

August 30, 2017

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
2nd Floor, Room-N201  
Harrisburg, PA 17120

**RE: Dave Price v. Duquesne Light Company**  
Docket No. C-2017-2618525

Dear Secretary Chiavetta:

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

Please feel free to contact me if you have any questions.

Sincerely,



Jeremy V. Farrell  
Attorney for Duquesne Light Company

Paul Shane Miller  
Attorney for Duquesne Light Company

Enclosure

cc: Dave Price (with enclosure)

LIT:628069-1 014657-158498



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVE PRICE,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2017-2618525
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT**

Pursuant to 52 Pa. Code. § 5.101, Duquesne Light Company (“Duquesne Light”) files the following preliminary objections to Dave Price’s (“Complainant’s”) Formal Complaint.

**I. Factual Background**

1. Act 129 of 2008 (“Act 129”) requires Duquesne Light to replace its meters with digital models equipped with smart meter technology, commonly called “Smart Meters.” Duquesne Light is now replacing approximately 600,000 meters with Smart Meters in its service territory. The law does not allow customers to “opt-out” of the Smart Meter program.

2. The Commission approved Duquesne Light’s petition for approval of its Smart Meter procurement and installation plan (“Smart Meter Plan”) on May 6, 2013, at Docket No. M-2009-2123948. The Commission further approved in part and denied in part Duquesne Light’s petition to amend its Smart Meter Plan on April 7, 2017, at Docket P-2015-2497267. The Commission’s April 7, 2017, Order did not establish a mechanism for customers to opt out of having Smart Meters installed at their premises. To the contrary, in relevant part, the Commission’s Order provided for the *accelerated* installation of smart meters.

3. On July 17, 2017, Duquesne Light replaced the meter at Complainant's address with a Smart Meter.

4. On July 27, 2017, Complainant filed a Formal Complaint against Duquesne Light. He objects to the installation of the Smart Meter. Compl. ¶¶ 4-5.

5. Complainant does not claim that the Smart Meter has harmed him or that Duquesne Light has violated the Public Utility Code. Rather, he "want[s] a hearing on [the] use of [the] digital meter . . ." Id. at ¶ 5. He also states that he "[doesn't] want this meter use[d] in my home" and objects "to the [Smart Meter] and other reasons." Id. He does not provide more details.

6. As discussed below, the Formal Complaint must be dismissed for two reasons: (1) legal insufficiency of a pleading under 52 Pa. Code § 5.101(a)(4), and (2) insufficient specificity of a pleading under 52 Pa. Code § 5.101(a)(3).<sup>1</sup>

## II. Law and Argument

### **Preliminary Objection No. 1: The Formal Complaint must be dismissed because it does not allege that Duquesne Light violated the law.**

7. A party can file preliminary objections for "legal insufficiency of a pleading." 52 Pa. Code § 5.101(a)(4). A complaint is "legally insufficient" if it does not allege that the respondent violated the law. Marge Walters, F-2015-2501949, 2015 WL 9595682, at \*5 (Dec. 17, 2015).

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<sup>1</sup> Under 52 Pa. Code § 5.101(e)(1), a party is not required to file an answer with its preliminary objections if the preliminary objections allege insufficient specificity of a pleading. Here, Duquesne Light raises preliminary objections for insufficient specificity of a pleading and legal insufficiency of a pleading. Given that Duquesne Light has raised preliminary objections on both grounds – not just insufficient specificity of a pleading – the company has filed an answer with these preliminary objections out of an abundance of caution.

8. Act 129 requires Duquesne Light to replace its meters with Smart Meters. Duquesne Light replaced the meter at Complainant's address with a Smart Meter on July 17, 2017. Duquesne Light thus complied with the law by installing a Smart Meter at Complainant's address.

9. Complainant does not allege that the Smart Meter has harmed him. He does not suggest that Duquesne Light has failed to provide adequate, efficient, safe, and reasonable service, or that it violated any other provision of the Public Utility Code.

10. Given that Duquesne Light complied with the law by installing a Smart Meter at Complainant's address and Complainant has raised no other claims, the Formal Complaint fails to allege that Duquesne Light violated the law. It must be dismissed because it is legally insufficient.

**Preliminary Objection No. 2: Even if the Formal Complaint is legally sufficient, it must be dismissed because it does not describe Duquesne Light's alleged unlawful conduct with sufficient specificity.**

11. A party can also file preliminary objections for "insufficient specificity of a pleading." 52 Pa. Code § 5.101(a)(3).

12. The Commission's rule regarding specificity of a pleading is based on Pennsylvania's Rule of Civil Procedure 1019, which requires a plaintiff to plead all facts that he must prove to recover on the alleged cause of action. Tremayne Shanault Lewis, C-2013-2357268, 2013 WL 3355962, at \*3 (May 24, 2013).

13. The pleading must be sufficiently specific so that the defending party will know how to prepare his defense. Id. (citing Dep't of Transp. v. Shipley Humble Oil Co., 370 A. 2d 438 (Pa. Cmwlth. Ct. 1977)).

14. Pennsylvania is a fact pleading, rather than a notice, state. Thus, the pleadings should conform to the elements necessary to state a cause of action. Id.

15. The Commission regularly dismisses complaints for insufficient specificity when a complainant fails to allege "clear and concise statement of the act or omission being complained of as well as a clear and concise statement of the relief sought as required by the Commission's regulations." Alice Ann Belmonte-Gates, F-2012-2332583, 2013 WL 596066, at \*8 (Jan. 24, 2013) (J. Cheskis) (citing 52 Pa. Code §§ 5.22(a)(3)).

16. Here, Complainant has not clearly explained how Duquesne Light violated the law or what relief he is seeking. He simply states that he does not want a Smart Meter at his home. Complainant, however, does not provide more information that would allow Duquesne Light defend itself, such as how the Smart Meter installation violates the law, how it harmed him, or what relief he seeks.

17. Given that the Formal Complaint provides little explanation for Complainant's claim against Duquesne Light, it must be dismissed for insufficient specificity under 52 Pa. Code § 5.101(a)(3).

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

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Company

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Complainant,	:	
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vs.	:	No: C-2017-2618525
	:	
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):

Dave Price  
152 Wynoka Street  
Pittsburgh, PA 15210

Dated this 30<sup>th</sup> day of August, 2017



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