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February 20, 2020

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 Reply Exceptions for the above-captioned matter. A copy of this document and the enclosed filing have been sent to the parties of record in accordance with the enclosed Certificate of Service.

Please contact me with any questions, comments, or concerns.

Respectfully,

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

Emily M. Farah
Duquesne Light Company
Counsel, Regulatory

Enclosure

cc: Certificate of Service (w/ encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

DUQUESNE LIGHT’S REPLY TO COMPLAINANT’S EXCEPTIONS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”), files the following Reply to Complainant’s Exceptions of the Initial Decision of Administrative Law Judge Katrina L. Dunderdale:

INTRODUCTION

The Initial Decision correctly allowed Lipsoss Corp Constructors¹ (“Complainant”) to withdraw the above-captioned Formal Complaint (“Complaint”) without prejudice because, pursuant to 52 Pa.Code § 5.94(a), a Complainant is entitled to do so. The sole issue here is whether the Administrative Law Judge (“ALJ”) erred when she accepted the Complainant’s Petition to Withdraw the Complaint docketed on December 16, 2019. The ALJ did not err because (1) Complainant does not object to the request to withdraw the Complaint in the Exceptions and (2) it would be inefficient to schedule a hearing at the Commission because the

¹The Complaint initiating this matter was electronically served on Duquesne Light on August 22, 2019. The Complaint was filed by “Anastasios Smalis – Lipsoss Corp.” Complaint ¶ 1. The Complaint provided information for legal representation, indicating that counsel was “for Lipsoss Corp.” Complaint ¶ 8. The Complaint was verified by Mr. Smalis’ signature as the “President of Lipsoss Corp.” Complaint ¶ 9. For the purposes of these Exceptions, the Complainant is Lipsoss Corp Constructors. Anastasios Smalis is the ratepayer of record for the electric service account associated with building located at 4073 Liberty Avenue, Pittsburgh, PA 15224, and is on the GS – Small Commercial Rate.

Complainant is pursuing his cause(s) of action in a different venue, namely, the United States District Court for the District of Western Pennsylvania.

BACKGROUND

The Complaint that initiated the above-captioned matter contained allegations concerning electric distribution facilities located behind a building owned, in part, by Lipsoss Corp Constructors located at 4073 Liberty Avenue, Pittsburgh, PA 15224 (the “Property”). Complaint ¶¶ 4-5. On September 9, 2019, Duquesne Light filed an Answer and New Matter and Preliminary Objections.

Complainant’s subsequent (and numerous) filings made from September 27, 2019 through September 30, 2019 were unclear, but generally requested more time to obtain counsel, raised new allegations, and restated allegations in the Complaint. Complainant then retained counsel pursuant to the Entry of Appearance electronically filed on October 17, 2019.² On October 21, 2019, Duquesne Light filed a response to Complainant’s various filings made between September 27, 2019 through September 30, 2019.

On December 16, 2019, Complainant filed a “Petition for Permission to Withdraw Complaint Without Prejudice” (“Petition to Withdraw”). Complainant requested to withdraw the Complaint because he filed a separate federal action in the United States District Court for the Western District. Petition to Withdraw ¶ 4. Indeed, on or about December 13, 2019, a federal complaint was filed and docketed at number 2-19-CV-001609-001.³ Named as defendants in the federal matter were Rosemary Chiavetta, individually and in her role as Secretary of the Pennsylvania Public Utility Commission, two Duquesne Light personnel, individually and in

² Counsel that filed the entry of appearance was different from the counsel listed on the Complaint. Complaint ¶ 8.

³ On February 20, 2020, counsel for Complainant filed an Amended Complaint in the federal matter.

their capacities as Duquesne Light representatives, and the City of Pittsburgh Department of Public Works.

Complainant's Counsel filed a Notice of Withdrawal of Counsel on December 24, 2019.⁴ On December 31, 2019, Duquesne Light filed a letter indicating that it did not object to the request to withdraw the Complaint.

On January 21, 2020, Administrative Law Judge Katrina Dunderdale rendered an Initial Decision, which accepted the Petition to Withdraw and closed the Complaint.⁵ Lipso Corp Constructors v. Duquesne Light Co., No. C-2019-3012350, 2020 WL 509893, at *4 (Jan. 21, 2020).

On January 31, 2020, the Commission received Complainant's Exceptions,⁶ and advised by electronic mailing that the Respondent's deadline to file Reply Exceptions is February 21, 2020.

ARGUMENT

A. The ALJ did not err by accepting the Petition to Withdraw because neither Complainant nor Respondent objects to the request for withdrawal.

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, which must contain the reasons for the withdrawal. 52 Pa. Code § 5.94(a) allows a party to object to the petition within 10 days of service. After a petition to withdraw is filed, the Presiding Officer's obligation is to consider the

⁴ The Notice of Withdrawal of Counsel was returned by the Secretary's Bureau for lack of an original signature. Counsel returned the Notice of Withdrawal on January 10, 2020 with an original signature.

⁵ Since the Initial Decision only addressed the merits of Complainant's Petition to Withdraw, Duquesne Light's supplemental arguments in its Preliminary Objections relating to the Commission's lack of jurisdiction over property matters and inability to award monetary damages and need not be discussed here. This is not intended to be, and should not be interpreted as, a waiver of those arguments.

⁶ On January 24, 2020, the Commission received a filing dated January 9, 2020, from the Complainant, containing two separate petitions regarding this complaint. By Secretarial letter dated January 30, 2020, the Commission indicated it was uncertain as to the purpose of the petitions, but initially treated the filing as exceptions since the filing was made within the twenty (20) days following service of the Judge's Initial Decision.

petition in light of any objections and the public interest, and then make a determination on whether the withdrawal is permissible. 52 Pa. Code § 5.94(a).

It is well-settled that requiring a Complainant to pursue a Complaint when he or she no longer wishes to do so is not in the public interest. See Santander v. Duquesne Light Co., No. C-2018-3006533, 2019 WL 7403563, at *2 (Dec. 23, 2019); Westmeyer v. West Penn Power Co., No. C-2015-2489174, 2015 WL 5780364, at *3 (Sept. 10, 2015). For example, In DiBello v. Pennsylvania-American Water Co., complainant's counsel filed a letter with the Secretary's Bureau indicating her client decided to withdraw the formal complaint. DiBello v. Pennsylvania-American Water, No. C-2019-3011593, 2019 WL 7403548, at *1 (Dec. 10, 2019). There, the respondent Pennsylvania-American Water Co. informed the presiding officer by electronic mailing that there was no objection to the request to withdraw the complaint. Id. at *2. The presiding officer granted the request to withdraw the complaint, reasoning that proceeding to litigate when the complainant was unwilling to prosecute the complaint would have been a waste of time and energy for the complainant, respondent, and the Commission. Id. at *3.

Here, the Initial Decision determined that the public interest was not served or benefitted by requiring the Complainant to pursue a Complaint he or she no longer wishes to pursue, stating: “[i]t is Complainant’s prerogative to seek a withdrawal of the Formal Complaint if Complainant no longer wishes to pursue the allegations.” Lipsoss Corp Constructors v. Duquesne Light Co., No. C-2019-3012350, 2020 WL 509893, at *4 (Jan. 21, 2020). Duquesne Light did not object to the Petition to Withdraw.

Complainant has also not objected to the withdrawal of the Complaint. To the contrary; Complainant’s Exceptions expressly indicate that Complainant no longer wishes to pursue this matter before the Commission.

Complainant responds to the Findings of Fact in ALJ Dunderdale’s Initial Decision at page 5 of the Exceptions. In her third Finding of Fact, ALJ Dunderdale found: “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.” Complainant responded: “Answer as to No. 3 admitted with correction, **withdrawn the Formal Complaint without prejudice as to correction.**” Exceptions, p. 5 (emphasis added).

In her fourth Finding of Fact, ALJ Dunderdale found: “4. Respondent does not object to the withdrawal.” Complainant responded: “Answer as to No. 4 admitted with correction, **Respondent has no objections as to withdraw of formal Complaint without prejudice** but reserves to any new allegations, complainant denies this statement. All allegations were addressed in addendum 1, 2, 3.” *Id.* (emphasis added).

Complainant’s Exceptions then go on to air various grievances against Duquesne Light and the Commission – but, notably, those grievances do not suggest that Complainant objects to the closing of the Complaint. Accordingly, the ALJ did not err by accepting the Petition to Withdraw, and recommending the Complaint be closed because the Complainant articulated (and continues to articulate) an unwillingness to pursue the matter before the Commission.

(B) Accepting the Complainant’s Petition to Withdraw serves the interest of judicial economy because Complainant is pursuing the cause(s) of action in a different venue, namely, the United States District Court for the District of Western Pennsylvania.

Applying the principles articulated in DiBello v. Pennsylvania-American Water Co., litigating a complaint that the complainant is unwilling to prosecute is a waste of time and

resources for all parties and the Commission. DiBello v. Pennsylvania-American Water, No. C-2019-3011593.

In the Petition to Withdraw, Complainant indicated it was pursuing the claims in federal court. Petition to Withdraw ¶ 4. Indeed, Complainant brought a federal lawsuit around the same time the Complainant requested to withdraw the Complaint. As such, it would be inefficient to conduct a hearing for allegations the Complainant is currently pursuing in federal court. See Jones v. PECO Energy Co., No. C-2018-3005985, 2019 WL 1225909, at *2 (Feb. 28, 2019) (allowing the complainant to withdraw her complaint because it eliminated the need for litigation and saved the parties any additional costs in time and money they would have otherwise incurred litigating the case). Accordingly, the ALJ did not err by accepting the Petition to Withdraw and recommending the Complaint be closed because it is in the interest of judicial economy to avoid litigating claims at the Commission that are duplicative of the claims currently pending in federal court.

CONCLUSION

Since the Complainant seeks to withdraw the Complaint and accepting the Petition to Withdraw the Complaint was in the public interest, the Administrative Law Judge correctly granted Complainant's request to withdraw the Complaint pursuant to 52 Pa. Code § 5.94(a). Duquesne Light respectfully requests that the Commission affirm the Initial Decision and mark the Complaint as closed. In the event these exceptions are denied, Duquesne Light reserves the right to address any other matters at issue in this proceeding.

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
Counsel for Duquesne Light Company

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

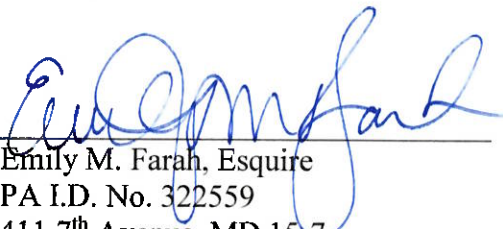
I hereby certify that I have this day served a true copy of the Reply Exceptions upon the participant listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

LipsoSS Corp Constructors
c/o Anastasios Smalis
6652 Northumberland Street
Pittsburgh, PA 15217
(via first-class mailing)

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

Pennsylvania Public Utility Commission Office of Special Assistants
(Via email at: ra-OSA@pa.gov)

Dated this 20th day of February, 2020



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