

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Todd Elliott Koger, Sr.
and Elliot-Todd Parker Koger**

v.

C-2024-3049627

Duquesne Light Company

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Duquesne Light Company

COMPLAINANTS' MOTION TO COMPEL PRODUCTION OF DISCOVERY

Todd Elliott Koger, Sr. and Elliott-Todd Parker Koger (hereinafter, "Complainants"), through undersigned counsel, respectfully move the Pennsylvania Public Utility Commission ("Commission") to compel Duquesne Light Company ("Duquesne Light" or "Respondent") to produce documents and information fully responsive to Complainants' First Set of Requests for Production of Documents and Things (Requests Nos. 3, 4, and 5) and First Set of Interrogatories (Question Nos. 2 and 10).

In support of this Motion, Complainants state as follows:

I. PROCEDURAL BACKGROUND

1. On July 1, 2024, Complainants served their First Set of Requests for Production of Documents and Things upon Duquesne Light. The requests at issue include:

◦ **Request No. 3: All field books, hard-copy service logs, work orders, inspection checklists, emergency audit reports, and handwritten notes generated by Duquesne Light employees or its contractors relating to the electrical condition at the Koger residence on October 11, 2023, or any subsequent inspection/repair.**

◦ **Request No. 4: All tangible materials (USB drives, CDs, DVDs, memory cards, flash drives, tapes, or binders) containing investigation reports, test data sheets, calibration records, or laboratory analyses performed on equipment or conductors at the Koger site.**

◦ **Request No. 5: All hard-copy correspondence, letters, internal memoranda, and interoffice mailings regarding the Koger family's "Total Loss" claim (including the November 7, 2023 claim submission and any follow-up) and any drafts or attachments thereof.**

2. On July 15, 2024, Complainants served their First Set of Interrogatories upon Duquesne Light. The interrogatories at issue include:

◦ **Interrogatory No. 2: Describe in detail the procedures, search parameters, keywords, custodians, and databases searched in formulating the statement in Megan Rulli's April 3, 2025 correspondence that "there's no documentation for the Koger family's damage claim".**

◦ **Interrogatory No. 10: Identify all other complaints, incidents, claims, or field reports logged by Duquesne Light from January 1, 2020, through present that involve meter base defects, neutral connection failures, or electrical arcs in your**

service territory, stating for each the customer name (or account number), date, and resolution.

3. On July 21, 2024, Duquesne Light served its Objections to these Requests for Production (Nos. 3-5) and Interrogatories (Nos. 2 and 10). Duquesne Light's objections are predicated on the grounds that the requests are vague, overly broad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Duquesne Light asserts that these requests improperly seek confidential settlement information and information protected by attorney-client privilege and the attorney work product doctrine.

II. LEGAL STANDARD FOR DISCOVERY IN PUC PROCEEDINGS

4. Discovery in Pennsylvania Public Utility Commission proceedings is governed by a liberal relevance standard, mirroring that applied in civil actions. Pursuant to 52 Pa. Code § 5.321 and Pennsylvania Rule of Civil Procedure 4003.1, a party may obtain discovery of "any matter not privileged which is relevant to the subject matter involved in the proceeding" and "reasonably calculated to lead to admissible evidence".

5. The Commission applies these standards broadly to ensure a "full and fair adjudication".

6. While the Commission's regulations protect certain privileged matters (52 Pa. Code §§ 5.321(c), 5.361(a)) and an attorney's mental impressions, legal theories, or trial preparation materials (52 Pa. Code § 5.323(a) and Pa.R.C.P. 4003.3), such work-product protection applies only to materials "prepared in anticipation of litigation," not to routine business records.

III. ARGUMENT IN SUPPORT OF COMPULSION

7. Complainants contend that Duquesne Light's objections are unfounded, as the requested materials are non-privileged, directly relevant to the core issues of this proceeding, and essential for a full and fair adjudication.

A. Relevance and Non-Privilege of Requests for Production Nos. 3, 4, and 5
Complainants allege gross negligence by Duquesne Light, stemming from an alleged failure to properly connect a neutral conductor and subsequent unauthorized post-incident alterations to the meter on private property. To establish gross negligence, Complainants must demonstrate:

- A duty existed (e.g., utility duty under 66 Pa.C.S. § 1501 to provide safe service).
- Duquesne Light breached that duty by failing to maintain the neutral connection and by altering the meter box post-incident.
- The breach grossly caused the total loss of electrical service and damage.
- Actual damages resulted (e.g., ruined appliances, destroyed wiring).

The requested documents in Requests 3, 4, and 5 directly support these elements:

- Field books, service logs, work orders, inspection checklists, emergency audit reports, and handwritten notes (Request 3) document inspections, repairs, and the pre- and post-repair condition of the service equipment.
- Test data, calibration records, and laboratory analyses (Request 4) reveal critical information regarding voltage tests, continuity checks, and the actual state of the neutral conductor before and after Duquesne Light's work.
- Correspondence, internal memoranda, and interoffice mailings regarding the "Total Loss" claim (Request 5) are likely to contain factual admissions, analyses by non-legal personnel, and discussions regarding the neutral defect and related damage.

8. Duquesne Light's assertion that these requests are vague, overly broad, or privileged is without merit.

9. These materials constitute routine business records, created in the ordinary course of operations and not in anticipation of litigation or at counsel's direction.

10. Therefore, they are not shielded by attorney-client privilege or the attorney work product doctrine under 52 Pa. Code § 5.323 or Pa.R.C.P. 4003.3.

11. The fact that these documents might later become part of a defense package does not render them privileged if they were created as part of normal operating procedures.

12. Furthermore, blanket claims of vagueness or overbreadth fail given the clear nexus between the requested documents and the specific allegations concerning the meter's condition, the neutral connection, and post-incident repairs.

B. Discoverability of Search Methodology (Interrogatory No. 2)

13. Duquesne Light's objection to Interrogatory No. 2, which seeks detailed information on the search parameters, keywords, custodians, and databases used to formulate Megan Rulli's statement of "no documentation," is improper.

14. This interrogatory seeks factual information regarding discovery processes, not legal advice, mental impressions, or legal theories protected under 52 Pa. Code § 5.323(a).

15. Factual descriptions of search procedures are discoverable under 52 Pa. Code § 5.321 and Pa.R.C.P. 4003.1.

16. Transparency in search methodology is crucial to ensure that all responsive, non-privileged documents have been identified.

C. Relevance of Pattern Evidence (Interrogatory No. 10)

17. Interrogatory No. 10 requests information regarding other complaints, incidents, claims, or field reports involving meter base defects, neutral connection failures, or electrical arcs from January 1, 2020, to the present.

18. While Duquesne Light objects on grounds of vagueness, overbreadth, undue burden, and confidentiality, this information is highly relevant. It bears directly on whether the Koger incident was an isolated event or indicative of a broader pattern of negligence or known hazards within Duquesne Light's service territory.

19. This information is crucial for assessing the Respondent's overall standard of care and the foreseeability of the alleged issues.

20. While acknowledging potential concerns regarding confidential customer information, Duquesne Light's objection to producing a summary of incidents (e.g., account identifiers and dates) is impermissible where the information is relevant and non-privileged. Duquesne Light can comply with 52 Pa. Code § 5.361(b) by tailoring or redacting sensitive data rather than issuing a blanket refusal.

21. The geographic and temporal scope, while spanning nearly five years across the service territory, is required for understanding systemic issues that could underpin a gross negligence claim.

D. Spoliation of Evidence

22. Duquesne Light's actions of allegedly "correcting" the meter and neutral connection on private property after the incident, without allowing the Complainants to inspect the original condition, raise concerns of spoliation of evidence.

23. Under Pennsylvania law, spoliation is defined as the destruction or significant alteration of evidence, or the failure to preserve property, for use in reasonably foreseeable litigation.

24. The PUC's duty to ensure a "full and fair adjudication" (66 Pa.C.S. § 331(d)) compels the production of all pre- and post-repair records to allow the fact-finder to assess the true condition of the service equipment and consider appropriate spoliation instructions or sanctions.

IV. REQUEST FOR PROTECTIVE ORDER

25. Should Duquesne Light contend that any compelled materials contain highly sensitive, proprietary, or confidential customer information not subject to redaction, Complainants are amenable to the entry of a narrowly tailored protective order under 52 Pa. Code §§ 5.365–5.372. This approach would balance Duquesne Light's legitimate concerns with Complainants' right to comprehensive discovery necessary for a just resolution.

V. PRAYER FOR RELIEF

WHEREFORE, Complainants Todd Elliott Koger, Sr. and Elliot-Todd Parker Koger respectfully request that the Commission enter an Order:

1. Compelling Duquesne Light Company to produce, within ten (10) days of the Commission's Order, all documents fully responsive to Complainants' First Set of Requests for Production of Documents and Things, Nos. 3, 4, and 5.
2. Compelling Duquesne Light Company to provide sworn answers, within ten (10) days of the Commission's Order, to Complainants' First Set of Interrogatories, Nos. 2 and 10.
3. Awarding Complainants any further relief the Commission deems just and proper.

Respectfully submitted,

/s/ Todd Elliott Koger, Sr.

/s/ Elliott-Todd Parker Koger

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Complainants' First Set of Requests for Production of Documents and Things

Pursuant to 52 Pa. Code § 5.321 and 231 Pa. Code § 4007.3, Complainants Todd Elliott Koger, Sr., and Elliott-Todd Parker Koger hereby request that Duquesne Light Company produce the following tangible things for inspection and copying within the time frame prescribed by the Administrative Law Judge's procedural schedule and the PUC's rules of practice. Please provide the records in electronic format (PDF) via email to kogerfriend@gmail.com. I welcome any clarifications you may need to process this request and would appreciate your response within the mandated time required by law.

1. Any and all physical devices, components, or assemblies removed from the Koger residence's service connection or meter base during or after the October 11, 2023 electrical event, including but not limited to meter sockets, neutral buss bars, grounding straps, and terminal lugs.
2. All original photographs, video recordings, slides, negatives, audio recordings, and physical copies of sketches or diagrams depicting the service equipment, meter base, neutral connection, and surrounding premises taken by Duquesne Light personnel, contractors, or agents from January 1, 2023, to the present.

3. All field books, hard-copy service logs, work orders, inspection checklists, emergency audit reports, and handwritten notes generated by Duquesne Light employees or its contractors relating to the electrical condition at the Koger residence on October 11, 2023, or any subsequent inspection/repair.
4. All tangible materials (USB drives, CDs, DVDs, memory cards, flash drives, tapes, or binders) containing investigation reports, test data sheets, calibration records, or laboratory analyses performed on equipment or conductors at the Koger site.
5. All hard-copy correspondence, letters, internal memoranda, and interoffice mailings regarding the Koger family's "Total Loss" claim (including the November 7, 2023 claim submission and any follow-up) and any drafts or attachments thereof.
6. Any physical copies of CLEAResult Smart Comfort visit refusal notices or related documentation indicating grounds for declining inspection of the Koger residence.
7. All tangible promotional or training materials, bulletins, or manuals that describe Duquesne Light's procedures for preserving evidence or handling property damage claims under Section 1501 of Title 66.

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Complainants' First Set of Interrogatories

Pursuant to 52 Pa. Code § 5.321 and 231 Pa. Code § 4007.3, Complainants Todd Elliott Koger, Sr., and Elliott-Todd Parker Koger hereby request that Duquesne Light Company provide sworn answers to the following interrogatories within the time frame prescribed by the Administrative Law Judge's procedural schedule and the PUC's rules of practice.

Please provide the records in electronic format (PDF) via email to kogerfriend@gmail.com. I welcome any clarifications you may need to process this request and would appreciate your response within the mandated time required by law.

1. State the date, time, and method by which Duquesne Light first received notice—oral or written—of the October 11, 2023 incident at the Koger residence, and identify the individual(s) who logged or recorded that notice.

2. Describe in detail the procedures, search parameters, keywords, custodians, and databases searched in formulating the statement in Megan Rulli's April 3, 2025 correspondence that "there's no documentation for the Koger family's damage claim."

3. Identify every Duquesne Light employee, supervisor, contractor, or agent who inspected, tested, or otherwise examined the Koger service equipment on October 11, 2023, including each person's title, employer, role in the inspection, and any written reports they authored.

4. Detail all physical adjustments, repairs, tightening, or alterations performed on the meter base, neutral connection, or other service components at the Koger residence from October 11, 2023, through the date of your responses, specifying who performed each action, the date, and the reason for the work.

5. Explain the testing protocols, equipment used, calibration schedules, and criteria for passing/failing that Duquesne Light applied when evaluating the meter base, neutral conductor, or grounding system at the Koger property.

6. Identify all communications (including dates, participants, and mediums) between Duquesne Light and CLEAResult concerning the Koger residence, and describe the reasons CLEAResult cited for refusing to perform a Smart Comfort inspection.

7. Provide a narrative of Duquesne Light's policies and procedures for preserving evidence and maintaining original condition of utility property when a customer submits a claim for property damage under Section 1501.

8. Describe all internal risk assessments, hazard analyses, or management approvals (by name and date) concerning the decision not to immediately remediate the “ongoing electrical arc” or “no neutral connection” condition discovered on October 11, 2023.

9. List every payment, credit, hardship grant, or settlement offer extended by Duquesne Light to the Koger family in connection with the October 11, 2023 event, including the date, amount, and form of each transaction.

10. Identify all other complaints, incidents, claims, or field reports logged by Duquesne Light from January 1, 2020, through present that involve meter base defects, neutral connection failures, or electrical arcs in your service territory, stating for each the customer name (or account number), date, and resolution.

I certify the truthfulness of all of the information identified in the Brief and stand ready to provide further sworn testimony and documentation as required. I submit this statement under penalties of 18 Pa. C.S. § 4904, attesting that all facts provided herein are true and correct to the best of our knowledge, information, and belief, and that we are prepared to prove these facts at hearing. _____ DATED: _____

/s/ Todd Elliott Koger, Sr.

/s/ Elliott-Todd Parker Koger

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