BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Todd Elliott Koger Sr. and Elliott Todd Parker Koger	:	C-2024-3049627
v.	:	
Duquesne Light Company	:	

Todd Elliott Koger Sr. and Elliott Todd Parker Koger	:	C-2025-2054190
v.	:	
Duquesne Light Company	:	

INTERIM ORDER
DENYING COMPLAINANTS' MOTION TO COMPEL DISCOVERY RESPONSES

On or about July 11, 2025,[1] the Complainants served Complainants Set I on Duquesne Light via email. Respondent avers on or about July 21, 2025, Duquesne Light timely served its Objections to Complainants Set I. Specifically, Duquesne Light objected to Requests for Production Nos. 3, 4, and 5 and Interrogatories Nos. 2 and 10. [2]

Respondent avers on July 21, 2025, counsel for Duquesne Light followed up with the Complainants via email, expressing a willingness to work with the Complainants informally to attempt to resolve the Objections. Respondent avers Complainants responded to this offer

[1] Respondent asserts the Complainants served their discovery via email received at 6:26 PM on Thursday, July 10, 2025. Because the discovery responses were served after 4:30 PM, they are deemed to have been served on July 11, 2025. *See* 52 Pa. Code § 1.56(a)(5).

[2] Respondent's Answer to Complainants' Motion To Compel Discovery Responses at ¶ 2.

with a demand for settlement but did not make a good faith attempt to informally resolve this discovery dispute prior to filing the instant Motion to Compel.[3]

Respondent avers on July 28, 2025, the Complainants served their Motion to Compel Production of Discovery. In their Motion to Compel, the Complainants clarified that they were not seeking privileged materials but argued that the information sought is relevant to the claims raised in their Complaints. (*See, e.g.*, Motion to Compel at 4-5.)[4]

Respondent avers on August 1, 2025, Duquesne Light served its Answers to all but one of the requests contained in Complainants Set I. Respondent avers the Company's service of these Answers was without wavier of its objections, in the interest of compromise and administrative efficiency and based on clarifications made in the Complainants' Motion to Compel. Duquesne Light maintains that Interrogatory No. 10 requests information outside the scope of the instant proceeding and, therefore, the Company should not be compelled to provide a response.[5]

Under 52 Pa. Code § 5.321(c), a party is entitled to obtain discovery of any matter not privileged that is relevant to the pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence.

The Superior Court of Pennsylvania has explained "While discovery should be liberally allowed, 'fishing expeditions' are not to be countenanced under the guise of discovery." *Land v. State Farm Mutual Ins. Co.*, 600 A.2d 605, 608 (Pa. Super. 1991) (emphasis added).

"[T]he standard for discovery is relevance, not curiosity." [6]

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[3] The Company maintains that the Complainants' failure to make a good faith attempt to resolve this discovery dispute informally contradicts the ALJ's directive in the Interim order Establishing Initial Litigation Schedule issued July 11, 2025. Also see Respondent's Answer to Complainants' Motion To Compel Discovery Responses at ¶ 3.

[4] Complainant did not file a certificate of service or notify the undersigned presiding officer of the undated filing.

[5] Respondent's Answer to Complainants' Motion To Compel Discovery Responses at ¶ 5.

[6] *Pa. PUC v. Pennsylvania-American Water Co.*, Docket Nos. R-2011-2232243, *et al.*, at 22 (July 21, 2011) (Order on Motion to Compel).

Complainants' First Set of Requests for Production of Documents and Things, Nos. 3 through 5 ask Duquesne Light to produce the following:

> 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.

The Company objected to Requests for Production Nos. 3 through 5 on the grounds that the requests as written seek the production of information or documents that are attorney work product or protected by attorney client privilege and are vague, overly broad, and not reasonably calculated to lead to the discovery admissible evidence. The Company averred it objected to these requests to the extent that they seek information that would constitute attorney work product or be protected by attorney-client privilege.

Matters that are privileged are shielded from discovery by the Commission's regulations. *See* 52 Pa. Code §§ 5.321(c), 5.361(a). Section 5.323(a) of the Commission's regulations states, "[t]he discovery may not include disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories." 52 Pa. Code § 5.323(a).

Duquesne Light also objected to Request Nos. 3 through 5 on the grounds that they are vague, overly broad, and not reasonably calculated to lead to the discovery of admissible

evidence, to the extent that production of these tangible items includes information related to customers and facilities that are irrelevant to the instant Complaints, and to the extent that the Company does not maintain the requested data or information in the format requested, in the normal course of business.

Respondent argues the requests seek production of "tangible materials" and/or "hard copies" of, *inter alia*, entire field books, service logs, CDs, binders, and flash drives, that "contain" information related to the Complainants' damage claim. To the extent that the Company has information responsive to these requests in the format requested, the tangible items requested could include sensitive account information for other customers and details of the Company's distribution system facilities not limited to the Complainants' service address or the instant Complaints. As such, Respondent asserts the requests are unreasonably broad as their production could include voluminous records entirely unrelated to the instant Complaints.

Respondent asserts Complainants' requests are improperly vague, overly broad, and unduly burdensome in that the request to produce "[a]ll tangible materials" could include production of the physical hard drives of any Company computers that house information related to the Complainants' allegations. Respondent argues the production of Company hard drives would disrupt the normal course of the Company's business, as these items are relied on by Company employees and operations and would contain records that entirely unrelated to this proceeding. Respondent also argues such a request is wholly disproportionate to the scope of this proceeding.

Respondent argues the issues in this proceeding are limited to whether the Company provided reasonable service to the Complainants related to the alleged October 11, 2023, service visit and claims of subsequent damage, and Smart Comfort visit requirements for enrollment in the Company's Customer Assistance Program (CAP). By asking the Company to produce "all tangible materials" merely containing records related to the Complaints, Respondent argues the Complainants unreasonably request information that goes far beyond the scope of this proceeding.

Respondent argues these discovery requests seek the production of information or documents that are attorney work product or protected by attorney client privilege and are vague, overly broad, and not reasonably calculated to lead to the discovery admissible evidence. Notwithstanding, and without waiver of these objections, on August 1, 2025, Duquesne Light served its Answers to Requests for Production Nos. 3, 4, and 5.

Respondent explains Complainants clarified in the Motion to Compel that they are not seeking privileged information that would constitute attorney work product and be protected by attorney-client privilege and are instead seeking routine business records responsive to their requests.[7] Based on this clarification, the Respondent avers it provided non-privileged, responsive documents in its Answers to Requests for Production Nos. 3, 4, and 5 on August 1, 2025.

Respondent also avers the Company maintains all its records responsive to the Complainants' Requests for Production Nos. 3, 4, and 5 in electronic form.[8] As such, the Company provided electronic versions of the requested documentation. Respondent argues that production of these documents in electronic format provides the Complainants with full and complete responses to these discovery requests and avoids the issues with production for physical inspection identified in the Company's Objections. Accordingly, Respondent argues this portion of the Complainants' Motion to Compel is moot.

OBJECTIONS TO COMPLAINANTS' FIRST SET OF INTERROGATORIES, NO. 2

Complainants' First Set of Interrogatories, No. 2 states:

> 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

[7] Motion to Compel at 5.

[8] Columbia explained in the Company's response to RPD No. 3, there is one responsive record that is maintained in physical form, which the Company stated it is willing to make available for inspection. However, the Company included an electronic version of that record in its response and, therefore, maintains that coordinating physical inspection of that sole record is not necessary.

Koger family's damage claim."

Duquesne Light objected to Question No. 2 to the extent that it sought the production of information that is attorney work product or protected by attorney client privilege. Matters that are privileged are shielded from discovery by the Commission's regulations. *See* 52 Pa. Code §§ 5.321(c), 5.361(a).

Section 5.323(a) of the Commission's regulations states, "The discovery may not include disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories." 52 Pa. Code § 5.323(a).

Respondent asserts discussions between Duquesne Light's attorneys and employees regarding legal matters are not discoverable. The interrogatory improperly requests information and communications that are protected by attorney-client privilege and the attorney work product doctrine. Discovery is intended for the discovery of facts and evidence that may be presented at the evidentiary hearing, not the legal opinions of the Company's attorneys that are protected by attorney-client privilege and the attorney work product doctrine. As written, the scope of the interrogatory inappropriately encompasses work product of the Company's attorneys.

Based on the foregoing, Respondent argues this interrogatory improperly seeks information protected by attorney-client privilege and the attorney work product doctrine. In the Motion to Compel, the Complainants clarify that this request is not seeking privileged information.[9] Considering the Complainants' clarification, and without waiver of this objection, Duquesne Light averred it answered this Interrogatory on August 1, 2025, in the interest of compromise and administrative efficiency. Respondent asserts the Company's response was provided by Duquesne Light's Claims Specialist, the individual who searched for the records at issue.

[9] *See* Motion to Compel at 5.

Based upon the above, Respondent submits this portion of the Complainants' Motion to Compel is moot.

OBJECTIONS TO COMPLAINANTS' FIRST SET OF INTERROGATORIES, NO. 10

Complainants' Interrogatories – Set I, Question No. 10 asks Duquesne Light to:

> 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.

In their Motion to Compel, Complainants assert they need the requested information in order to determine "whether the Koger incident was an isolated event or indicative of a broader patterns of negligence or known hazards with Duquesne Light's service territory" and that the information is "required for understanding systemic issues that could underpin a gross negligence claim." [10]

The Company objected to Question No. 10 on the grounds that the request is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding and is vague, overly broad, unduly burdensome, and improperly seeks confidential settlement information.

Respondent asserts the request is not reasonably calculated to lead to the discovery of admissible evidence because information regarding service provided by Duquesne Light to other customers is irrelevant to whether Duquesne Light violated the Public Utility Code, the Commission's order or regulations, or the Company's Commission-approved tariff with regard to the claims raised in the instant Complaints. *See Kitzmiller v. City of Lancaster*

[10] Motion to Compel at 5.

Water Dep't, (Order on Motions to Compel) (*Kitzmiller*) [11](denying complainant's motion to compel with regard to certain interrogatories "because these interrogatories seek information regarding service provided by Lancaster to other customers, not [the complainant]," determining that "[s]uch service is irrelevant to whether Lancaster violated the Public Utility Code, a Commission order or regulation or a Commission-approve [sic] tariff of the company.")

As explained in *Kitzmiller*, "Section 701 of the Public Utility Code provides that any person may complain in writing to the Commission regarding the acts or omissions of a public utility."[12] Neither Section 701 nor any other section of the Public Utility Code allows the Complainants to bring claims on behalf of other customers.[13]

Complainants' stated reasons for requesting this information, to demonstrate a "pattern" of practice by Duquesne Light or to lay the groundwork for a "gross negligence" claim, according to Respondent, are simply outside the scope of the instant proceeding, which concerns whether the Company provided reasonable service to the Complainants under Section 1501 of the Public Utility Code.[14] Respondent asserts the information sought by the Complainants regarding service to other customers would not be admissible in the evidentiary hearing.

Respondent also argues that the Complainants cannot be permitted to use discovery as a "fishing expedition" to attempt to establish a civil negligence claim against the Company or to satisfy their curiosity regarding the service provided to other customers, as that information is not relevant to these Complaints.[15] Respondents further argue Complainants' request is vague in that the Complainants fail to define the terms "meter base defects," "neutral connection failures," or "electric arcs." Without clarification as to the meaning of these terms in

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[11] *See Kitzmiller v. City of Lancaster Water Dep't*, Docket No. C-2014-2435567 at 11 (June 15, 2018) (Order on Motions to Compel) (*Kitzmiller*).

[12] *See id.* (citing 66 Pa. C.S. § 701).

[13] *See id*. (also finding that Sections 1.21(b) and 1.22(a) of the Commission's regulations, 52 Pa. Code §§ 1.21(b) and 1.22(a), barred the complainant from representing the interests of other customers because he was not an attorney licensed to practice law in Pennsylvania.)

[14] *See* 66 Pa. C.S. § 1501.

[15] *See Land v. State Farm Mutual Ins. Co.*, 600 A.2d 605, 608 (Pa. Super. 1991) ("While discovery should be liberally allowed, 'fishing expeditions' are <u>not</u> to be countenanced under the guise of discovery.") (emphasis added); *see also Pa. PUC v. Pennsylvania-American Water Co.*, Docket Nos. R-2011-2232243, *et al.*, at 22 (July 21, 2011) (Order on Motion to Compel) ("[T]he standard for discovery is relevance, not curiosity.").

the context of these Complaints, Respondent argues it cannot reasonably provide a complete and accurate response.

Respondent also argues the request is overly broad and unduly burdensome to the extent that the Company does not maintain the requested data or information in the format requested, in the normal course of business, or to the extent that it requires the Company to perform a special study or analysis in a non-rate proceeding.[16] Respondent also argues the request would likely require the Company to perform a special analysis of all service calls since 2020 in order to identify which relate to the issues identified by the Complainants.

In addition, Respondent argues the request is overly broad and unduly burdensome in that it requests records related to the Company's entire service territory going back nearly five years. Respondent argues the geographic and temporal scope of this request is wholly disproportionate to the scope of the instant Complaints, which relate to an isolated event at a single service address affecting one account, *i.e.*, the Company's service visit to the Complainants' service address on October 11, 2023.

Respondent explains Complainants' request also asks for the "resolution" of other customer claims and complaints. Respondent argues, to the extent that any of these alleged claims or complaints were settled, the details of any confidential settlement agreements, as well as the negotiations of those agreements, are inadmissible and not discoverable. Accordingly, Respondent asserts this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding and is also vague, overly broad, unduly burdensome, and improperly seeks confidential information.

Complainants' Claims Regarding Spoliation Are Unfounded and Should Be Disregarded

Respondent argues the Complainants' allegations regarding spoliation are unfounded and should be disregarded.

[16] *See* 52 Pa. Code § 5.361(b).

In the Motion to Compel, Complainants claim that they are concerned with the spoliation of evidence, presumably related to the October 11, 2023, service visit at issue in these Complaints.[17] Respondent argues it has provided Answers to all but Interrogatory No. 10, which does not concern the service provided to the Complainants or the Complainants' service address.

Respondent concludes the Complainants have provided no basis or justification for their "concerns of spoliation of evidence" and, therefore, these claims and any requests for relief based thereon should be disregarded. Respondent also asserted it does not oppose the entry of a Protective Order in this proceeding and, to the extent necessary, will work with the Complainants to produce confidential materials pursuant to a duly executed stipulated protective agreement or Protective Order.

The scope of permissible discovery in Commission proceedings is governed by the Commission's rules at 52 Pa.Code § 5.321. The presiding officer in any proceeding has broad discretion regarding the scope of discovery. For example, 52 Pa.Code § 5.321(b) specifically gives the presiding officer the authority to "vary provisions of this subchapter as justice requires."

There is little doubt that the Commission's regulations are intended to encourage discovery. Discovery can only be undertaken with respect to matters that are not privileged and which are "relevant to the subject matter involved in the pending action …"[18] 52 Pa.Code § 5.321(c). The Pennsylvania courts have said that "[e]vidence is relevant, if it tends to make a fact at issue more or less probable." *LaVerne R. Martin v. Larry Soblotney*, 502 418, 466 A. 2d 1022, 1034 (Pa. 1983).

The Commission has limited a party's inquiry into issues which are not relevant to the issues in a pending matter. *Application of Newtown Artesian Water Company and Indian Rock Water Company*, 1990 Pa. PUC LEXIS 83, involved a proposed merger of two companies

[17] Motion to Compel at 6.

[18] The Commission's rules also indicate that discovery may be conducted with respect to matters that, although they may be inadmissible at hearing, may nevertheless be permitted as long as the information sought appears reasonably calculated to lead to discovery of admissible evidence.

along with the abandonment of service by Indian Rock Water Company. Newtown Township ("Township") petitioned to intervene in the merger case and filed a separate eminent domain case with the Commission. The Township submitted interrogatories in the merger proceeding concerning ratemaking matters and additional discovery in the eminent domain case. The merging companies objected to the interrogatories, and the Township filed a Motion to Compel. The Township believed it was entitled to pursue discovery "as to what costs can be saved if Indian Rock is acquired by eminent domain." The ALJ denied the Motion to Compel and reasoned "[T]he saving of costs in a separate, legal proceeding on eminent domain is not relevant to the pending merger application proceeding. To argue in favor of discovery because of discovery's potential effect on a separate proceeding is a blatant admission that the discovery sought is inappropriate and irrelevant to the case at bar." 1990 Pa. PUC LEXIS 83 at 7.

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Complainants have failed to establish that the information sought in its motion is relevant "to the subject matter involved in the pending action." Under the circumstances, such information is not directly relevant to the issues presented by these proceedings nor are the discovery requests reasonably calculated to lead to the discovery of admissible evidence. Complainants have simply failed to establish that the information sought, as stated, is relevant or reasonably calculated to lead to the discovery of admissible evidence related to the claims asserted by Respondent in these proceedings.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Compel Production of Discovery Propounded by Complainants filed on or about July 28, 2025 in these proceedings, captioned above, is Denied.

2. That any party may file an appropriate request seeking an entry of a Protective Order in this proceeding and, to the extent necessary, shall cooperate in an attempt to executed stipulated protective agreement or request for a Protective Order.

3. That the Parties are reminded to provide the undersigned presiding officer and the opposing party with copies of all pleadings filed in this proceeding and certificates of service, pursuant to the Pennsylvania Public Utility Code and Commission Regulations.

Date: September 25, 2025

/s/
Jeffrey A. Watson
Administrative Law Judge

C-2024-3049627, C-2025-3054190 - TODD ELLIOTT KOGER SR AND ELLIOT TODD KOGER v. DUQUESNE LIGHT COMPANY

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