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September 11, 2019

Via Electronic Filing

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

**RE: Lipsoss Corp Constructors v. Duquesne Light Company
Docket No. C-2019-3012350**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by Lipsoss Corp Constructors. 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,



Emily M. Farah
Counsel, Regulator

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LIPSOSS CORP CONSTRUCTORS, :
 :
 Complainant, :
 :
 vs. :
 :
 DUQUESNE LIGHT COMPANY, :
 :
 Respondent. :

No: C-2019-3012350

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
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NOTICE TO PLEAD

TO COMPLAINANT LIPSOSS CORP CONSTRUCTORS:

**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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LIPSOSS CORP CONSTRUCTORS,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3012350
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code §§ 5.101(a)(1) and 5.101(a)(4), Duquesne Light files its Preliminary Objections to the Formal Complaint (“Complaint”) filed by Lipsoss Corp Constructors, and in support thereof, states as follows:

I. INTRODUCTION

1. Duquesne Light seeks to dismiss the Complaint in its entirety because: the Pennsylvania Public Utility Commission (“Commission” or “PUC”) lacks the legal authority and jurisdiction to hear the claims made by the Complainant rooted in the United States Constitution and Occupational Health and Safety Administration (“OSHA”) regulations, and further lacks the authority and jurisdiction to provide Complainant with the requested relief in the form of a monetary judgment.
2. Complainant’s allegations are rooted in the Takings Clause of the Fifth Amendment of the United States Constitution and OSHA regulations.
3. The Commission does not have subject matter jurisdiction over claims arising under the Constitution of the United States or the regulations promulgated by OSHA, and therefore, the Complaint must be dismissed in its entirety.
4. In response to the portion of the Complaint asking “[h]ow do you want your complaint to be resolved[,]” the Complainant requests “request[s] the PUC to order the DLC to compensate the owners

of the building for fees of violating PA law for trespass and taking of property without compensation in violation of the 5th amendment for no aerial rights and no easement for years the DLC has violated PA laws.” Complaint, ¶ 5.

3. Because the sole relief sought in the Complaint is relief the Commission lacks the legal authority to award, the Complaint must be dismissed in its entirety.

II. BACKGROUND

5. Duquesne Light is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania.

6. 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.

7. The Commission's procedural regulations allow a party to file a preliminary objections 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) and 5.101(a)(4).

8. On August 22, 2019, the Company was electronically served with Complainant's Formal Complaint at the above-captioned docket.

9. Duquesne Light is timely filing its Answer and New Matter contemporaneously with its Preliminary Objections.

III. LAW AND ARGUMENT

A. The Complaint should be dismissed on the grounds of legal insufficiency because the Complaint does not allege violations of the Public Utility Commission's rules or regulations.

10. According to Commission regulations, a preliminary objection 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).

11. 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) ("The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists.").

12. 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 rule contained within the Company's Commission-approved tariff. It is, therefore, legally insufficient.

13. Complainant alleges that the Company has violated Occupational Safety and Health Administration regulations, not one or more violations of the Public Utility Code, Commission Order or regulation, or any rule contained within the Company's Commission-approved tariff .

14. Because the Complaint fails to state an act or omission to be done or about to be done by Duquesne Light Company in violation of its Commission-approved tariff, the Commission's regulations, or Commission's orders, the Complaint is legally insufficient.

15. Consequently, the Complaint fails as a matter of law, and must be dismissed in its entirety.

B. The Complaint must be dismissed in its entirety because the Commission does not have jurisdiction over claims for monetary damages.

16. For the paragraph titled “Requested Relief,” the Complainant “request[s] the PUC to order the DLC to compensate the owners of the building for fees of violating PA law for trespass and taking of property without compensation in violation of the 5th amendment for no aerial rights and no easement for years the DLC has violated PA laws.” Complaint, ¶ 5.

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

18. 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).

19. 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).

20. 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. Cmwlth. 1995).

21. The Commission’s jurisdiction is limited only to “regulatory matters essential to utility service.” Horowitz at *3.

22. Because Complainant’s sole relief is a request for monetary damages, and granting of such relief is outside the Commission’s jurisdiction, the Complaint must be dismissed in its entirety.

C. The Complaint must be dismissed in its entirety because the Commission does not have subject matter jurisdiction over the allegations in the Complaint, namely, violations of the Takings Clause of the Fifth Amendment to the United States Constitution .

23. A party may file preliminary objections for lack of Commission jurisdiction. 52 Pa. Code § 5.101(a).

24. The Commission is a creature of statute and may exercise only those powers that are expressly conferred upon it by the legislature. Feingold v. Bell of Pennsylvania, 383 A.2d 791, 794 (Pa. 1978).

25. The Commission does not have jurisdiction over claims arising under the United States Constitution. See Alice Ann Belmonte-Gates v. PECO Energy Co., Docket No. F- 2012-2332583, 2013 WL 596066, at *7 (Jan. 24, 2013) (Commission does not have jurisdiction over matters involving federal civil rights); James Coppedge v. PECO Energy Co., Docket No. F-2009-2135893, 2010 WL 3183815, at *5-6 (July 29, 2010) (Commission does not have jurisdiction over issues arising under the United States Constitution).

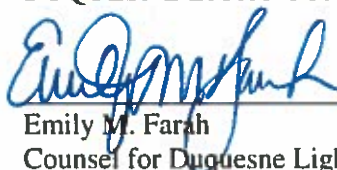
26. Here, Complainant claims that Duquesne Light has violated the Takings Clause of the United States Constitution by not obtaining private property rights to install and maintain a certain distribution line behind Complainant's building located at 4073 Liberty Avenue, Pittsburgh, PA 15224 ("Property").

27. The Commission does not have jurisdiction to rule on this claim rooted in the United States Constitution.

28. Accordingly, this portion of the Complaint 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



Emily M. Farah
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LIPSOSS CORP CONSTRUCTORS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2019-3012350

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):

LipsoSS Corp. Constructors
c/o Anastasios Smalis
6652 Northumberland Street
Pittsburgh, PA 15217

Dated this 11th day of September, 2019.



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Company