

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Todd Elliott Koger, Sr. and Elliot-Todd Parker Koger,	:	
	:	
	:	
Complainants,	:	
	:	C-2025-3054190
v.	:	
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

**INTERIM ORDER SUSTAINING OBJECTIONS OF DUQUESNE LIGHT COMPANY  
AND DENYING COMPLAINANTS' APPLICATION FOR THE ISSUANCE OF  
SUBPOENAS**

On or about October 25, 2025, the Complainants filed their Application for the issuance of subpoenas (Application) with the Commission. On November 4, 2025, the Company filed its Objections to Complainant's Application for the issuance of Subpoenas (Objections). In its Objections, the Company avers Complainants failed to effectuate any service of the Application on either the Company or the witnesses identified therein. In addition, like most, if not all pleadings or requests for relief filed by Complainants, a copy of the Application was not served upon the undersigned presiding officer by Complainants.

The Company requests that the Complainants' Application for the issuance of subpoenas be denied.

Section 5.421(a)(2) of the Commission's regulations states that a "subpoena will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena." 52 Pa. Code § 5.421(a)(2).

Such an application: (1) must specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired; (2) must list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents; (3) must contain a notice that a response or objection to the application shall be filed with the Commission and presiding officer within 10 days of service of the application; (4) must include a certificate of service; and (5) may attach the proposed subpoena to the application. *Id.* § 5.421(b)(1)-(5).

When the person for whom the subpoena is sought is a non-party, the application must provide the names and addresses of the persons, including the Secretary of the Commission and the presiding officer, to whom the answer or objection to the application shall be sent. *Id.* § 5.421(c)(5).

Complainants request, inter alia, that the Commission to issue a subpoena compelling Duquesne Light's attorney in this matter to testify. Complainants assert they need to call counsel for Duquesne Light to testify regarding "representations made in discovery, correspondence, and procedural matters relevant to the Complainants' claims."<sup>1</sup>

In its Objections, the Company asserts Counsel for the Company is not a fact witness in this proceeding and cannot be called to testify on behalf of Duquesne Light. The Company submits Counsel for the Company did not sponsor any discovery responses in this

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<sup>1</sup> See Application, p. 3.

proceeding. To the extent the Complainants have questions regarding discovery responses served, those questions, according to the Company, should be directed to the appropriate witnesses who sponsored the requests. To the extent the Complainants have questions regarding procedural matters or correspondence, the Company asserts the Complainants have ample opportunity to contact counsel for Duquesne Light to discuss and resolve these non-substantive issues prior to the hearing or to raise these issues at the hearing. However, the Company asserts, counsel for the Company cannot be compelled to testify about the facts in dispute in these Complaints, as such testimony would be protected by attorney-client privilege and/or the attorney work product doctrine.

The Company further asserts, the Pennsylvania's Rules of Professional Conduct prohibit lawyers from acting as a witness on behalf of their clients, except in limited circumstances.<sup>2</sup> None of the exceptions contained in Rule 3.7 have been identified by Complainants in their Application.

Complainants, in their Application, appear to have failed to effectuate any service of their requests for subpoenas on the Company or the undersigned presiding officer.

The Commission's regulations at 52 Pa. Code § 5.421 identify the form and service requirements for a written application for the issuance of a subpoena.<sup>3</sup> The Complainants, who are self-represented, disregarded the basic service requirements contained in these regulations by failing to effectuate any service of their Application on the Company or the witnesses identified therein. Although the Complainants attached a Certificate of Service to their Application, the Company was not served and only became aware of the Application on October 31, 2025, through a routine check of the Commission's dockets for the above-captioned Complaints.

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<sup>2</sup> See Pa. Rule of Professional Conduct Rule 3.7 (providing exceptions for testimony related to an uncontested issue or the nature and value of legal services rendered in the case, or if disqualification would cause substantial hardship to the client).

<sup>3</sup> See 52 Pa. Code §§ 5.421(b)-(c).

In addition, the Complainants failed to include the requisite notice on their Application “that a response or objection to the application shall be filed with the Commission and presiding officer within 10 days of service of the application.”<sup>4</sup>

The Commission has previously recognized that pro se litigants are not excused from complying with the Commission’s procedural rules.<sup>5</sup> The right of self-representation is not a license to “not comply with relevant rules of procedure and substantive law.”<sup>6</sup> The Company asserts Complainants initiated and are engaged in formal contested proceedings and the fact that the Complainants are unrepresented is no excuse for failing to follow the Commission’s regulations governing the issuance of subpoenas.

Without waiving its objections, the Company asserts that it already plans to call Darryl Honick, Thomas Johnson, Carolyn Cingel, Roxanne Morris, Diane Lloyd, and Stephanie Gillespie as fact witnesses at the upcoming evidentiary hearings. Accordingly, the Company asserts Complainants will have the opportunity to cross-examine each of these witnesses at the hearings and to ask relevant and non-objectionable questions to these witnesses.

Duquesne Light submits it notified the Complainants of its intent to call each of these witnesses in email correspondence dated September 2, 2025 and that correspondence included summaries of the witnesses’ proposed testimony in accordance with the Scheduling Order. Therefore, the Company asserts Complainants’ request to issue subpoenas compelling these witnesses to testify, despite the notice already provided, is both unnecessary and frivolous.<sup>7</sup>

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<sup>4</sup> 52 Pa. Code § 5.421(b)(3).

<sup>5</sup> See *Lewis v. PECO Energy Company*, Docket No. C-2010-2189187 (Order entered July 15, 2011) (dismissing a pro se complainant's formal complaint for failing to comply with a Presiding Officer's Order).

<sup>6</sup> See *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975); see also *Vann v. Unemployment Compensation Board of Review*, 494 A.2d 1081, 1086 (Pa. 1985) (warning that pro se litigants must to some extent assume the risk that their lack of legal training will prove their undoing). See *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975); see also *Vann v. Unemployment Compensation Board of Review*, 494 A.2d 1081, 1086 (Pa. 1985) (warning that pro se litigants must to some extent assume the risk that their lack of legal training will prove their undoing).

<sup>7</sup> The Company also notes that if the Complainants’ Application is granted, the Complainants, who are proceeding *pro se* in these matters, could be responsible for paying fees and mileage related to the Company’s witnesses’ travel and appearance at two days of in-person hearings. See 52 Pa. Code § 5.421(e).

The Complainants also request the production of “all tangible things identified in discovery” should be denied because it is unreasonably vague and runs contrary to the Interim Order denying the Complainants’ Motion to Compel.

The Commission’s regulations at Section 5.421(b)(1) require that written applications for subpoenas “[m]ust specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.”<sup>8</sup>

Here, the Complainants ask the Commission to issue a subpoena requiring the Company “to produce all tangible things identified during discovery at the evidentiary hearings.”<sup>9</sup>

This request should be rejected for several reasons. First, the request is unreasonably vague because it is entirely unclear which “tangible things” the Complainants are referring to or the “general relevance, materiality and scope of the . . . documentary evidence sought.”<sup>10</sup> Far from “specific[ying] as nearly as possible . . . the documents desired,” the Complainants merely ask the Commission to require the Company to produce “all tangible things identified during discovery.”<sup>11</sup> Without further information regarding the requested items, the Company asserts it cannot reasonably comply with this request. As such, the Company asserts the request is unreasonably vague and should be denied.

The Company further asserts it has already produced numerous documents in response to the Complainants’ discovery requests, in both hard copy and electronic forms, all of which the Complainants have or should continue to have access. The Company argues Complainants have provided no explanation as to why the Company should be compelled to produce again the items already provided in discovery.

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<sup>8</sup> 52 Pa. Code 5.421(b)(1).

<sup>9</sup> Application, p. 1.

<sup>10</sup> See 52 Pa. Code 5.421(b)(1).

<sup>11</sup> See *id.*

In addition, the Company asserts the issue of whether the Company should be required to produce additional tangible items in response to the Complainants' discovery requests was fully resolved when the ALJ denied the Complainants' Motion to Compel. (*See Order Denying Motion to Compel.*) The Company asserts the relevant requests for production of tangible items were vague, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence, to the extent that production would include information related to customers and facilities that are irrelevant to the instant Complaints, and because the Company does not maintain the requested items in the format requested in the normal course of business. The undersigned agreed with the Company and found that the "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 . . . in these proceedings."<sup>12</sup> Accordingly, the Company argues this production issue was fully resolved by the Order Denying Motion to Compel and the Complainants' renewed attempts to acquire these items by subpoena should be rejected.

THEREFORE,

IT IS ORDERED:

1. That the Complainants' Application For The Issuance Of Subpoenas is Denied.
2. That the Objections Of Duquesne Light Company To Complainants' Application For The Issuance Of Subpoenas are Sustained.

Date: November 10, 2025

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Jeffrey A. Watson  
Administrative Law Judge

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<sup>12</sup> See Order Denying Motion to Compel, p. 12.

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

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