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December 10, 2018

Via Electronic Filing

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

RE: Rickey Davis v. Duquesne Light Company
Docket No. F-2018-3006074

Dear Secretary Chiavetta:

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

Respectfully,

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

Emily M. Farah
Counsel, Regulatory

Enclosure

cc: Rickey Davis (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICKEY DAVIS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: F-2018-3006074

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

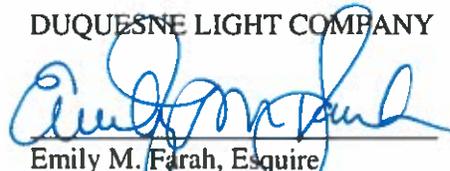
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NOTICE TO PLEAD

TO: COMPLAINANT, RICKEY DAVIS

**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, Esquire
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICKEY DAVIS,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: F-2018-3006074
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTIONS

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

I. Factual Background

1. On or about November 19, 2018, Duquesne Light was served with Rickey Davis' ("Complainant") Formal Complaint (the "Complaint") initiating this matter.

2. Complainant argues that the Federal Emergency Relief Act of 1933 empowers him to pay his electric bills by simply "instruct[ing]" Duquesne Light to "set off and discharge" them, and he objects to Duquesne Light's requirement that his electric bills be paid in legal tender. Complaint, ¶¶ 4-5.

3. Duquesne Light files these Preliminary Objections on the grounds that this Commission lacks jurisdiction to adjudicate Complainant's claims arising under a federal statute, and that the Complaint is legally insufficient.

II. Legal Argument - Complainant's Complaint Should Be Dismissed for Lack of Jurisdiction.

4. 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, the Complainant improperly invokes a federal statute, namely, the Federal Emergency Relief Act of 1933, which is not part of the Pennsylvania Public Utility Code or associated regulations.

9. Not only does this law cited by the Complainant have no bearing on any matters relating to Complainant’s account, it is also outside of the Commission’s realm of jurisdiction.

10. As such, Duquesne Light requests that Complainant’s claims arising under the Federal Emergency Relief Act of 1933 be dismissed in their entirety, as this Commission lacks jurisdiction to decide them.

II. Legal Argument - Complainant’s Complaint Should Be Dismissed for Legal Insufficiency.

11. Preliminary objections may be filed for “legal insufficiency of a pleading.” 52 Pa. Code § 5.101(a)(4). “In order to be legally sufficient, a complaint must set forth an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” Drake v. Pennsylvania Electric Co., Docket No. C-2014-2413771, 2014 WL 2003281 at *1 (Pa. P.U.C. May 7, 2014) (Salapa, ALJ).

12. Section 703(b) of the Public Utility Code allows the Commission to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessarily in the public interest. 66 Pa.

C.S. § 703(b). See also, Campisi v. PECO Energy Co., Docket No. 2014-2434501, 2014 WL 4644282 at *1 (Pa. P.U.C. Sept. 3, 2014) (Salapa, ALJ) (“The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists.”).

13. Even accepting as true all well-pleaded material facts and reasonable inferences, the Complaint does not raise a violation of the Public Utility Code, Commission Order or regulation, or any Commission-approved tariff. It is, therefore, legally insufficient.

14. As indicated *supra*, each allegation in the Complaint is grounded in Complainant’s misguided efforts to pay his electric bills by means other than legal tender.

15. Complainant alleges that Duquesne Light failed to honor Complainant’s “lawful payment tendered by me instructing them to set off and discharge” his account balance. Complaint ¶ 4.

16. Duquesne Light is not required to accept such “instructions” in lieu of payment.

17. Pennsylvania Public Utility Commission regulations provide that a customer may avoid termination if “payment in full is tendered in *any reasonable manner...*” 52 Pa. Code § 56.94 (emphasis added).

18. Pursuant to 52 Pa. Code § 56.94, Duquesne Light may require customers, including Complainant, to pay their bills in United States currency. See Feitt & Mendoza v. Duquesne Light Company, Docket No. F-2017-2636316, 2018 WL 3969580, at *8 (July 25, 2018).

19. Consequently, Complainant’s assertion that Duquesne Light must accept “instructions,” in lieu of payment in United States currency, is incorrect as a matter of law.¹

20. Furthermore, though Complainant checks boxes at ¶ 4 for “The utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” and “Incorrect charges on my bill,” Complainant’s subsequent explanations make it clear that these do not

¹ See also *id.* at *8 (observing that “bills of exchange purporting to be drawn against a trust account at the U.S. Treasury have been determined to be ‘nothing more than a string of words that sound as though they belong in a legal document, but which, in reality, are incomprehensible, signifying nothing.’”) (quoting In re: Denise Fachini, 2012 Bankr. LEXIS 448 at 5 (Bankr. M.D. Ga. 2012)).

represent separate allegations. Rather, they are part and parcel of Complainant's erroneous claim that Duquesne Light is required to accept his "instructions" in lieu of payment.

21. For example, in Paragraph 5 of the Complaint, Complainant explains that he objects to Duquesne Light's termination notices only insofar as he believes Duquesne Light should have "accept[ed] my payment methods based on my position I'm making lawful payments." Complaint ¶ 5.

22. Accordingly, these allegations fail as a matter of law.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections and dismiss the Complaint with prejudice without a hearing.

DUQUESNE LIGHT COMPANY



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