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August 22, 2019

Via Electronic Filing

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

**RE: Olivia Winterrowd v. Duquesne Light Company
Docket No. C-2019-3011935**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objection to the Formal Complaint filed by Olivia Winterrowd. A copy of this document was served upon Complainant in accordance with Commission regulations.

Please feel free to contact me if you have any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a large, stylized blue circular mark.

Emily M. Farah
Counsel, Regulatory

5. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

6. The Commission's procedural regulations allow a party to file a preliminary objection to pleadings that fail to comply with the rules of administrative practice or where the Commission lacks jurisdiction over the proceeding. See 52 Pa. Code § 5.101(a)(1).

7. On August 2, 2019, the Company was electronically served with Complainant's Formal Complaint at the above-captioned docket.

8. Duquesne Light is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection.

III. LAW AND ARGUMENT

9. For the paragraph titled "Requested Relief," the Complaint is requesting "reimbursement for the damaged items (in full)[.]" Complaint, ¶ 5.

10. Specifically, Complainant is requesting \$2,000.

11. The sole relief sought in the Formal Complaint is an award of monetary damages from the Company.

12. It is well established that the Commission does not have jurisdiction over actions for damages. Horowitz v. PECO, Docket No. C-2013-2382740, 2013 WL 7019109, at *3 (Dec. 30, 2013).

13. In Elkin v. Bell Telephone Co., 420 A.2d 371 (Pa. 1980), the Superior Court of Pennsylvania stated:

The courts retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility's performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts.

Elkin, 420 A.2d at 379 (citations omitted).

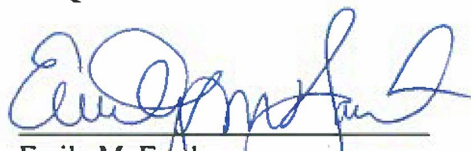
14. Further, "[t]here is no question that the Commission lacks authority to award damages." Horowitz at *3, citing Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994); Elkin v. Bell Telephone Co., 420 A.2d 371 (Pa. 1980); Feingold v. Bell Telephone Co. of Pa., 383 A.2d 791 (Pa. 1977); Ostrov v. I.F.T., Inc., 586 A.2d 409 (Pa. Super. 1991); Poorbaugh v. Pa. Pub. Util. Comm'n, 666 A.2d 744 (Pa. Cmwlt. 1995).

15. The Commission's jurisdiction is limited only to "regulatory matters essential to utility service." Horowitz at *3.

16. Because Complainant's sole relief is a request for monetary damages in the amount of \$2,000, and granting of such relief is outside the Commission's jurisdiction, the Complaint must be dismissed in its entirety.

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

DUQUESNE LIGHT COMPANY



Emily M. Farah
Counsel for Duquesne Light Company

