

1. REPORT DATE: 00/00/00	:	
2. BUREAU: ALJ	:	
3. SECTION(S):	:	4. PUBLIC MEETING DATE:
5. APPROVED BY:	:	00/00/00
DIRECTOR:	:	
SUPERVISOR:	:	
6. PERSON IN CHARGE:	:	7. DATE FILED: 01/22/01
8. DOCKET NO: C-00014743	:	9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: POLAS, TED

RESPONDENT/APPLICANT: DUQUESNE LIGHT COMPANY

COMP/APP COUNTY: BEAVER

UTILITY CODE: 110150

ALLEGATION OR SUBJECT

COMPLAINANT STATES HE BELIEVES THAT DUQUESNE HAS VIOLATED HIS RIGHT TO CONTINUALLY ACQUIRE SAFE AND ADEQUATE ELECTRICAL SERVICE TO HIS RESIDENCE AND THAT OF HIS NEIGHBORS BY PERMITTING AT&T TO CONSTRUCT A 236' CELLULAR COMMUNICATIONS TOWER APPROXIMATELY 50' FROM A 138,000 VOLT DUQUESNE LIGHT TRANSMISSION LINE. HE WANTS THE PUC TO PROHIBIT AND STOP THE CONSTRUCTION OF THE CELL TOWER INSIDE OF THE 236' FALL ZONED AREA ESTABLISHED BY THE NATIONAL ELECTRIC CODE AND DIRECT THE BOROUGH OF ECONOMY TO IMMEDIATELY REVOKE THE BUILDING PERMIT.

DOCKETED
 JAN 22 2001

DOCUMENT
 FOLDER

C-0001474
110150

Formal Complaint Form
Pennsylvania Public Utility Commission

Please Print: (you may also type your answers directly onto the form as it appears on your screen)

1. Your name, mailing address and telephone number.

Name Ted Polas

Street/P.O.Box 1901 Watch Hill Drive

City Ambridge

State Penna.

Zip 15003

County Beaver

Area Code/Home Phone 724-266-2737

Area Code/Work Phone 304-797-4186

ORIGINAL

2. Name of company your complaint concerns: Duquesne Light Co.

3. What is your complaint? (Use additional paper if need more space).

I believe that Duquesne has violated my right to continually acquire safe and adequate electrical service to my residence and that of my neighbors by permitting AT&T to construct a 236' (203' initially) cellular communications tower approximately 50' from a 138,000 volt Duquesne Light transmission Line. This is a direct violation of PA code #57.191 & 57.193 and the N.E.C. 810-16 (b) and poses a threat to life and property. "additional sheet is attached"

4. What do you want the Public Utility Commission to do about your complaint? (Use additional paper if need more space).

Prohibit and stop the construction of the cell tower inside of the 236' fall zoned area established by the National Electric Code and direct the borough of Economy to immediately revoke the building permit

5. You must sign and date your complaint below.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania State Law if I purposely give false information.

Ted Polas

Signature

January 17, 2001

Date

Continued on next page

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SECRETARY'S BUREAU
01 JAN 22 AM 8:51

21

Additions sheet to Item 3 -

It is my understanding that the National Electrical Code is to be followed by all Public Electrical utilities as the minimum guidelines unless otherwise authorized by the P.U.C. - I have been told that no such permission has been granted in this case. The National Electric Code effectively establishes a fall zone equal to a height of the tower + grounding antenna on top as a minimum. In addition to these violations this installations presents an extreme safety hazard which may result in loss of property and/or life to the residents if this structure falls onto these lines causing a phase to phase and/or a phase to ground fault. The possibility of the fire-consuming residents is distinct. I also have film documenting such an phase to phase fault in which the transmission lines fell upon the residential power lines backfeeding high voltage into the residents & resulting in a total destruction of at least 6 homes. In addition I have documentation during a December 2000 wind storm that the wind shears were so great that a 40' Colorado Blue spruce tree was uprooted in my front lawn (I live approximately 1000' from the proposed cell tower location) & a Duquesne Light wooden telephone pole carrying 69,000 volts (100' from the proposed cell tower site & on Duquesne right of way) was sheared in half during the same wind storm. During the early 1970's I have also witnessed a tornado in the area resulting in a 20' x 100' destructive path in a wooded area near the site. All of this proves that extreme weather and storms do occur in the area.

As an attempt to specify the exact location of this proposed tower: it is to be located in Pennsylvania, Beaver County, and Economy Borough approximately 1000' off of Watch Hill Drive and Shell Drive. Duquesne Light Company transmission & power lines service me and all of my neighbors.

Pa Code:

§ 57.193. Transmission system reliability.

(a) An electric distribution company shall install and maintain its transmission facilities, and ensure that its transmission facilities are operated, in conformity with the applicable requirements of the National Electrical Safety Code. An electric distribution company shall operate its transmission facilities in conformity with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council, or successor organizations, and other applicable requirements

§ 57.191 Purpose.

Reliable electric service is essential to the health, safety and welfare of the citizens of this Commonwealth. The purpose of this subchapter is to establish standards and procedures for continuing and ensuring the safety and reliability of the electric system in this Commonwealth. The standards have been developed to provide a uniform method of assessing the reasonableness of electric service reliability

National Electric Code.

810-16. Size of Wire-Strung Antenna -- Receiving Station.

(a) Size of Antenna Conductors. Outdoor antenna conductors for receiving stations shall be of a size not less than given in Table 810-16(a).

(b) Self-Supporting Antennas. Outdoor antennas, such as vertical rods, dishes, or dipole structures, shall be of corrosion-resistant materials and of strength suitable to withstand ice and wind loading conditions, and shall be located well away from overhead conductors of electric light and power circuits of over 150 volts to ground, so as to avoid the possibility of the antenna or structure falling into or making accidental contact with such circuits

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P O BOX 3265, HARRISBURG PA 17105-3265

DATE SERVED: JANUARY 23, 2001

C-00014743

DUQUESNE LIGHT CO
JOHN MARSHALL PRESIDENT
411 7TH AVENUE
PITTSBURGH PA 15219-1905

Dear Sir/Madam:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by TED POLAS. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

DOCUMENT
FOLDER

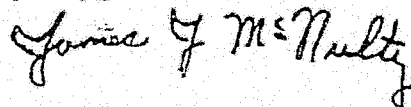
JANUARY 23, 2001

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,



James J. McNulty
Secretary

JH

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: JANUARY 23, 2001

TED POLAS
Complainant

VS.

DUQUESNE LIGHT COMPANY
Respondent

Complaint Docket
No: C-00014743

DOCUMENT
FOLDER
DOCKETED
JAN 22 2001

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: DUQUESNE LIGHT COMPANY
TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

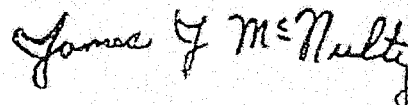
1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17120, an answer (original and two copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty
Secretary

(SEAL)

Certified Mail
Return Receipt Requested



Cherrington Corporate Center
Mail Drop C-4-4-3
400 Fairway Drive
Cranopolis, PA 15108

Phone: (412) 393-1546
Fax: (412) 393-1418

Legal Services

ORIGINAL

February 15, 2001

Certificate of Mailing

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED

FEB 15 2001

A PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

RE: Ted Polas v. Duquesne Light Company
Docket No. C-00014743

Dear Secretary McNulty:

An original and three copies of Respondent Duquesne Light Company's Answer and New Matter and Preliminary Motion to Dismiss are enclosed. A copy of these documents has been served upon Complainant in accordance with Commission Regulations.

Sincerely,

Regina M. Sestak
Attorney for Duquesne Light Company

DOCUMENT
FOLDER

encs

c: Ted Polas (with enclosures)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

TED POLAS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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RECEIVED
FEB 15 2001
PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

Docket No. C-0004743

ANSWER AND NEW MATTER OF DUQUESNE LIGHT COMPANY

TO THE HONORABLE COMMISSION:

AND NOW comes the Respondent, Duquesne Light Company, by and through its attorney, Regina Sestak, and files the within Answer and New Matter of which the following is a statement:

ANSWER

1. Admitted.
2. Admitted.
3. Denied in part and admitted in part.

DOCUMENT FOLDER

DOCKETED
FEB 21 2001

Complainant's averment that, "I believe that Duquesne has violated my right to continually acquire safe and adequate electrical service to my residence and that of my neighbors by permitting AT&T to construct a 236' (203' initially) cellular communications tower approximately 50' from a 138,000 volt Duquesne Light transmission line" is an opinion to which no response is necessary. By way of further

response, according to information received by Respondent concerning the proposed cellular tower, the construction of said tower is to be done for the benefit of AT&T Wireless Services, a mobile domestic cellular radio telecommunications affiliate of AT&T. To the extent Complainant's averment makes statements of fact concerning the proposed construction of an AT&T Wireless cellular tower, said averments are denied. On the contrary, Respondent has not permitted construction of the proposed cellular tower, in that it does not have the authority to grant or deny such permission. The proposed tower will not be on Respondent's property, nor will it be located within Respondent's right-of-way. Respondent's only involvement with the construction of this cellular tower was its response to a request from SBA Inc., an agent of AT&T Wireless, that Respondent perform a clearance evaluation for the proposed cellular tower. It is denied that this tower interferes with continuous, adequate or safe delivery of service, as Respondent's Engineering Department performed an evaluation and concluded that the proposed tower will meet the clearance requirements of the National Electric Safety Code (NESC), 1997 Edition. By way of further response, based upon information obtained by Respondent, it is Respondent's understanding that said tower is not 236', but is a 220' tower with nine (9) panel antennas located at the top and a 12' x 20' prefabricated concrete shelter at the base, which is near Respondent's Circuit Z82, where a 69 kV line, not a 138,000-volt line, runs between Respondent's Tower No. 4419 and Respondent's Pole No. 326189.

Complainant's averment that, "This is a direct violation of PA code #57.191 & 57.193 and the N.E.C. 810-16 (b) and poses a threat to life and property" is a conclusion of law to which no response is necessary. To the extent a response may be required, this

avermment is denied. Commission Regulation 57.191, 52 Pa. Code § 57.191, sets forth the purpose of the Commission's Reliability Standards, which is to provide a method of assessing the reasonableness of electric service reliability. Commission Regulation 57.193, 52 Pa. Code § 57.193, sets forth various requirements, including, at (a), the requirement that an electric utility operate its facilities in conformity with the applicable requirements of the National Electric Safety Code (NESC).

As noted above, the tower in question meets the requirements of the NESC. Complainant apparently intends "N.E.C." to stand for the National Electric Code. The NEC is a standard developed by the NEC Committee of the American National Standards Institute (ANSI). The applicable standards under Commission Regulation 57.193(a), 52 Pa. Code § 57.193(a), are those of the NESC, not NEC.

Complainant's averment, "additional sheet is attached," apparently refers to the document labeled "Additional sheet to Item 3" which he apparently intends to incorporate into his complaint. Respondent responds as follows:

To the extent that this document reiterates matters addressed above, Respondent's responses are hereby incorporated by reference. To the extent that this document includes statements of opinion, queries, conclusions of law, statements of intention, and requests for relief, no response is required.

Complainant's averment, "It is my understanding that the National Electric Code is to be followed by all Public Electrical utilities as the minimum guidelines unless authorized by the P.U.C.," is a statement of opinion to which no response is required. To the extent that a response may be appropriate, as noted above, Commission Regulation

57.193(a) requires electric utilities to comply with the NESC, not the National Electric Code (NEC)

After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment, "I have been told that no such permission has been granted in this case," and this averment is denied. By way of further response, Respondent did not seek PUC authorization to not follow NEC guidelines because: (1) it is not the entity controlling the tower construction, and (2) the Commission does not require it to follow the NEC. Respondent does not follow the NEC as a minimum. On the contrary, Respondent must follow as a minimum guideline the NESC. The Commission has recognized that the provisions of the NESC constitute reasonable standards of safe construction and maintenance practices of electric utility facilities.

It is not clear what Complainant is referring to in his averment that, "The National Electric Code effectively establishes a fall zone equal to the height of the tower + grounding antenna on top as a minimum." After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment and it is therefore denied. By way of further response, the NEC is inapplicable to the instant situation, as Commission Regulation 57.193(a) requires Respondent to comply with NESC guidelines. Further, Respondent's Engineering Department has performed a line clearance evaluation and concluded that the proposed tower will meet the clearance requirements of the NESC, 1997 Edition.

Complainant's averment that, "In addition to these violations this installations presents an extreme safety hazard which may result in loss of property and/or life to the

residents if this structure falls onto these lines causing a phase to phase and/or phase to ground fault," is an opinion to which no response is required. To the extent a response is necessary, Respondent here incorporates the forgoing portion of its Answer.

Complainant's averment that, "The possibility of the fire-consuming residents is distinct," is an opinion and/or speculation to which no response is required.

After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment, "I also have film documenting such an phase to phase fault in which the transmission lines fell upon the residential power lines backfeeding high voltage into the residents & resulting in a total destruction of at least 6 homes," and it is therefore denied.

After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment that, "In addition I have documentation during a December 2000 wind storm that the wind shears were so great that a 40' Colorado Blue spruce tree was uprooted in my front lawn," and it is therefore denied.

After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment that, "I live approximately 1000' from the proposed cell tower location," and it is therefore denied.

After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment. "& a Duquesne Light wooden telephone pole carrying 69,000 volts (100' from the proposed cell tower site & on Duquesne right of way) was sheared in half during the same wind storm," and it is therefore denied.

After reasonable investigation, Respondent is without sufficient knowledge or information to form a belief as to the truth of Complainant's averment that, "During the early 1970's I have also witnessed a tornado in the area resulting in a 20' x 100' destructive path in a wooded area near the site," and it is therefore denied.

Complainant's averment that, "All of this proves that extreme weather and storms do occur in the area," is an opinion to which no response is required.

Complainant's averment, "As an attempt to specify the exact location of this proposed tower, it is to be located in Pennsylvania, Beaver County, and Economy Borough approximately 1000' off of Watch Hill Drive and Shell Drive," is admitted to the extent that, based upon information received from SBA, Inc., an AT&T Wireless agent, the proposed tower is to be located at 1906 Watch Hill Drive, Economy Borough, Pennsylvania.

Complainant's averment that, "Duquesne Light Company transmission & power lines service me and all of my neighbors," is admitted to the extent that Complainant's premises is located within Respondent's service territory.

Complainant's attached document appears to contain quoted sections of 52 Pa. Code §§ 57.193 and 57.191. Respondent admits that those quoted sections appear as they do in the Pa. Code.

Complainant's attached document appears to contain a quote of Section 810-16(a) & (b) of the National Electric Code. To the extent that it appears on said attachment, Respondent admits that this quoted section appears as it does in the National Electric Code, 1990 Edition.

4. As this paragraph contains a request for relief, no response is required.

WHEREFORE, Respondent requests that after reasonable investigation and hearing the Complaint be dismissed.

NEW MATTER

5. Paragraphs one through four above are hereby incorporated by reference.

6. According to information provided to Respondent by SBA, Inc., an agent of AT&T Wireless Services, the entity constructing said tower is AT&T Wireless Services, which is an affiliate of AT&T.

7. Neither AT&T nor Economy Borough are named as parties to this Complaint.

8. Neither AT&T nor Economy Borough are proper parties to a formal complaint proceeding before the Commission under the facts alleged in this complaint.

9. Under the Pennsylvania Public Utility Code, 66 Pa. C.S.A. § 102 (2)(iv), an entity engaged in wireless communications exclusively, that is, "[A]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service," is not within the definition of a public utility subject to the jurisdiction of the Commission.

10. The Commission has relinquished jurisdiction over mobile domestic cellular radio telecommunication companies under regulation 66 Pa. C.S.A. § 102 (2)(iv) and by its Order entered September 18, 1998, at Re Omnibus Budget Reconciliation Act of 1993, Docket Nos. L-00950104 and M-00950695.

11. Even though AT&T may offer landline telecommunications services, which is an activity explicitly within the jurisdiction of the Commission, AT&T in this situation does not become a regulated public utility under the Commission's jurisdiction.

merely because the Commission regulates a related entity. The regulated status of AT&T does not confer regulated status on its wireless affiliate. *See Aronson v Sprint Spectrum, L.P.*, 2001 WL 32927 (Pa. Super. 2001).

12. The Complainant does not recite what authority, if any, Respondent has to control construction of said tower.

13. Complainant is apparently attempting to circumvent the Commission's jurisdictional reach by attaching Respondent to the instant action.

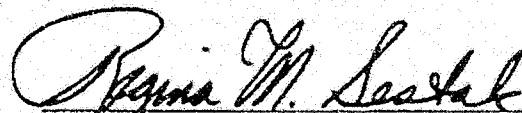
14. Complainant's averments do not support a determination that Respondent violated any statute, regulation, or Commission order.

WHEREFORE, Respondent requests that the Commission dismiss this complaint.

Respectfully submitted:

Duquesne Light Company

By Counsel:



Regina M. Sestak

Pa. I.D. No. 23632

DQE, Inc.

Mail Drop - C4-4-3

Cherrington Corporate Center

400 Fairway Drive, Suite 400

Coraopolis, PA 15108

(412) 393-1546

(412) 393-1418 FAX

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

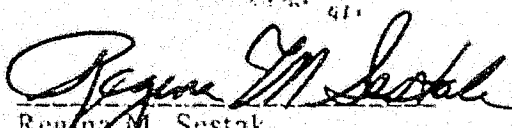
TED POLAS.)
)
 Complainant.)
)
 v) Docket No C-00014743
)
 DUQUESNE LIGHT COMPANY.)
)
 Respondent)

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)

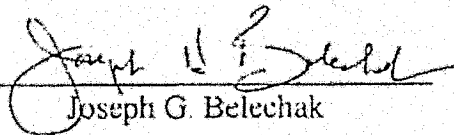
Ted Polas
1901 Watch Hill Drive
Ambridge, PA 15003

Dated this 15th day of February, 2001.

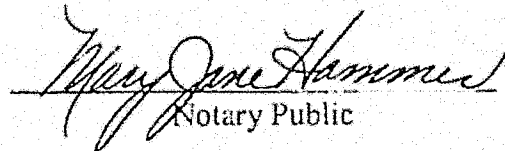
RECEIVED
FEB 15 2001
PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

Regina M. Sestak
Pa. I.D. # 23632
DQE, Inc.
Mail Drop C4-4-3
Cherrington Corporate Center
400 Fairway Drive, Suite 400
Coraopolis, PA 15108
Telephone: (412) 393-1546
FAX (412) 393-1418

AFFIDAVIT

I, Joseph G. Belechak, being duly sworn according to law depose and say that I am authorized to make this affidavit on behalf of Duquesne Light Company being the holder of the office of Vice President – Operations and Asset Management with that corporation, and that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief and Duquesne Light Company expects to be able to prove the same at any hearing hercof.


Joseph G. Belechak

Sworn and subscribed before me this 14th day of February, 2001.


Notary Public

My Commission Expires

Notarial Seal
Mary Jane Hammer, Notary Public
Moon Twp., Allegheny County
My Commission Expires Oct. 6, 2003
Member, Pennsylvania Association of Notaries

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TED POLAS)
ORIGINAL)
Complainant,)
vs.)
DUQUESNE LIGHT COMPANY,)
Respondent.)

Docket No. C-00014743

RECEIVED
FEB 15 2001
UTILITY COMMISSION
CLERK'S BUREAU

RESPONDENT DUQUESNE LIGHT COMPANY'S
PRELIMINARY MOTION TO DISMISS

AND NOW comes the Respondent, Duquesne Light Company, by and through its attorney, Regina M. Sestak, and files this Preliminary Motion to Dismiss pursuant to Commission Regulation 5.101, 52 Pa. Code §5.101.

1. Complainant filed the above-captioned Formal Complaint on 1/22/2001, requesting that the Commission:

Prohibit and stop the construction of the cell tower inside of the 236' fall zoned area established by the National Electric Code and direct the borough of Economy to immediately revoke the building permit.

2. Respondent is filing an Answer to said Complaint of even date herewith, and hereby incorporates said Answer herein.

3. Commission Regulation 5.101(a)(3), 52 Pa. Code §5 101(a)(3) provides that a participant in a formal proceeding may file a motion to dismiss a pleading that is insufficient as to substance.

DOCUMENT
FOLDER

ROCKETED
FEB 21 2001

4. Commission Regulation 5.101(a)(1), 52 Pa. Code § 5.101(a)(1) provides that a participant in a formal proceeding may file a motion that questions the jurisdiction of the Commission.

5. Commission Regulation 5.21(a), 52 Pa. Code § 5.21(a) permits formal complaints to be filed regarding "acts done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission."

6. The averments in the complaint assert that AT&T intends to construct a cellular tower in Economy Borough.

7. Neither AT&T nor Economy Borough are named as parties to this Complaint.

8. Neither AT&T nor Economy Borough are proper parties to a formal complaint proceeding before the Commission under the facts alleged in this complaint.

9. Complainant's requested relief requires that the Commission exercise jurisdiction over AT&T Wireless Services, a mobile domestic cellular radio telecommunication affiliate of AT&T.

10. Under the Pennsylvania Public Utility Code, 66 Pa. C.S.A. § 102 (2)(iv), an entity engaged in wireless communications exclusively, that is, "[A]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service," is not within the definition of a public utility subject to the jurisdiction of the Commission.

11. The Commission has relinquished jurisdiction over mobile domestic cellular radio telecommunication companies under regulation 66 Pa. C.S.A. § 102 (2)(iv) and by its Order entered September 18, 1998, at Re Omnibus Budget Reconciliation Act of 1993, Docket Nos. L-00950104 and M-00950695.

12. Even though AT&T may offer landline telecommunications services, which is an activity explicitly within the jurisdiction of the Commission, AT&T Wireless Services in this situation does not become a regulated public utility under the Commission's jurisdiction merely because the Commission regulates a related entity. The regulated status of AT&T does not confer regulated status on its wireless affiliate. *See Aronson v. Sprint Spectrum, L.P.*, 2001 WL 32927 (Pa. Super. 2001).

13. The Commission by regulation, as well as its own orders, does not have jurisdiction to grant the relief sought by Complainant.

14. Complainant asserts, at Paragraph 3 of his Complaint, that Respondent has violated his right to safe and adequate electrical service by permitting AT&T to construct the cellular communications tower in question.

15. The Complainant does not specify what authority, if any, Respondent has to control construction of said tower.

16. Complainant is apparently attempting to circumvent the Commission's jurisdictional reach by attaching Respondent to the instant action.

17. The averments of Complainant's Complaint do not support a determination that Respondent has violated any statute, regulation, or Commission order.

WHEREFORE, Respondent requests that the Commission dismiss this
Complaint.

Duquesne Light Company

By Counsel:



Regina M. Sestak
Pa. I.D. No. 23632
DQE, Inc.

Mail Drop - C4-4-3
Cherrington Corporate Center
400 Fairway Drive, Suite 400
Coraopolis, PA 15108
(412) 393-1546
(412) 393-1418 FAX

RECEIVED

FEB 17 2001
PENNSYLVANIA PUBLIC UTILITY COMMISSION
DOCKET # C-00014743

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TED POLAS)
)
 Complainant.)
)
 v)
)
 DUQUESNE LIGHT COMPANY.)
)
 Respondent)

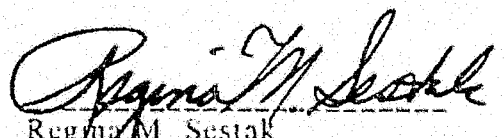
Docket No. C-00014743

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).

Ted Polas
1901 Watch Hill Drive
Ambridge, PA 15003

Dated this 15th day of February, 2001



Regina M. Sestak
Pa ID # 23632
DQE, Inc.
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Coraopolis, PA 15108
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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 1, 2001

In Re: C-00014743

(See attached list)

Ted Polas v. Duquesne Light Company

Objects to cellular tower being erected near transmission line.

Hearing Notice

This is to inform you that a hearing on the above-captioned case will be held as follows:

Type: Initial Hearing

Date: Wednesday, April 4, 2001

Time: 10:00 a.m.

Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

DOCKETED
MAR 5 2001

DOCUMENT
FOLDER

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Corbett
Bruce Bigelow, Mediator
Susan Licon
Beth Plantz
Docket Section
Calendar File



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harnsburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 20, 2001

In Re: C-00014743

DOCUMENT
FOLDER

(See letter of 3-1-01)

Ted Polas v. Duquesne Light Company

Cancellation Notice

This is to inform you of the following cancellation:

Type: Initial hearing
Date: Wednesday, April 4, 2001
Time: 10:00 a.m.
Location: Pittsburgh
Presiding: Administrative Law Judge John H. Corbett, Jr.

DOCKETED

MAR 22 2001

Please mark your records accordingly.

pc: Judge Corbett
Susan Licon
Beth Plantz
Docket Section
Calendar File