

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

**REPLY TO DUQUESNE LIGHT COMPANY'S ANSWER TO MOTION FOR
ADVERSE INFERENCE, INTERIM RELIEF, AND REFERRAL**

Complainants, Todd Elliott Koger, Sr. and Elliott-Todd Parker Koger, submit this Reply to Duquesne Light Company's ("Duquesne Light" or "Company") Answer to the Complainants' Motion for Adverse Inference, Interim Relief, and Referral ("Motion for Sanctions"), demonstrating that Duquesne Light's assertions are unfounded and lack merit.

The Company's arguments attempt to diminish the severity of its actions, which the Complainants contend constitute a knowing withholding of crucial evidence and an obstruction of the regulatory process.

1. The Company's Claim of Unclear Discovery Requests is Unfounded
Duquesne Light contends that Complainants "failed to clearly request records related to the alleged July 29 and August 14, 2024, service visits in their original request for production", asserting that Request for Production No. 3 (RPD No. 3) was reasonably interpreted to cover only the October 11, 2023, visit and subsequent visits investigating those same issues. **This assertion is unfounded for several reasons:**

- **Breadth of Original Request:** RPD No. 3 specifically sought "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". The phrase "any subsequent inspection/repair" is intentionally broad to encompass all relevant post-incident activity concerning the electrical condition at the residence.

- **Specific Identification in Motion:** While the initial RPD No. 3 used comprehensive language rather than specific dates, the Complainants' Motion for Sanctions explicitly identified the "Trouble Shooting Inspections" from July 29 and August 14, 2024, as the crucial, withheld information directly bearing on the case. This clarification within the Motion itself—to which Duquesne Light is responding—demonstrates the specific nature of the missing documents from the broader "subsequent inspection/repair" category.

- **Company's Acknowledgment:** Duquesne Light's Answer implicitly acknowledges its awareness of these specific dates by stating it is "investigating and compiling any responsive records related to the July 29 and August 14, 2024, shut off notices attached to the Complainants' Motion for Sanctions". This confirms the Company was indeed on notice of the specific dates and documents in question from the Complainants' filing, undermining its argument of a lack of clarity in the original RPD. The Company's claim that these visits "may not be directly relevant" is a substantive defense to be proven, not a justification for initial non-production.

2. The Company's Claim of No Attempt at Informal Resolution is Unfounded – Duquesne Light asserts that Complainants "made no attempt to informally resolve their discovery dispute before seeking the extreme remedy of sanctions". **This contention is unfounded given the procedural history:**

- **Prior Motion to Compel:** Complainants previously filed a Motion to Compel on July 28, 2025 (or August 5, 2025), which Duquesne Light

acknowledges is still pending and "includes the discovery request at issue in the instant Motion for Sanctions". The filing of a Motion to Compel is inherently a formal attempt to resolve a dispute after informal efforts have failed or are deemed futile.

- **Company's Prior Objections:** Duquesne Light itself 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. The existence of these formal objections signals an active and disputed discovery process, negating the suggestion that Complainants bypassed an informal resolution phase.

- **Alleged Pattern of Non-Compliance:** Complainants' Motion highlights an "alleged pattern of denying receipt of documentation, followed by incomplete production". Specifically, Duquesne Light acknowledged receiving the claim in an April 17, 2025, letter, after asserting no documentation existed on April 3, 2025. This inconsistency suggests a deliberate and knowing withholding of evidence, rendering further informal discussions unlikely to yield results. The Complainants specifically describe Duquesne Light's conduct as a "knowing withholding and refusal to produce relevant tangible evidence", which necessitates formal intervention.

3. The Company's Claim of No Demonstrated Prejudice is Unfounded
Duquesne Light argues that Complainants "failed to demonstrate that they have been prejudiced in any way by the Company's initial response to the discovery request at issue" and that a supplemental response can cure any perceived defect. **This argument is unsupported by the record:**

- **Severe Hampering of Case Development:** Complainants explicitly stated that 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

materials are described as "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:** Complainants assert that without expedited production, they face "irreparable harm to their ability to receive a fair and complete adjudication of their claims, potentially leading to an unjust outcome". This constitutes a clear and direct demonstration of prejudice. The requested adverse inference is deemed "critical to bridge the evidentiary gaps created by Duquesne Light's non-production".

- **Spoliation of Evidence:** Beyond discovery non-compliance, Complainants allege that Duquesne Light's actions on October 11, 2023, where a troubleshooter "tightened the connection" in the meter base, "removed any and all evidence of the Koger family claims in clear violation of Section 1501 of the Pennsylvania Public" Code. Such physical manipulation, particularly after an incident giving rise to a legal claim, "is foreseeable as impacting the evidentiary landscape". This spoliation constitutes a profound and irretrievable form of prejudice that cannot be cured by later discovery, regardless of the deadline.

- **Untimeliness of Production:** Duquesne Light's offer to supplement its response by August 15, 2025, made after the Motion for Sanctions was filed, does not retroactively absolve the Company of its alleged "knowing withholding" and "refusal to produce relevant tangible evidence" that necessitated the Motion. ***The prejudice lies in the initial, deliberate non-production that has already required Complainants to seek intervention.***

Conclusion

4. Duquesne Light's arguments in response to the Motion for Sanctions are unfounded. The Complainants clearly requested information pertinent to "subsequent inspection/repair," explicitly identified the missing "Trouble Shooting Inspections" from July 29 and August 14, 2024, within their

Motion, and had previously engaged in formal discovery dispute mechanisms. Furthermore, the prejudice suffered by Complainants is substantial and ongoing, directly impacting their ability to prove gross negligence and ensure a fair adjudication, compounded by allegations of spoliation of evidence.

5. For the foregoing reasons, **Duquesne Light Company's arguments should be disregarded**, and the Complainants' Motion for Adverse Inference, Interim Relief, and Referral should be granted in its entirety to ensure the integrity of the Commission's adjudicatory process and compel the Company to fulfill its statutory duty to provide safe, adequate, and reasonable service.

/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 Number: 00001
Revision: 07/18

Date: 8/14/24
Name: TODDER ROGER
Address: 515 ICE LLY AVE
RITZBURGH VA

Truck or Trailer: 2922

Shut Off Notice
AVISO DE SUSPENSIÓN DE SERVICIO

Your electric service (meter and/or lines) 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
HOOPER
EMPLOYEE
DATE OF
1ST NOTICE
AS PER DIANE WOOD
7/29/24

Other: needs works Done by electrician per
DLK Rep

Dianna 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 #023-00001 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 may be (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 412 393 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).

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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: