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July 10, 2018

**Via Electronic Filing**

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

**RE: Richard Wendell v. Duquesne Light Company  
Docket No. C-2018-3002839**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to Formal Complaint filed by Richard Wendell.

A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over the typed name and title.

Emily M. Farah  
Counsel for Duquesne Light Company

Enclosure

cc: Richard Wendell (with enclosure)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICHARD WENDELL,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2018-3002839

**PRELIMINARY OBJECTIONS**

Filed on behalf of Respondent  
Duquesne Light Company

Counsel of Record for this Party:  
Emily M. Farah, Esquire  
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411 Seventh Avenue, 15th Fl.  
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**NOTICE TO PLEAD**

**TO COMPLAINANT RICHARD WENDELL:**

**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.**

DUQUESNE LIGHT COMPANY



Emily M. Farah  
Counsel for Duquesne Light Company



Order of the Commission.” Robert Tyson v. PECO Energy Company, Docket No. C-2013-2378829 (Initial Decision Granting Preliminary Objections and Dismissing the Complaint entered September 4, 2013), citing 52 Pa. Code § 5.22(a)(4).

4. Here, Duquesne Light has not violated – and the Complaint does not allege that Duquesne Light has violated – any statute, Regulation or Order by engaging in vegetation management practices along Old Mill Road and Fox Chapel Borough (“Borough”). Therefore, the Complaint must be dismissed in its entirety.

## **II. THE COMPLAINT’S ALLEGATIONS**

5. Complainant alleges that (1) Duquesne Light improperly removed vegetation from Old Mill Road in the Borough and (2) Duquesne Light’s pending base rate increase case (“Rate Case”) should include an environmental component. Complaint, ¶¶ 4, 5.

6. For the reasons set forth below, Duquesne Light files Preliminary Objections on the basis that (1) the Complainant lacks standing because he does not have a discernible interest in the litigation, and (2) the Complaint is legally insufficient because it does not allege that Duquesne Light violated any section of the Pennsylvania Code, Commission rules or regulations, nor its tariff by conducting vegetation management along Old Mill Road.

## **III. LAW AND ARGUMENT**

**A. The Complainant lacks standing because he does not have a direct, immediate, or substantial interest in the suit.**

7. Pursuant to 52 Pa. Code. § 5.101(a)(7), a party may file preliminary objections on the grounds of “[s]tanding of a party to participate in the proceeding.”

8. “Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding.” Pamela Giacomet Luke v. Columbia Gas of Pennsylvania, Docket No. C-2014-2425948, 2014 WL 3824555, \*5 (Pa. P.U.C., July 18, 2014).

9. Further, “[t]he Complainant’s interest in the subject matter of the proceeding is direct if her interest is adversely affected by the actions challenged in the complaint, is immediate if there is a causal nexus between her asserted injury and the actions challenged in the complaint and is substantial if she has a discernible interest other than the general interest of all citizens in seeking compliance with the law.” Luke, 2014 WLC 3824555 at \*5 (citing Ken R. ex rel. C.R. v. Arthur Z., 682 A.2d 1267 (Pa. 1996)). A party who asserts standing “in a representational capacity would still be required to demonstrate an interest on the part of its members that is direct, immediate and substantial.” Pennsylvania Pub. Utility Comm'n v. Pennsylvania Gas & Water Company, et al., R-922169, 1992 WL 687130, at \*3 (Oct. 29, 1992).

10. Here, Complainant lacks standing because the vegetation management that took place on Old Mill Road occurred within the public right-of-way and not his property. Complainant has no more interest in the vegetation management beyond the general interest of all citizens in the area, which is inadequate to confer standing. The portions of the Complaint that refer to the vegetation management that took place on Old Mill Road should therefore be dismissed.

11. Similarly, Complainant asks this Commission to order Duquesne Light to include environmental considerations in its Rate Case, citing “a responsibility to our community to mitigate the damage to our environment.” Complaint Attachment, p. 3. Complainant, however, lacks a substantial interest in such matters as his interest is no different than the general interest of all citizens in the area. As a result, the portions of the Complaint that refer to the Rate Case should be dismissed.

**B. Complaint lacks legal sufficiency because Complainant does not identify violation of Pennsylvania law or Commission authority.**

12. Pursuant to 52 Pa. Code. § 5.101(a)(4), a party may file preliminary objections on the grounds of “[l]egal insufficiency of a pleading.”

13. 66 Pa. C.S.A. § 1501 (“Section 1501”) requires every public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs,

changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” See 66 Pa. C.S.A. § 1501.

14. “Service,” as defined in Section 1501 includes any and all acts that relate to distributing electricity, including vegetation maintenance so long as it is reasonable. W. Penn Power Co. v. Pa. PUC, 134 Pa. Cmwlth. 53, 57, 578 A. 2d 75, 77 (1990).

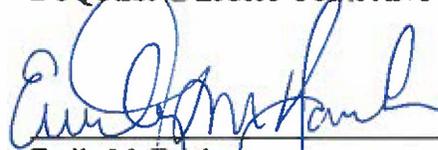
15. Consistent with Section 1501, Duquesne Light performed vegetation management along Old Mill Road to service the overhead distribution lines where vegetation was posing reliability and safety hazards, ensuring Duquesne Light satisfies its obligation to provide safe and reliable electric service under Section 1501.

16. Thus, by performing the vegetation management of which Complainant complains, Duquesne Light was complying with the law, not violating it. The Complaint alleges no facts to the contrary.

17. The Complainant’s claim that Duquesne Light improperly removed trees and branches from Old Mill Road and the Borough generally is legally insufficient and must be dismissed.

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

DUQUESNE LIGHT COMPANY



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Emily M. Farah  
Counsel for Duquesne Light Company

**BEFORE THE  
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RICHARD WENDELL,

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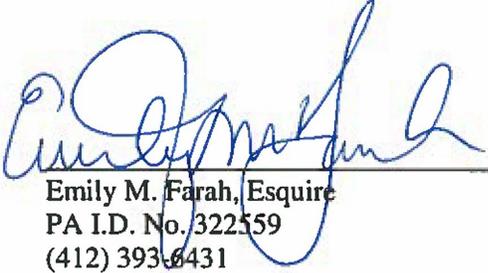
No: C-2018-3002839

**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):

Richard Wendell  
511 Old Mill Road  
Pittsburgh, PA 15238

Dated this 10<sup>th</sup> day of July, 2018

  
Emily M. Farah, Esquire  
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Counsel for Respondent,  
Duquesne Light Company