

January 22, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

RE: KR Investment Properties 2, LP v. Duquesne Light Company
Docket No. F-2018-2640709

Dear Secretary Chiavetta:

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

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Lauren N. Rulli
Attorney for Duquesne Light Company

Enclosure

cc: KR Investment Properties 2, LP (with enclosure)
Brad Sommer, Esquire (with enclosure)

LIT:634663-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KR INVESTMENT PROPERTIES 2, LP, :

Complainant, :

vs. :

DUQUESNE LIGHT COMPANY, :

Respondent. :

No: F-2018-2640709

**PRELIMINARY OBJECTIONS TO
FORMAL COMPLAINT**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

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Counsel for Respondent

NOTICE TO PLEAD

TO: COMPLAINANT, KR INVESTMENT PROPERTIES 2, LP

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

TUCKER ARENSBERG, P.C.



Paul Shane Miller, Esquire
Lauren N. Rulli, Esquire
Counsel for Duquesne Light Company

**BEFORE THE
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KR INVESTMENT PROPERTIES 2, LP,

Complainant,

vs.

No: F-2018-2640709

DUQUESNE LIGHT COMPANY,

Respondent.

PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT

Pursuant to 52 Pa. Code. § 5.101, Duquesne Light files its preliminary objections to the Formal Complaint:

I. Introduction

1. Duquesne Light seeks to dismiss this Formal Complaint in its entirety because it is legally insufficient, and the Commission lacks jurisdiction to resolve the dispute between Complainant KR Investment Properties 2, LP (“Complainant”) and its former tenant, Mr. Robert Ondike Jr.

II. The Complaint’s Allegations

2. On or about January 2, 2018, Complainant filed a Formal Complaint (the “Complaint”) against Duquesne Light initiating this matter.

3. Complainant alleges that there are incorrect charges on its bill because Duquesne Light is seeking to hold Complainant responsible for charges that accrued prior to September 6, 2017 – the date in which Duquesne Light discovered foreign load at Complainant’s rental property located at 341 Larimer Avenue, 1st Floor, Turtle Creek, PA 15145 (the “Property”). See Complaint ¶¶ 13.

4. Complainant also describes, in detail, various problems that it experienced over several years with its former tenant, Mr. Robert Ondike Jr. and claims that Duquesne Light should not have allowed him to “amass such a large bill” at the Property. *Id.* at ¶¶ 4-5, 8-14.

5. As relief, Complainant requests that it held be held responsible only for charges incurred after foreign load was discovered on September 6, 2017. *Id.* at ¶¶ 13, 15.

II. Law and Argument

6. A party may file preliminary objections for, among other things, lack of Commission jurisdiction and legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(1), (4).

7. Section 703 of the Public Utility Code also states that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b).

8. Section 1529.1 of the Public Utility Code governs the payment of utility services in rental properties. Vito Satiro v. PECO Energy Company, F-2015-2510660, 2015 WL 9595691, at *4 (Pa. P.U.C. Dec. 22, 2015).

9. Section 1529.1 states as follows:

(a) Notice to public utility. - It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) History of account. - Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) Failure to give notice. - Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa.C.S. § 1529.1.

10. The Commission has established that the presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1. David P. Boyce v. Duquesne Light Company, Docket Number Z-00223698, 1994 WL 932263, at *3 (Pa. P.U.C. Sept. 1, 1994).

11. "Foreign load" exists where a residential tenant is billed through a meter assigned to his or her residence, and where utility service for other areas outside the residence (such as other residences or building common areas) are also routed through that same meter. Id. at *4-5.

12. The Commission addressed Section 1529.1 at length in Ace Check Cashing Inc. v. Philadelphia Gas Works, Eddie and Jennifer West, Indispensable Parties, Docket No. C2008-2056428, 2010 WL 2911722 (Pa. P.U.C. May 21, 2010).

13. In Ace, the Commission reversed its then-existing policy in foreign load cases articulated in Afshari v. PPL Electric Utilities Corporation, Docket No. C-20055547, 2008 WL 6690076 (Pa. P.U.C. April 9, 2008) that allowed a hearing to determine the amount of electric usage attributable to the foreign load.

14. In reversing Afshari, the Commission in Ace ruled that it does not have jurisdiction over a financial dispute between two non-utility parties. Ace Check Cashing Inc., 2010 WL at *3. Although the Commission has jurisdiction over the regulation of utility companies and utility service, it does not have jurisdiction to adjudicate every dispute that involves a utility. Id. For that reason, the Commission does not have subject matter jurisdiction

over a dispute between a property owner and a tenant -- two non-utility parties. Id. That type of dispute must be left to the courts. Id.

15. The Commission in Ace also held that its policy in Afshari contradicts a plain reading of 66 Pa.C.S. § 1529.1 and is inconsistent with long-standing Commission precedent that holds the property owner financially responsible for a tenant's account once foreign load is verified on the tenant's service. Id. at *4.

16. As a result, Section 1529.1 of the Public Utility Code and applicable Commission precedent are clear that any dispute regarding the financial responsibilities of the parties in a case where foreign load is present is a matter to be resolved in the Court of Common Pleas and is outside the Commission's jurisdiction. Larry Twigg v. Pa. Power Company, F-2014-2417501, 2014 WL 3555461, at *8 (Pa. P.U.C. July 2, 2014).

17. Here, Complainant admits that it has been the owner of the Property since February 7, 2017. See Complaint at ¶ 7.

18. Complainant also admits that Duquesne Light discovered foreign load at the Property on September 6, 2017. Id. at ¶ 13.

19. Thus, as a matter of law, Complainant is financially responsible for the account balance that its tenant accrued while residing at the Property. The Complaint is legally insufficient and must be dismissed.

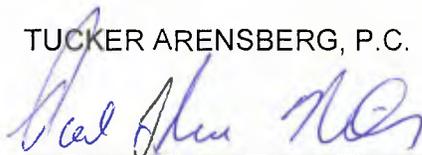
20. Moreover, although Complainant sets forth numerous allegations against its former tenant, the Commission does not have subject jurisdiction to settle those disputes because they involve two non-utility parties: Complainant and its former tenant. Those disputes must be resolved by the courts, not the Commission.

21. Finally, the case that Complainant cites in support of his claim that charges for foreign load should be effective only from the date of discovery (see Complaint ¶ 13) is the Afshari case, which was overruled by the Commission's decision in Ace.

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

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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No: F-2018-2640709

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):

KR Investment Properties 2, LP
130 Pine Court
Pittsburgh, PA 15239

Brad Sommer, Esquire
Sommer Law Group
6 Market Square
Pittsburgh, PA 15222

Dated this 22nd day of January, 2018



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