

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

v.

C-2024-3049627

Duquesne Light Company

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

v.

C-2025-3054190

Duquesne Light Company

Complainants' Motion for Adverse Inference, Interim Relief, and Referral

Complainants, Todd Elliott Koger, Sr. and Elliott-Todd Parker Koger, hereby respectfully move the Pennsylvania Public Utility Commission ("Commission") for relief, including adverse inference instructions, interim relief, and referral to the Bureau of Investigation & Enforcement ("I&E"), due to Duquesne Light Company's ("Duquesne Light" or "Respondent") knowing withholding and refusal to produce relevant tangible evidence in the ongoing discovery process. Duquesne Light has **knowingly withheld crucial "Trouble Shooting Inspections" information from July 29 and August 14, 2024**, which directly bears on the case.

I. Procedural Background

1. Complainants initiated this proceeding by filing formal complaints against Duquesne Light, asserting, inter alia, violations of Duquesne Light's statutory duty to provide safe, adequate, and reasonable service under Section 1501 of the Pennsylvania Public Utility Code. Specifically, the complaints concern an

electrical event at the Koger residence on October 11, 2023, which Complainants allege resulted from an "ongoing electrical arc" and/or "no neutral connection" identified by Duquesne Light's own supervisor on that date. Complainants contend that this hazardous condition caused a "Total Loss" of electrical wiring and appliances in their home.

2. To ascertain the full scope of the incident and Duquesne Light's subsequent actions, Complainants served their First Set of Requests for Production of Documents and Things (Requests Nos. 3-5) and First Set of Interrogatories (Questions Nos. 2 and 10) on Duquesne Light.
3. These requests sought, among other things, all field books, service logs, work orders, inspection checklists, emergency audit reports, handwritten notes related to the electrical condition at the Koger residence on or after October 11, 2023; tangible materials containing investigation reports, test data, and analyses performed at the Koger site; hard-copy correspondence regarding the Koger family's "Total Loss" claim; detailed descriptions of search procedures for the statement that "there's no documentation for the Koger family's damage claim"; and identification of other complaints involving meter base defects, neutral connection failures, or electrical arcs from January 1, 2020, to present.
4. Duquesne Light served objections to Requests Nos. 3 through 5 of the production requests and Questions Nos. 2 and 10 of the interrogatories on July 21, 2025.
5. The Company asserted that these requests were vague, overly broad, unduly burdensome, irrelevant, not reasonably calculated to lead to admissible

evidence, and improperly sought confidential settlement information or attorney-client privileged/work product protected information.

6. Complainants subsequently filed a Motion to Compel on July 28, 2025 (as noted by Duquesne Light) or August 5, 2025 (as stated in the Complainants' motion), clarifying that they were not seeking privileged information.
7. Duquesne Light thereafter provided some documentation, including a service ticket, trouble ticket, and trouble shooter's time entry notes for the October 11, 2023, service visit, and voltage monitor reports from April 9-17, 2025. Duquesne Light also provided digital records related to the damage claim processed on April 3, 2025.
8. However, Duquesne Light has **knowingly withheld crucial "Trouble Shooting Inspections" information from July 29 and August 14, 2024**, which directly bears on the case.

II. Knowing Failure to Produce Evidence

9. Duquesne Light's responses to discovery requests have been incomplete, specifically lacking alleged "Trouble Shooting Inspections" from July 29 and August 14, 2024, as asserted by Complainants.
10. While Duquesne Light provided a service ticket for October 11, 2023, and voltage monitor reports from April 9-17, 2025, it has not produced all records pertaining to "any subsequent inspection/repair" as requested in Request No. 3. Duquesne Light's Claims Specialist, Carolyn Cingel, acknowledged in internal email correspondence on April 3, 2025, that an online claim "was not received by the claims department. Not sure why.", despite Complainants' assertions of

continuous engagement and prior detailed written accounts of the claim to Duquesne Light's attorneys in November 2023 and June/August 2024.

11. This alleged pattern of denying receipt of documentation, followed by incomplete production, strongly suggests a knowing withholding of evidence.

III. Requested Relief and Legal Foundation

12. The knowing withholding of relevant tangible evidence by Duquesne Light warrants a range of remedial actions from the Commission, as authorized by its rules and established precedents.

A. Adverse Inference Instruction

13. Complainants respectfully request that the Administrative Law Judge issue an **adverse inference instruction** to the Commission and the ultimate decision-maker.

14. This instruction would permit the Commission to **presume that the unproduced "Trouble Shooting Inspections" from July 29 and August 14, 2024, and any other unproduced relevant documents, would have supported Complainants' case.**

15. This remedy is critical to bridge the evidentiary gaps created by Duquesne Light's non-production. Under 52 Pa. Code § 5.363, the lack of produced evidence may be treated as an admission against interest.

16. Furthermore, 66 Pa.C.S. § 331 grants the Commission inherent authority to address discovery abuses.

17. The principle of spoliation supports this inference, which is defined as the destruction or significant alteration of evidence, or the failure to preserve property for use in reasonably foreseeable litigation.
18. Complainants have already highlighted Duquesne Light's actions on October 11, 2023, where a troubleshooter "tightened the connection" in the meter base, which Complainants allege "removed any and all evidence of the Koger family claims in clear violation of Section 1501 of the Pennsylvania Public" Code.
19. Such physical manipulation of electrical infrastructure, particularly following an incident giving rise to a legal claim, is foreseeable as impacting the evidentiary landscape.
20. The PUC's duty to ensure "full and fair adjudication" necessitates remedies for spoliation and non-production.

B. Petition for Interim Relief

21. Given the immediate and critical nature of the missing evidence to the upcoming hearing and overall procedural timeline, Complainants simultaneously submit this as a **Petition for Interim Relief** pursuant to 52 Pa. Code § 5.44(b).
22. The criteria for interim emergency relief are demonstrably met:
 - **Knowing Failure to Produce:** As outlined above, Duquesne Light's history of denying receipt of the claim despite documented communications and its incomplete responses to discovery, particularly concerning other "trouble shooting inspections," demonstrate a deliberate pattern of non-compliance. Duquesne Light acknowledged receiving the claim in an April 17, 2025 letter,

after asserting no documentation existed on April 3, 2025. This inconsistency supports an inference of knowing non-production.

- **Immediate Prejudice to the Case:** The absence of comprehensive "trouble shooting inspections" from July 29 and August 14, 2024, and other requested documents, severely hampers Complainants' ability to fully develop and present their case regarding Duquesne Light's gross negligence, its breach of duty under 66 Pa.C.S. § 1501, and the resulting "Total loss" damages. The requested materials are foundational to proving gross negligence, including the pre- and post-repair condition of the service equipment, test data, and internal discussions about the claim.

- **Irreparable Harm Absent Expedited Relief:** Without the expedited production of this evidence, Complainants face irreparable harm to their ability to receive a fair and complete adjudication of their claims, potentially leading to an unjust outcome.

C. Referral to the Commission's Bureau of Investigation & Enforcement (I&E)

23. The alleged knowing withholding of crucial evidence rises to the level of an **obstruction of regulatory process** and warrants formal enforcement action.

Complainants respectfully request that the Commission **refer Duquesne Light to its Bureau of Investigation & Enforcement (I&E) for a formal enforcement action** under 66 Pa.C.S. § 502.

- **Monetary fines up to \$1,000 per day per violation.**

- **Separate orders compelling production.**

- **Additional sanctions** as the Commission deems appropriate.

24. Duquesne Light has a statutory duty under Section 1501 of the Pennsylvania Public Utility Code to provide "safe, adequate, and reasonable service".

25. The deliberate withholding of relevant documentation, compounded by actions that may have altered or obscured evidence, constitutes a breach of this fundamental obligation and undermines the integrity of the Commission's adjudicatory process.

IV. Conclusion

For the foregoing reasons, Complainants respectfully request that the Commission:

1. **Grant an adverse inference instruction** against Duquesne Light regarding the unproduced "Trouble Shooting Inspections" from July 29 and August 14, 2024, and other withheld relevant documents.
2. **Grant this Petition for Interim Relief** and immediately compel Duquesne Light to produce all remaining responsive documents and information related to the aforementioned "Trouble Shooting Inspections" and other outstanding discovery requests.
3. **Refer Duquesne Light Company to the Bureau of Investigation & Enforcement (I&E)** for formal enforcement action under 66 Pa.C.S. § 502, including consideration of monetary fines and other appropriate sanctions.
4. **Award Complainants any further relief** the Commission deems just and proper to ensure a full and fair adjudication of this matter.

/s/ Todd Elliott Koger, Sr.
/s/ Elliott-Todd Parker Koger
(412) 758-4510
kogerfriend@gmail.com



Non-Credit Related
Duguesne Light Company
Shut-off Notice

Form 1000-00001 Rev. Jul. 18
DLC ID 6790

Date 8/14/24 Meter or Tracker 2922
Name TODD R ROGER
Address 515 ICE LLY AVE
RITZBURGH PA

Shut Off Notice
AVISO DE SUSPENSION DE SERVICIO

Your electric service (meter and/or meter base) removed due to:

- Unsafe Condition Damaged Equipment

All dues from tables. We may act on this notice within 60 days.

We will not remove your electric service or will restore your service if you take the actions checked below within the next 30 days.

- Obtain a Wiring Approval from a qualified inspection agency.
 Make structural repairs as noted.

7/26
REPORTED
JULY 26/24
TRANSFER
+ HOOTER
EMPLOYEES
DATE OF
1ST NOTICE
AS PER DIANE WOOD
7/29/24

Other: needs works Done by electrician per
DLK Rep Brandon S/

If your electric service is turned off, you may also be required to pay a reconnection fee to restore service.

DIANE M. WOOD SUP

Important: To avoid service shut-off or to restore service, please notify Duguesne Light at 1-888-393-7100 after satisfying the above checked condition(s).

AUGUST 14, 2024
WHAT NEEDS REPAIRED?
TODD, SR.
Whoever qualified electrician needs
for you to obtain a wiring approval

EXPLAINED
1ST NOTICE
EXPLAINED
DLC IS
REQUIRED TO HAVE
RESPONSIBILITY
FORM #D23-00001 REV. JUL 18
DLC ID 6790
ID 2922



Non-Credit Related
Duquesne Light Company
Shut-off Notice

Model - Standard Single Phase
6:00 a.m. to 5:00 p.m.

07/29/24
Kiser Sr Todd
515 Kelly Ave
Pgh PA

T/SR or TRUCK _____

Shut-Off Notice

AVISO DE SUSPENSION DE SERVICIO

Your electric service has been removed due to:

- Unsafe Condition Damaged Equipment

10 days from today. We may act on this notice within 60 days.

We will not remove your electric service or will restore your service if you take the actions checked below within the next 10 days:

- Obtain a Wiring Approval from a qualified inspection agency.
 Make structural repairs as noted:

Other
Per Field Activity "Troubleshooter found 0 voltage at socket,
customer owned secondary issue"

Per Work Order DLC New Business 412 593 4545

Your electric service is turned off, you may also be required to pay a reconnection fee to restore service.

Important: To avoid service shut-off or to restore service, please notify Duquesne Light at 1-888-393-7100 after satisfying the above checked condition(s).