

August 1, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Richard Tillilie v. Duquesne Light Company
Docket No. C-2013-2356336

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings. A copy of this document has been served upon Complainant's attorney in accordance with Commission regulations.

Sincerely,



Danielle L. Dietrich
Attorney for Duquesne Light Company

Enclosure

cc: Susan Foster Blank (w/enc.)
ALJ Jeffrey Watson (w/enc.)

LIT:568178-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD TILLILIE,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2013-2356336

**RESPONDENT'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

Danielle L. Dietrich, Esquire

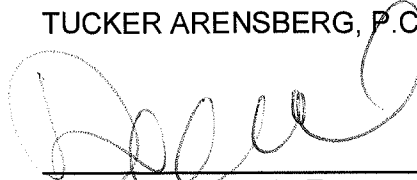
PA I.D. No. 200767
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5605
Counsel for Respondent

NOTICE TO PLEAD

TO COMPLAINANT, c/o SUSAN FOSTER BLANK, ESQ.:

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ENCLOSED MOTION FOR JUDGMENT ON THE PLEADINGS WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR YOUR COMPLAINT MAY BE DISMISSED.

TUCKER ARENSBERG, P.C.



Danielle L. Dietrich, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD TILLILIE,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2013-2356336
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

RESPONDENT’S MOTION FOR JUDGMENT ON THE PLEADINGS

Respondent, Duquesne Light Company, files the within Motion for Judgment on the Pleadings:

I. PROCEDURAL BACKGROUND

1. On April 8, 2013, Duquesne Light Company (“Duquesne Light”) was served with Complainant Richard Tillilie’s Formal Complaint (“Complaint”) initiating this matter, alleging that Duquesne Light had placed equipment on his property without a right of way agreement. Attachment to Complaint, ¶ 1.
2. This equipment includes a pole, splicing pit and a transformer. Id.
3. Complainant requests as relief: “[r]emove equipment to appropriate areas, obtain a signed right of way agreement so Duquesne Light can service the equipment using an alternate road because of the size and weight of their vehicles on my driveway.” Complaint ¶ 5.
4. Duquesne Light filed an Answer and New Matter on April 29, 2013.
5. This matter was originally scheduled for a telephonic hearing before ALJ Jeffrey Watson on June 24, 2013.
6. This hearing was rescheduled for August 9, 2013 due to a scheduling conflict.

7. On July 20, 2013, Complainant requested a continuance in order to allow him to obtain an attorney to represent him in this matter.¹

8. The hearing was rescheduled for October 3, 2013.

9. Judge Watson requested that the parties consider mediation. Both Complainant and Duquesne Light agreed to try to resolve this matter informally and/or through mediation.

10. The parties were unable to reach an agreement.

11. Duquesne Light's New Matter avers that the Commission lacks subject matter jurisdiction over this property dispute, and the Commission lacks the power to grant any of Complainant's requested relief. New Matter ¶ 11.

12. It also avers, "Complainant's cause of action, if there be one, is in a forum other than the Commission." *Id.* ¶ 12.

13. Duquesne Light also pleads in its New Matter that it "has a license from Crown Atlantic Company, LLC to place its equipment on the property that is owned by Complainant and leased by Crown Atlantic, LLC."

14. Duquesne Light's New Matter included a "Notice to Plead".

15. Neither the Complainant nor his Counsel filed any response to the New Matter.

16. Pursuant to 52 Pa. Code §5.60, Complainant's failure to reply to the New Matter may be deemed in default, and the facts stated in the new matter may be deemed to be admitted.

II. STANDARD FOR GRANTING A MOTION FOR JUDGMENT ON THE PLEADINGS

17. Pursuant to 52 Pa. Code § 5.102(a), a party may file a motion for judgment on the pleadings after the pleadings are closed, but within a time so that the hearing will not be delayed.

¹ Complainant filed the formal complaint *pro se* but Susan Foster Blank, Esq. entered her appearance on behalf of Complainant on September 30, 2013.

18. 52 Pa. Code § 5.102(d)(a) provides that a motion for judgment on the pleadings will be rendered if the applicable pleadings “show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.”

III. THE COMMISSION LACKS SUBJECT MATTER JURISDICTION OVER THIS ACTION

19. Duquesne Light files this Motion for Judgment on the Pleadings because the Commission lacks jurisdiction over the matters raised in the Complaint or the requested relief.

20. “The Commission must act within, and cannot exceed, its jurisdiction.” City of Pittsburgh v. Pa. Public Utility Comm’n, 43 A.2d 348 (Pa. Super. Ct. 1945).

21. The Commission has exclusive jurisdiction over matters involving the reasonableness, adequacy and sufficiency of services rendered. Bell Telephone Co. of Pennsylvania v. Sanner, 375 A.2d 93 (Pa. Super. Ct. 1977); Behrend v. Bell Telephone Co. of Pennsylvania, 431 Pa. 63, 243 A.2d 346 (1968).

22. The Complaint does not raise any matters involving the reasonableness, adequacy or sufficiency of services rendered by Duquesne Light.

23. The Commission also lacks jurisdiction to determine the validity of a right-of-way. Brown v. West Penn Power, PUC Docket No. C-2013-2356237 (Opinion and Order entered April 23, 2014); Stefanoski v. Pa. American Water Co., PUC Docket No. C-20078219 (Opinion and Order entered September 22, 2008).

24. The Commission has stated that property disputes belong in a court of general jurisdiction. Orach v. PPL Electric, PUC Docket No. C-2013-2393163 (Initial decision dated January 7, 2014); Perrige v. Metropolitan Edison Co., PUC Docket No. C-00004110 (Opinion and Order entered July 11, 2003).

25. The subject matter of the controversy at issue in this Complaint is Duquesne Light’s property rights.

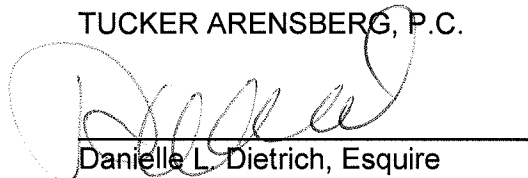
26. As this Complaint solely involves a property dispute, it is more properly before a court of general jurisdiction.

27. The filing of this motion will not delay the hearing in this matter, as there is no hearing currently scheduled.

28. For these reasons, the Commission lacks jurisdiction over the matters alleged in Complainant's Complaint, and thus the PUC should dismiss the Complaint.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain this Motion for Judgment on the Pleadings and dismiss Complainant's Complaint against it with prejudice.

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read 'Danielle L. Dietrich', is written over a horizontal line.

Danielle L. Dietrich, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


RICHARD TILLILIE,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2013-2356336
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

Susan Foster Blank, Esquire
30 Monongahela Pike
PO Box 4541
Eighty Four, PA 15330

Dated this 1st day of August, 2014

TUCKER ARENSBERG, P.C.


Danielle L. Dietrich, Esquire
PA I.D. No. 200767

1500 One PPG Place
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Counsel for Respondent, Duquesne Light
Company