

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**

COMPLAINANT(S)' RESPONSE IN OPPOSITION TO RENEWED MOTION

Both Elliott-Todd Parker Koger and Todd Elliott Koger, Sr., Complainants, respectfully submit this Response in Opposition to Renewed Motion. For the reasons set forth below, the Motion should be denied in its entirety and these matters should continue for the scheduled evidentiary hearing. The record and controlling law mandate that the Commission adjudicate the merits: (1) the Public Utility Code imposes a non-delegable duty on utility to furnish safe, adequate, and reasonable service under **66 Pa. C.S. § 1501**; (2) the Commission's discovery rules render un-answered Request for Admission conclusively established under **52 Pa. Code § 5.350**; and DLC's admitted, onsite manipulation of customer-owned equipment constitutes spoliation that both establishes prejudice and forecloses dismissal as a proportionate remedy under **52 Pa. Code § 5.371**.

1. STATEMENT OF FACTS (AS ESTABLISHED ON THE RECORD)

- On **October 11, 2023**, Duquesne Light's Senior Operator, Darryl Honick, removed the meter cover and physically tightened the customer-side neutral connection in the meter base at the Koger service address; DLC has admitted that action on the record.

- DLC’s internal troubleshooting report contemporaneously logged the condition as “customer neutral loose” and recorded that the neutral was “tighten[ed] up.”
- Complainants served the Request for Admission that sought to establish, among other matters, the foregoing operative facts; DLC failed to serve sufficient answers or proper objections within the time prescribed by Commission rules.
- Complainants filed motions to deem those Requests admitted and have produced compliance filings dated November 3 and November 6, 2025, including a summary table of responses, supporting documentation, and updated damages estimates.
- Complainants have identified itemized losses and replacement costs (**projected range: \$19,500 to \$47,900+ That are NOT DISPUTED by DLC**) and have preserved the right to call fact witnesses and a qualified expert to address breach, causation, damages, and the legal consequences of spoliation.

2. ARGUMENT

A. The Public Utility Code Requires a Hearing on Claims of Unsafe or Inadequate Service (66 Pa. C.S. § 1501)

Legal principle. The Commission’s statutory mandate under **66 Pa. C.S. § 1501** obligates every public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities.” This statutory duty is the foundation for Commission jurisdiction and remedial authority where a utility conduct threatens safety or adequacy of service.

Application. The Koger family complaints squarely allege that DLC’s conduct—both the underlying events giving rise to more than two fires reported by Xfinity Technicians and other related property damage and the subsequent unauthorized manipulation of customer-owned equipment—implicates safety and adequacy. Because

the statutory standard is dispositive of the Commission's remedial power, the presence of a **§ 1501 claim** requires adjudication on the merits rather than dismissal on procedural grounds.

B. Deem Admissions Under 52 Pa. Code § 5.350 Establish Foundational Facts Requiring a Hearing

Legal principle. Under **52 Pa. Code § 5.350** matters set forth in Requests for Admission are deemed admitted if the responding party fails to serve sufficient answers or proper objections within the prescribed period; such admissions are conclusively established for the pending action.

Application. DLC failed to timely and sufficiently answer Request for Admission Nos. 2,3,4,7,11, 13, and 15. Those Requests encompass the operative facts that form the core of Complainants' prima facie case— most notably, the admission that DLC personnel removed the meter cover and tightened the customer-side neutral. Because these matters are properly deemed admitted, the record contains conclusive factual predicates that compel further proceedings and preclude dismissal based on alleged discovery noncompliance.

C. DLC's Admitted Manipulation of Customer-Owned Equipment Constitutes Spoliation and Warrants Adverse Evidentiary Treatment, Not Dismissal

Legal principle. When a party alters or destroys evidence that it controls and that alteration was foreseeable to affect litigation, spoliation principles permit the factfinder to draw adverse inferences and authorize other remedial measures. Remedies are calibrated to prejudice suffered and the culpability of the spoliating party; dismissal is an extreme sanction reserved for the most egregious, willful, and incurable misconduct.

Application. DLC’s admitted tightening of the customer-side neutral after the event (more than two fires reported by Xfinity Technicians) that gave rise to the complaint is precisely the sort of physical alteration that foreseeably impairs the evidentiary landscape. The record demonstrates both the alteration and its relevance to causation and damages. Under these circumstances, the appropriate relief is evidentiary—adverse-inference instructions, preclusion of contrary evidence on the altered matters, and other measures tailored to cure prejudice— not termination of Complainants’ claims. Dismissal would be disproportionate and inconsistent with the Commission’s remedial discretion.

D. Commission Sanctioning Authority Requires Proportionality; Dismissal is an Extreme Remedy (52 Pa. Code § 5.371)

Legal principle. 52 Pa. Code § 5.371 authorizes sanctions for discovery violations but contemplates proportional remedies. Commission precedent and due process principles counsel that dismissal with prejudice is reserved for willful, contumacious, or incurable noncompliance where lesser sanctions cannot remedy prejudice.

Application. The record reflects Complainants’ good-faith compliance with the ALJ’s discovery directives and the production of responsive materials on November 3 and November 6, 2025. ***Where the record already contains deemed admissions and documentary support for damages and witness foundation, dismissal is neither necessary nor just.*** The Commission should instead exercise its authority to fashion targeted remedies— adverse evidentiary ruling, preclusion of inconsistent testimony, and its exercise of the scheduled hearing— thereby vindicating due process while protecting the integrity of the record.

CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, Complainants respectfully request that the Administrative Law Judge and the Commission:

1. **Deny** Duquesne Light Company's Renewed Motion to Dismiss in its entirety;
2. **Recognize** The matters properly deemed admitted under **52 Pa. Code § 5.350** as established for purpose of these proceedings;
3. **Enter** such targeted evidentiary relief as is necessary to remedy prejudice arising from DLC's admitted alteration of customer-owned equipment (including adverse inference-instructions and preclusion of contrary evidence on the altered matters); and
4. **Proceed** with the scheduled evidentiary hearing so that the Commission may resolve the statutory **§ 1501 claim**, determine caution and damages, and consider any appropriate enforcement or remedial action.

Respectfully submitted,

/s/ Todd Elliott Koger, Sr., Complainant, Pro Se

/s Elliott-Todd Parker Koger, Complainant, Pro Se

Dated: November 30, 2025

APPENDIX

PRE-HEARING SUMMARY OF THE CASE AND EVIDENCE

I. Core Claims

- **Violation of 66 Pa.C.S. § 1501:** DLC failed to furnish and maintain safe, adequate, and reasonable service.
- **Unauthorized Repair / Regulatory Violation:** DLC personnel performed an unauthorized physical manipulation of customer-owned equipment (tightening the customer-side neutral) on October 11, 2023, contrary to applicable tariff and regulatory limitations on utility intervention in customer facilities.
- **Spoliation of Evidence:** The tightening of the neutral connection altered the pre-repair condition and destroyed evidence relevant to causation and damages.
- **Gross Negligence and Damages:** Complainants assert compensable losses for wiring, appliances, and other household chattels damaged by the electrical event and resulting conditions.

II. Key Admitted Facts and Documentary Record

- **Admission of Action:** DLC admitted that on October 11, 2023, its Senior Operator, **Darryl Honick**, removed the meter cover and tightened the customer-side neutral connection.
- **Internal Troubleshooting Report:** DLC's contemporaneous report documents "customer neutral loose" and that the neutral was "tighten[ed] up."
- **Deemed Admissions:** DLC failed to timely answer Requests for Admission Nos. 2, 3, 4, 7, 11, 13, and 15; Complainants' Motion to Deem Admissions therefore establishes these matters for the record.
- **Compliance Filings:** Complainants filed Compliance and Motion to Admit Evidence on November 3 and November 6, 2025, including a summary table, supporting documentation, and updated damages estimates.
- **Damages Documentation (NOT DISPUTED BY DLC):** Itemized losses and replacement cost estimates (**projected range: \$19,500 to \$47,900+**) and insurance claim documentation have been produced and moved into evidence.

III. Witnesses

- **Fact Witnesses:** Todd Elliott Koger, Sr.; Elliot-Todd Parker Koger; DLC personnel including Darryl Honick and other relevant employees.
- **Expert Witness:** Complainants reserve the right to call a qualified expert to testify regarding breach of duty under § 1501, causation, damages, and the consequences of spoliation.

IV. Relief Requested at Hearing

- Adjudication of liability under **66 Pa.C.S. § 1501**;
- Award of compensatory damages consistent with the itemized estimates;

- Evidentiary sanctions appropriate to remedy spoliation (adverse-inference instruction; preclusion of contrary evidence on altered matters);
- Referral to the Bureau of Investigation & Enforcement for enforcement action under **66 Pa.C.S. § 502**, if the Commission deems enforcement warranted.

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DUQUESNE LIGHT COMPANY
RESPONDENT

PROPOSED ORDER

AND NOW, on this the _____ day of _____, 2025, this matter, upon consideration of Complainants' Response to DLC's and based on the AI-Generated Estimate of Damages (**NEVER DISPUTED BY DLC**), it is hereby **ORDERED THAT**:

1. **Duquesne Light Company's Renewed Motion to Dismiss is DENIED.** The Motion is denied in its entirety for the reasons set forth in the Findings of Fact and Conclusions of Law.
2. **Deemed Admissions are Recognized.** Requests for Admission Nos. 2, 3, 4, 7, 11, 13, and 15 are hereby deemed admitted pursuant to the Commission's discovery rules and are established for purposes of these proceedings unless and until the presiding officer permits withdrawal or amendment for good cause shown.
3. **Evidentiary Relief for Alteration of Evidence.** In light of Duquesne Light Company's admitted physical alteration of customer-owned equipment, the

presiding officer will apply appropriate remedial measures at hearing, which shall include, at minimum:

- **Adverse Inference.** The factfinder shall be permitted to consider an adverse inference regarding the condition of the customer-side neutral connection prior to Duquesne Light Company's admitted intervention; and
- **Preclusion.** Duquesne Light Company shall be precluded from introducing evidence or testimony that contradicts the matters deemed admitted or that attempts to reconstitute the pre-alteration condition absent a showing of newly discovered, material evidence that could not have been obtained with reasonable diligence.

4. **Admission of Complainants' Compliance Filings.** The Complainants' Compliance filings dated November 3, 2025 and November 6, 2025, including the summary table of responses, supporting documentation, and updated damages estimates, are accepted for the record and shall be considered in preparation for hearing.
5. **Preservation of Rights.** Nothing in this Order shall be construed to limit the Complainants' right to present additional admissible evidence, to call fact and expert witnesses, or to seek further relief consistent with the Commission's rules and applicable law. Duquesne Light Company retains the right to present admissible evidence in defense of the claims, subject to the evidentiary rulings set forth herein.
6. **Referral for Enforcement Review.** The Commission may, in its discretion, refer the matter to the Bureau of Investigation & Enforcement for review of potential

enforcement action under applicable statutory provisions; such referral shall be considered following the conclusion of the evidentiary hearing and the issuance of an initial decision, if appropriate.

7. **Sanctions Reserved.** The presiding officer retains authority to impose additional sanctions, including monetary fines or other remedies, should further discovery violations or willful misconduct be established during the course of these proceedings.

Order Effective Date and Entry

This Proposed Order shall be entered and effective upon the date signed below by the presiding officer or the Commission, as applicable.

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 on this the 30th day of October 2025, 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