

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

**SECOND MOTION TO OVERRULE DUQUESNE LIGHT
OBJECTIONS TO REQUESTS FOR DEEMED ADMISSIONS**

Complainants, Todd Elliott Koger, Sr. and Elliott-Todd Parker Koger, by and through their undersigned, hereby respectfully move a “second time” for the Pennsylvania Public Utility Commission (“Commission”) for an Order **overruling Duquesne Light Company's ("Duquesne Light" or "Company") Objections to Complainants' First Set of Requests for Admission and deeming the subject matters admitted** pursuant to 52 Pa. Code § 5.350.

I. Introduction

1. Duquesne Light Company's (Duquesne Light) admitted actions of performing repairs on customer-owned electrical infrastructure constitute a significant legal breach, leading to the **destruction of evidence and spoliation**, thereby necessitating an adverse inference against the utility.
2. This argument is grounded in a robust framework of Pennsylvania statutes, Public Utility Commission (PUC) regulations, and controlling case law, which establish strict divisions of responsibility and severe

consequences for unauthorized utility interventions on private property.

3. Duquesne Light's objections are demonstrably unfounded, procedurally deficient, and represent a knowing attempt to evade crucial discovery, thereby necessitating the Commission's intervention to ensure the integrity of the adjudicatory process.

II. Statutory and Regulatory Framework: Strict Division of Responsibility – Pennsylvania law clearly delineates the responsibilities for maintaining utility service equipment:

4. **Utility's Duty:** Public utilities, including Duquesne Light, are mandated by **66 Pa.C.S. § 1501** to furnish safe, adequate, and reasonable service and facilities, adhere to necessary repairs, and conform to Commission standards.
5. **Customer's Responsibility:** **66 Pa.C.S. § 1510** specifies that the property owner is responsible for the service line segment from the curb stop to the meter, "unless otherwise agreed to by the parties consistent with commission regulations". Critically, a public utility is generally **not authorized or required to acquire or assume ownership of any customer's service line.**
6. **Meter Box Ownership:** PUC regulations, such as **52 Pa. Code § 59.18**, further detail that while the utility maintains the service line from the main to the curb, **the customer must maintain from the curb to the meter.** Utility tariffs from major providers like Duquesne Light clarify that **the customer owns and is responsible for the meter socket/meter box, service entrance cable, and all downstream wiring.** The utility owns and maintains only the meter itself.

7. **Prohibition on Utility Repairs:** A cornerstone of this regulatory scheme is the **categorical prohibition against utility companies repairing the "customer-owned" portion of the service apparatus, including the meter box, even with explicit permission from the property owner.**
8. Utility tariffs explicitly stipulate that repairs to customer-owned equipment must be performed by the customer or a licensed electrician at their expense, not by the utility.
9. This strict division is enforced due to statutory mandates, public safety concerns, and local electrical codes that require licensed electricians for repairs to parts attached to the building structure.

III. Duquesne Light's Admissions of Unauthorized Repair

10. Duquesne Light has made several key admissions and statements in its own records that indicate a direct violation of these regulations:
11. **Admission of Action:** Duquesne Light **admitted** that on October 11, 2023, its Senior Operator, Darryl Honick, removed the meter cover and **physically tightened the customer-side neutral connection in the meter base** at the Koger residence. Darryl Honick was acting within the course and scope of his employment.
12. **Internal Documentation:** Duquesne Light's own troubleshooting report from October 11, 2023, logged the issue as "customer neutral loose" and stated it was "tighten[ed] up".
13. An internal claims report also noted Darryl Honick stating he "Checked meter, found neutral in meter base loose. 'Told customer, can get electrician' or he can tighten it up and see what happens. **Did favor and tightened neutral**".

14. **Contradictory Claims of Vagueness:** Duquesne Light initially objected to Requests for Admission (RFAs) concerning these actions, claiming vagueness regarding phrases like "all connections" and "on the load side of the meter within it".
15. However, the Complainants' RFAs explicitly defined "Customer-Side Equipment" to include "all conductors and connections on the load side of the meter, including the meter base, neutral buss bars, grounding straps, and terminal lugs, which are the customer's property and maintenance obligation," thus eliminating any legitimate claim of ambiguity.
16. Duquesne Light's own records demonstrate its understanding and operational engagement with these "customer-side" components.

IV. Legal Ramifications: Spoliation of Evidence and Adverse Inference

17. The significant legal ramifications arise because Duquesne Light's admitted actions constitute **spoliation of evidence**.
18. **Spoliation Defined:** Spoliation is the **destruction or significant alteration of evidence, or the failure to preserve property for use in reasonably foreseeable litigation**.
19. It extends beyond physical removal to include any alteration that deprives another party of the ability to inspect, document, or litigate the original condition.
20. **Unauthorized Repair as Spoliation:** When a utility alters, repairs, or replaces a customer-owned meter box, especially following an incident giving rise to a dispute, it **eliminates critical physical evidence regarding the pre-repair condition and any causal defect**.

21. The Complainants consistently assert that Duquesne Light's action of tightening the connection "removed any and all evidence of the Koger family claims".
22. **Foreseeability:** Such physical manipulation of electrical infrastructure, particularly after an incident leading to a legal claim, **is foreseeable as impacting the evidentiary landscape.**
23. **Elements of Spoliation:** Under Pennsylvania law (e.g., *Donofrio v. IKEA*), spoliation requires:
 24. **Control over evidence** by the alleged spoliator (the utility).
 25. **Actual suppression or alteration of the evidence.**
 26. **Relevance of the evidence** to a foreseeable dispute.
 27. **Foreseeability that the evidence would be subject to litigation or inspection.**

V. The Required Legal Inference: Adverse Inference

28. When a utility's own reporting admits to a repair on customer-owned equipment, or if contemporaneous documentation of the pre-repair condition is missing, **the required legal inference is an adverse inference.**
29. **Presumption of Unfavorability:** This adverse inference permits the Commission to **presume that the altered or missing evidence would have been unfavorable to the utility company's position in any subsequent claim or regulatory dispute.**
30. The Complainants specifically request an adverse inference instruction regarding the unproduced "Trouble Shooting Inspections"

from July 29 and August 14, 2024, and any other withheld relevant documents.

31. **Burden Shift:** The act of spoliation shifts the burden of proof. The utility must then demonstrate with credible evidence that its repair did not destroy relevant evidence and/or that alternative evidence is available to permit a fair determination on the merits.
32. This is especially significant given that **66 Pa.C.S. § 315** places the burden on the utility to prove its service and facilities are "adequate, efficient, safe, and reasonable"—a burden made heavier when evidence is altered.

VI. Supporting Case Law:

33. ***Donofrio v. IKEA U.S. Retail, LLC*** (E.D. Pa. May 6, 2024): This case established that if a party destroys or materially alters physical evidence critical to disputed facts, the court may instruct the jury that the lost or altered evidence would have been unfavorable to the destroying party.
34. **This "adverse inference" is not contingent upon proof of bad faith; deliberate or negligent destruction suffices as long as relevance was foreseeable.**
35. ***Marshall v. Brown's IA, LLC*** (Pa. Super. 2019): Reaffirms that where a party undertakes material alteration or repair after anticipating litigation, the opposing party is entitled to an adverse inference instruction, and sanctions may be imposed even if actual bad faith is unclear, so long as the destruction is prejudicial.
36. **PUC Precedent:** Recent Pennsylvania PUC cases confirm that **the unauthorized repair and subsequent destruction or alteration of a meter box by a utility on private, customer-owned property may warrant a presumption or direct finding against the utility's**

interest on disputed factual issues, including condition, defect, or cause of incident.

VI. Liability "Even if There Was Implied Consent to Repair"

37. Crucially, the PUC and Pennsylvania law hold the utility company liable for spoliation and regulatory violations even if there was an implied consent to repair the customer's private property (customer-owned section of the service meter box attached to the house).

38. **Strict Prohibition:** The prohibition against utility companies repairing customer-owned equipment is **categorical and non-waivable**, unless through formalized, Commission-approved "otherwise agreed" procedures, which nearly always involve a transfer of ownership and documentation.

39. These repairs are **unlawful by statutory definition** unless pursuant to written agreements approved by the Commission under 66 Pa.C.S. § 1510 and relevant regulations.

VII. Exceeding Authority: The critical issue is not the customer's "favor" or implied consent, but that the utility employee exceeded their authority and acted in violation of clear statutory, regulatory, and tariff provisions.

40. The utility's tariffs stipulate that they *will not perform repairs* on these elements, and field personnel are instructed to tell owners to contact a licensed electrician, **even if the customer requests or consents to utility intervention.**

41. **Intentional Act Leading to Evidence Destruction:** The act of "tightening the neutral" by Darryl Honick, even if framed as a "favor," was an **intentional act of physical manipulation of**

customer-owned electrical infrastructure performed by a Duquesne Light employee acting in the course and scope of his employment.

42. This act **necessarily results in the destruction or alteration of any and all physical evidence** relevant to the original "loose customer-side neutral connection".

43. The legal consequence (spoliation and adverse inference) stems from this fundamental act of altering evidence relevant to a foreseeable dispute, rather than from the presence or absence of customer consent.

VIII. Commission's Authority and Requested Remedies

44. The PUC's duty to ensure "full and fair adjudication" necessitates robust remedies for spoliation and non-production.

45. **Inherent Authority:** The Commission possesses inherent authority to address discovery abuses under **66 Pa.C.S. § 331**.

46. **Requested Relief:** The Complainants respectfully request that the Commission:

47. **Grant an adverse inference instruction** against Duquesne Light regarding the unproduced "Trouble Shooting Inspections" from July 29 and August 14, 2024, and any other withheld relevant documents.

48. **Immediately compel Duquesne Light** to produce all remaining responsive documents and information related to these inspections and other outstanding discovery requests.

49. **Refer Duquesne Light Company to the Bureau of Investigation & Enforcement (I&E)** for formal enforcement action

under **66 Pa.C.S. § 502**, which may include monetary fines up to \$1,000 per day per violation and other appropriate sanctions.

X. Conclusion

50. Duquesne Light's admitted action of tightening a customer-side neutral connection, irrespective of any implied consent, constitutes a clear breach of its regulatory duties and a direct act of spoliation. This renders the utility liable for the destruction of crucial evidence, thereby mandating a strong adverse inference against it and warranting robust sanctions from the Pennsylvania Public Utility Commission to ensure a fair and just adjudication of the matter.

Respectfully,

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

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**PROPOSED ORDER
MOTION TO OVERRULE DUQUESNE LIGHT OBJECTIONS
AND REQUESTS FOR DEEMED ADMISSIONS**

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

This matter comes before the Pennsylvania Public Utility Commission ("Commission") upon Complainants' Motion to Overrule Duquesne Light Company's ("Duquesne Light" or "Respondent") Objections to Requests for Admission and for Deemed Admissions, pursuant to 52 Pa. Code § 5.350 and other applicable authority. Duquesne Light filed objections to Complainants' First Set of Requests for Admission, specifically Requests Nos. 2, 3, 4, 7, 11, 13, and 15. Having reviewed the Motion, Duquesne Light's objections, and the pertinent legal authority, the Commission finds that Duquesne Light's objections are insufficient or invalid as a matter of law, and that the matters should be deemed admitted.

1. Duquesne Light Company's Objections to Requests for Admission are OVERRULED.

- Duquesne Light Company's objections to Requests for Admission Nos. 2, 3, 4, 7, 11, 13, and 15, asserting vagueness, that they improperly seek legal opinions, and/or failure to comply with 52 Pa. Code § 5.350(a), are hereby **OVERRULED**.

- Requests for Admission may properly include "facts, opinions, and the application of law to facts" pursuant to **52 Pa. Code § 5.350(a)**, thereby rendering objections based solely on the request for legal opinions invalid.

- Duquesne Light's assertions of vagueness are insufficient, as the requests are found to be reasonably clear in context or Duquesne Light failed to articulate how such vagueness truly prevented a substantive response.

- Regarding Request No. 13, Duquesne Light's objection for failure to provide copies of referenced communications is overruled, as it has not been sufficiently demonstrated that such documents were not "otherwise furnished or available for inspection and copying" to Duquesne Light.

2. Matters Set Forth in Requests for Admission are DEEMED ADMITTED.

- Duquesne Light Company, having failed to serve sufficient answers or proper objections to Requests for Admission Nos. 2, 3, 4, 7, 11, 13, and 15 within the prescribed 20-day period as required by **52 Pa. Code § 5.350(c)**, the matters set forth therein are hereby **DEEMED ADMITTED** as a matter of law.

- These admissions are **conclusively established** for all purposes of the pending action, pursuant to **52 Pa. Code § 5.350(f)**, unless timely withdrawal or amendment is permitted on motion with a showing that withdrawal serves the merits

and does not prejudice the requesting party. No such meritorious motion has been granted.

- Duquesne Light Company is therefore **bound by these admissions** for all purposes of this proceeding and shall be **precluded** from denying these matters or introducing contrary testimony, evidence, or argument on those points.

- The facts and matters set forth in the aforementioned Requests for Admission shall be **incorporated into the record** and treated as established for dispositive motions and further proceedings in this case.

3. Further Relief.

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

BY THE COMMISSION,

Administrative Law Judge/Commissioner Name

Date:

APPENDIX

**Duquesne Light Company
Responses to the Complainants'
First Set of Requests for Admissions
Dated August 25, 2025
Docket Nos. C-2024-3049627 and C-2025-3054190**

Complainants' RFA No. 1	Admit that on October 11, 2023, Duquesne Light Company's Senior Operator, Darryl Honick, removed the meter cover and physically tightened the customer-side neutral connection in the meter base at the Service Address.
Response	Admitted. In further response, Darryl Honick replaced the meter cover after the loose customer-side neutral was tightened.

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Complainants' RFA No. 2 Admit that the meter base at the Service Address, and all connections on the load side of the meter within it, including the neutral connection, are explicitly identified by Duquesne Light Company as being "owned and maintained by" the customer, not Duquesne Light Company.

Response

Objection served August 15, 2025.

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Complainants' RPA No. 3 Admit that 52 Pa. Code § 56.32 prohibits Duquesne Light Company from tightening, repairing, or otherwise touching any customer-owned wiring or connections downstream of the meter.

Response

Objection served August 15, 2025.

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Complainants' RFA No. 4 Admit that Duquesne Light Company's tariff (e.g., Electric Pa. P.U.C. No. 1, Rule 6) incorporates 52 Pa. Code § 56.32, thereby disclaiming responsibility and lacking authority to perform maintenance or alterations on customer-side wiring, including neutral connections.

Response

Objection served August 15, 2025.

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Complainants' RFA No. 5	Admit that the action of Duquesne Light Company's Senior Operator, Darryl Honick, in tightening the customer-side neutral connection at the Service Address on October 11, 2023, constituted unauthorized physical manipulation of customer-owned electrical infrastructure.
Response	Denied.

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Complainants' RFA No. 6 Admit that Duquesne Light Company's Senior Operator, Darryl Honick, when performing the action described in Request for Admission No. 1, was acting in the course and scope of his employment with Duquesne Light Company.

Response

Admitted.

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Complainants' RFA No. 7	Admit that Duquesne Light Company does not possess records detailing the specific training materials, manuals, or bulletins provided to Darryl Honick, or similar field personnel, that explicitly describe the prohibition on tightening, repairing, or otherwise touching customer-owned wiring or connections downstream of the meter, as stipulated by 52 Pa. Code § 56.32 and its own tariff, prior to October 11, 2023.
Response	Objection served August 15, 2025.

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Complainants' RFA No. 8 Admit that Duquesne Light Company's internal communications confirm that the Koger family "did file an online claim as he received the response but it was not received by the claims department. Not sure why?", as stated in an email from Carolyn Cingel dated April 3, 2025.

Response

Denied. The referenced email is a document that speaks for itself. Any characterizations thereof are denied. In further response, the Request for Admission does not accurately restate the excerpt of the email dated April 3, 2025, which states in full: "Apparently, he did file an online claim as he received the response but it was not received by the claims department. Not sure why."

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Complainants' RFA No. 9	Admit that the internal communication referenced in Request for Admission No. 8 contradicts the statement made by Megan Rulli on April 3, 2025, that "there's no documentation for the Koger family's damage claim."
Response	<p>Denied. The communications referenced in this response are documents that speaks for themselves. Any characterizations thereof are denied. In further response, I was copied on the communication quoted in this Request for Admission and deny that it was sent on April 3, 2025, and that it states, "there's no documentation for the Koger family's damage claim." The email was sent by attorney Megan Rulli on April 2, 2025, at 4:25 PM, and states:</p> <p>"Following our telephone conversation earlier today regarding your active Formal Complaints before the Public Utility Commission against Duquesne Light Company ("Duquesne Light" or "Company"), I reached out to the Company to find out whether a damage claim was submitted to Duquesne Light. The Claims Department has no records of receiving a damage claim related to the incidents you describe in the email below or the October 11, 2023, service visit to your address.</p> <p>In order to submit a damage claim to the Company, you can call 412-393-6093. You will be guided through a series of prompts to answer questions regarding the claim. You can also submit a claim online through this link: Customer Claims. From there, the Company will process your damage claim. Please note that the processing of a claim does not guarantee reimbursement for damages."</p>

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Complainants' RFA No. 10	Admit that the Duquesne Light Company's troubleshooting report and notes from October 11, 2023, specifically logged the issue as "customer neutral loose" and recorded that it was "tighten[ed] up" as "perm repairs."
Response	Denied. The referenced trouble shooting report is a document that speaks for itself. Any characterizations thereof are denied. . In further response, the troubleshooting report comments referenced in this Request for Admission state in full: "customer neutral loose. tighten up. perm repairs."

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Complainants' RFA No. 11	Admit that the tightening of the loose customer-side neutral connection on October 11, 2023, by Duquesne Light Personnel had the potential to alter or obscure evidence relevant to the electrical condition at the Service Address and any subsequent legal claim.
Response	Objection served August 15, 2025.

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Complainants' RFA No. 12 Admit that any and all physical evidence relevant to the electrical condition "loose customer-side neutral connection" on October 11, 2023, is no longer available, as per the intentional acts of a Duquesne Light employee.

Response

Denied. Specifically, it is denied that Duquesne Light or its employees intentionally destroyed physical evidence relevant to the condition of the Complainants' meter base on October 11, 2023.

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Complainants' RFA No. 13 Admit that Duquesne Light Company was aware of the Koger family's "Total Loss" claim related to the October 11, 2023 Incident through documented communications with its legal representatives as early as November 7, 2023, and continuing through June 18, 2024, and August 14, 2024.

Response

Objection served August 15, 2025.

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Complainants' RFA No. 14 Admit that the Duquesne Light Company's internal claims report, dated July 31, 2025 (File No. G23-10-0020-000), includes notes from Carolyn Cingel stating, "Spoke with Darrel Konick on 4/4/25 who responded to the trouble call. ... Checked meter, found neutral in meter base loose. Told customer, can get electrician or he can tighten it up and see what happens. Did favor and tightened neutral."

Response

Denied. The document referenced speaks for itself. Any characterizations thereof are denied. In further response, it is denied that the notes referenced are an "internal claims report" dated July 31, 2025.

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Complainants' RFA No. 15	Admit that the action of Duquesne Light Company's Senior Operator, Darryl Honick, in tightening the customer-side neutral connection as a "favor" to the customer, as noted in Duquesne Light's internal claims report, aligns with the Complainants' "strict liability" assertion that Duquesne Light Personnel unlawfully "touched" their property.
Response	Objection served August 15, 2025.

VERIFICATION

I, Roxanne Morris, Supervisor, Regulatory Consumer Relations of Duquesne Light Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 25, 2025

Signed by:

F6A44EC65198498...
Roxanne Morris

VERIFICATION

I, Darryl Honick, Senior Operator at Duquesne Light Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 25, 2025

Signed by:

99AAA9DA32514ED...
Darryl Honick