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November 8, 2018

Via Electronic Filing

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

**RE: HFT Holdings, Inc. v. Duquesne Light Company
Docket No. C-2018-3005532**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by HFT Holdings, Inc. regarding a commercial building known as "Manor Oak II."

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

Sincerely,

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

Emily M. Farah
Counsel for Duquesne Light Company

Enclosure

cc: Brad N. Sommer, Counsel for Complainant (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HFT HOLDINGS, INC.	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3005532
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

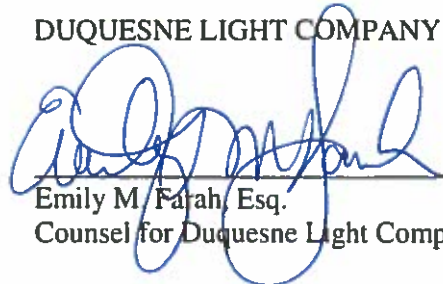
Counsel of Record for this Party:
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411 Seventh Avenue, 15th Fl.
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NOTICE TO PLEAD

TO: COMPLAINANT, HFT HOLDINGS, INC.:

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

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esq.
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HFT HOLDINGS, INC.,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3005532
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT
FOR INSUFFICIENT SPECIFICITY AND LEGAL INSUFFICIENCY**

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

1. On October 19, 2018, Complainant, represented by counsel, filed a Formal Complaint (“Complaint”) against Duquesne Light initiating this matter.

2. However, the Complaint (i) lacks 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, and (ii) requests relief to which Complainant is not legally entitled.

3. Pursuant to 52 Pa. Code. § 5.101(a)(3), a party may file preliminary objections for “[i]nsufficient specificity of a pleading.”

4. 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 or she must prove in order to achieve recovery on the alleged cause of action. Lewis v. PECO Energy Co., Docket No. C-2013-2357268, 2013 WL 3355962, at *3 (May 24, 2013).

5. 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)).

6. Pennsylvania is a fact pleading state, not a notice pleading state. Thus, the pleadings should conform to the elements necessary to state a cause of action. Id.

7. In Paragraph 4 of the Complaint, Complainant checks the boxes for “the utility is threatening to shut off my service,” “I would like a payment agreement,” “incorrect charges” on the bill, and “other.” Beneath the “other” option, Complainant indicates “Incorrect Billing and/or Excessive Rate Increase and Service Overcharge.”

8. In Paragraph 5 of the Complaint, Complainant appears to attempt to raise additional allegations regarding “1.) The calculated amount owed of \$226,261.21; 2.) The procedural handling of the billing; 3.) Third-party request for payment; 4.) Rate increases; 5.) Service calculation; and 6.) Failure to follow applicable statutes and rules.”

9. As discussed below, Complainant fails to provide detail sufficient for Duquesne Light to ascertain the specific acts or omissions of which Complainant complains. Therefore, the Complaint fails as a matter of law.

10. As Administrative Law Judge Colwell explained:

“Incorrect charges are on my bill,” listed on the formal complaint form, along with the directive to supply more detail, is meant to be the starting point for the Complainant to provide specific details, such as, what are the incorrect charges, and on which bill or bills do they appear? That information would give the utility a place to check its records. Without the information, the utility is unable to formulate a valid response without guessing and assuming facts not provided. A respondent is not required to guess whether the Complainant means to allege something, and it is also possible that a respondent will guess the wrong basis of the complaint.

Piller v. Philadelphia Gas Works, Docket No. C-2013-2365623, 2013 WL 3971559, at *2 (July 29, 2013).

11. 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.”

Belmonte-Gates v. PECO Energy Co., Docket No. F-2012-2332583, 2013 WL 596066, at *8 (Jan. 24, 2013) (citing 52 Pa. Code §§ 5.22(a)(3)).

12. In this case, Complainant has been a customer of Duquesne Light since 1996, meaning that Duquesne Light has approximately 22 years of customer records for Complainant. Because Complainant's allegations are so vague, Duquesne Light cannot respond or even investigate without speculating as to what bills, dates of service, acts, or omissions that Complainant is disputing during the 22 years since establishing electric service.

13. With respect to Complainant's allegation that "[i]ncorrect charges are on my bill" and "Incorrect Billing and/or Excessive Rate Increase and Service Overcharge" (Complaint Paragraph 4), Complainant fails to identify the charges or bills it alleges are incorrect. At Paragraph 5 of the Complaint, Complainant states in part, "[t]he attached bills demonstrate that the calculation of the amount owed is incorrect." However, Complaint does not identify the bills it alleges are incorrect, or the time periods during which it was allegedly overcharged. Furthermore, the bills attached to the Complaint are from a different service address, issued to a different customer, and at a different account number than the ones indicated in Paragraph 1 of the Complaint. These bills are therefore irrelevant to, and do not support or explain, any allegations in this Complaint.

14. Similarly, Duquesne Light is unable to respond to Complainant's apparent allegation regarding "the calculated amount owed of \$226,261.21." This "calculated amount" does not appear elsewhere in the Complaint or in any of the documentation attached to the Complaint. The Complaint does not indicate what the "calculated amount" is supposed to represent, why Complainant believes it to be incorrect, or why Complainant believes it demonstrates any act or omission by Duquesne Light.

15. At Paragraph 4 of the Complaint, Complainant checks the box for "the utility is threatening to shut off my service," but provides no further information necessary for Duquesne Light to prepare a meaningful response. For example, Complainant does not indicate which alleged threat(s) of service termination it objects to, or why it believes such alleged threat(s) to represent wrongdoing by

Duquesne Light. Indeed, the Complaint does not suggest that such alleged threat(s) of service termination represents wrongdoing by Duquesne Light at all.

16. With respect to Complaint's apparent allegations regarding "The procedural handling of the billing;" "Third-party request for payment;" "Rate increases;" and "Service calculation," such allegations are vague to such an extent that Duquesne Light cannot properly prepare a meaningful response. Complainant does not identify any particular acts or omissions that it believes constitute wrongdoing by Duquesne Light.

17. With respect to Complaint's apparent allegations regarding "failure to follow applicable statutes and rules," Complainant fails to identify any "statutes [or] rules" that it alleges Duquesne Light has violated.

18. These allegations in the Complaint are so vague that Duquesne Light cannot properly prepare a meaningful response.

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

20. The remaining averment in Paragraph 4 of the Complaint, Complainant's request for a payment arrangement, fails as a matter of law.

21. A utility may offer a payment arrangement to a nonresidential customer, but it is not required to do so. Angelo v. PECO Energy Co., Docket No. C-2009-2083058, 2009 WL 4700698, at *3 (Dec. 7, 2009).

22. The Commission cannot establish a payment arrangement for a nonresidential customer.

23. The Responsible Utility Customer Protection Act, 66 Pa. C.S §§ 1401, *et seq.* provides, in pertinent part: "[t]he commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established by this chapter." 66 Pa. C.S. § 1405(a).

24. As the ALJ observed in Nina Jones v. Philadelphia Gas Works, Docket No. C-2015-2493099, 2016 WL 637953 at *10 (Jan. 20, 2016):

The Commission may establish a payment arrangement between a public utility and a customer only within the limits established by 66 Pa.C.S. §§ 1401-1418. In order to be eligible for a payment arrangement, the

Complainant must be a “customer” or “applicant” as defined by 66 Pa.C.S. § 1403. If the Complainant is not a “customer” or “applicant”, the Commission is not authorized to establish a payment arrangement between her and the Respondent.

25. 66 Pa. C.S § 1403 defines a “customer” as “[a] natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.” (Emphasis added.) Similarly, “applicant” is defined as “[a] natural person not currently receiving service who applies for residential service” Id. (emphasis added.)

26. Nonresidential customers do not fall under the definition of “customer,” as defined in 66 Pa. C.S. § 1403. Selena Ricks for Mortgage Shoppers Fin., Inc., Docket No. C-2012-2325257, 2012 WL 6763612, at *1 (Dec. 19, 2012)

27. Complainant is a corporation, not a natural person. See Complaint ¶ 1.

28. Complainant does not receive residential service.

29. Complainant is not a “customer” for the purposes of 66 Pa. C.S § 1405, and, therefore, is not entitled to a payment arrangement. Id.

30. Because Complainant is not entitled to a payment arrangement, this request should be dismissed with prejudice.

31. While the Commission routinely gives pro se complainants leeway, within the confines of due process, in pursuing their complaints, this Complainant is not pro se. See Macluckie v. Palmco Energy PA, LLC, Docket No. C-2014-2402558, 2014 WL 6985668, at *10 (Dec. 4, 2014) (citing Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993)).


32. Here, Complainant is represented by counsel, it should not be afforded the same leeway as pro se complainants. See Complaint ¶¶ 1, 8.

33. For the reasons described herein, the Complaint against Duquesne Light should be dismissed with prejudice.

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

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
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efarah@duqlight.com
(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

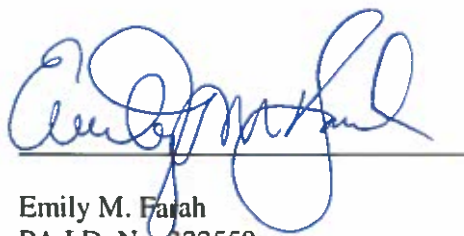
HFT HOLDINGS, INC.	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3005532
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

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):

Brad N. Sommer
6 Market Square
Pittsburgh, PA 15222
Counsel for HFT Holdings, Inc.

Dated this 8th day of November, 2018



Emily M. Farah
PA I.D. No. 322559
Counsel for Respondent,
Duquesne Light Company