



Emily M. Farah
Counsel, Regulatory

411 Seventh Avenue
Mail drop 15-7
Pittsburgh, PA 15219

Tel: 412-393-6431
efarah@duqlight.com

February 3, 2020

Via Electronic Filing

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

RE: Todd Koger v. Duquesne Light Company
Docket No. C-2019-3013238

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Response to Complainant's Motion to Strike / Motion in Limine and Request for Subpoena. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a large, faint, light blue watermark of the same signature.

Emily M. Farah
Counsel for Duquesne Light Company

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD KOGER,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2019-3013238

**RESPONSE TO COMPLAINANT'S
MOTION TO STRIKE AND
MOTION IN LIMINE AND
REQUEST FOR SUBPOENA**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
Emily M. Farah, Esquire
PA I.D. No. 322559
efarah@duqlight.com
(412) 393-6431
411 Seventh Avenue, 15th Fl.
Pittsburgh, PA 15219

NOTICE TO PLEAD

TO: COMPLAINANT TODD KOGER

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN
MOTION DUQUESNE LIGHT COMPANY WITHIN TWENTY (20) DAYS OF
SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.**

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|--------------------|
| TODD KOGER | : | |
| | : | |
| Complainant, | : | |
| | : | |
| vs. | : | No: C-2019-3013238 |
| | : | |
| DUQUESNE LIGHT COMPANY, | : | |
| | : | |
| Respondent. | : | |

**RESPONSE TO COMPLAINANT’S MOTION TO STRIKE AND MOTION IN LIMINE
AND REQUEST FOR SUBPOENA**

Pursuant to 52 Pa. Code § 5.103, Respondent Duquesne Light Company (“Duquesne Light”) files this Response to Complainant’s Motion to Strike and Motion in Limine and Request for Subpoena:

I. BACKGROUND

1. The Formal Complaint (“Complaint”) regarding electric service provided at 515 Kelly Avenue, Pittsburgh, PA 15221 (“Property”) filed by Complainant Todd E. Koger (“Complainant”) was electronically served on Duquesne Light on September 30, 2019.
2. Respondent filed a timely Answer to the Complaint on October 21, 2019.
3. On October 30, 2019, the Pennsylvania Public Utility Commission issued an Interim Order Setting a Resolution Conference on or before November 26, 2019.
4. On November 26, 2019, Duquesne Light Company served a Resolution Conference Report on the Complainant and the mediator assigned to the matter, requesting a formal hearing.

5. The Hearing Notice issued on December 4, 2019 set a date for the formal hearing to take place on January 9, 2019.

6. The Prehearing Order issued on December 9, 2019, requested the parties submit proposed exhibits one week before the scheduled hearing.

7. On December 30, 2019, Duquesne Light Company submitted twelve proposed exhibits, pre-marked as Exhibits A through L.

8. On January 9, 2020 an Initial Telephonic Hearing took place, wherein the Respondent requested to submit two late-filed exhibits, pre-marked as Exhibit M and N.

9. Exhibit M represents the letter dated July 2, 2018 mailed to the Property when the account holder enrolled with a third party electric generation supplier (“EGS”).

10. Exhibits N represents the letter dated December 19, 2019 mailed to the Property when the account holder dropped the EGS.

11. The January 9, 2020 concluded, but the hearing record remained open for a second hearing to be scheduled.

12. On January 13, 2019, Respondent provided by overnight mailing, copies of its proposed Exhibits M and N to the Presiding Officer and the Complainant.

13. On January 14, 2020, Complainant emailed the Presiding Officer a document titled “Motion to Strike/ Motion in Limine And Request for Subpoena,” (“Motion to Strike”) which was not filed with the Pennsylvania Public Utility Commission Secretary’s Bureau.

14. Complainant’s Motion to Strike was not endorsed with a Notice to Plead pursuant to 52 Pa. Code § 5.103, however, Respondent provides this Response out of an abundance of caution.

15. On January 16, 2020, a second Telephonic Hearing was scheduled for February 25, 2020.

16. The Complainant's Motion to Strike should be denied because the hearing record remains open and Complainant has an opportunity to cross examine Respondent's witness on Exhibits M and N at the second Telephonic Hearing scheduled for February 25, 2020.

17. Duquesne Light requests its late filed exhibits pre-marked as Exhibits M and N be admitted into evidence after the Complainant has had the opportunity to cross examine the Company witness at the hearing scheduled for February 25, 2020, and in support of its request, states as follows:

II. LAW AND ARGUMENT

A. The late-filed Exhibits M and N should be admitted into evidence because they are relevant to the allegation of "over-billing" in the Complaint.

14. Pursuant to 52 Pa. Code § 5.401, all relevant and material evidence may be admitted into evidence at hearing.

15. Contradictory statements appear in Complainant's Motion to Strike. On one hand, Complainant asserts that his Complaint is about "over-billing," and therefore, Exhibits M and N are relevant to the account holder's enrollment with an EGS. Motion to Strike ¶ 2. On the other hand, Complainant indicates that the Exhibits M and N are not relevant, alleging a "new account" was created for the Property in mid-August 2018, after Exhibits M and N were generated. Motion to Strike ¶ 4.

16. Exhibits M and N are relevant to Complainant's billing, being that the Exhibits pertain to the account holder's enrollment with a third-party electric generation supplier ("EGS").

17. Complainant's allegation that a new account was created for the service address in mid-August 2018 is incorrect. Further, such allegation was not raised in the Complaint.

18. Being that the Complainant's enrollment with an EGS is relevant as it pertains to the over-billing allegation, Exhibits M and N should be admitted into the record.

B. The late-filed Exhibits M and N should be admitted into evidence because their admission will not unduly prejudice the Complainant.

19. Pursuant to the Pennsylvania Code, all relevant and material evidence may be admitted except when its probative value is outweighed by a "danger of unfair prejudice, confusion of the issues, or considerations of undue delay or waste of time. Epsenship v. PECO Energy Co., Docket No. C-2013-2354841, 2014 WL 606376 at *6 (Feb. 11, 2014), citing 52 Pa. Code § 5.401.

20. In addition, a party that wishes to admit evidence into the record must present a sponsoring witness and, if properly marked for identification and moved for admission, can be admitted after the other party has had an opportunity to examine the sponsoring witness. Epsenship v. PECO at *6, citing 52 Pa.Code § 5.402.

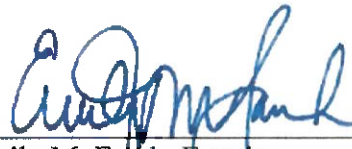
22. As stated above, Exhibits M and N were provided to the Complainant by overnight mailing on January 13, 2020.

23. Given that the Complainant was provided with Exhibits M and N more than one month prior to the hearing scheduled on February 25, 2020, and given that the Complainant will have the opportunity to examine the sponsoring witness at the hearing scheduled for February 25, 2020, the Complainant is not unduly prejudiced by the admission of Exhibits M and N.

WHEREFORE, Duquesne Light requests its late filed exhibits pre-marked as Exhibits M and N be admitted into evidence after the Complainant has had the opportunity to cross examine the Company witness at the hearing scheduled for February 25, 2020.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
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Pittsburgh, PA 15219
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(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| TODD KOGER, | : | |
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| Complainant, | : | |
| | : | |
| vs. | : | No: C-2019-3013238 |
| | : | |
| DUQUESNE LIGHT COMPANY, | : | |
| | : | |
| Respondent. | : | |


CERTIFICATE OF SERVICE

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

Todd Koger
515 Kelly Avenue
Pittsburgh, PA 15221

Administrative Law Judge Mark Hoyer
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated this 3rd day of February, 2020



Emily M. Farah
PA I.D. No. 322559
Counsel for Respondent,
Duquesne Light Company