

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

PROPOSED ORDER – FOR ADVERSE INFERENCE, INTERIM RELIEF, REFERRAL

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Adverse Inference Instruction Granted.

◦ The Administrative Law Judge shall **issue an adverse inference instruction** to the Commission and the ultimate decision-maker. This instruction shall permit the Commission to **presume that the unproduced "Trouble Shooting Inspections"** from July 29 and August 14, 2024, and any other relevant documents knowingly withheld by Duquesne Light Company ("Duquesne Light"), **would have supported Complainants' case.**

◦ This remedy is critical to bridge the evidentiary gaps created by Duquesne Light's non-production. The lack of produced evidence may be treated as an admission against interest under 52 Pa. Code § 5.363. Furthermore, the Commission possesses inherent authority to address discovery abuses pursuant to 66 Pa.C.S. § 331.

◦ This inference is supported by the principle of spoliation, defined as the destruction or significant alteration of evidence, or the failure to preserve property for use in reasonably foreseeable litigation. Complainants have alleged that Duquesne Light's actions on October 11, 2023, specifically the troubleshooter's "tighten[ing] the connection" in the meter base, **removed evidence pertinent to the Koger family claims**, thereby violating Section 1501 of the Pennsylvania Public Utility Code. Such physical manipulation of electrical infrastructure, particularly following an incident giving rise to a legal claim, is foreseeable as impacting the evidentiary landscape. The Pennsylvania Public Utility Commission's (PUC) duty to ensure "full and fair adjudication" necessitates remedies for spoliation and non-production.

2. Petition for Interim Relief Granted; Expedited Production Compelled.

◦ Duquesne Light is hereby **immediately compelled to produce all remaining responsive documents and information related to the "Trouble Shooting Inspections"** from July 29 and August 14, 2024, and all other outstanding discovery requests previously identified by Complainants.

◦ The criteria for interim emergency relief under 52 Pa. Code § 5.44(b) are demonstrably met:

▪ **Knowing Failure to Produce:** Duquesne Light's history of denying receipt of the claim despite documented communications and its incomplete responses to discovery, especially concerning other "trouble shooting inspections," demonstrate a deliberate pattern of non-compliance. The inconsistency in acknowledging receipt of the claim—asserting no documentation existed on April 3, 2025, yet acknowledging receipt in an April 17, 2025 letter—further 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. These requested materials are foundational to proving gross negligence, encompassing 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.

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

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

Duquesne Light Company is hereby **referred to the Bureau of Investigation & Enforcement (I&E)** for a formal enforcement action under 66 Pa.C.S. § 502.

◦ Such enforcement action may include, but is not limited to:

- The imposition of **monetary fines up to \$1,000 per day per violation.**
- Issuance of **separate orders compelling production** of evidence.
- Consideration of **additional sanctions** as the Commission deems appropriate.

4. Further Relief.

◦ Complainants are awarded any further relief the Commission deems just and proper to ensure a full and fair adjudication of this matter.

◦ Duquesne Light has a statutory duty under Section 1501 of the Pennsylvania Public Utility Code to provide "safe, adequate, and reasonable service". The deliberate withholding of relevant documentation, compounded by actions that have altered or obscured evidence, constitutes a breach of this fundamental obligation and **undermines the integrity of the Commission's adjudicatory process.**

BY THE COMMISSION,

Administrative Law Judge/Commissioner Name

Date: