

In The  
SUPERIOR COURT OF PENNSYLVANIA

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No. 912 WDA 2008

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PR BEAVER VALLEY LIMITED PARTNERSHIP,

Appellant,

v.

DUQUESNE LIGHT COMPANY,

Appellee.

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**BRIEF FOR APPELLEE**

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On appeal from the Order dated May 2, 2008,  
in the Court of Common Pleas of Beaver County,  
Pennsylvania, Civil Division, at No. 10088 of 2008

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v. Philadelphia Electric Co., 403 Pa. 647, 170 A.2d 565, 567 (1961) (declaratory judgment).<sup>3</sup>

Additionally, this lawsuit also requires the interpretation of Duquesne Light's tariff referenced in the Agreement between the parties. The relevant tariff provision states:

Where a single building will contain two or more customers who will receive service directly from [Duquesne Light], [Duquesne Light] will furnish, install, own, operate and maintain new facilities for delivery of service to the load side of the meters supplying such customers if (a) in [Duquesne Light's] judgment the cost of doing so is justified by the revenues to be obtained, and (b) [Duquesne Light is furnished easements on private property under terms satisfactory to [Duquesne Light].

(R. 36a).

Public utilities, such as Duquesne Light, are required to file tariffs with the PUC governing the rates to be established, collected or enforced by the public utility. 66 Pa.C.S.A. §1302. It is well settled that the PUC has particular expertise in interpreting public utility tariffs. County of Erie v. Verizon North, Inc., 879 A.2d 357, 364 (Pa. Cmwlth. 2005); United States Steel Corp. v. Pennsylvania Public Utility Com'n, 850 A.2d 783, 789 (Pa. Cmwlth. 2004), appeal denied, 581 Pa. 687, 863 A.2d 115 (2004). Matters relating to such tariffs are particularly within the expertise of the PUC and, as such, are outside the jurisdiction of the courts. County of Erie, 879 A.2d at 364; Morrow v. Bell Telephone Co. of Pa., 479 A.2d 548, 550 (Pa. Super. 1984). See also Optimum Image, 600 A.2d at 557. Because this matter involves the interpretation of a Duquesne Light tariff, it is within the particular expertise of the PUC and outside the jurisdiction of the courts.

Although the Partnership has attempted to frame its declaratory judgment complaint in terms of a breach of contract or anticipatory breach of contract case, the issues involved are appropriate for determination by the PUC. The Partnership alleges that Duquesne Light is attempting to terminate an agreement calling for Duquesne Light's maintenance services on the

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<sup>3</sup> Where a lawsuit implicating PUC jurisdiction includes a claim for money damages, the suit is bifurcated with the PUC deciding the liability issues covered by the Public Utility Code after which the case is then transferred back to the court of common pleas for the assessment of damages if there has been a finding of liability. See Elkin at 376-77; Optimum Image, 600 A.2d at 555.