

February 12, 2020

Via Regular Mail

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

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 *In Limine* to Preclude Joshua Hart From Testifying as an Expert Witness that was dated January 24, 2020 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
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Encl: Complainant's Answer to Respondent's Motion *In Limine* to Preclude Joshua Hart
From Testifying as an Expert Witness

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

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: As previously stated on October 19, 2019 in 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 ("Complainant's October 19 Answer"), the words "due to the misinterpretation of state law" are relevant and 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.

First, Mr. Hart is not qualified...In addition, Complainant repeatedly refused to produce information in discovery relating Mr. Hart's planned testimony, even though Duquesne Light first requested the information roughly 16 months ago and the Presiding ALJ ordered Complainant to produce it. Complainant's refusal to produce this information has deprived Duquesne Light of its fundamental right to review the evidence and testimony that will be presented against it at the hearing.

Answer: Respondent claims that Complainant has "deprived Duquesne Light of its fundamental right to review the evidence and testimony that will be presented against it" despite being provided with more than ample evidence and information at stopsmartmeters.org. The expert witness, Joshua Hart, is the Director of the advocacy group "Stop Smart Meters".

Respondent appears to be trying to mislead the ALJ into believing that the Complainant has been withholding information about Joshua Hart for "roughly 16 months." While the period between the issuance of Duquesne Light's First Set of Discovery Requests on September 24, 2018 and January 24, 2020 is indeed "roughly 16 months", Duquesne Light is well aware that on October 12, 2018 the Complainant disclosed in her Answers to Duquesne Light Company's First Set of Discovery Requests that she was in the process of procuring expert testimony and that "the subject matter on which the experts are expected to testify is smart meters and EHS". Joshua

Hart was only procured as a witness in August 2019 -- which is five months, not sixteen -- and Complainant has withheld no information about Joshua Hart.

In addition, Respondent is also mathematically challenged with its consistent and repeated practice of substituting an incorrect zip code of 15227 for the correct zip code of 15228 in Complainant's address, despite being asked by Complainant in writing on February 28, 2019 (roughly 12 months ago) to cease doing so. This results in unnecessary mail delivery delays to Complainant.

III. Argument

A. Mr. Hart should be precluded from testifying as an expert witness because he is not a physician or healthcare professional and does not have a reasonable pretension to specialized knowledge about alleged adverse health effects from smart meters.

Answer: Despite Duquesne Light's claims to the contrary, Joshua Hart is qualified to offer expert testimony about adverse health effects from smart meter installations because he has a reasonable pretension to specialized knowledge about adverse health effects from smart meter installations. It is not necessary that an expert witness be a physician or healthcare professional. In addition, Duquesne Light repeatedly fails to acknowledge in its filings that Joshua Hart's relevant experience in advocacy to stop smart meters is in itself the "relevant experience in medicine, public health, or a related field" that Duquesne Light claims that he lacks. Duquesne Light thereby denies that their mass installations of RF-emitting smart meters are not a public health issue, when in fact their actions greatly affect public health. Joshua Hart clearly possesses more expertise than is within the ordinary range of training, knowledge, intelligence, or experience. Jacobs v. Chatwani, 992 A.2d 950, 959 (Pa. Super. Ct. 2007). Joshua Hart qualifies as an expert witness because he has clearly demonstrated 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). Joshua Hart is an expert on the public health effects from smart meter installations, and has acquired the specialized knowledge; he does not need to be a physician or healthcare professional to meet the criteria of an expert witness for the purposes of this hearing.

In addition, as previously stated in Complainant's October 19 Answer, Joshua Hart 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.

B. Mr. Hart should be precluded from testifying as an expert witness because Complainant failed to provide Duquesne Light with the substance of the facts and opinions to which he is expected to testify, the grounds for each opinion, or a valid expert report or curriculum vitae for Mr. Hart.

Answer: Duquesne Light Company has been provided with more than ample substance of the facts and opinions, the grounds for each opinion, and information at stopsmartmeters.org and in the report provided by Complainant.

In contrast, Complainant has not been provided with any report or curriculum vitae for any of Duquesne Light's proposed expert witnesses, yet she is not wailing about being "deprived" of her "fundamental right to review the evidence and testimony that will be presented against" her at the hearing.

Respondent's October 30, 2019 Motion to Compel Discovery Responses wails that "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 reality, 52 Pa. Code § 5.324(a)(1)(ii) forbids nothing and simply provides that a party may require that the other party "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." This has been done. There is no requirement in 52 Pa. Code § 5.324(a)(1)(ii) to require the production of a curriculum vitae document, nor does it define "report" or require that the report be specific to the party's particular case. The nature of Joshua Hart's testimony has been fully disclosed to Duquesne Light and his testimony should not be precluded.

C. If Mr. Hart is permitted to testify as an expert witness in this matter, his testimony must be limited to the fair scope of his email to the California Council on Science and Technology dated

January 27, 2011.

Answer: Between Joshua Hart's 2011 report and the wealth of information on stopsmartmeters.org, Duquesne Light has had sufficient notice of the expert's theory and all information necessary for Duquesne Light to prepare a meaningful response to any expert testimony from Joshua Hart. Martin v. Johns- Manville Corp., 322 Pa. Super. 348, 469 A.2d 655 (1983) (“[W]e have found experts' reports to be adequate...when the report provides sufficient notice of the expert's theory to enable the opposing party to prepare a rebuttal witness.”). The nature of Joshua Hart's expert testimony has been fully disclosed.


IV. Conclusion

For the reasons set forth above, Complainant requests an order denying Respondent's Motion *In Limine* to Preclude Joshua Hart From Testifying as an Expert Witness.

Respectfully submitted,



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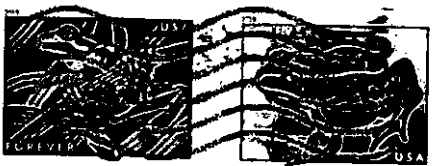
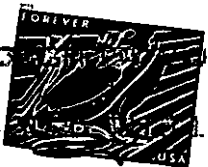
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