

December 23, 2019

Via Electronic Filing

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

RE: Miranda Edwards v. Duquesne Light Company
Docket No. C-2018-3002741

Dear Secretary Chiavetta:

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

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

Sincerely,



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

Enclosure

c: Miranda Edwards (with enclosure)
ALJ Jeffrey Watson (with enclosure)

TADMS:5248336-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRANDA EDWARDS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2018-3002741

**SECOND MOTION TO COMPEL
DISCOVERY RESPONSES**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

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NOTICE TO PLEAD

TO COMPLAINANT MIRANDA EDWARDS:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S SECOND MOTION TO COMPEL DISCOVERY RESPONSES WITHIN TWENTY DAYS OF SERVICE PURSUANT TO 52 PA CODE § 5.61.

TUCKER ARENSBERG, P.C.



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

MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to 52 Pa. Code. § 5.103, Duquesne Light Company (“Duquesne Light” or “the Company”) files this Second Motion to Compel Discovery Responses:

I. Introduction

1. Duquesne Light seeks an order requiring Complainant Miranda Edwards (“Complainant”) to provide full and complete responses to four discovery requests previously served by the Company.

II. Relevant Factual Background

2. On June 14, 2018, Complainant filed a Formal Complaint against Duquesne Light to prevent the Company from installing a Smart Meter at her property located at 3835 Acorn Street, Pittsburgh, PA 15207 (“Property”). Complaint at ¶¶ 4-5. Complainant alleged, in relevant part, that Duquesne Light’s smart meters threaten her health and safety and infringe upon her right to privacy. Id.

3. On July 10, 2018, Duquesne Light served its First Set of Discovery Requests Directed to Complainant (“First Set of Discovery Requests”).

4. On August 20, 2018, Complainant moved to strike Duquesne Light’s First Set of Discovery Requests (“Motion to Strike”) because they were purportedly “untimely” and “irrelevant.” See Objection to and Motion to Strike Respondent’s Discovery Requests, p. 4.

5. On October 24, 2018, the Presiding ALJ issued an Interim Order denying Complainant’s Motion to Strike. The Presiding ALJ ordered Complainant to “serve...objections where appropriate to any specific discovery requests and full and complete responses to the interrogatories and requests for production of documents served by Respondent...on or before November 30, 2018.” See Interim Ordering Granting Respondent’s Motion to Compel, pp. 4-5.

6. On November 30, 2018, Complainant served Complainant's Responses to Respondent's First Set of Discovery Requests ("Complainant's Discovery Responses"). Complainant's Discovery Responses contained several objections. Complainant also indicated that she would supplement several responses after gathering additional information.

7. On December 10, 2018, Duquesne Light filed a Motion to Compel Discovery Responses ("First Motion to Compel"). It requested that the Presiding ALJ order Complainant to provide full and complete responses to nine requests from Duquesne Light's First Set of Discovery Requests to which Complainant raised objections. See Motion to Compel Discovery Responses, p. 10.

8. On January 28, 2019, the Presiding ALJ ordered Complainant to provide full and complete responses to eight of the nine discovery requests set forth in Duquesne Light's First Motion to Compel. See Interim Order Granting in Part and Denying in Part Respondent's Second Motion to Compel.

9. On February 19, 2019—in response to the Presiding ALJ's Interim Order from January 28, 2019—Complainant served Complainant's Responses to Respondent's First Set of Discovery Requests ("Supplemental Discovery Responses").

10. On March 4, 2019, Complainant filed an Amended Complaint. It raises the same general allegations and requests for relief as the original Complaint.

11. On October 25, 2019, the Presiding ALJ issued an Interim Order stating, in relevant part, "[a]ny request for relief for any outstanding issues in this case, other than dispositive motions or Motions in Limine, shall be filed on or before December 23, 2019." See Interim Order Setting Requirements Including Proposals for Dates for Hearing, ¶ 5.

12. On December 17, 2019, Duquesne Light's counsel contacted Complainant to request supplemental responses to several discovery requests set forth in Duquesne Light's First Set of Discovery Requests. Duquesne Light sent a proposed confidentiality agreement to Complainant to address her concerns about protecting personal information.

13. Complainant did not respond to this communication and provided no supplemental discovery responses to Duquesne Light.

14. Complainant has failed to provide full and complete responses to the following requests from Duquesne Light's First Set of Discovery Requests: #16, #18, #19 and #20.

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

III. Argument

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

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

18. 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).

19. Under 52 Pa. Code § 5.332, "A party...is under a continuing duty to amend a prior response upon discovering that the response is incorrect or incomplete."

Discovery Request #16

20. Discovery Request #16 contains the following question and answer:

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

Answer: Discovery Request No. 16 is irrelevant because of crucial differences between any “devices, appliances, and equipment used by [me] in [my] home or in [my] daily life” and the Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter. Furthermore, providing information on these products of which I have ownership and control would open the door to even more intrusive lines of inquiry, such as Discovery Request No. 17.”

Supplemental Answer:¹ Providing this detailed information about wireless products used in my home may compromise my privacy and security. Please sign the attached Stipulated Protective Agreement and I will provide the information as specified in the interim order of January 28, 2019.

21. Complainant’s answer to Discovery Request #16 is deficient because she failed to provide a full and complete response, *despite being ordered to do so by the Presiding ALJ nearly a year ago*. Duquesne Light is entitled to receive the requested information because Complainant has alleged that radiofrequency radiation purportedly emitted from Duquesne Light’s smart meters will damage her health. Duquesne Light is entitled to know if Complainant

¹ Complainant provided this supplemental answer after the Presiding ALJ ordered her to provide a “full and complete” response to Discovery Request #16 on January 28, 2019.

is regularly exposed to radiofrequency radiation from other sources, such as cell phones, microwave ovens, wireless internet, and Wi-Fi routers. Duquesne Light provided a mutual confidentiality agreement to Complainant to alleviate any privacy concerns, but she did not sign the agreement or provide a complete response to this discovery request.

Discovery Request #18

22. Discovery Request #18 contains the following question and answer:

Question: Produce all documents, including, but not limited to, user manuals and instructional materials, relating to each device identified in response to Discovery Request No. 16.

Answer: See answer to Discovery Request No. 16.

Supplemental Answer:² See answer to Discovery Request No. 16. By way of further response, once DLC signs the Agreement named in Discovery Request No. 16, DLC will have access to the make and model of any wireless devices used in my home, and can freely access any user manuals/instructional materials that are available online to anyone.

23. Complainant's answer is deficient because she failed to provide a full and complete response to this discovery request, *despite being ordered to do so by the Presiding ALJ nearly a year ago*. The requested information is relevant because if Complainant has other devices, appliances, or equipment in her home that emit radiofrequency or low frequency radiation, it is less likely that any alleged adverse health effects were caused by Duquesne Light's smart meter. Duquesne Light is seeking to obtain the requested documents so it can

² Complainant provided this supplemental answer after the Presiding ALJ ordered her to provide a "full and complete" response to this discovery request on January 28, 2019.

determine how much radiofrequency radiation each product emits relative to Duquesne Light's smart meters. This information is not privileged and must be provided.

Discovery Request #19

24. Discovery Request #19 contains the following question and answer:

Question: Do You claim that there has been a fire(s) caused by an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter installed by Duquesne Light or its contractors? If so, for each such fire, state:

- The date of the fire;
- The address of the location where the fire happened; and
- All facts that support Your contention or belief that the fire was caused by an Itron SK9AMI7 HW 3.1 OpenWay CENTRON Singlephase Smart Meter installed by Duquesne Light or its contractors.

Answer: This is premature; I am in the process of gathering information and facts that support my claim, including the information specified in Discovery Request No. 19. Duquesne Light Company's (DLC's) answers to my interrogatories will help inform additional facts that support my claim.

25. Complainant's answer is deficient because she did not provide a full and complete response. Complainant stated that she was "in the process of gathering information and facts that support [her] claim" but never supplemented this response as required by 52 Pa. Code § 5.332. It is thus unclear if Complainant claims that Duquesne Light's smart meters have ever caused a fire. If Complainant has no additional information in response to this request, she must simply say so.

Discovery Request #20

26. Discovery Request #20 contains the following question and answer:

Question: Produce all Documents that relate to Your response to the preceding request.

Answer: See answer to Discovery Request No. 19.

27. This response is deficient for the same reasons set forth in paragraph 25. If Complainant has no additional documents to produce in response to this request, she must simply say so.

WHEREFORE, Duquesne Light Company respectfully requests that the Presiding ALJ grant its Second Motion to Compel Discovery Responses and require Complainant Miranda Edwards to provide complete answers to Discovery Requests #16, #18, #19, and #20.

Respectfully submitted,

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