

May 15, 2018

Via Electronic Filing

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

RE: Nathaniel Walker v. Duquesne Light Company
Docket No. F-2018-3001412

Dear Secretary Chiavetta:

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

In addition, Duquesne Light Company respectfully requests that these Preliminary Objections be assigned to Administrative Law Judge Conrad Johnson, as he has recently presided over a matter with similar issues.

Sincerely,

Lauren N. Rulli
Attorney for Duquesne Light Company

Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Nathaniel Walker (with enclosure)

LIT:640415-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NATHANIEL WALKER,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: F-2018-3001412

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

Lauren N. Rulli, Esquire
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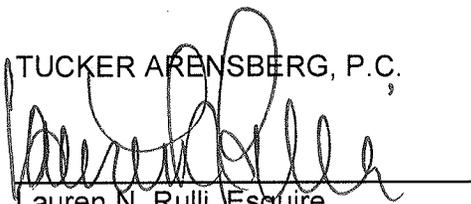
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1500 One PPG Place
Pittsburgh, PA 15222
Counsel for Respondent

NOTICE TO PLEAD

TO: COMPLAINANT, NATHANIEL WALKER

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.

Lauren N. Rulli, Esquire
Counsel for Duquesne Light Company

**BEFORE THE
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No: F-2018-3001412

DUQUESNE LIGHT COMPANY,

Respondent.

PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code § 5.101, Duquesne Light files its preliminary objections to Nathaniel Walker's Formal Complaint:

I. Factual Background

1. On or about April 20, 2018, Duquesne Light was served with Nathaniel Walker's ("Complainant's") Formal Complaint (the "Complaint") initiating this matter.

2. Complainant's claim is that Duquesne Light failed to honor several "Tendered Negotiable Instruments" by failing to "discharge" Complainant's outstanding balance. (Complaint, Paragraph 5). Complainants allege that these actions by Duquesne Light violate "Public Law 73-10," "UCC 3-310(b); 3-603, 3-104(a)," and the "U.S. Bankruptcy and Commercial Law." (Complaint, Paragraph 5).

3. None of the laws cited by Complainant in the Complaint refer to the Pennsylvania Public Utility Code or any associated regulations.

4. The only box that Complaint checks in Paragraph 4 of the Complaint is "[t]he utility is threatening to shut off my service or has already shut off my service." (Complaint, Paragraph 4). However, there are no allegations in the Complaint regarding improper termination of service.

5. Duquesne Light files these Preliminary Objections on the grounds that this Commission lacks jurisdiction over Complainant's claims as they invoke a United States House Resolution enacted in 1933 (the so-called Public Law 73-10), the Uniform Commercial Code, and unspecified sections of the federal Bankruptcy Code.

II. Legal Argument

A. **Complainant's Complaint Should Be Dismissed for Lack of Jurisdiction.**

6. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections on the grounds that the Commission lacks jurisdiction. 52 Pa. Code §5.101(a).

7. Pursuant to Section 501 of the Public Utility Code, 66 Pa.C.S.A. § 501, the Commission has the power to "enforce, execute and carry out, by its regulations, orders or otherwise" all provisions of the Code. Section 701, 66 Pa.C.S.A. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer.

8. Here, Complainants improperly invoke "Public Law 73-10," the sections of the Uniform Commercial Code, and unspecified sections of the Bankruptcy Code, all of which are clearly not part of the Pennsylvania Public Utility Code or associated regulations.

9. Research of "Public Law 73-10" shows that it is in reference to United States House Joint Resolution 192 (1933) titled "To assure uniform value to the coins and currencies of the United States." Enactment of this resolution by Public Law 73-10 suspended the gold standard in the United States. Surprisingly, plaintiffs all too frequently attempt to use Public Law 73-10 to avoid paying a debt on various supposed consequences flowing from the 1933 suspension of the gold standard. *McLaughlin v. CitiMortgage, Inc.*, 726 F.Supp. 2d 201 (D. Conn. 2010) (discussing these theories in depth and collecting cases that "universally and emphatically" reject them). Courts that have been faced with these claims have described them

as "equal parts revisionist legal history and conspiracy theory." *Bryant v. Wash. Mut. Bank*, 524 F. Supp. 2d 753, 758 (W.D. Va. 2007). That aside, Public Law 73-10 is clearly not within the realm of the Commission.

10. The Commission has been faced with complaints regarding Public Law 73-10 and has ruled that the negotiability of a promissory note submitted by a customer as payment does not fall within the Commission's jurisdiction. *Kennedy v. PECO*, C-2015-2471718, 2015 WL 6575645, at *7 (Oct. 22, 2015) (sustaining PECO's preliminary objections and dismissing the complaint without a hearing when the complainant claimed that PECO violated Public Law 73-10 by failing to accept his promissory note as payment).

11. Moreover, the Uniform Commercial Code and the Bankruptcy Code are also outside of the Commission's realm of jurisdiction. *Coppedge v. PECO Energy Company*, Docket No. F-2009-2135893 (August 3, 2010) (the Commission lacks jurisdiction to interpret the UCC to determine the negotiability of instruments).

12. Here, even if the Complaint is read in the most liberal way in Complainant's favor, there are no other allegations that could possibly be construed as violations of the Pennsylvania Public Utility Code or associated regulations.

13. As such, Duquesne Light requests that Complainant's Complaint be dismissed in its entirety as this Commission lacks jurisdiction to decide the claims contained therein.

B. The Complaint Should Be Dismissed For Insufficient Specificity

14. To the extent that the Commission determines that the Complaint contains allegations other than those relating to Public Law 73-10, the Uniform Commercial Code, and the federal Bankruptcy Code, these such allegations lack the required specificity for a pleading as it fails to allege any factual averments that would allow Duquesne Light to prepare a response or begin an investigation.

15. Pursuant to 52 Pa. Code. § 5.101(a)(3), a party may file preliminary objections on the grounds of "[i]nsufficient specificity of a pleading."

16. 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 the facts that he must prove in order to achieve recovery on the alleged cause of action. *Tremayne Shanault Lewis*, C-2013-2357268, 2013 WL 3355962, at *3 (May 24, 2013).

17. 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)).

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

19. Complainant checks one box in his Complaint - that the utility is threatening or has shut off his service. However, there are no other allegations even remotely related to this claim.

20. There are no allegations that Duquesne Light is improperly attempting to terminate or has improperly terminated Complainant's service.

21. In fact, the Complaint as a whole is so vague that Duquesne Light cannot properly prepare a meaningful response thereto.

22. 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)).

23. Here, the Complaint lacks the required specificity for a pleading.

24. For these reasons, the Complaint against Duquesne Light should be dismissed for insufficient specificity.

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

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read "Lauren N. Rulli", written over a horizontal line.

Lauren N. Rulli, Esquire
Counsel for Duquesne Light Company

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No: F-2018-3001412

DUQUESNE LIGHT COMPANY,

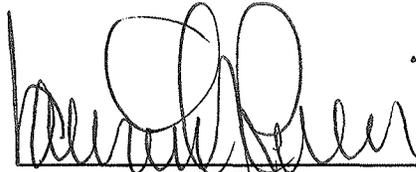
Respondent.

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):

Nathaniel Walker
541 Lowell Street
Pittsburgh, PA 15206

Dated this 15th day of May, 2018



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