

October 19, 2019

**Via Regular Mail**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, Second Floor W.  
400 North Street  
Harrisburg, PA 17120

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

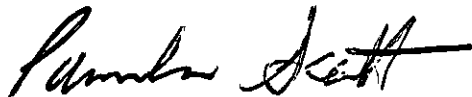
Dear Secretary Chiavetta:

Enclosed please find a copy of Complainant's Answer to Respondent's Motion to Compel Discovery Responses and to Preclude Witnesses Identified in Complainant's List of Potential Witnesses From Testifying that was dated September 30, 2019 from the law offices of Tucker Arensberg.

A copy of this letter and document has been served upon Respondent (Paul Shane Miller and Jeremy V. Farrell of Tucker Arensberg, attorneys for Duquesne Light Company) in accordance with Commission regulations.

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

Sincerely,



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

**Encl: Complainant's Answer to Respondent's Motion to Compel Discovery Responses and to Preclude Witnesses Identified in Complainant's List of Potential Witnesses From Testifying**

**Cc: Paul Shane Miller & Jeremy V. Farrell (with enclosure)**  
**Administrative Law Judge Jeffrey A. Watson (with enclosure)**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT

Complainant,

vs.

DUQUESNE LIGHT COMPANY

Respondent.

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Docket No. C-2018-3004042

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

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

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*expert within 15 days from the date of the Presiding ALJ's Order.*

## **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.*

Answer: In my Formal Complaint, the words "due to the misinterpretation of state law" appeared after "forced participation in their advanced digital smart meter program", referencing Act 129 of 2008 a second time in my Formal Complaint of August 15, 2018.

## **III. Argument**

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

Answer: Administrative Law Judge Jeffrey A. Watson's October 16, 2019 Interim Order Denying Respondent's Motion to Compel, Without Prejudice, as Moot already addressed this Motion to Compel Discovery Responses.

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

*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.*

Answer: Attorney Thomas L. Stevenson should be allowed to testify so as to provide historical

evidence supporting Complainant's contention that Duquesne Light has a history of engaging in falsehoods and disinformation. Engaging in falsehoods and disinformation violates Duquesne Light's obligation to provide reasonable service, and is clearly relevant for purposes of the hearing. ["Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa. C.S. Section 1501: *Character of service and facilities.*] In this instance, Duquesne Light promulgated falsehoods and paid money to neighbors in exchange for them to stop asking questions or seek compensation for damages beyond the small amount offered by Duquesne Light.

*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.*

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

Answer: Linda Kurtz should be allowed to testify because, as a lay witness, she is well-versed in facts within her knowledge about the dirty electricity and radio frequency issues in consumers' residences associated with smart meters. Such testimony does not involve scientific, technical, or other specialized knowledge beyond that possessed by the average lay person. Her testimony would be based on her personal knowledge and experiences that she has observed in the course of her extensive research and experience regarding smart meter installations. She would present evidence that Duquesne Light's smart meters impart dirty electricity into the wiring of residents' homes. <http://www.smartmetereducationnetwork.com/dirty-electricity-and-smart-meters.php>

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

Answer: Linda Kurtz should be allowed to testify because her testimony would not seem to fall under the definition of hearsay, as Respondent claims. See response to (b.)(i) directly above.

*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.*

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

Answer: Act 129 of 2008 is unambiguous in that it created an opt-in provision. There is nothing in Act 129 that prohibits opt-outs.

*(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.*

Answer: State Senator Scott E. Hutchinson, State Representative Kerry Benninghoff, and State Representative Stanley E. Saylor should be allowed to testify because their testimony would not engage in any facet of "post-act legislative history". Their testimony would relate to "what the legislature did, not what a single legislator thought the legislation did." [Com. v. Wisneski, 29 A. 3d 1150, 1153 (Pa. 2011)]. Their testimony would relate to actual history, backed up with contemporaneous historical session transcripts and documents from that time. This might cause the Commission and Duquesne Light Company to reinterpret their policies.

*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.*

Answer: Dr. Robert Sturges Jr. should be allowed to testify because his testimony is well within the scope of the Formal Complaint. Overloaded wires and house fires are capable of very damaging health effects, and as such are includable as an "adverse health condition" in the Formal Complaint. Dr. Sturges is a previous owner, engineer, and resident of Complainant's property and is well-qualified to address issues presented by smart meter installation on old wiring such as the pulsed and variable electrical current created by smart meters' switched mode power supply.

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

*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.*

*(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.*

Answer: Drs. Mowery and Morgan should be allowed to testify because the inadvisability of mandating smart meters as a condition of electric service is relevant to the matters at issue. The

misinterpretation of Act 129 of 2008 by the Commission and Duquesne Light cited in my Formal Complaint is clearly one of the matters at issue, and as public policy experts they can address the foibles of creating policy, rules, orders, regulations, and tariffs based on misinterpretation of a statute, as well as the lack of legal standing to do so. Such testimony might cause the Commission and Duquesne Light Company to revise their policies and see that Act 129 in no way prohibits opt-outs.

*(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.*

Answer: Complainant did not fail to provide a summary of the grounds for their expert opinions. See pages 7-8 of Exhibit F of Respondent's Motion to Compel Discovery Requests. "The grounds for each expert opinion are their extensive experience in their areas of expertise" and the curriculum vitae of each. Duquesne Light's Discovery asked Complainant to produce reports that do not exist.

*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.*

*(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."*

Answer: Joshua Hart MSc should be allowed to testify because he is well-qualified to report on the discrepancies between the actual emissions vs. industry-stated emissions from smart meters, including those that Duquesne Light Company has deployed and is deploying.

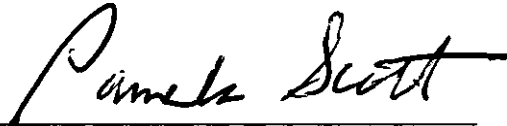
*(ii) Hart should be precluded from testifying because Complainant failed provide a summary of the grounds for his expert opinion and never produced his expert report to Duquesne Light.*

Answer: Joshua Hart should be allowed to testify because Complainant provided summary of the grounds for his expert opinion on pages 7-8 of Exhibit F of Respondent's Motion to Compel Discovery Requests. "The grounds for each expert opinion are their extensive experience in their areas of expertise". Duquesne Light's Discovery asked Complainant to produce reports that do not exist. Josh Hart's curriculum vitae has not yet been provided to me, and that is why I have not yet provided it to Respondent.

#### IV. Conclusion

For the reasons set forth above, Complainant requests an order denying Respondent's Motion to Preclude Witnesses Identified in Complainant's List of Potential Witnesses From Testifying.

Respectfully submitted,



Pamela Scott, Complainant  
134 Markham Drive  
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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).



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

Dated: October 19, 2019

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