

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**INTERIM ORDER  
DENYING COMPLAINANTS' MOTIONS FOR ADVERSE INFERENCE, INTERIM  
RELIEF, AND REFERRAL TO I&E**

On or about August 7, 2025, Complainants filed Complainants' Motion for Adverse Inference, Interim Relief, and Referral (Motion For Sanctions). Todd Elliott Koger, Sr. and Elliott-Todd Parker Koger (Complainants) requested an adverse inference instructions, interim relief, and referral to the Bureau of Investigation & Enforcement (I&E), alleging Duquesne Light Company (Duquesne Light or Respondent) knowing withheld and refused to produce relevant tangible evidence in the discovery process in this proceeding. Complainants assert Respondent knowingly withheld crucial trouble shooting inspections information from July 29 and August 14, 2024, which Complaints aver, have a direct impact on this proceeding.

Knowing Failure to Produce Evidence

Complainants assert Respondents responses to discovery requests have been incomplete, specifically lacking alleged trouble shooting inspections from July 29 and

August 14, 2024 Complainants aver, while Respondent provided a service ticket for October 11, 2023, and voltage monitor reports from April 9-17, 2025, Respondent has not produced all records pertaining to "any subsequent inspection/repair" as requested in Request No. 3.

Complainants aver 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 2 continuous engagement and prior detailed written accounts of the claim to Duquesne Light's attorneys in November 2023 and June/August 2024. Complainants assert this alleged pattern of denying receipt of documentation by Respondent, followed by incomplete production, strongly suggests a knowing withholding of evidence.

#### Requested Relief and Legal Foundation

Complainants aver 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, as follows.

#### Adverse Inference Instruction

Complainants request that an adverse inference instruction be issued to the Commission and the ultimate decision-maker. Complainants aver 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. Complainants argue this remedy is critical to bridge the evidentiary gaps created by Duquesne Light's non-production. Complainants argue, under 52 Pa. Code § 5.363, the lack of produced evidence may be treated as an admission against interest. Furthermore, Complainants assert, 66 Pa.C.S. § 331 grants the Commission inherent authority to address discovery abuses.

Complainants argue the principle of spoliation supports this inference, which Complainants submit is defined as the destruction or significant alteration of evidence, or the

failure to preserve property for use in reasonably foreseeable litigation. Complainants assert on October 11, 2023, Respondent committed inappropriate actions, where Complainants allege a troubleshooter tightened the connection in a 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.

Complainants argue such physical manipulation of electrical infrastructure, particularly following an incident giving rise to a legal claim, is foreseeable as impacting the evidentiary landscape. Complainants argue the Commission has a duty to ensure full and fair adjudication which necessitates remedies for spoliation and non-production.

#### Petition for Interim Relief

Complainants argue given the alleged immediate and critical nature of the missing evidence to the upcoming hearing and overall procedural timeline, Complainants submit this Petition for Interim Relief pursuant to 52 Pa. Code § 5.44(b). Complainants argue Duquesne Light has a 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. Complainants assert Duquesne Light acknowledged receiving the claim in an April 17, 2025 letter, after asserting no documentation existed on April 3, 2025. Complainants argue this alleged inconsistency supports an inference of knowing non-production. Complainants further argue 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 alleged gross negligence, its alleged breach of duty under 66 Pa.C.S. § 1501, and the alleged resulting total loss damages. Complainants argue the requested materials are required to prove gross negligence, including the pre- and post-repair condition of the service equipment, test data, and internal discussions about the claim.

Complainants further argue 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.

Referral to the Commission's Bureau of Investigation & Enforcement

According to Complainants, the alleged knowing withholding of crucial evidence rises to the level of an obstruction of regulatory process and warrants formal enforcement action. Complainants request that the Commission refer Duquesne Light to the Bureau of Investigation & Enforcement for a formal enforcement action under 66 Pa.C.S. § 502. Complainants appear to seek monetary fines up to \$1,000 per day per violation, separate orders compelling production, and additional sanctions as the Commission deems appropriate.

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

On or about August 14, 2025, Respondent filed its Answer Of Duquesne Light Company To The Complainants' Motion For Adverse Inference, Interim Relief, and Referral. Respondent requests that the Motion for Sanctions should be denied in its entirety because the Complainants: (1) failed to clearly request records related to the alleged July 29 and August 14, 2024, service visits in their original request for production; (2) made no attempt to informally resolve their discovery dispute before seeking the extreme remedy of sanctions; and (3) failed to demonstrate that they have been prejudiced in any way by the Company's initial response to the discovery request at issue.

Respondent asserts the July 11, 2025, Interim Order Established an Initial Litigation Schedule that, *inter alia*, established a discovery deadline of October 31, 2025 in this proceeding. Also on or about July 11, 2025, 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.

On or about July 28, 2025, Complainants served their Motion to Compel Production of Discovery.<sup>1</sup> 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.<sup>2</sup> On August 1, 2025, Duquesne Light served its Answers to all but one of the requests contained in Complainants Set I. The Company's service of these Answers was without waiver of its objections, in the interest of compromise and administrative efficiency and based on clarifications made in the Complainants' Motion to Compel.

On or about August 4, 2025, Duquesne Light served its Answer to the Complainants' Motion to Compel.

On August 5, 2025, the Complainants served their First Set of Requests for Admissions.

#### Complainants' Motion For Sanctions

Respondent argues Complainants' Motion for Sanctions for the alleged insufficiency of a single request for production should be denied because the Complainants: (1) failed to clearly request records related to the alleged July 29 and August 14, 2024, service visits in their original request for production; (2) made no attempt to informally resolve their discovery dispute before seeking the extreme remedy of sanctions; and (3) failed to demonstrate that they have been prejudiced in any way by the Company's initial response to the discovery request at issue.

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<sup>1</sup> Respondent asserts 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).

<sup>2</sup> *See, e.g.*, Motion to Compel at 4-5.

Respondent asserts the Complainants base their request for sanctions on unfounded allegations that the Company insufficiently responded to their Request for Production No. 3 (RPD No. 3).

Complainants' First Set of Requests for Production of Documents and Things, asked 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.

Respondent asserts Complainants' request for sanctions based on the Company's response to RPD No. 3 should be denied. Respondent argues sanctions are not warranted because the Complainants have never propounded discovery explicitly requesting Company records related to alleged service visits on July 29 and August 14, 2024. Respondent asserts it reasonably interpreted RPD No. 3 to refer to records related to the October 11, 2023, service visit and any subsequent service visits investigating those same issues and provided responsive records on August 1, 2025.

Respondent argues, now, through their Motion for Sanctions, the Complainants apparently expand the scope of their original request to encompass any Company visits to the service address made since October 11, 2023, regardless of whether they were undertaken to address the service concerns raised in the instant Complaints.

Respondent asserts it should be afforded the basic opportunity to respond to the Complainants' new, specific request before sanctions are considered. Respondent argues it should not be sanctioned for the lack of clarity in the Complainants' original discovery request, which did not identify the dates now placed at issue. Respondent further avers it is currently 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, and any other service visits conducted since October 11, 2023, and will supplement its response to RPD No. 3 accordingly. In an effort to expedite the discovery process, Respondent asserted it will supplement its response to RPD No. 3 by August 15, 2025. However, the Company maintains that because the Complainants are active customers of Duquesne Light, they have had contacts with the Company since October 11, 2023, which are not encompassed within the original scope of RPD No. 3, and which may not be directly relevant to the instant proceedings.

Second, Respondent asserts sanctions are not warranted because the Complainants made no attempt to resolve this issue informally before requesting the extreme relief of sanctions. The Complainants did not contact the Company prior to filing their Motion for Sanctions to either clarify the scope of their request, inquire about the records they perceived were missing, or serve additional discovery seeking records related to the alleged July 29 or August 14, 2025, service visits, despite clearly possessing records of their own related to those dates.

Instead, Respondent asserts, Complainants now completely mischaracterize the Company's response to RPD No. 3 and its participation in the discovery process generally, making a bad faith request for sanctions based on unfounded assertions that the Company has "knowingly withheld crucial 'Trouble Shooting Inspections'" from production or has a pattern of withholding documentation.<sup>3</sup> Respondent argues these accusations are baseless considering the Company's good faith responses to the discovery served to date and should be disregarded entirely.

Third, Respondent asserts sanctions are unwarranted because the Complainants have not demonstrated any prejudice to their case as a result of this discovery dispute, especially considering the Company's commitment to promptly supplement its response to RPD No. 3.

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<sup>3</sup> Complainants' Motion for Sanctions at 3. Complainants' Motion for Sanctions at 3.

Respondent further argues Complainants have ample opportunity to propound additional discovery in this proceeding, as the discovery deadline is October 31, 2025. Respondent asserts complainants have offered no explanation as to why a supplemental response cannot cure any perceived discovery defect and have not even attempted to fill any alleged gap in information with additional discovery seeking the records at issue in their Motion for Sanctions.

Respondent argues, given the Company's good faith effort to respond fully to the Complainants' original request and its commitment to supplement its response to RPD No. 3 by August 15, 2025, as well as the Complainants' unwillingness to resolve this discovery issue informally, sanctions are completely unwarranted in this instance. Respondent argues sanctions are an extreme remedy that should only be awarded in limited scenarios, such as when a party intentionally attempts to impede discovery, refuses to respond to discovery requests, or fails to comply with a discovery order issued by the presiding officer or the Commission.

Respondent asserts because the Complainants have failed to demonstrate any sanctionable conduct all requested relief should be denied.

Respondent further explains that the Complainants make a variety of inappropriate factual allegations that are wholly unrelated to the current discovery dispute, apparently because they disagree with the Company's responses to certain other discovery requests. These allegations, according to Respondent should be disregarded completely, as they are factual issues in dispute in this proceeding that can only be decided through the presentation of evidence at hearings.

Respondent asserts it is also unclear which provisions of the Commission's regulations the Complainants rely on for support for their request for an adverse inference or emergency relief, as the cited provisions refer to procedures requesting a stay of proceedings and petitions for reconsideration from actions of the

staff, respectively.<sup>4</sup> To the extent that the Complainants seek an adverse inference related to visits to the service address on the dates at issue, for the reasons stated above, Respondent asserts the request is unwarranted and should be denied. To the extent that the Complainants seek interim emergency relief, Respondent argues Complainants have failed to demonstrate that such relief is warranted, considering the Complainants have not been prejudiced by the Company's initial response to RPD No. 3 and the Company has committed to supplementing its response by August 15, 2025.

Respondent asserts the Complainants also have failed to provide any legal or factual justification for their request to involve the Commission's Bureau of Investigation and Enforcement in a routine discovery dispute that they made no attempt to resolve informally. Respondent avers this too is an extreme and unwarranted request that should be denied.

Accordingly, Respondent asserts Complainants' Motion for Sanctions and their requests for relief based thereon should be denied.

Respondent further requests that any additional discovery motions filed in this proceeding be required to include documentation demonstrating that the moving party attempted in good faith to resolve the issue informally prior to filing.<sup>2</sup>

### Discussion

Initially, Complainant filed its Motion for Sanctions, like similar previous motions, without providing a copy to the undersigned presiding officer despite the requirements set forth in the Commission regulations and the clear directives of previous Orders entered in this proceeding. Complainants Motions do not conform with the Code or the Commission regulations. The failure to comply with Commission regulations and orders of the presiding officer result in a delay in these proceedings and does not promote the effective and efficient use of ratepayer and Commission resources.

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<sup>4</sup> See 52 Pa. Code §§ 5.363 and 5.44.

Turning to the substantive claims raised by Complainants, Todd Elliott Koger, Sr. and Elliot-Todd Koger 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 the 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 for formal enforcement action under 66 Pa.C.S. § 502, including consideration of monetary fines and other appropriate sanctions; and (4) award Complainants any further relief the Commission deems just and proper to ensure a full and fair adjudication of this matter.

#### Adverse Inference Instruction

Complainants request that an adverse inference instruction be issued to the Commission and the ultimate decision-maker. Complainants aver 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. Complainants also argue this remedy is critical to bridge the evidentiary gaps created by Duquesne Light's non-production and that, under 52 Pa. Code § 5.363, the lack of produced evidence may be treated as an admission against interest.

Complainant has filed various discovery motions and motions to Compel, to date, all of which have been denied. In addition, Complainants may engage in further discovery and appropriately seek appropriate relief to address any alleged discovery abuses, as discover in this case is ongoing and will close on October 31, 2025. Complainants cite no relevant or applicable legal authority or specific factual basis to support its claim for an adverse inference to be made in this case. In addition, the request is premature. Accordingly, Complainants have failed to establish that an adverse inference should be made at this time and accordingly, that request will be denied.

The parties are reminded that discovery will close on October 31, 2025 and that the parties should avail themselves of any appropriate discover processes and remedies available to them, and that upon the close of discovery, an evidentiary hearing will be scheduled consistent with the litigation schedule previously issued in this case.

Complainants also asserts that a Respondent committed inappropriate actions and make allegations that a troubleshooter tightened the connection in a meter base, and that Respondent removed any and all evidence of the Koger family claims in clear violation of Section 1501 of the Code. Consistent with previous orders entered in this proceeding, Complainants may engage in discovery in order to seek any discoverable information or material related to Complainants claims. In addition, any appropriate and relevant evidence may be offered into evidence, subject to objections by the opposing party, consistent with applicable rules, at the evidentiary hearing in this proceeding.

#### Petition For Interim Relief

Complainants argue given the alleged immediate and critical nature of the missing evidence to the upcoming hearing and overall procedural timeline, Complainants are entitled to emergency relief pursuant to 52 Pa. Code § 5.44(b). Complainants apparently base this claim on allegations that Respondent has a history of denying receipt of the claim despite documented communications and its incomplete responses to discovery, particularly concerning other trouble shooting inspections. Complainants assert Duquesne Light acknowledged receiving the claim in an April 17, 2025 letter, after asserting no documentation existed on April 3, 2025. Complainants argue this alleged inconsistency supports an inference of knowing non-production.

Complainants further argue 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 alleged gross negligence, its alleged breach of duty under 66 Pa.C.S. § 1501, and the alleged resulting total loss damages. Complainants argue 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.

Finally, Complainants argue 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.

Complainants seem to be asserting a request for discovery or further relief from the alleged failure of Respondent to comply with discovery requests of Complainants. Complainants have not demonstrated any facts or circumstances or cited any relevant legal authority to establish the need for emergency relief in this proceeding. Complainants may certainly provide clear and appropriate discovery requests or engage in other discovery methods to obtain the information sought by Complainants, while discovery is ongoing in this proceeding. Complainants have failed to establish that the requested relief sought is necessary or appropriate, and accordingly the request will be denied.

The parties are reminded that discovery will close on October 31, 2025 and that the parties should avail themselves of any appropriate discover processes and remedies available to them, and that upon the close of discovery, an evidentiary hearing will be scheduled consistent with the litigation schedule previously issued in this case.

Complainants also assert that a Respondent committed inappropriate actions and make allegations that a troubleshooter tightened the connection in a meter base, and that Respondent removed any and all evidence of the Koger family claims in clear violation of Section 1501 of the Code. Consistent with previous orders entered in this proceeding, Complainants may engage in discovery in order to seek any discoverable information or material related to Complainants claims. In addition, any appropriate and relevant evidence may be offered into evidence, subject to objections by the opposing party, consistent with applicable rules, at the evidentiary hearing in this proceeding.

## Referral to Bureau of Investigation & Enforcement

Complainants allege Respondent has withheld crucial evidence in this proceeding that rises to the level of an obstruction of regulatory process and warrants formal enforcement action. Complainants request that the Bureau of Investigation & Enforcement initiate a formal enforcement action under 66 Pa.C.S. § 502, and impose upon Respondent, monetary fines up to \$1,000 per day per violation, orders compelling production, and other sanctions as the Commission deems appropriate.

Complainants aver Duquesne Light has a statutory duty under Section 1501 of the Code to provide safe, adequate, and reasonable service. Complainants assert 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.

To the extent Complainants have properly asserted Section 1501 violations and the assessment of civil penalties, such evidence will be considered, subject to appropriate objections, at the evidentiary hearing in this proceeding.

To the extent that Complainant is seeking the appropriate production of discovery or relief for alleged discovery violations, Complainants presently may continue to engage in discovery and seek redress for alleged discovery violations in this proceeding, pursuant to the litigation schedule previously entered. Complainants have failed to provide any factual or legal basis for the entry of any further relief at this time. Accordingly, the Complainants request for relief will be denied however, the Parties are again reminded to timely utilize the discovery process available to them during the discovery phase of this proceeding. The Parties are further reminded that they will be provided an opportunity to present evidence at the hearing in this case, subject to the objections of the opposing Party.

THEREFORE,



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

TODD ELLIOTT KOGER SR & ELLIOTT TODD KOGER  
515 KELLY AVENUE  
PITTSBURGH PA 15221  
**412.758.4510**  
[kogerfriend@gmail.com](mailto:kogerfriend@gmail.com)  
Served via USPS First Class Mail & Email – September 29, 2025

MEGAN E RULLI ESQUIRE  
POST AND SCHELL PC  
17 NORTH SECOND STREET – 12<sup>TH</sup> FLOOR  
HARRISBURG PA 17101  
**717.731.1970**  
[mrulli@postschell.com](mailto:mrulli@postschell.com)  
Served via eService – September 29, 2025  
*(Counsel for Duquesne Light Company)*

MICHAEL BRECHLIN  
DUQUESNE LIGHT COMPANY  
411 SEVENTH AVENUE  
PITTSBURGH PA 15219  
**412.393.6431**  
[mbrechlin@duqlight.com](mailto:mbrechlin@duqlight.com)  
Served via eService – September 29, 2025