

October 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. 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)

TADMS:5218474-1 014657-158498

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 requests.¹ However, Complainant’s Discovery Responses failed to provide full and complete requests to each request in Duquesne Light’s Discovery Requests. Thus, in a letter dated August 27, 2019 (“Duquesne Light’s Letter”), Duquesne Light asked Complainant to provide supplemental responses to Discovery Request Nos. 2, 4, 5, 7, 22, 23, and 24.

On or about September 26, 2019, Complainant 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. 22, 23, and 24.²

On September 30, 2019, Duquesne Light filed a Motion to Compel Discovery Responses and To Preclude Witnesses Identified in Complainant’s List of Potential Witnesses From

¹ After Duquesne Light filed a Motion to Compel, it ultimately received complete responses from Complainant to the four Discovery Requests that she previously objected to. They are not at issue here.

² A copy of Duquesne Light’s Discovery Request Nos. 22, 23, and 24 is attached as Exhibit A. A copy of Complainant’s Discovery Responses to these requests is attached as Exhibit B. A copy of Complainant’s Supplemental Discovery Responses to these requests is attached as Exhibit C.

Testifying (“Motion to Compel”). In relevant part, Duquesne Light’s Motion to Compel requested that Complainant provide full and complete responses to Discovery Request Nos. 22, 23, and 24 for each expert witness that was not precluded from testifying at the hearing.

On October 16, 2019, the Presiding ALJ issued an Interim Order Denying Respondent’s Motion to Compel, Without Prejudice, as Moot (“Interim Order”). In the Interim Order, the Presiding ALJ ruled that Duquesne Light’s Motion to Compel was denied, without prejudice, as moot because Complainant filed a Certificate of Service on October 10, 2019 stating that she provided supplemental discovery responses to Duquesne Light’s Discovery Requests. The Interim Order further stated, “In the event Complainant failed to provide Respondent with full and complete responses to its Discovery Requests, Respondent shall file a new or Supplemental Motion to Compel on or before October 31, 2019, and any response from Complainant shall be filed on or before November 7, 2019.”

On October 28, 2019, the Presiding ALJ issued an Interim Order that precluded two of Complainant’s three proposed expert witnesses from testifying at the hearing. This Interim Order did not address Complainant’s remaining expert witness, Joshua Hart. Thus, at this time, Mr. Hart has not been precluded from testifying.

III. ARGUMENT

Complainant should be compelled to provide full and complete responses to Duquesne Light’s Discovery Request Nos. 22, 23, and 24 for Mr. Hart, given that he has not been precluded from testifying as an expert witness at the hearing in this matter.

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.

In addition, 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).

Here, through Discovery Request Nos. 22 and 23, Duquesne Light attempted to obtain "the subject matter on which the expert is expected to testify"; "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 "a report of the expert." Specifically, Duquesne Light's Discovery Request Nos. 22 and 23 state:

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 A.

Complainant failed to provide full and complete responses to these requests. Instead, she merely provided Mr. Hart's name and contact information; a brief summary of the topic on which he plans to testify (adverse health effects from smart meters); and a statement that "the grounds for each expert opinions are their extensive experience in their areas of expertise." See Exhibits B and C.

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 complete responses to these two Discovery Requests, Duquesne Light has little idea what Mr. Hart will testify to at the hearing, which puts Duquesne Light in precisely the predicament that is forbidden by 52 Pa. Code § 5.324(a)(1)(ii). In addition, the Presiding ALJ has ruled in similar cases that a respondent is entitled to receive the expert witness information that Duquesne Light requested in Discovery Request Nos. 22 and 23. See Hriadil v. Duquesne Light Co., Docket No. C-2016-2571726 (Pa. P.U.C. June 6, 2019) (Watson, ALJ) (ruling that the complainant was required to provide written reports for each purported expert witness that comply with 52 Pa. Code § 5.324(a)(1)(ii)).

Finally, Complainant should be compelled to provide Mr. Hart's *curriculum vitae*, as requested by Discovery Request No. 24. See Exhibit A. Mr. Hart's *curriculum vitae* is relevant because it will allow Duquesne Light to evaluate his prior professional experience and qualifications relating to the subject matter upon which he plans to testify. Complainant previously stated that she requested a *curriculum vitae* from Mr. Hart, but still has not produced it.³

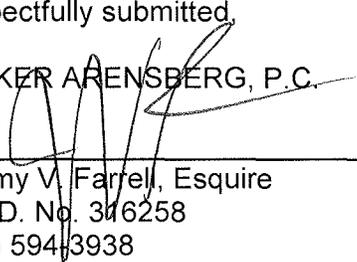
³ Duquesne Light reserves the right to object to Mr. Hart's testimony on the basis that he does not qualify as an expert witness after receiving full and complete responses to Discovery Request Nos. 22, 23, and 24.

IV. CONCLUSION

For the reasons set forth above, Duquesne Light requests an order compelling Complainant to provide full and complete responses to Duquesne Light's Discovery Request Nos. 22, 23, and 24 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

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:

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.

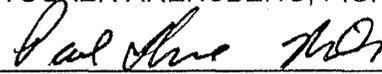
ANSWER:

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.

A handwritten signature in black ink, appearing to read "Paul Shane Miller", written over a horizontal line.

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.

No: C-2018-3004042

CERTIFICATE OF SERVICE

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

Pamela Scott
134 Markham Drive
Pittsburgh, PA 15228

Dated this 24th day of September 2018.



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

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

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

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

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

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.

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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

(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?"

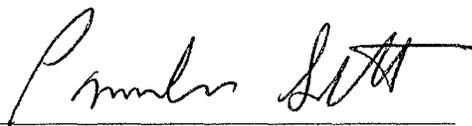
"In considering the control of customer loads and distribution systems, a key policy issue is who gets to choose when and where to turn things on and off? In the smart grid

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

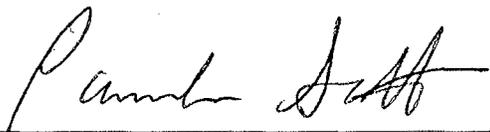
Respondent.

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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).



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

Dated: September 26, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAMELA SCOTT,

Complainant,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

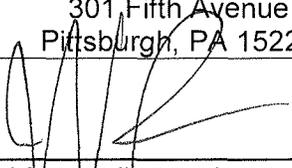
No: C-2018-3004042

CERTIFICATE OF SERVICE

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

Pamela Scott 134 Markham Drive Pittsburgh, PA 15227	Administrative Law Judge Jeffrey Watson Pennsylvania Public Utility Commission Office of Administrative Law Judge Piatt Place, Suite 220 301 Fifth Avenue Pittsburgh, PA 15222
---	---

Dated this 30TH day of 2019



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Counsel for Respondent,
Duquesne Light Company