

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Todd Elliott Koger, Sr. and Elliot-Todd Parker Koger,	:	
	:	
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 DENYING PREHEARING MOTIONS
OF TODD ELLIOTT KOGER, SR. AND ELLIOT-TODD PARKER KOGER**

On July 10, 2025, an Interim Order was entered granting the Company’s Motion to Consolidate the proceedings filed by Complainants at Docket No. C-2024-3049627 and Docket No. C-2025-3054190.

On July 11, 2025, an Interim Order was entered establishing an initial litigation schedule (Scheduling Order), which, among other things: (1) required the parties to provide each other notice of, identify, and summarize the testimony of any fact witnesses on or before September 1, 2025; (2) required the parties to provide each other notice of, identify, and

summarize the testimony of any expert witnesses on or before September 5, 2025; and (3) established October 31, 2025, as the deadline for discovery in these proceedings.

Respondent has averred that on July 11, 2025, the Complainants served Complainants' First Set of Requests for Production of Documents and Things and First Set of Interrogatories (Complainants Set I) on Duquesne Light via email. Responses to Complainants Set I were due to be served by August 1, 2025.¹ Respondent avers that on July 21, 2025, Duquesne Light timely served its Objections to Complainants Set I. Specifically, Duquesne Light avers it objected to Requests for Production Nos. 3, 4, and 5 and Interrogatories Nos. 2 and 10.²

Respondent avers that on July 28, 2025, Complainants served a Motion to Compel Production of Discovery (Motion to Compel), arguing that the Company's Objections should be overruled. Respondent avers that on August 1, 2025, Duquesne Light timely served its Answers to all but one of the requests contained in Complainants Set I.³

Respondent avers that on August 4, 2025, Duquesne Light timely served its Answer to the Complainants' Motion to Compel. Respondent avers that on September 2, 2025, Duquesne Light provided the Complainants with a list of the fact witnesses it plans to call at the hearings and summaries of the anticipated testimony of those fact witnesses.⁴

On September 5, 2025, Duquesne Light provided notice to the Complainants that the Company does not intend to call any expert witnesses at the hearings for these matters. Respondent avers, to date, Complainants have not provided notice to Duquesne Light of any expert witnesses they plan to call at the evidentiary hearings.⁵

¹ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

² See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

³ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

⁴ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

⁵ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

On September 9, 2025, Duquesne Light served Interrogatories and Requests for Production of Documents on the Complainants – Set I, Questions 1 through 19 (DLC to Complainants Set I) via electronic and first-class mail. Pursuant to the Commission’s regulations, objections to DLC to Complainants Set I were due on or before September 19, 2025, and responses were due on or before September 29, 2025. Respondent avers Complainants never served any objections to DLC to Complainants Set I by September 19, 2025. Additionally, Respondent avers Complainants did not provide responses to DLC to Complainants Set I by September 29, 2025.⁶

On September 25, 2025, an Interim Order was entered denying Complainants’ Motion to Compel Discovery Responses in full.

Respondent avers on October 1, 2025, Counsel for Duquesne Light emailed the Complainants to inquire into the status of the Complainants’ responses to the discovery requests, but the Complainants’ response gave no indication that they plan to serve any responses.⁷

On October 16, 2025, Duquesne Light filed a Motion to Compel responses to DLC to Complainants Set I. Complainants did not file an Answer to the Company’s Motion to Compel.

On October 16, 2025, the Commission issued an Initial In-Person Hearing Notice, scheduling the in-person hearings for the above-captioned Complaints for December 8 and 10, 2025, at the Commission’s Pittsburgh offices.

On October 16, 2025, a Prehearing Order was issued requiring distribution of proposed exhibits and other requirements for the evidentiary hearings (Prehearing Order), which, among other things, requires each party to serve copies of all proposed evidence on the opposing party and the undersigned presiding officer on or before 4:00 PM on December 3, 2025.

⁶ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

⁷ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

On or about October 25, 2025, Complainants filed their Motion in Limine to Exclude Undisclosed Evidence and Expert Testimony (Motion in Limine) and their Motion to Admit AI-Generated Estimate of Damages (First Motion to Admit Evidence). Respondent avers Complainants failed to serve copies of these Motions on the Company.⁸ Complainants did not serve their Motions upon the undersigned presiding officer.

On October 31, 2025, an Interim Order was issued granting Duquesne Light's Motion to Compel. The Order specifically directed the Complainants to "serve upon counsel for Respondent, full and complete answers and responses, in their entirety, to Duquesne Light Companies Set I discovery requests, as identified in the Motion to Compel filed on October 16, 2025, on or before 4:00 p.m. on Thursday, November 6, 2025."⁹ In addition, the Order noted that "the failure of Complainants to fully and timely comply with the terms and provisions set forth in this Interim Order may result in the imposition of sanctions, upon the filing of an appropriate Motion or request for relief."¹⁰

On or about November 3, 2025, the Complainants filed a document entitled "Complainants Compliance and Motion to Admit Evidence" (Second Motion to Admit Evidence), purporting to comply with the Order granting Duquesne Light's Motion to Compel and renewing their request to admit an Artificial Intelligence (AI) generated estimate of their alleged damages into evidence.¹¹ Respondent avers it was never served with the Second Motion to Admit Evidence.¹² Complainants failed to serve the undersigned presiding officer with a copy of the filing.

⁸ See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

⁹ See Interim Order at p. 23.

¹⁰ *Id.*

¹¹ The portion of this Motion purporting to comply with the ALJ's Interim Order granting Duquesne Light's Motion to Compel is the subject of the Company's pending Motion to Dismiss the above-captioned Complaints and, therefore, will not be further addressed in this Answer.

¹² See Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

On November 14, 2025, Respondent filed an Answer to the Prehearing Motions filed by Complainants, as identified above. Respondent avers that no formal and complete responses to DLC to Complainants Set I have been received from Complainants. In addition, despite the representations made in their filing dated November 3, 2025, Respondent avers the Complainants have also failed to produce any documents responsive to the Company's discovery requests.¹³

In its Answer, Respondent requests that Complainants' Prehearing Motions be denied.

Complainants Motion in Limine

Complainants' Motion in Limine essentially requests that the Company's case-in-chief to be limited to the scope of the Complainants' discovery requests. In their Motion in Limine, the Complainants request that Duquesne Light be prohibited from "introducing any evidence, documents, or expert testimony not disclosed during discovery."¹⁴ Complainants seem to argue that admitting materials into the record that have not previously been provided in discovery "would cause unfair surprise and prejudice."¹⁵ The Company's case-in-chief cannot be limited to the scope of the Complainants' discovery. In its Answer, Respondent argues the Company is entitled to present all relevant evidence to respond to the Complainants' allegations at the evidentiary hearings scheduled for these matters. Limiting the Company's evidence to the scope of the Complainants' discovery, Respondent argues, would deny the Company its basic due process right to respond to the claims brought by the Complainants.

Respondent submits, while the Complainants propounded multiple sets of discovery on the Company, they never asked Duquesne Light to disclose all evidence and/or

¹³ Respondent avers at various points in the filing, the Complainants state that documentation is attached to the filing. However, no responsive documents were attached to the filing and no documents have been served on the Company; also see Respondents Answer to Complainants Prehearing Motions filed on November 14, 2025.

¹⁴ Motion in Limine, p. 1.

¹⁵ *Id.*, p. 2.

exhibits that it planned to present at the evidentiary hearings. In its Answer, Respondent asserts Complainants cannot now claim that the Company has withheld documents simply because they did not ask for those materials.

Respondent also explains discovery in these proceedings did not close until October 31, 2025, and the Company responded to numerous discovery requests served by the Complainants on August 1 and 25, 2025. The Company also provided the Complainants with a list of their proposed fact witnesses and summaries of their testimony on October 2, 2025, pursuant to the Scheduling Order. Therefore, Respondent argues Complainants had ample opportunity to propound additional discovery requests based on these materials prior to the close of discovery.

Respondent further argues Complainants will also have the opportunity to review the Company's proposed exhibits pursuant to the Interim Orders entered in this proceeding and, at the hearing, the Complainants can present their own evidence in rebuttal, cross-examine the Company's witnesses on the testimony and exhibits presented, and raise valid objections to their admission into evidence. Thus, Respondent argues Complainants' concerns that allowing the Company to present evidence not sought in discovery "would cause unfair surprise and prejudice" are unfounded.

Respondent further argues Complainants have not provided any legal or substantive justification for their request to limit the scope of the Company's case-in-chief. For example, the Complainants have not identified any documentation that the Company has refused to provide upon request or any issues on which the Company has refused to provide information. In addition, Complainants' Motion to Compel was denied by Interim Order entered on September 25, 2025. Accordingly, Respondent argues it has properly produced documents and information responsive to the Complainants' discovery requests and that there is no legal or factual basis for their request to limit the Company's ability to present evidence in its favor.

Furthermore, regarding expert testimony and reports, Respondent asserts on October 5, 2025, the Company already notified the Complainants that it does not intend to present any expert testimony at the upcoming hearings.

Complainants Motions to Admit Evidence

In its Answer, Respondent argues Complainants' First and Second Motions to Admit Evidence should be denied because they are premature and the Complainants have failed to authenticate or lay any foundation for the admission of AI-generated damages in this proceeding.

In their Motions to Admit Evidence, Complainants request the admission into evidence of AI-generated estimates of alleged damages incurred. Complainants state they produced these estimates in discovery and claim, and that the Company has waived any objections to their admission into the record.¹⁶ Respondent disputes the assertion by Complainants and argues Complainants' arguments should be rejected as being premature and that the parties' proposed evidence will be presented for admission into the record at the hearings scheduled for December 8 and 10, 2025. Respondent further asserts at the hearings, the Complainants will have the opportunity to present all relevant evidence in their favor and to offer it into evidence, subject to valid objections from the Company. Respondent further argues that Complainants have not provided any compelling reason why these estimates should be admitted prior to the hearings.

Respondent also argues that Complainants did not produce these estimates in discovery and the Company did not "waive" any objections to this evidence. The Company acknowledges that the Complainants submitted an estimate of damages to the Company's Claims Department during review of the Complainants' damage claim, however that information was not provided to the Company in discovery. Respondent further asserts Complainants have refused to produce any materials or information in response to the Company's discovery

¹⁶ See First Motion to Admit Evidence, pp. 1-2; Second Motion to Admit Evidence, pp. 5-7.

requests.¹⁷ Even assuming, *arguendo*, that the Complainants had produced these estimates in response to discovery requests from Duquesne Light, Respondent asserts it had no duty to object at the time of production, as simply because information or documents are shared during discovery does not make them part of the evidentiary record in a proceeding. Instead, Respondent asserts, only the presiding officer can admit evidence into the record upon the motion of a party, and the non-moving party must have the chance to challenge its authenticity, raise proper objections, and conduct cross-examination related to that evidence. Respondent further asserts that the AI-generated damage estimates should be excluded from the record because they have not been properly authenticated and the Complainants have not laid any foundation for their admission.

Respondent further asserts that Complainants would need to offer expert testimony explaining how the AI model works and validating the reliability of its modeling and results. As presented, the Complainants have provided no basis for determining the authenticity of the AI-generated estimates and, therefore, Respondent argues, they should be excluded from the record.

Respondent argues the Complainants have failed to lay any foundation for the admission of damage evidence into the record in these proceedings or that Complainants have actually incurred the damages they are requesting compensation for or that the actions or omissions of Duquesne Light caused any damage to their service address or personal property. Respondent also argues the precise amount of the Complainants' alleged damages is not relevant to the instant proceeding, as the Commission cannot award damages.¹⁸ Accordingly, Respondents argue Complainants' Motions to Admit Evidence should be denied.

¹⁷ See generally Duquesne Light's Motion to Dismiss Complaints.

¹⁸ See *Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections). Indeed, requests for damages are regularly stricken from complaints as being impertinent matter. See, e.g., *id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No. C-2011-2264876, 2011 Pa. PUC LEXIS 652, at *8-9, 16-17 (Dec. 21, 2011), *adopted by Commission*, 2012 Pa. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at *8-9, 12 (Feb. 4, 2011), *adopted by Commission*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

As set forth in the Answer filed by Respondent on November 14, 2025, the Company argues the Complainants Motion in Limine to Exclude Undisclosed Evidence and Expert Testimony, the Motion to Admit AI-Generated Estimate of Damages, and the Motion to Admit Evidence of Todd Elliott Koger, Sr. and Elliot-Todd Koger, should be denied.

I agree with the arguments advanced by Duquesne Light in its Answer to the Prehearing Motions identified above.

Complainants are further reminded, again, and are directed to comply with applicable law, the Pennsylvania Public Utility Code and Commission Regulations regarding service upon opposing counsel and the undersigned presiding officer, with all filings or requests for relief made in this proceeding, in order for consideration to be given to such filings or requests.

Under the circumstances, the following Order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the Motion in Limine to Exclude Undisclosed Evidence and Expert Testimony, filed by Complainants, is Denied.
2. That the Motion to Admit AI-Generated Estimate of Damages, filed by Complainants, is Denied, without prejudice.
3. That the Motion to Admit Evidence, filed by Complainants, is Denied, without prejudice.
4. Complainants are directed to comply with applicable law, the Pennsylvania Public Utility Code and Commission Regulations regarding service upon opposing

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