

December 19, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
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 Motion to Dismiss For Lack of Prosecution. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Dave Price (with enclosure)
Administrative Law Judge Jeffrey A. Watson (with enclosure)

LIT:632869-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVE PRICE,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2017-2618525

TO: DAVE PRICE

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN MOTION OF RESPONDENT, DUQUESNE LIGHT COMPANY, WITHIN TWENTY (20) DAYS OF SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

TUCKER ARENSBERG, P.C.



Paul Shane Miller, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVE PRICE,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2017-2618525

MOTION TO DISMISS FOR LACK OF PROSECUTION

TO THE HONORABLE COMMISSION:

Respondent, Duquesne Light Company, by and through its attorneys, Tucker Arensberg, P.C., files this Motion to Dismiss For Lack of Prosecution, and respectfully petitions this Honorable Commission to dismiss the Formal Complaint with prejudice:

1. The Formal Complaint (the "Complaint") filed by Complainant Dave Price ("Complainant") must be dismissed with prejudice for lack of prosecution.

2. This Honorable Commission previously ordered Complainant to file and serve an amended complaint by December 5, 2017.

3. As of December 19, 2017, Complainant has not filed or served an amended complaint.

4. Given that Complainant has violated a Commission order, neglected to file an amended complaint, and generally failed to pursue this matter, this Honorable Commission must dismiss the Complaint with prejudice for lack of prosecution.

FACTUAL BACKGROUND

5. On July 27, 2017, Complainant filed the Complaint with the Commission.

6. In Paragraph 4 of the Complaint (“Reason for Complaint”), Complainant stated: “THE CHANGE TO DIGITAL METER WITH RF TECHNOLOGY.”

7. In Paragraph 5 of the Complaint (“Request for Relief”), Complainant stated: “[A] HEARING ON USE OF DIDGITAL [sic] METER. DON’T WANT THIS METER USE [sic] IN MY HOME. I OBJECT TO THE R.F.I. METER AND OTHER REASONS.”

8. Complainant does not provide any further explanation regarding the reason for the Complainant or his request for relief.

9. On August 30, 2017, Duquesne Light filed an Answer and Preliminary Objections.

10. In the Preliminary Objections, Duquesne Light argued the Complaint must be dismissed because it is (1) legally insufficient, and (2) insufficiently specific.

11. Complainant did not respond to Duquesne Light’s Preliminary Objections.

12. On November 15, 2017, this Honorable Commission issued an Interim Order Granting in Part and Denying in Part the Preliminary Objections Filed by Respondent (the “Interim Order”).

13. In the Interim Order, this Honorable Commission granted Duquesne Light’s Preliminary Objections to the extent that Duquesne Light sought an order requiring Complainant to file a more specific pleading.¹

14. As part of the Interim Order, this Honorable Commission ordered Complainant to file an amended complaint “stating the specific allegations against . . . Duquesne Light . . . about which he [Complainant] complains and identifying in detail the reasons for his Complaint and all of his claims and ‘other reasons’ against . . . Duquesne Light Company.”²

¹ This Honorable Commission denied Duquesne Light’s Preliminary Objections in all other respects.

² Under 52 Pa. Code § 5.93, the Commission may direct parties to “state their case by way of amendment more fully or in more detail.”

15. This Honorable Commission ordered Complainant to file and serve an amended complaint on Duquesne Light's counsel on or before December 5, 2017.

16. As of December 19, 2017, Duquesne Light's counsel has not received an amended complaint from Complainant; an amended complaint also does not appear on the docket.

LAW AND ARGUMENT

17. Under 52 Pa. Code § 5.21(d), the Commission may dismiss a complaint if a hearing is not necessary.

18. This provision serves judicial economy by avoiding a hearing where no factual dispute exists. Schell v. PPL Elec. Utilities Corp., C-2016-2578796, 2017 WL 2633310, at *3 (Pa. P.U.C. Apr. 27, 2017).

19. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa. Code § 5.22(a)(4).

20. A complaint must contain information specific enough to allow the respondent to understand the allegations against it and to conduct a meaningful investigation of the allegations and to prepare a coherent response or defense. Schell, 2017 WL 2633310, at *4.

21. A pleading also must be legally sufficient. See 52 Pa. Code § 5.101(a)(4). A complaint is legally insufficient if it only makes general averments with no factual explanation of the alleged problem. Schell, 2017 WL 2633310, at *4.

22. The Commission has held that the orders of an administrative law judge must be complied with and that a failure to do so is a sufficient basis to support dismissal of the matter. Id.; Snyderville Cmty. Dev. Corp. v. Phila. Gas Works, C-20055032, 2006 WL 4794390, at *4 (Pa. P.U.C. July 31, 2006) ("An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing.").

23. Here, Complainant did not comply with the Interim Order, which required him to file and serve an amended complaint on Duquesne Light by December 5, 2017.

24. Because Complainant has not filed an amended complaint, the Complainant is still insufficiently specific; it does not adequately notify Duquesne Light of the claims against it.

25. In addition to being insufficiently specific, the Complaint also is legally insufficient because it contains general averments rather than a specific factual explanation of the alleged problem.

26. Given that Complainant has violated a Commission order, neglected to file an amended complaint, and generally failed to pursue this matter, this Honorable Commission should find that a hearing is not necessary and dismiss the Complaint with prejudice.

WHEREFORE, Respondent, Duquesne Light Company, respectfully requests that the Honorable Commission dismiss the instant Complaint with prejudice.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Paul Shane Miller, Esquire
PA I.D. No. 319174

1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5527

Counsel for Respondent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DAVE PRICE,	:	
	:	
Complainant,	:	
	:	
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

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place - 301 Fifth Avenue
Suite 220
Pittsburgh, PA 15222

Dated this 19th of December, 2017

TUCKER ARENSBERG, P.C.



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