

December 1, 2015

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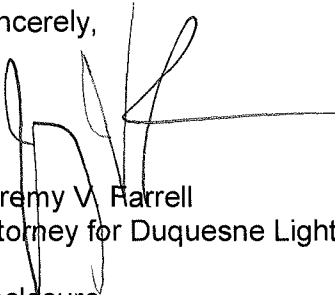
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

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

Sincerely,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

cc: John Harris, Esq. (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN HARRIS (UTILISAVE, LLC),	:	
	:	
Complainant,	:	
	:	
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 Amended Complaint filed by John Harris, Esq. (UtiliSave LLC):

1. Duquesne Light files these Preliminary Objections, pursuant to 52 Pa. Code § 5.101(a)(7), challenging UtiliSave, LLC's ("UtiliSave") ability to bring this Amended Complaint on behalf of Duquesne Light's customer because UtiliSave lacks standing to pursue the claims asserted in the Amended Complaint.

I. Factual Background

2. On November 12, 2015, Duquesne Light was served with an Amended Formal Complaint brought by UtiliSave through its attorney, John Harris, Esq.¹

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

¹ The Amended Complaint followed an initial Formal Complaint filed by an individual named John Lee who held himself out as an employee of UtiliSave.

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

5. UtiliSave claims that it has been retained by Draxxhall Management Corporation and its affiliates, including 110 Associates, to audit their utility bills and pursue claims before the Commission. (Amended Complaint, ¶ 4 and associated attachment.)

6. UtiliSave, however, does not allege that it is a customer of Duquesne Light or even that it resides at or conducts business out of the service address identified in the Amended Complaint. At best, UtiliSave alleges that they have a business relationship with one of Duquesne Light’s customers. Amended Complaint, ¶ 4.

7. Despite the fact that UtiliSave does not allege it is a customer of the Property or even that it uses the service Duquesne Light provides at the Property, UtiliSave 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. (Amended Complaint, ¶¶ 4-5.) UtiliSave even goes so far as to ask that any refund check be issued directly to it and not to Duquesne Light’s customer. (Amended Complaint, ¶ 5.)

II. Law and Argument

8. As noted above, Duquesne Light files these preliminary objections on the grounds that UtiliSave lacks standing to pursue the claims set forth in the Complaint either in a first-party or representative capacity.

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

10. “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) (dismissing a formal complaint, due to lack of standing, that was filed by a complainant who was not a customer of the utility).

11. “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)).² See also, Coggins v. PPL Electric Utilities Corp., Docket No. C-2012-2312785, 2013 WL 1856491 at *6 (Pa. P.U.C. April 22, 2013) (noting that a “complainant which is not a customer of a utility generally does not have the requisite substantial, direct, and immediate interest necessary to confer standing to bring the complain about the service of that utility.”).

12. 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, e.g., Luke, 2014 WL 3824555 at *1; Coggins, 2013 WL 1856491 at *6.

13. 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).

² Standing is an important concept. As one Administrative Law Judge aptly noted: “Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers.” Luke, supra at *5.

14. In the instant matter, UtiliSave does not contend that it is a customer of Duquesne Light or a resident at this service address. It does not allege that it is a tenant of the Property. Nor does UtiliSave allege that it conducts business out of the Property. UtiliSave has offered no evidence of any tangible connection between it and the account that is the subject of the Complaint. Simply put, UtiliSave 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. At best, UtiliSave has a business relationship with one of Duquesne Light's customers, but that does not mean it has demonstrated an interest on the part of its members that is direct, immediate and substantial. Therefore, the Amended Complaint must be dismissed. See, e.g., Luke, supra at *5 (ruling that a complainant lacked standing to bring a formal complaint relating to an account for which she was not a customer and, therefore, was not adversely affected by the actions taken relating to the father's account); Coggins, supra (dismissing complaint where the complainant had a business relationship with the utility's customer, but was not himself a customer of the utility).

15. As the Commission ruled in Luke:

Since the Complainant was not the customer of record or a resident at the service address, the Complainant cannot maintain this action as a customer. Her interest is not direct because she is not adversely affected by the actions challenged in the complaint. Her interest is not immediate because she has suffered no injury as a result of the actions challenged in the complaint. Her interest is not substantial because she has no discernible interest other than the general interest of all citizens in seeking compliance with the law. The Complainant lacks standing to maintain the action as a customer or resident.

Id. at *6.

16. Similarly, in Coggins v. PPL Electric Utilities Corp., Docket No. C-2012-2312785, 2013 WL 1856491 at *1 (Pa. P.U.C. April 22, 2013), the complainant filed a formal complaint against PPL alleging that the campground where he rented space as a permanent resident was overcharging him for electric service it received from PPL. The complainant, however, paid the

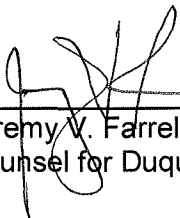
campgrounds for his electric service through a private contract and, therefore was not a PPL customer. Relying on the rule that “a complainant must be respondent’s customer to have standing to file a complaint about its utility service,” the presiding ALJ dismissed the formal complaint with prejudice in advance of hearing. Id. at *6.

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

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

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections and dismiss the Amended Complaint with prejudice.

TUCKER ARENSBERG, P.C.



Jeremy V. Farrell, Esquire
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

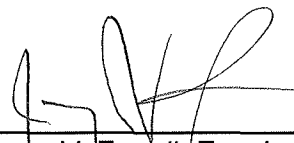
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Complainant,	:	
	:	
vs.	:	No: C-2015-2507068
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
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CERTIFICATE OF SERVICE

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 G. Harris, Esq.
1105 N. Market Street, 11th Floor
Wilmington, DE 19801

Dated this 1st day of December, 2015



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