeatedly held that Act 129's deployment of smart meters is mandatory. Because Act 129 is mandatory, Duquesne Light must comply with the law, regardless of whether Drs. Mowery and Morgan believe it is good or bad policy.

Second, Drs. Mowery and Morgan should be precluded from testifying because Complainant failed to produce their expert reports or a written summary of their expected testimony to Duquesne Light, even though the Commission's regulations and Duquesne Light's Discovery Requests required her to do so.

- i. **Drs. Mowery and Morgan should be precluded from testifying because their purported testimony about the inadvisability of mandating smart meters as a condition of electric service is irrelevant to the matters at issue.**

As noted supra, Commonwealth agencies like the Commission are not bound by technical rules of evidence, but irrelevant evidence is inadmissible at an administrative hearing. Pa. R.E. 402; Maleszewski, 2013 WL at *7. Evidence is relevant if it "tends to make an act at issue more or less probable." LeRoi, 382 A.2d at 1263; Williamson, 2011 WL at *3; Foursevitch, 2018 WL at *5.

The Commission—including the Presiding ALJ—has repeatedly ruled that Act 129's deployment of smart meters is mandatory, meaning that a customer cannot opt-out of receiving a smart meter. Hoffman-Lorah, 2019 WL at *4 (there is no provision in Pennsylvania law that allows a customer to opt-out of receiving a smart meter); Randall & Albrecht, 2019 WL at *53 (same); Lamagna, 2018 WL at *14 ("The final version of Act 129 that was signed into law by the Pennsylvania legislature does not contain a specific opt-out provision."); Fiorito, 2018 WL at *10 (Act 129 does not provide any language that permits customers to "opt out" from smart meter installation).

The Commission has also held that public policy arguments about Act 129's wisdom are irrelevant in evaluating whether a customer is entitled to opt-out of receiving a smart meter. For example, in Povacz v. PECO Energy Co. the complainant argued that she should not be required to receive a smart meter because Act 129 was a bad policy. No. C-2012-2317176, 2013 WL 392699, at *5 (Pa. P.U.C. Jan. 24, 2013). The Commission ruled that the complainant's public policy arguments about Act 129 were irrelevant in evaluating whether she was entitled to opt-out of receiving a smart meter. Id.

Similarly in Starr v. PECO Energy Co., the complainant argued he was not required to receive a smart meter under Act 129 on public policy grounds. No. C-2015-2516061, 2016 WL 4699145, at *5 (Pa. P.U.C. Sept. 1, 2016). The Commission affirmed the presiding administrative law judge's dismissal of the complaint, holding that the complainant's public policy arguments against Act 129 should be addressed to the General Assembly, not the Commission. Id. at *7.

Like the complainants in Povacz and Starr, Complainant seeks to establish that Act 129's smart meter mandate is bad public policy through the testimony of Drs. Mowery and Morgan. This public policy question, however, has no bearing on the matter at issue in this case: whether Duquesne Light "violated its tariff, the Public Utility Code or a Commission order or regulation." Interim Order Establishing Initial Litigation Schedule, p. 2 (Oct. 15, 2018). The Commission has repeatedly held that the deployment of smart meters under Act 129 is mandatory, so the wisdom of Act 129 is irrelevant in evaluating whether Duquesne Light has violated its tariff, the Public Utility Code, or a Commission order or regulation is seeking to install a smart meter at Complainant's residence.

Moreover, the Commission has already approved Duquesne Light's Smart Meter Plan after a lengthy, fully-noticed public proceeding and review process. Duquesne Light's Smart Meter Plan does not include an opt-out provision, and Complainant cannot collaterally attack the approval of Duquesne Light's Smart Meter Plan through this proceeding. Accordingly, testimony by Drs. Mowery and Morgan should be precluded.

- ii. **Drs. Mowery and Morgan also should be precluded from testifying because Complainant failed to provide a summary of the grounds for their expert opinions and never produced their expert reports to Duquesne Light.**

In addition, Drs. Mowery and Morgan should be precluded from testifying as expert witnesses because Complainant failed to provide a summary of the grounds for their expert opinions and never produced their expert reports to Duquesne Light, even though the Commission's regulations and Duquesne Light's Discovery Requests required her to do so.

Specifically, the Commission's regulations provide:

A party may through interrogatories require both of the following:

(i) That the other party identify each person whom the party expects to call as an expert witness at hearing and to state the subject matter on which the expert is expected to testify.

(ii) That the other party have each expert so identified **state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party answering the interrogatories may file as the answer a report of the expert, have the interrogatories answered by the expert or provide written direct testimony of the expert.** The answer, separate report or testimony shall be signed by the expert and shall be deemed to be provided under oath in accordance with section 333(d) of the act (relating to prehearing procedures).

52 Pa. Code § 5.324(a)(1)(ii) (emphasis added).

In addition, the discovery rules state that 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). A party may serve written interrogatories and a request to produce documents to the opposing party as part of the discovery process. 52 Pa. Code § 5.341(a); 52 Pa. Code § 5.349. Finally, a party may, through interrogatories, request that the opposing party have each of its expert witnesses state the substance of the facts and opinions to which the expert is expected to testify and provide a summary of the grounds for each expert's opinion. 52 Pa. Code § 5.324(a)(1)(ii).

Here, as permitted by the above-mentioned rules, Duquesne Light attempted to obtain "the substance of the facts and opinions to which [each] expert is expected to testify", a "summary of the grounds for each expert opinion", and an expert report for each expert in Discovery Request Nos. 22 and 23. Specifically, these requests provide:

22. 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.
23. Produce the report of any expert You intend to call to testify on Your behalf at trial.

See Exhibit D.

Complainant failed to provide full and complete responses to these requests. Instead, she provided the name and contact information for each expert; a brief summary of the topic on which they plan to testify; and a statement that “the grounds for each expert opinions are their extensive experience in their areas of expertise.” See Exhibits E and F.

Complainant’s failure to provide complete responses to Discovery Request Nos. 22 and 23 is not a minor procedural matter. Rather, it deprives Duquesne Light of its fundamental right to examine the evidence that will be presented against the Company at the hearing. Without this information, Duquesne Light has little idea what Drs. Mowery and Morgan will testify to at the hearing, putting Duquesne Light in precisely the predicament that is forbidden by 52 Pa. Code § 5.324(a)(1)(ii). Accordingly, Drs. Mowery and Morgan should be precluded from testifying at any hearing in this matter.

Alternatively, if the Presiding ALJ does not preclude Drs. Mowery and Morgan from testifying at any hearing in this matter, Complainant should be compelled to provide complete responses to Duquesne Light’s Discovery Request Nos. 22 and 23 within 15 days from the date of the Presiding ALJ’s Order.¹¹

¹¹ Duquesne Light reserves the right to object to the testimony of Drs. Mowery and Morgan after receiving complete responses to Discovery Request Nos. 22 and 23.

- b. Joshua Hart should be precluded from testifying as an expert because (i) he is not a medical professional and thus is not qualified to offer expert testimony about “adverse health effects from smart meter installations,” and (ii) Complainant failed to provide a summary of the grounds for his expert opinion and never produced his expert report to Duquesne Light.**

Complainant lists Joshua Hart as her third potential expert witness. He is the Director of *Stop Smart Meters!*, a group that opposes the installation of smart meters. In this case, Complainant wants him to “offer expert testimony and opinion regarding adverse health effects from smart meter installations.” Hart should be precluded from testifying for two reasons.

First, Hart is not a medical professional and thus does not possess a reasonable pretension to specialized knowledge about the alleged adverse health effects from smart meter installations. Second, Complainant failed to provide a summary of the grounds for his expert opinion and never produced his expert report to Duquesne Light, even though she was required to do so by the Commission’s regulations and Duquesne Light’s Discovery Requests.

- i. Hart should be precluded from testifying because he is not a medical professional and thus is not qualified to offer expert testimony about “adverse health effects from smart meter installations.”**

Under Pennsylvania law, a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue. Ruzzi v. Butler Petroleum Co., 588 A.2d 1, 10 (Pa. 1991); Kursis v. Baldwin-Lima-Hamilton Corp., 319 A.2d 914, 924 (Pa. 1974). A witness does not qualify as an expert simply by possessing general knowledge about a topic. See Kovalev v. Sowell, 839 A.2d 359, 364 (Pa. Super. Ct. 2003) (holding that although all doctors have general knowledge of the human body, an ophthalmologist is not an expert on heart disease); Dierolf v. Slade, 581 A.2d 649, 651 (Pa. Super. Ct. 1990) (an orthodontist is not an expert on oral surgery); Yacoub v. Lehigh Valley Med. Associates, 805 A.2d 579, 591 (Pa. Super. Ct. 2002) (a neurosurgeon is not an expert on internal medicine or nursing). Finally, a witness must possess medical training and experience in order to testify about the existence or non-existence of a disease or disorder. Collins v. Cooper, 746 A.2d 615, 620 (Pa. Super. Ct. 2000).

In this case, Hart does not have a reasonable pretension to specialized knowledge about “adverse health effects from smart meter installations.” Although Hart may possess some general knowledge about smart meters, he is not a medical professional and thus is not qualified to offer an opinion about whether smart meters will cause individuals to suffer adverse health effects. Hart should be precluded from offering expert testimony at any hearing in this matter on this basis alone.

- ii. **Hart should be precluded from testifying because Complainant failed provide a summary of the grounds for his expert opinion and never produced his expert report to Duquesne Light.**

Hart also should be precluded from testifying as an expert because Complainant failed provide a summary of the grounds for his expert opinion and never produced his expert report to Duquesne Light, even though she was required to do so by Commission regulations and Duquesne Light’s Discovery Requests. Under 52 Pa. Code § 5.324(a)(1)(ii), a party may request through interrogatories “the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.” The responding party may file an expert report, have the interrogatories answered by the expert, or provide written direct testimony of the expert. 52 Pa. Code § 5.324(a)(1)(ii).

As discussed supra, Duquesne Light attempted to obtain “the substance of the facts and opinions to which [each] expert is expected to testify”, a “summary of the grounds for each expert opinion”, and an expert report for each expert in Discovery Request Nos. 22 and 23 more than a year ago. Complainant still has not provided this information. Like with Drs. Mowery and Morgan, Complainant’s failure to provide this information has prejudiced Duquesne Light by violating its fundamental right to be informed of the evidence that will be presented against it at the hearing. Accordingly, Hart should be precluded from testifying as an expert at any hearing in this matter. But if Hart is permitted to testify, Complainant should be compelled to provide full and complete responses to Discovery Request Nos. 22 and 23 within 15 days from the date of

the Presiding ALJ's Order. In addition, Complainant should be compelled to provide his *curriculum vitae*, as requested by Discovery Request No. 24.¹²

IV. CONCLUSION

For the reasons set forth above, Duquesne Light requests (i) an order compelling Complainant to provide full and complete responses to Duquesne Light's Discovery Request Nos. 2, 4, 5, and 7 within 15 days from the date of the Presiding ALJ's Order; (ii) an order that precludes all witnesses identified in Complainant's List of Potential Witnesses from testifying at any hearing in this matter; and (iii) in the alternative, if any of Complainant's expert witnesses are permitted to testify at any hearing in this matter, Duquesne Light requests an order compelling Complainant to provide full and complete responses to Duquesne Light's Discovery Request Nos. 22, 23, and 24 for each such expert within 15 days from the date of the Presiding ALJ's Order.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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

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

1500 One PPG Place
Pittsburgh, PA 15222
Counsel for Respondent,
Duquesne Light Company

¹² Duquesne Light reserves the right to object to Hart's testimony after receiving full and complete responses to Discovery Request Nos. 22, 23, and 24.

August 9, 2019

Via Regular Mail

Jeremy V. Farrell, Esq. and
Paul Shane Miller, Esq.
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222

RE: Pamela Scott v. Duquesne Light Company
Docket No. C-2018-3004042

Dear Messrs. Farrell and Miller:

Enclosed please find Complainant's list of potential witnesses.

Thank you for your attention to this matter.

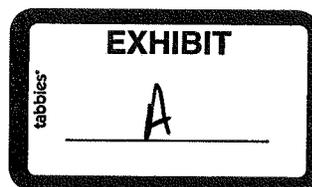
Sincerely,



Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

Encl: List of Potential Witnesses
Certificate of Service

Cc: ALJ Jeffrey A. Watson (with enclosure)



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

Respondent.

:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

**COMPLAINANT'S
LIST
OF
POTENTIAL
WITNESSES**

Filed by Complainant
Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT	:	
	:	
Complainant,	:	
	:	
vs.	:	Docket No. C-2018-3004042
	:	
DUQUESNE LIGHT COMPANY	:	
	:	
Respondent.	:	

COMPLAINANT'S LIST OF POTENTIAL WITNESSES

Complainant Pamela Scott, in accordance with Administrative Law Judge Jeffrey A. Watson's Interim Order Establishing Revised Litigation Schedule dated July 23, 2019, identifies the following individuals who she may call as fact or expert witnesses at the hearing of this matter.

EXPERT WITNESSES

1. David C. Mowery
William A. & Betty H. Hasler Professor Emeritus of New Enterprise Development
Business and Public Policy
Haas School of Business
University of California, Berkeley
2220 Piedmont Ave.
Berkeley, CA 94720

Dr. Mowery would offer expert testimony and opinion regarding the public policy and inadvisability of mandating smart meters as a condition of electric service, including the economic ramifications of doing so.

2. M. Granger Morgan
Hamerschlag University Professor of Engineering
Department of Engineering and Public Policy
Carnegie Mellon University
129 Baker Hall
Pittsburgh, PA 15213

Dr. Morgan would offer expert testimony and opinion regarding the public policy and inadvisability of mandating smart meters as a condition of electric service, including the economic ramifications of doing so.

3. Joshua Hart MSc, Director
Stop Smart Meters
P.O. Box 682
Portola, CA 96122

Mr. Hart would offer expert testimony and opinion regarding adverse health effects from smart meter installations.

FACTUAL WITNESSES

1. Thomas L. Stevenson, Attorney
Thomas L. Stevenson and Associates
666 Washington Rd., Suite #101
Pittsburgh, PA 15228

Attorney Stevenson would offer testimony about a powerful electrical surge, and information and/or misinformation that Duquesne Light provided regarding said surge, in the Markham neighborhood circa 2002.

2. Scott E. Hutchinson, Senator
Pennsylvania State Senate
170 Main Capitol

Harrisburg, PA 17120

As a member of the House in 2008, Senator Hutchinson would testify as to whether forced acceptance of a smart meter as a condition of electric service at 100% of residences in an EDC's service territory was the intent of Act 129 of 2008.

3. Kerry Benninghoff, Representative
Pennsylvania House of Representatives
147 Main Capitol
P.O. Box 202171
Harrisburg, PA 17120

As a member of the House in 2008, Representative Benninghoff would testify as to whether forced acceptance of a smart meter as a condition of electric service at 100% of residences in an EDC's service territory was the intent of Act 129 of 2008.

4. Stanley E. Saylor, Representative
Pennsylvania House of Representatives
245 Main Capitol Building
P.O. Box 202094
Harrisburg, PA 17120

As a member of the House in 2008, Representative Saylor would testify as to whether forced acceptance of a smart meter as a condition of electric service at 100% of residences in an EDC's service territory was the intent of Act 129 of 2008.

5. Robert Sturges Jr.
Professor Emeritus
Department of Industrial and Systems Engineering
College of Engineering
Virginia Tech
100 Durham Hall
Blacksburg, VA 24061

Dr. Sturges would testify as to whether the wiring of the 1938-vintage Property would be

compromised by installation of the Smart Meter.

6. Linda Kurtz, Director
Smart Meter Education Network
2150 Foss St.
Ann Arbor, MI 48103

Ms. Kurtz would offer testimony regarding adverse health effects from smart meter installations.

Respectfully submitted,

A handwritten signature in black ink that reads "Pamela Scott". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Pamela Scott, Complainant
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

CERTIFICATE OF SERVICE

I, Pamela Scott, hereby certify that I have this day served a true copy of the foregoing Complainant's potential witness list upon the parties, listed below, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

VIA REGULAR MAIL:

Paul Shane Miller, Esq. & Jeremy V. Farrell, Esq.
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222

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

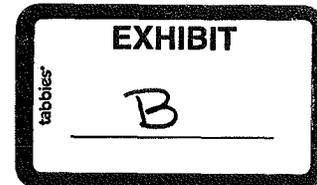
Dated this 9th day of August, 2019



Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

August 27, 2019

Pamela Scott
134 Markham Drive
Pittsburgh, PA 15227



RE: Pamela Scott v. Duquesne Light Company
Docket No. C-2018-3004042

Dear Ms. Scott:

We are writing to address certain issues relating to your List of Potential Witnesses, which we recently received, as well as your Answers to Respondent's First Set of Discovery Requests Directed to Complainant, which you served on or about October 12, 2018.

First, we are requesting that you withdraw two witnesses identified in your List of Potential Witnesses: Dr. David C. Mowery and Dr. M. Granger Morgan. You stated that these witnesses will "offer expert testimony and opinion regarding the public policy and inadvisability of mandating smart meters as a condition of electric service, including the economic ramifications of doing so." These matters fall far outside the scope of your pending Formal Complaint and are thus inappropriate subjects for expert testimony. Judge Watson has already issued an order stating that the relevant issue in this case is whether Duquesne Light "violated its tariff, the Public Utility Code or a Commission order or regulation..." *Interim Order Establishing Initial Litigation Schedule* (dated Oct. 15, 2018) (Watson, ALJ). The economic consequences of smart meter technology goes far beyond these narrow issues, and testimony by Drs. Mowery and Morgan about this issue thus would be improper and irrelevant to this proceeding. We thus request that you withdraw Drs. Mowery and Morgan as witnesses. Please let us know if you will agree to do so.

Second, you are required to provide the following information for each expert witness that you intend to call to testify at the hearing (including Drs. Mowery and Morgan if you will not agree to voluntarily withdraw them as witnesses): (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; (iii) a summary of the grounds for each expert opinion; (iv) the report of each expert you intend to call to testify; and (v) a curriculum vitae for each expert. Duquesne Light previously requested this information in its First Set of Discovery Requests (see Request Nos. 22-24), which we sent to you in September 2018. In response, you stated that you were still identifying your expert witnesses and

August 27, 2019
Page 2

that you did not have any documents in your possession, custody, or control that were responsive to these requests. Now that you have identified three expert witnesses in your List of Potential Witnesses, please supplement your responses to Duquesne Light's Discovery Request Nos. 22, 23, and 24 by providing the requested information noted above.

Please note that Duquesne Light reserves its right to challenge the admissibility of your proposed expert testimony and is not waiving any argument as to the admissibility of that testimony by requesting this information. At this point, Duquesne Light is simply asking you to produce the information it requested in discovery. Of course, if you agree to withdraw Drs. Mowery and Morgan, we do not need any expert reports from them.

Finally, please provide supplemental responses to Duquesne Light's Discovery Request Nos. 2, 4, 5, and 7. In these questions, Duquesne Light asked you to produce certain hospital or medical records. In response, you stated that you do not have any such records in your possession, custody, or control or that such records are equally available to Duquesne Light on the internet. Duquesne Light cannot access your medical records on the internet, so if you have any records that are responsive to Discovery Request Nos. 2, 4, 5, or 7, *especially those that involve the individuals who you identified in your List of Potential Witnesses to testify about health and medical issues*, you must produce them. If you do not have any such records in your possession, custody, or control, you must state so.

Please provide complete responses to the issues I raised above by **Friday, September 27, 2019**. Otherwise, we must ask the Presiding ALJ to order you to provide this information.

Very truly yours,



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

September 26, 2019

Via Regular Mail

Jeremy V. Farrell, Esq. and
Paul Shane Miller, Esq.
1500 One PPG Place
Pittsburgh, PA 15222

RE: Pamela Scott v. Duquesne Light Company
Docket No. C-2018-3004042

Dear Messrs. Farrell and Miller:

Enclosed please find Complainant's Supplemental Answers to Duquesne Light Company's First Set of Discovery Requests Directed to Complainant, dated from your office on September 24, 2018 and your letter dated August 27, 2019 asking for supplemental responses for Request Nos. 2, 4, 5, 7, 22, 23, and 24. I have thoroughly reviewed my October 12, 2018 answers and am in addition providing supplemental answer to No. 21, which is the only other discovery request that needs a supplemented or amended response.

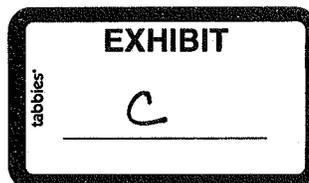
In addition, I must respectfully decline your August 27, 2019 request for me to withdraw Drs. Mowery and Morgan from my List of Potential Witnesses. Their testimony would directly relate to the scope of my Formal Complaint. I will agree, however, to limit their expert testimony and opinion regarding the economic ramifications of mandating smart meters as a condition of electric service to the wastage of dollars prosecuting customers who try to opt out.

Sincerely,



Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

Encl: Complainant's Supplemental Answers to Respondent's First Set of Discovery
Requests Directed to Complainant
Verification
Certificate of Service



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PAMELA SCOTT,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3004042

**FIRST SET OF DISCOVERY REQUESTS
DIRECTED TO COMPLAINANT**

Filed on behalf of Respondent
Duquesne Light Company

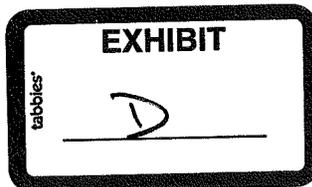
Counsel of Record for this Party:

Paul Shane Miller, Esquire
PA I.D. No. 319174
smiller@tuckerlaw.com

Jeremy V. Farrell, Esquire
PA I.D. No. 316258
jfarrell@tuckerlaw.com

(412) 566-1212
1500 One PPG Place
Pittsburgh, PA 15222

TADMS:1004596-1 014657-158498



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PAMELA SCOTT,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3004042
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

FIRST SET OF DISCOVERY REQUESTS DIRECTED TO COMPLAINANT

Respondent Duquesne Light Company ("Duquesne Light"), by and through its undersigned counsel, Tucker Arensberg, P.C., serves the following First Set of Discovery Requests Directed to Complainant pursuant to 52 Pa. Code §§ 5.341 and 5.349. In accordance with 52 Pa. Code §§ 5.342 and 5.349(d), Complainant Pamela Scott ("Complainant") must respond to each discovery request within 20 days after being served with these discovery requests. Complainant's responses must be verified in accordance with 52 Pa. Code § 1.36. Duquesne Light reserves the right to serve additional discovery requests.

DEFINITIONS

A. The terms "You" and "Your" shall mean Complainant Pamela Scott and any individual acting on her behalf.

B. The term "Formal Complaint" shall mean the Formal Complaint You filed against Duquesne Light with the Pennsylvania Public Utility Commission at Docket No. C-2018-3004042.

C. The term "Document" shall mean any written, typed, printed, graphic, or recorded material that is currently in Your possession, custody, or control or that was formerly in Your possession, custody, or control. A Document is in Your "control" if You have ownership,

possession, or custody of the Document or if You have the right to secure the Document or a 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 134 Markham Drive, Pittsburgh, PA 15228.

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. Do You contend that the installation of a Smart Meter at the Property will negatively affect Your health? If so, state all facts that support Your contention.

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

ANSWER:

4. 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. 3.

ANSWER:

5. 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. 3 and Your proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

ANSWER:

6. Identify all physicians and/or healthcare providers that You currently received treatment from.

ANSWER:

7. To the extent not previously requested, produce all documents, including but not limited to hospital and/or medical records, from Your treating physicians and/or healthcare professionals that relate to any condition identified in Your response to Discovery Request No.

3.

ANSWER:

8. Is it Your contention that Duquesne Light is not permitted by law to install a Smart Meter at the Property before 2023? If so, identify the specific law and/or regulation that You contend supports Your position.

ANSWER:

9. 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:

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

ANSWER:

22. 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:

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

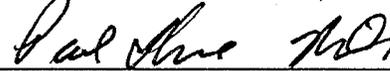
ANSWER:

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

ANSWER:

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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:1004596-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

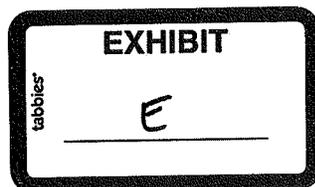
Respondent.

:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

**COMPLAINANT'S
ANSWERS
TO RESPONDENT'S
FIRST SET OF
DISCOVERY REQUESTS
DIRECTED TO
COMPLAINANT**

Filed by Complainant
Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008



10/2/18

Formal Complaint, while the radio frequency (RF) radiation emitted by smart meters 24/7 has adverse health effects on all living things, the adverse effects can be devastating for the percentage of the population -- like me -- who suffer from electromagnetic hypersensitivity (EHS).

Discovery Request #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 to Discovery Request #2: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request that are not equally available online to Duquesne Light. Further, this request appears to duplicate the burdensome, unreasonable request for "all facts" about the health hazards associated with smart meters in Discovery Request #1.

Discovery Request #3: Identify all medical conditions that You contend make You vulnerable to, or that would be aggravated by, proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

Answer to Discovery Request #3: My EHS (electromagnetic hypersensitivity) condition would be aggravated by proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter installed anywhere on the Property.

Discovery Request #4: 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. 3.

Answer to Discovery Request #4: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Discovery Request #5: 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. 3 and Your proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

Answer to Discovery Request #5: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request that are not equally available online to Duquesne Light.

Discovery Request #6: Identify all physicians and/or healthcare providers that You currently received [sic] treatment from.

Answer to Discovery Request #6: The use of the term "currently received" is puzzlingly ambiguous, but regardless, there are no physicians and/or healthcare providers that I currently receive or recently have received treatment from other than dentist Dr. Matthew Sack, 128 N. Craig St #207, Pittsburgh, PA 15213 and the rotating optometrists at Eyetique, 301 South Hills Village, Pittsburgh, PA 15241.

Discovery Request #7: To the extent not previously requested, produce all documents, including but not limited to hospital and/or medical records, from Your treating physicians and/or healthcare professionals that relate to any condition identified in Your response to Discovery Request No. 3.

Answer to Discovery Request #7: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Discovery Request #8: Is it Your contention that Duquesne Light is not permitted by law to install a Smart Meter at the Property before 2023? If so, identify the specific law and/or regulation that You contend supports Your position.

Answer to Discovery Request #8: It is my contention that Duquesne Light is not permitted by law to forcibly install a Smart Meter at the Property before, during, or after 2023. The specific law that supports my position is Act 129 of 2008 [66 Pa. C.S. Section 2807(f) and 66 Pa. C.S. Section 2807(g)]. As I have previously stated, Act 129 in no way requires installation of advanced digital AMI smart meters as a condition of electric service for 100% of the customers who reside in electric distribution company (EDC) territories that serve over 100,000 residents. Act 129 in no way prohibits opt-outs from EDC's smart meter programs; in fact, there is only provision in the law (Act 129) for customers to opt in. [66 Pa. C.S. Section 2807(f)]. The Commission has both the right and the obligation to address my complaint that Act 129 has been

Discovery Request #22: *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 to Discovery Request #22: I am in the process of identifying the full names, addresses, and telephone numbers of each person that I expect to offer testimony "at any hearing of this matter", therefore I have no names, addresses, or telephone numbers of such persons at this time. The subject matter on which the experts are expected to testify is smart meters and EHS.

Discovery Request #23: *Produce the report of any expert You intend to call to testify on Your behalf at trial.*

Answer to Discovery Request #23: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Discovery Request #24: *Produce the curriculum vitae of any expert that You intend to call to testify on Your behalf at trial.*

Answer to Discovery Request #24: Given that I am in the process of identifying and securing expert testimony, I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Respectfully submitted,



Pamela Scott, Complainant
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

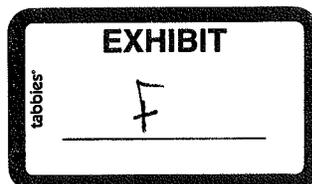
Respondent.

:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

**COMPLAINANT'S
SUPPLEMENTAL
ANSWERS
TO RESPONDENT'S
FIRST SET OF
DISCOVERY REQUESTS
DIRECTED TO
COMPLAINANT**

Filed by Complainant
Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

**COMPLAINANT'S SUPPLEMENTAL ANSWERS
TO RESPONDENT'S FIRST SET OF DISCOVERY REQUESTS DIRECTED TO
COMPLAINANT**

I, Pamela Scott, hereby respond with supplemental answers to 1) Duquesne Light Company's First Set of Discovery Requests Directed to Complainant, dated September 24, 2018 and 2) Respondent's letter dated August 27, 2019 asking for supplemental responses for Request Nos. 2, 4, 5, 7, 22, 23, and 24. I have thoroughly reviewed my October 12, 2018 answers and am in addition providing supplemental answer to No. 21, which is the only other discovery request that needs a supplemented or amended response.

Respondent appears to be confused regarding Nos. 2, 4, 5, and 7 when stating in their August 27, 2019 letter that "Duquesne Light cannot access your medical records on the internet, so if you have any records that are responsive to Discovery Request Nos. 2, 4, 5, or 7, *especially those that involve the individuals who you identified in your List of Potential Witnesses to testify about health and medical issues*, you must produce them." In no way did I ever respond to any questions about personal health, hospital, or medical records with a response suggesting that

such items are "equally available to Duquesne Light on the internet". In my Answer to Respondent's Discovery Request #1, I answered that "Yes, I contend that the installation of a Smart Meter at the Property will negatively affect my health. Facts that support this contention from peer-reviewed journals, World Health Organization press releases, scientific articles, scientific reports, etc. are equally available online to Duquesne Light and the Complainant, thus this request represents an unreasonable, burdensome request for Complainant to prepare a massive compilation that does not presently exist. It is the not Complainant's responsibility to attempt to educate Duquesne Light on matters that Duquesne Light appears to resist education about. Such study or analysis can and should have been reasonably conducted by Duquesne Light. As previously stated in my September 24, 2018 Response to Duquesne Light Company's Answer and New Matter to the Formal Complaint, while the radio frequency (RF) radiation emitted by smart meters 24/7 has adverse health effects on all living things, the adverse effects can be devastating for the percentage of the population -- like me -- who suffer from electromagnetic hypersensitivity (EHS)." Duquesne Light's Discovery Request #2 asked for all Documents that relate to my answer to Discovery Request #1, and all such non-personal hospital and/or medical records and studies information is certainly equally available online to Duquesne Light. Similarly, Duquesne Light's Discovery Request #5 broadly asked for personal as well as general information about the relationship between smart meters and adverse health effects. There is ample evidence equally available to Duquesne Light that demonstrates that my EHS (electromagnetic hypersensitivity) condition would be aggravated by proximity to a smart meter installed anywhere on the Property.

Discovery Request #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.

Supplemental Answer to Discovery Request #2: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

My October 12, 2018 Answer to Discovery Request #2: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request that are not equally available online to Duquesne Light. Further, this request appears to duplicate the burdensome, unreasonable request for "all facts" about the health hazards associated with smart meters in Discovery Request #1.

Discovery Request #4: 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. 3.

Supplemental Answer to Discovery Request #4: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

My October 12, 2018 Answer to Discovery Request #4: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Discovery Request #5: 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. 3 and Your proximity to an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter.

Supplemental Answer to Discovery Request #5: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

My October 12, 2018 Answer to Discovery Request #5: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request that are not equally available online to Duquesne Light.

Discovery Request #7: To the extent not previously requested, produce all documents, including but not limited to hospital and/or medical records, from Your treating physicians and/or healthcare professionals that relate to any condition identified in Your response to Discovery Request No. 3.

Supplemental Answer to Discovery Request #7: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

My October 12, 2018 Answer to Discovery Request #7: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Discovery Request #21: State the full name, address, and telephone number of each person who You expect to call to testify at any hearing of this matter.

Supplemental Answer to Discovery Request #21: The full names and addresses of factual witnesses were provided to you on August 9, 2019 in my Complainant's List of Potential Witnesses. Their telephone numbers are as follows:

Thomas L. Stevenson, Attorney
Thomas L. Stevenson and Associates
666 Washington Rd., Suite #101
Pittsburgh, PA 15228
(412) 531-4949

Scott E. Hutchinson, Senator
Pennsylvania State Senate
170 Main Capitol
Harrisburg, PA 17120
(717) 787-9684

Kerry Benninghoff, Representative
Pennsylvania House of Representatives
147 Main Capitol
P.O. Box 202171
Harrisburg, PA 17120
(717) 783-1918

Stanley E. Saylor, Representative
Pennsylvania House of Representatives
245 Main Capitol Building
P.O. Box 202094
Harrisburg, PA 17120

(717) 783-6426

Robert Sturges Jr.
Professor Emeritus
Department of Industrial and Systems Engineering
College of Engineering
Virginia Tech
100 Durham Hall
Blacksburg, VA 24061
(540) 320-3743

Linda Kurtz, Director
Smart Meter Education Network
2150 Foss St.
Ann Arbor, MI 48103
(734) 769-4241

Discovery Request #22: 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.

Supplemental Answer to Discovery Request #22: The full names and addresses of each expert witness that I expect to offer testimony were provided to you on August 9, 2019 in my Complainant's List of Potential Witnesses. Their telephone numbers are as follows:

David C. Mowery
William A. & Betty H. Hasler Professor Emeritus of New Enterprise Development
Business and Public Policy
Haas School of Business
University of California, Berkeley
2220 Piedmont Ave.
Berkeley, CA 94720
(510) 643-9992

M. Granger Morgan
Hamerschlag University Professor of Engineering

Department of Engineering and Public Policy
Carnegie Mellon University
129 Baker Hall
Pittsburgh, PA 15213
(412) 268-1085

Joshua Hart MSc, Director
Stop Smart Meters
P.O. Box 682
Portola, CA 96122
(888) 965-6435

The subject matter and substance of the expert witnesses' testimony were provided to you on August 9, 2019 in my Complainant's List of Potential Witnesses and remains for Drs. Mowery and Morgan expert testimony and opinion regarding the public policy and inadvisability of mandating smart meters as a condition of electric service. I have agreed to limit expert testimony and opinion regarding the economic ramifications of doing so to the wastage of dollars prosecuting customers who try to opt out. For Joshua Hart, it remains expert testimony and opinion regarding adverse health effects from smart meter installations. The grounds for each expert opinion are their extensive experience in their areas of expertise.

***Discovery Request #23:** Produce the report of any expert You intend to call to testify on Your behalf at trial.*

Supplemental Answer to Discovery Request #23: I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request. I can, however, refer you to Dr. Morgan's *The many meanings of "Smart Grid"* briefing which is available online at https://www.cmu.edu/epp/policy-briefs/briefs/Policy_Brief_Smart_Grid_July_09.pdf and where the following excerpt appears on page 4:

"Who should be in charge?"

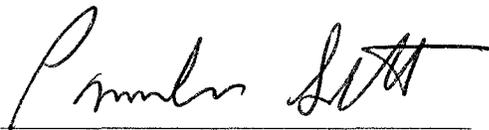
"In considering the control of customer loads and distribution systems, a key policy issue is who gets to choose when and where to turn things on and off? In the smart grid

systems being built in some parts of Europe, such as the Netherlands, the answer is the utility is in charge. In emergency situations, that is surely the best arrangement. But, for day-to-day operations, we believe that it is far better to leave control in the hands of customers, who are free to respond to price signals. Nobody wants to sit and watch the meter, but in our electronics age there are simple inexpensive devices that can carry out our instructions as electricity prices change (see the discussion above on time-of-use meters and on control of customers' loads)."

Discovery Request #24: Produce the curriculum vitae of any expert that You intend to call to testify on Your behalf at trial.

Supplemental Answer to Discovery Request #24: The curriculum vitae of Dr. David C. Mowery is online at <https://haas.berkeley.edu/faculty/mowery-david/>. The curriculum vitae of Dr. M. Granger Morgan is online at <https://www.cmu.edu/epp/images/morgan-resume-february-2016.pdf>. I have requested the curriculum vitae of Joshua Hart Msc, and will forward it to you when I receive it. Joshua Hart is the Director of Stop Smart Meters, whose website is <https://stopsmartmeters.org> which has much information. Other than the information contained in the previous four sentences of this Answer, I do not have any Documents currently or formerly in my possession, custody, or control that are responsive to this request.

Respectfully submitted,



Pamela Scott, Complainant
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

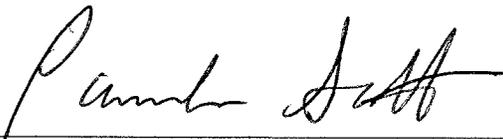
Respondent.

:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

VERIFICATION

I, Pamela Scott, 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. Section 4904 (relating to unsworn falsification to authorities).



Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228
(412) 998-8880

Dated: September 26, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

Respondent.

:
:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

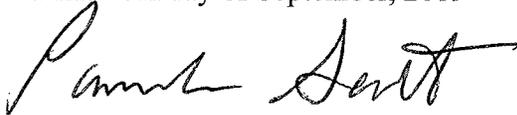
CERTIFICATE OF SERVICE

I, Pamela Scott, hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

VIA REGULAR MAIL:

Paul Shane Miller & Jeremy V. Farrell
Tucker Arensberg
1500 One PPG Place
Pittsburgh, PA 15222

Dated this 26th day of September, 2019



Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008
(412) 998-8880

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

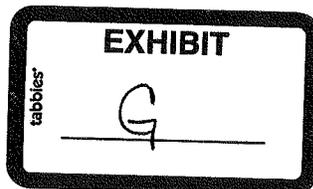
Respondent.

:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2018-3004042

**FIRST SET OF
DISCOVERY REQUESTS
DIRECTED TO
RESPONDENT**

Filed by Complainant
Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228-1008



18. Identify the day, month, and year of the very large and damaging power surge caused by You in the Property's neighborhood on a day of clear and mild weather which resulted in You offering monetary settlements to many residents in 2001, 2002, and/or 2003.

ANSWER:

19. Produce all documents (including but not limited to call records and copies of mailed offers of settlement to Complainant) relating to damage at the Property resulting from the surge identified in Discovery Request No. 18.

ANSWER:

20. Please admit that You deliberately propagated false information and misrepresented facts when You described the event identified in Discovery Request No. 18 as being weather-related.

ANSWER:

21. To the extent that Your response to Discovery Request No. 20 is other than an unqualified admission, list all facts on which You base any part of Your response that is not an unqualified admission, and identify and produce all documents memorializing each such fact.

ANSWER:

22. Provide any and all documents demonstrating that Your practice of removing meters that have surge protection and replacing them with meters that do not have surge protection is not a downgrade and violation of the electric safety standards of 052 Pa. Code § 57.28(a)(1) to use reasonable effort to protect the public from danger and exercise reasonable care to reduce the hazards to which customers may be subjected to, and/or violation of 66 Pa. C.S. § 1501 regarding Your responsibilities to make any changes, alterations, substitutions, and improvements in service and facilities to be for the accommodation, convenience, and safety of Your patrons, employees, and the public.

ANSWER:

23. Does the "Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter" and any other Smart Meter that You intend to install at the Property in place of the Current Meter provide surge protection?

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PAMELA SCOTT,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3004042

**OBJECTIONS TO COMPLAINANT'S
FIRST SET OF DISCOVERY REQUESTS
DIRECTED TO RESPONDENT**

Filed on behalf of Respondent
Duquesne Light Company

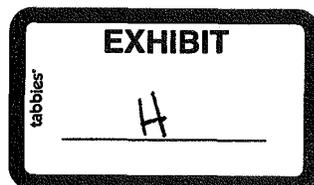
Counsel of Record for this Party:

Paul Shane Miller, Esquire
PA I.D. No. 319174
smiller@tuckerlaw.com

Jeremy V. Farrell, Esquire
PA ID No. 316258
jfarrell@tuckerlaw.com

(412) 566-1212
1500 One PPG Place
Pittsburgh, PA 15222

TADMS:5105466-1 014657-15849



16. Identify any law, code, order, regulation, or tariff that permits You not to use certified electricians or professionals to install Smart Meters on Your behalf, particularly with respect to FCC regulations that say "requires professional installation".

ANSWER: Duquesne Light objects to this Request because it asks Duquesne Light to provide a legal opinion, and incorrectly assumes that Duquesne Light bears the burden of proof with respect to alleged violation(s) of law. Duquesne Light further objects to this Request because it does not identify the "FCC regulations" mentioned in the Request.

18. Identify the day, month, and year of the very large and damaging power surge caused by You in the Property's neighborhood on a day of clear and mild weather which resulted in You offering monetary settlements to many residents in 2001, 2002, and/or 2003.

ANSWER: Duquesne Light objects to this Request because it is argumentative and improperly assumes facts that may not be true. Duquesne Light further objects to this Request because it is vague and ambiguous. Duquesne Light does not know what alleged incident Complainant is referring to in this Request. Duquesne Light further objects to this Request because it seeks information that is irrelevant to the allegations set forth in the Complaint, and is not reasonably calculated to lead to the discovery of admissible evidence.

19. Produce all documents (including but not limited to call records and copies of mailed offers of settlement to Complainant) relating to damage at the Property resulting from the surge identified in Discovery Request No. 18.

ANSWER: Duquesne Light objects to this Request because it is argumentative and improperly assumes facts that may not be true. Duquesne Light further objects to this Request because it is vague and ambiguous. Duquesne Light does not know what alleged incident Complainant is referring to in Request No. 18 or this Request. Duquesne Light further objects to this Request because it seeks information that is irrelevant to the allegations set forth in the Complaint, and is not reasonably calculated to lead to the discovery of admissible evidence.

20. Please admit that You deliberately propagated false information and misrepresented facts when You described the event identified in Discovery Request No. 18 as being weather-related.

ANSWER: Duquesne Light objects to this Request because it is argumentative and improperly assumes facts that may not true. Duquesne Light further objects to this Request because it is vague and ambiguous. Duquesne Light does not know what alleged incident Complainant is referring to in Request No. 18 or this Request. Duquesne Light further objects to this Request because it seeks information that is irrelevant to the allegations set forth in the Complaint, and is not reasonably calculated to lead to the discovery of admissible evidence.

21. To the extent that Your response to Discovery Request No. 20 is other than an unqualified admission, list all facts on which You base any part of Your response that is not an unqualified admission, and identify and produce all documents memorializing each such fact.

ANSWER: Duquesne Light objects to this Request because it is argumentative and improperly assumes facts that may not be true. Duquesne Light further objects to this Request because it is vague and ambiguous. Duquesne Light does not know what alleged incident Complainant is referring to in Request No. 20 or this Request. Duquesne Light further objects to this Request because it seeks information that is irrelevant to the allegations set forth in the Complaint, and is not reasonably calculated to lead to the discovery of admissible evidence.

24. Identify the portions of any law, code, order, regulation, or tariff that grant You the right to install a Smart Meter at the Property that communicates or attempts to communicate via RF or any other means with appliances, devices, or any physical aspect within the residential structure that is on the Property, thereby performing two-way communication within the airspace/circuitry of the residential structure on the Property, and thereby engaging in communication activity that exceeds the "bidirectional communication" that Act 129 of 2008 permits only for the purpose of recording electricity usage. [66 Pa. C.S. § 2807(g)].

ANSWER: Duquesne Light objects to this Request because it asks Duquesne Light to provide a legal opinion, and incorrectly assumes that Duquesne Light bears the burden of proof with respect to alleged violation(s) of law. Duquesne Light further objects to this Request because it assumes facts that may not be true.

TADMS:5204424-1 014657-158498

Counsel for Respondent,
Duquesne Light Company