

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**TODD ELLIOTT KOGER, SR., AND
ELLIOTT-TODD PARKER KOGER
COMPLAINANT(S)**

V.

**C-2024-3049627 and
C-2025-3054190**

**DUQUESNE LIGHT COMPANY
RESPONDENT**

COMPLAINANTS' OPPOSITION TO MOTION TO DISMISS

Complainants Todd Elliott Koger, Sr. and Elliott-Todd Parker Koger (collectively, "Complainants"), hereby file this Opposition to Motion to Dismiss.

I. Introduction

Duquesne Light Company (DLC) seeks dismissal with prejudice of the Complainants' formal complaints, alleging failure to comply with the ALJ's October 31, 2025 Order compelling discovery. This request is procedurally improper and substantively unsupported. The Complainants have complied in good faith, provided responsive materials, and supplemented their filings with legally compliant damages estimates. Dismissal would constitute an extreme sanction inconsistent with Commission precedent and due process.

II. Procedural Posture

- **October 31, 2025:** ALJ issued Order compelling responses.

- **November 3, 2025:** Complainants filed *Compliance and Motion to Admit Evidence*, including a summary table of responses, supporting documentation, and updated damages estimates.
- **November 6, 2025:** Supplemental filing provided detailed legal and factual support, including itemized damages.
- **November 10, 2025 (Received November 18, 2025):** DLC filed Motion to Dismiss, alleging non-responsive answers.

III. Legal Standards

- **Discovery Compliance:** 52 Pa. Code § 5.321(c) permits discovery of relevant matters.
- **Sanctions:** 52 Pa. Code § 5.371(a) authorizes sanctions for failure to comply, but dismissal is reserved for egregious, willful non-compliance.
- **Evidence Admissibility:** 52 Pa. Code § 5.401(a) allows relevant and material evidence subject to objections.
- **Due Process:** Parties must be afforded opportunity to present claims; dismissal is a last resort.

IV. Complainants' Compliance

1. **Summary Table:** Organized responses by category, providing positions on each interrogatory.

2. **Damages Estimate:** AI-generated and updated per ALJ's order, itemizing losses with cost ranges.
3. **Supporting Documentation:** Notices of claims, correspondence, and factual witness identification.
4. **Legal Authority:** Citations to 66 Pa. C.S. §§ 1501, 1510, and evidentiary rules.

V. Counter-Arguments to DLC's Motion

1. **Good Faith Compliance:** Complainants filed responsive documents within the deadline.
2. **Substantial Responses:** While DLC claims brevity, the filings provide detailed factual and legal support.
3. **No Prejudice:** DLC retains full opportunity to cross-examine witnesses and challenge damages estimates at hearing.
4. **Extreme Sanction:** Dismissal with prejudice is disproportionate; lesser remedies (e.g., supplemental responses, evidentiary limitations) are available.
5. **Commission Precedent:** Cases cited by DLC involved *complete failure* to respond. Here, responses were filed and supplemented.

VI. Relief Requested

- Denial of DLC's Motion to Dismiss.
- Recognition of Complainants' compliance with the October 31, 2025 Order.
- Admission of AI-generated damages estimate into evidence.

- Scheduling of evidentiary hearing to resolve disputed facts.

VII. Conclusion

The Complainants have complied in good faith with the ALJ's Order. DLC's Motion to Dismiss mischaracterizes the filings and seeks an extreme sanction unwarranted under Commission rules and precedent. The Commission should deny the motion and allow the case to proceed to hearing on the merits.

Respectfully submitted,

TODD ELLIOTT KOGER, SR.

ELLIOTT-TODD PARKER KOGER

VERIFICATION

Both, **Todd Elliott Koger, Sr.** and **Elliott-Todd Parker Koger**, Complainants in the above-captioned matter, hereby state that I/we are authorized to make this Verification and that the facts set forth in the foregoing **Complainants' Supplemental Compliance and Motion to Admit Evidence** are true and correct to the best of my/our knowledge, information, and belief, and that I/we expect to be able to prove the same at a hearing held in this matter.

I/we understand that the statements made herein are subject to the penalties of **18 Pa. C.S. § 4904** (relating to unsworn falsification to authorities).

/s/ Todd Elliott Koger, Sr.

/s Elliott-Todd Parker Koger

(412) 758-4510

kogerfriend@gmail.com

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DUQUESNE LIGHT COMPANY
RESPONDENT

PROPOSED ORDER

AND NOW, on this the _____ day of _____, 2025, this matter, it is hereby **ORDERED** as follows:

1. Duquesne Light Company's Motion to Dismiss is hereby **DENIED**.
2. Complainants' Compliance filings dated November 3, 2025 and November 6, 2025 are deemed **responsive** to the ALJ's October 31, 2025 Order.
3. The evidentiary hearing shall proceed as scheduled, with all parties afforded the opportunity to present testimony and evidence.
4. The AI-generated damages estimate is admitted into the record, subject to cross-examination and rebuttal.
5. This Order is entered pursuant to **52 Pa. Code § 5.401**, which permits admission of relevant and material evidence, and in recognition of Respondent's waiver of objection by failing to raise any challenge during discovery.

BY THE COMMISSION:

_____ J.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Elliott-Todd Parker Koger

/s/ Todd Elliott Koger

(412) 758-4510

PROOF OF SERVICE

Both Elliott-Todd Parker Koger and Todd Elliott Koger, Sr., certify that this was served the following on:

Megan E. Rulli, 17th North Second Street 12th Floor, Harrisburg, PA 17101

/s/ Elliott-Todd Parker Koger

/s/ Todd Elliott Koger

(412) 758-4510