

October 26, 2015

Via Electronic Filing

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

RE: John Lee (UtiliSave, LLC) v. Duquesne Light Company
Docket No. C-2015-2507068

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Lindsay N. Kreppel
Attorney for Duquesne Light Company

Enclosure

cc: John Lee (with enclosure)

LIT:594900-1 014657-158498

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHN LEE (UTILISAVE, LLC),

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2015-2507068

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
Jeremy V. Farrell, Esquire
PA I.D. No. 316258
(412) 594-3938

Lindsay N. Kreppel, Esquire
PA I.D. No. 319559
(412) 594-5640

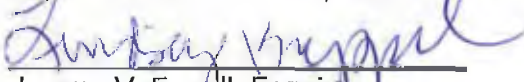
1500 One PPG Place
Pittsburgh, PA 15222
Counsel for Respondent

NOTICE TO PLEAD

TO: COMPLAINANT, JOHN LEE (UTILISAVE, LLC)

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN
PRELIMINARY OBJECTIONS OF RESPONDENT, DUQUESNE LIGHT COMPANY, WITHIN
TWENTY (10) DAYS OF SERVICE HEREOF, OR A JUDGMENT MAY BE ENTERED
AGAINST YOU.**

TUCKER ARENSBERG, P.C.



Jeremy V. Farrell, Esquire
Lindsay N. Kreppel, Esquire
Counsel for Duquesne Light Company

**BEFORE THE
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JOHN LEE (UTILISAVE, LLC),

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vs.

No: C-2015-2507068

DUQUESNE LIGHT COMPANY,

Respondent.

PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code. § 5.101, Duquesne Light files its preliminary objections to the Formal Complaint filed by John Lee, UtiliSave LLC:

1. Duquesne Light files these Preliminary Objections, pursuant to 52 Pa. Code § 5.101(a)(2) and (7), challenging Complainant's authority and ability to bring this Complaint on behalf of Duquesne Light's customer when: (a) Complainant lacks standing to pursue the claims asserted in the Complaint; (b) Complainant is not properly represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania; and (c) the Complaint fails to conform with two separate Commission regulations because it is neither signed by a party in interest (or its attorney) nor signed by an officer of the business association in whose name and interest the Complaint was purportedly brought.

I. Factual Background

2. On September 29, 2015, Duquesne Light was served with the Formal Complaint ("Complaint") brought by Complainant John Lee, UtiliSave LLC ("UtiliSave"), initiating this matter.

3. The service address at issue is 435 7th Avenue, Pittsburgh, Pennsylvania 15219 (the "Property"). (Complaint, ¶ 1.)

4. The Duquesne Light account holder at this Property is 110 Associates, LP ("110 Associates"). (Complaint, ¶ 1.)

5. Complainant purports that he has been retained by Draxxhall Management Corporation ("Draxxhall Management") to audit their utility bills. (Complaint, ¶ 4.)

6. The Complaint attaches an authorization, supposedly signed by the President of Draxxhall Management, which purports to authorize UtiliSave to audit and review the accounts and services provided to Draxxhall Management. (Complaint, ¶ 4 and associated attachment.) The authorization does not authorize Complainant to file a complaint on behalf of the Duquesne Light account holder, 110 Associates.

7. Significantly, however, the authorization does not empower Complainant to act on behalf of 110 Associates. Nor does Exhibit A to the authorization identify the Property as one of the addresses that is subject to the authorization.¹

8. Despite the fact that Complainant has offered no evidence indicating that it is empowered to act on behalf of 110 Associates, Complainant (a non-attorney) nevertheless challenges Duquesne Light's method of calculating the Property's electric bills and seeks to reduce the charges associated with the consumption and/or demand at the Property. (Complaint, ¶¶ 4-5.) Complainant even goes so far as to ask that any refund check be issued directly to his company. (Complaint, ¶ 5.)

¹ Admittedly, the copy of Exhibit A to the authorization received by Duquesne Light is not perfectly clear; however, a close review of the darkened rows on Exhibit A indicates that they apply to 436 and 437 7th Avenue, not the Property (which is 435 7th Avenue).

II. Law and Argument

9. As noted above, Duquesne Light files these preliminary objections on the following grounds: (a) Complainant lacks standing to pursue the claims set forth in the Complaint; (b) Complainant is not properly represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania; and (c) the Complaint does not conform to the Commission's regulations because the Complaint was not signed by a party in interest or a party's attorney, nor was it signed by an officer of the corporation.

10. Pursuant to 52 Pa. Code. § 5.101(a)(7), a party may file preliminary objections to dismiss a pleading for lack of standing.

11. "Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding." *Pamela Giacomel Luke v. Columbia Gas of Pennsylvania*, Docket No. C-2014-2425948, 2014 WLC 3824555, *5 (Pa. P.U.C., July 18, 2014).

12. "The Complainant's interest in the subject matter of the proceeding is direct if her interest is adversely affected by the actions challenged in the complaint, is immediate if there is a causal nexus between her asserted injury and the actions challenged in the complaint and is substantial if she has a discernible interest other than the general interest of all citizens in seeking compliance with the law." *Luke*, 2014 WLC 3824555 at *5 (citing *Ken R. ex rel. C.R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996)).

13. A complainant lacks standing when he is not a customer of the utility company or a resident at the service address at the time the alleged incidents occurred. See *Luke*, 2014 WLC 3824555 at *1.

14. An entity that asserts standing "in a representational capacity would still be required to demonstrate an interest on the part of its members that is direct, immediate and substantial." Pennsylvania Pub. Utility Comm'n v. Pennsylvania Gas & Water Company, et al., R-922169, 1992 WL 687130, at *3 (Oct. 29, 1992).

15. Complainant here is not a customer of Duquesne Light or a resident at this service address. Complainant does not allege that he is a tenant of the Property. Nor does he allege that he conducts business out of the Property. Complainant has offered no evidence of any tangible connection between his company and the account that is the subject of the Complaint. Simply put, Complainant has not asserted that it has been adversely affected by the Company's alleged incorrect application of the tariff or that it has any personal or individual interest in the actions challenged in the Complaint. Complainant has not demonstrated an interest on the part of its members that is direct, immediate and substantial.

16. In light of the above, Complainant does not have a direct, immediate or substantial interest in the subject matter of this proceeding.

17. Thus, Complainant lacks standing to participate in this proceeding and the Complaint must be dismissed.

18. Furthermore, under 52 Pa. Code §§ 1.21 and 1.22, business organizations (including Utilisave and 110 Associates) must have an attorney licensed to practice law in the Commonwealth of Pennsylvania represent them in this proceeding. Thus, whether this Complaint is brought on behalf of UtiliSave² or 110 Associates, that entity must be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania. Mr. Lee, however, did not identify himself as an attorney and the attorney identified in paragraph 8 of the

² For the reasons set forth in Paragraphs 10 through 17, UtiliSave lacks standing to bring this action.

Complaint is not identified as being licensed to practice law in the Commonwealth of Pennsylvania, as required by 52 Pa. Code §§ 1.21 and 1.22.

19. For those reasons, Mr. Lee is prohibited from representing either UtiliSave or 110 Associates before this Commission pursuant to 52 Pa. Code § 1.23(a), which provides: "Persons may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22."

20. Additionally, a party may file preliminary objections when a pleading fails to conform to the regulations. 52 Pa. Code § 5.101(a)(2). As set forth below, the Complaint fails to comply with several important Commission regulations.

21. First, under the Pennsylvania Public Utility Code ("Code"), a pleading must be signed by a party in interest or a party's attorney. 52 Pa. Code § 1.35(a)(1). That is not the case here. The Complaint is signed by John Lee from UtiliSave. Mr. Lee has not identified himself as an attorney (and, in fact, identifies another attorney licensed in New York in the Complaint). Mr. Lee has also not indicated that he is an officer or other duly authorized representative for Duquesne Light's customer, 110 Associates. Since the Complaint was not filed by 110 Associates -- the accountholder and party in interest -- or by an attorney on behalf of 110 Associates, it failed to comply with the Commission's regulations and should be dismissed.

22. Second, under the Code, a pleading filed with the Commission must be signed by an officer if it is a corporation, trust, association or other organized group. 52 Pa. Code § 1.35(b)(1)(ii). The allegations in the Complainant demonstrate no relationship between Complainant and 110 Associates, the account holder at the Property, let alone that Mr. Lee or Utilisave is an officer of 110 Associates. The authorization attached to the Complaint also does

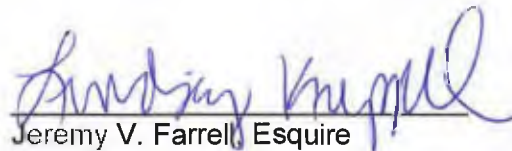
not refer to 110 Associates nor does it refer to the service address at issue. Thus, the Complaint also fails to conform to 52 Pa. Code § 1.35(b)(1)(ii).

23. For the reasons set forth above, the Complaint should be dismissed.

WHEREFORE, Duquesne Light Company respectfully requests the following:

- (1) that the Commission issue an Order requiring the Complainant to have an attorney enter an appearance by a date certain, in advance of the hearing, and if the Complainant fails to comply with the requested Order, the Complaint shall be dismissed with prejudice;
- (2) that the Commission enter an Order that only an attorney licensed to practice law in Pennsylvania may respond to these Preliminary Objections on behalf of Complainant; and/or
- (3) that the Commission sustain its Preliminary Objections and dismiss the Complaint with prejudice.

TUCKER ARENSBERG, P.C.



Jeremy V. Farrell, Esquire
Lindsay N. Kreppel, Esquire
Counsel for Duquesne Light Company

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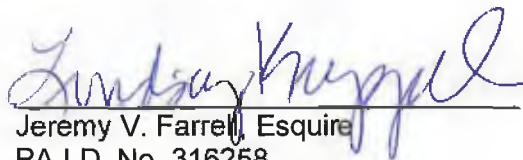
CERTIFICATE OF SERVICE

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):

John Lee, UtiliSave, LLC
129 W. 27th Street, 11th Floor
New York, NY 10001

One Ten Associates
435 7th Avenue
Pittsburgh, PA 15219

Dated this 26th day of October, 2015



Jeremy V. Farrell, Esquire
PA I.D. No. 316258
(412) 594-3938
jfarrell@tuckerlaw.com

Lindsay N. Kreppel, Esquire
PA I.D. No. 319559
(412) 594-5640
lkreppel@tuckerlaw.com

1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5619 (fax)
Counsel for Respondent, Duquesne Light
Company