

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                           |   |                |
|---------------------------|---|----------------|
| Lipsoss Corp Constructors | : |                |
|                           | : |                |
| v.                        | : | C-2019-3012350 |
|                           | : |                |
| Duquesne Light Company    | : |                |

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants Complainant’s request to withdraw the Formal Complaint because the public utility did not object to the request and the public interest benefits from granting the request.

**HISTORY OF THE PROCEEDING**

On August 8, 2019, Anastasios Smalis (Mr. Smalis) filed a Formal Complaint on behalf of Lipsoss Corp Constructors (Complainant or Lipsoss) and against Duquesne Light Company (Respondent or Duquesne Light) with the Pennsylvania Public Utility Commission (Commission). Complainant alleged Respondent never obtained an easement or right of way from Lipsoss and, despite not having permission, Respondent had installed an electrical pole one (1) foot away from the service address which resulted in damage to the back wall. In addition, Complainant alleged the location of the electrical pole made it impossible to erect scaffolding needed to repair the roof because the electric wires hang too close to the building.

Complainant asked the Commission to order Respondent to compensate Complainant for damage to the building due to the installation location of Respondent's pole and wires.

On August 27, 2019 and again on September 5, 2019, Complainant filed additional information. These documents were returned to Complainant from the Commission by Secretarial Letter on September 23, 2019, because the filings lacked an original signature.<sup>1</sup>

On September 11, 2019, Respondent filed and served its Answer and New Matter (Answer), which was not endorsed with a Notice to Plead, and generally denied the allegations. Respondent contended the same allegations were the subject of a civil complaint filed by Complainant in the Allegheny County Court of Common Pleas, docketed at GD-19-009684, and which was served on Duquesne Light on August 2, 2019. Respondent acknowledged the complaints concerned its electric distribution facilities located behind the service address, located at 4073 Liberty Avenue, Pittsburgh, Pennsylvania. Duquesne Light also acknowledged it had not obtained an easement or right of way from Complainant but denied the company was required to do so, pursuant to 15 Pa.C.S.A. § 1511. Respondent did not answer any of the allegations relating to the location of the electrical wires relative to the roof and back wall of the service address.

In New Matter, Duquesne Light requested the Commission deny the relief sought by Complainant and dismiss the Formal Complaint with prejudice if Complainant failed to obtain legal counsel by a certain date. Respondent averred Complainant is a business corporation which is not represented by counsel. Respondent acknowledged the Formal Complaint names an attorney as a representative of the corporation, but Duquesne Light alleged that attorney denied representing Complainant in this proceeding.

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<sup>1</sup> On September 23, 2019, the Secretary's Bureau returned the following three filings due to the lack of an original signature: Rebuttal Answers to Respondent Answer and New Matter to Formal Complaint; New Matter of Fraud and Abuse of Commission's Regulation; and Response to Respondent's Preliminary Objections. On September 28, 2019, Lipsoss sent in signed copies of documents it previously submitted to the Secretary's Bureau.

Also, on September 11, 2019, Respondent filed and served Preliminary Objections which were endorsed with a Notice to Plead, pursuant to 52 Pa.Code § 5.101(a). Respondent requested that the Formal Complaint be dismissed with prejudice in its entirety because the Commission lacks legal authority and jurisdiction to hear the claims. Respondent averred the Formal Complaint is rooted in the United States Constitution and regulations issued by the Occupational Health and Safety Administration (OSHA). In addition, Respondent averred the Commission lacks the authority to award monetary damages as requested in the Formal Complaint. Duquesne Light contended the Formal Complaint does not raise a violation of the Public Utility Code, Commission Order or regulation or any rule contained in Respondent's tariff. Respondent pointed out that the alleged violation concerns OSHA regulations and does not concern any violation over which the Commission has jurisdiction. As a matter of law, Respondent contends the Formal Complaint is legally insufficient and should be dismissed.

On September 27, 2019, Complainant filed a "Petition for Extension of Time to Acquire Legal Counsel to Answer to Respondent's Response to Respondent's Preliminary Objections" (Petition for Time #1), and "Rebuttal Answers to Respondent's Answer and New Matter to Formal Complaint" (Rebuttal Answers #1). Complainant contended the complaint proceeding docketed at GD-19-009684 in the Allegheny County Court of Common Pleas was withdrawn without prejudice and moved to the United States District Court for the Western District of Pennsylvania at Docket No. 19-1066. Complainant noted the federal proceeding was dismissed. Lipsoss contended Duquesne Light's pole and wires are located less than 7 feet over the roof of the service address and the location of the distribution line is in violation of 52 Pa.Code § 57.194. Lipsoss requested an additional 30 days in which to obtain counsel.

On September 28, 2019, Complainant filed its Rebuttal Answers to Respondent's Answer and New Matter to Formal Complaint (Rebuttal Answers #2) which included a response to Duquesne Light's Preliminary Objections and copies of numerous documents. Lipsoss averred the federal complaint had been dismissed and the Commission has subject matter jurisdiction to determine if Duquesne Light violated the Commission's regulations when it installed bare wires too close to the roof of the subject address. Lipsoss also indicated it mistakenly requested monetary compensation for damages.

On September 30, 2019, the Commission received three filings from Complainant: a Petition for Extension of Time to acquire Legal Counsel (Petition for Time #2); a Petition for an Extension of Time to Respond to Duquesne Light Company's Preliminary Objections (Petition for Time #3); and a Petition for Allowance of Addendum No. 3 to Formal Complaint (Petition for Addendum). In these various petitions, Complainant requested additional time in which to obtain legal counsel and contended in the Petition for Addendum that Duquesne Light's pole and wires create a hazard that prevents Complainant from cutting down trees and developing Complainant's property into townhouses.

By Motion Judge Assignment Notice dated October 2, 2019, the Chief Administrative Law Judge assigned Respondent's Preliminary Objections to the undersigned Presiding Officer for purposes of ruling on the Preliminary Objections.

On October 17, 2019, the Sommer Law Group PC, Brad N. Sommer, Esquire and Craig E. Maravich, Esquire filed an Entry of Appearance with the Commission on behalf of Lipsoss Corp Constructors.

On October 29, 2019, the Presiding Officer issued the First Interim Order which denied Respondent's Preliminary Objections and ordered the matter be scheduled for an initial hearing on whether Respondent properly refused to move the pole and/or wires which allegedly overhang the service address at 4703 Liberty Avenue, Pittsburgh, Pennsylvania 15224.

On October 30, 2019, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled the initial telephonic hearing to be conducted on Wednesday, January 15, 2020.

On December 16, 2019, Anastasios Smalis, on behalf of himself and Lipsoss, filed a "Petition for Permission to Withdraw Complaint Without Prejudice" (Withdraw Petition) which stated, inter alia, Complainant wished to withdraw the Formal Complaint without prejudice due to the filing of a complaint in the U.S. District Court for the Western District of Pennsylvania. By memo dated December 16, 2019, from the Presiding Officer, the Withdraw

Petition was filed with the Secretary's Bureau and was provided to Duquesne Light and Brad N. Sommer, Esq., counsel for Complainant.

On December 24, 2019, counsel of Record for Complainant filed a Petition for Leave to Withdraw Pleadings with the Secretary's Bureau. Counsel acknowledged Mr. Smalis filed the Withdraw Petition without providing notice to counsel and denied Mr. Smalis had terminated counsel's representation prior to December 16, 2019. However, in light of the Withdraw Petition and the filing of a complaint in Federal Court, counsel indicated irreconcilable differences exist between Counsel and Mr. Smalis. Accordingly, counsel requested that Complainant's Formal Complaint be withdrawn, and that counsel's appearance be withdrawn.

On December 31, 2019, Duquesne Light filed a letter which indicated it had no objection to the Commission granting the Withdraw Petition but the utility continued to object to Mr. Smalis acting as a representative for Lipsoss and reserved the right to address and defend any other allegations made by the Withdraw Petition.

The hearing record closed on December 24, 2019, pursuant to 52 Pa.Code § 5.94 (relating to withdrawal of pleadings in a contested proceeding) and § 5.431(a) and (b) (relating to Close of the Record).

#### FINDINGS OF FACT

1. Lipsoss Corp Constructors, Complainant, is the listed ratepayer of record at 4073 Liberty Avenue, Pittsburgh, Pennsylvania 15224 (service address).
2. Respondent in this proceeding is Duquesne Light Company.
3. On December 24, 2019, counsel for Complainant, Brad N. Sommer, Esquire, filed a Petition for Leave to Withdraw Pleadings with the Commission which indicated Complainant wished to withdraw the Formal Complaint.

4. Respondent does not object to the withdrawal.

### DISCUSSION

The Commission is empowered and charged with the duty to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a). In this proceeding, Complainant originally sought an order from the Commission finding Respondent failed to provide reasonable and adequate customer service because Respondent installed an electrical pole one (1) foot away from the back wall at the service address, and because the location of the electrical pole with the low-hanging electric wires made it impossible to erect scaffolding needed to repair the roof. Complainant now seeks an order from the Commission granting the request to withdraw the Formal Complaint.

Pursuant to 52 Pa.Code § 5.94(a), a “party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.”

In this proceeding, it is clear through statements of Mr. Smalis and counsel for Complainant (Lipsoss) that Complainant no longer wishes to pursue the Formal Complaint. By letter dated December 31, 2019, Respondent indicated it did not object to the withdrawal request. It is Complainant’s prerogative to seek a withdrawal of the Formal Complaint if Complainant no longer wishes to pursue the allegations. The public interest is not served or benefitted if the Commission requires a Complainant to continue to pursue a Complaint he or she no longer wishes to pursue. Lipsoss and Mr. Smalis had the opportunity to be heard on these issues but no longer wish to do so. Therefore, it is in the public interest to allow Complainant to withdraw the Formal Complaint and the request to withdraw will be granted.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a).
3. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is on Complainant as the proponent of a Commission Order.
4. Complainant, as a Party desiring to withdraw a pleading in a contested proceeding, has filed a petition for leave to withdraw the Formal Complaint, which petition sets forth a valid reason for the withdrawal. 52 Pa.Code § 5.94(a).
5. As Respondent did not object and no litigable matter remains in this proceeding, it is in the public interest to grant Complainant's request to withdraw the Complaint, and to close the matter. 52 Pa.Code § 5.94(a).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's request to withdraw the Formal Complaint filed in Lipsoss Corp Constructors versus Duquesne Light Company at Docket No. C-2019-3012350 is granted.

