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July 6, 2020

**Via Electronic Filing**

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

**RE: Todd Koger, Sr. v. Duquesne Light Company  
Docket No. C-2020-3020394**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint in the above-captioned matter. A copy of this document and the enclosed filing have been served upon Complainant in accordance with Commission regulations.

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

Sincerely,

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

Emily M. Farah  
Duquesne Light Company  
Counsel, Regulatory

Enclosures

cc: Todd Koger, Sr. (w/ enclosures)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD KOGER, SR.	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2020-3020394
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS**

Filed on behalf of Respondent  
Duquesne Light Company

Counsel of Record for this Party:  
Emily M. Farah, Esquire  
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Pittsburgh, PA 15219

**NOTICE TO PLEAD**

**TO COMPLAINANT TODD KOGER, SR.:**

**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

  
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Emily M. Farah  
Counsel for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD KOGER, SR.	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2020-3020394
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS**

Pursuant to 52 Pa. Code § 5.101(a)(1), Duquesne Light files its preliminary objections to Complainant’s Formal Complaint (“Present Complaint”):

**I. INTRODUCTION**

1. Duquesne Light seeks to dismiss this Complaint in its entirety for two reasons. First, the Pennsylvania Public Utility Commission (“Commission”) lacks jurisdiction to rule on the portions of the Complaint rooted in the Unites States Code, 42 USC 1981, 1983 and 1985. Complaint ¶ 4. Second, the Complaint is subject to a current pending proceeding awaiting an Initial Decision by the assigned Administrative Law Judge, identified by Docket No. C-2019-3013238 (“Previous Complaint”). See Present Complaint ¶ 4.

2. Because the Commission lacks jurisdiction over the Complainant’s allegations in the Complaint, and because the Complainant has a pending proceeding regarding the same causes of action, the Present Complaint must be dismissed in its entirety.

**III. LAW AND ARGUMENT**

**A. The Commission Lacks Jurisdiction to Rule on Matters Relating to Alleged Constitutional Violations or Federal Law.**

3. The Commission lacks subject matter jurisdiction to decide the Complainant’s allegations regarding violation of the United States Code, Equal Rights Under the Law, 42 USC § 1981, Civil

Action for Deprivation of Rights 42 USC § 1983, and Conspiracy to Interfere with Civil Rights, 42 USC § 1985.

4. The Commission may only exercise powers that are expressly conferred upon it by the legislature. See Feingold v. Bell of Pa., 383 A.2d 791, 794 (Pa. 1978).

5. The Commission must act within its jurisdiction, and may only hear complaints regarding the Pennsylvania Code, Commission Regulations or Commission Order. 66 Pa. C.S. § 701; Haleema B. Alkhatib v. PECO Energy Co., Docket No. C-2011-2242125, 2012 WL 641672, at \*5 (Jan. 12, 2012); City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348, 348 (Pa. Super. 1945).

6. The Commission does not have jurisdiction over claims arising under the United States Code. White v. PPL Elec. Utilities Corp., Docket No. C-2018-3003468, 2019 WL 2250756 (Pa. P.U.C. May 6, 2019) (stating the Commission has no jurisdiction to determine if an issue violates a complainant's constitutional rights).

7. The Commission has held that claims relating to violations of the United States Constitution were beyond the Commission's subject matter jurisdiction. See James Coppedge v. PECO Energy Co., Docket No. F-2009-2135893, 2010 WL 3183815, at \*1 (July 29, 2010).

8. Here, in the Present Complaint for Commission review, the Complainant alleges that the Company violated Complainant's constitutional rights by allegedly violating the federal laws, 42 USC §§ 1981, 1983 and 1985. See May 2020 Complaint ¶ 4.

9. Application and interpretation of the constitution and federal law is outside of the Commission's express jurisdiction of Pennsylvania Code, Commission Regulations or Commission Order. Complaint, ¶ 4; 66 Pa. C.S. § 701; Haleema B. Alkhatib v. PECO Energy Co., Docket No. C-2011-2242125, 2012 WL 641672, at \*5 (Pa. P.U.C. Jan. 12, 2012).

10. Therefore, the Commission lacks jurisdiction over the Complainant's allegations that are rooted in alleged constitutional violations and alleged violations of federal law.

11. Consequently, because the Commission lacks jurisdiction, the portions of the Present Complaint rooted in federal law must be dismissed pursuant to 52 Pa. Code § 5.101(a)(1).

B. The remaining portions of the Complaint not rooted in federal law are subject to a proceeding currently pending before a Commission Administrative Law Judge.

12. The above paragraphs in the Answer are incorporated as if fully restated herein.

13. On September 30, 2019, the Complainant filed the Previous Complaint alleging that the Company threatened to shut off his service or had already cut off his service and that there were incorrect charges on his bill. See C-2019-3012238 Complaint ¶ 4 and ¶ 5.

14. On January 9, 2020 and February 25, 2020, the parties participated in telephonic hearings before an Administrative Law Judge assigned to the Previous Complaint.

15. At hearing, the following issues were litigated: whether Complainant is the electric account holder for the Property, whether there was any wrongdoing associated with Complainant's participation in the energy assistance programs or the Company's Customer Assistance Program, or whether the Company improperly threatened to terminate electric service to 515 Kelly Avenue, Pittsburgh, PA 15221.

16. An Initial Decision has not yet been issued for the Previous Complaint.

17. On June 16, 2020, the Complainant filed another formal complaint ("Present Complaint") raising allegations related to whether Complainant is the electric account holder for the Property, whether there was any wrongdoing associated with Complainant's participation in the energy assistance programs or the Company's Customer Assistance Program, or whether the Company improperly threatened to terminate electric service to 515 Kelly Avenue, Pittsburgh, PA 15221. See Complaint ¶ 4.

18. Commission regulations allow preliminary objections to be filed on the basis of pendency of a prior proceeding. 52 Pa. Code § 5.101(a) (6).

19. To successfully plead the defense of pendency of a prior proceeding or *lis pendens*, "it must be shown that the prior case is the same, the parties are the same and the relief requested is the same." Crutchfield v. Eaton Corp., 806 A.2d 1259, 1263 (Pa. Super 2002); Penox Technologies, Inc. v. Foster Medical Corp., 546 A. 2d 114, 115 (Pa. Super. 1988).

20. The *lis pendens* defense protects “a defendant from the harassment of having to defend several suits on the same cause of action at the same time. Crutchfield v. Eaton Corp., 806 A.2d 1259, 1263 (Pa. Super 2002); Penox Technologies, Inc. v. Foster Medical Corp., 546 A. 2d 114, 115 (Pa. Super. 1988).

21. When “the *lis pendens* defense is raised, a court may dismiss or stay the subsequent proceeding.” Crutchfield v. Eaton Corp., 806 A.2d 1259, 1263 (Pa. Super 2002); Penox Technologies, Inc. v. Foster Medical Corp., 546 A. 2d 114, 115 (Pa. Super. 1988).

22. Here, the participating parties and the issues litigated under the Previous Complaint and Present Complaint are identical.

23. Further, the requested relief in the Present Complaint is tied to Complainant’s desired outcome for the Previous Complaint. See Complaint ¶ 5.

24. Because the Previous Complaint is still a pending proceeding awaiting an initial decision from an Administrative Law Judge, the Present Complaint must be dismissed or stayed.

25. Specifically, the issues raised by the Complainant in the Present Complaint and the issues raised during litigation for the Previous Complaint are identical.

26. In both matters, the issues relate to whether Complainant is the electric account holder for the Property, whether there was any wrongdoing associated with Complainant's participation in the energy assistance programs or CAP, or whether the Company improperly threatened to terminate electric service to the Property.

27. Complainant and Duquesne Light Company are the parties in both proceedings, and the parties in the Previous Complaint and the Present Complaint are identical.

28. In conclusion, the Commission should dismiss the Present Complaint, to protect Duquesne Light from the harassment of having to defend several suits on the same cause of action at the same time.

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

DUQUESNE LIGHT COMPANY



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Emily M. Farah  
Counsel for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

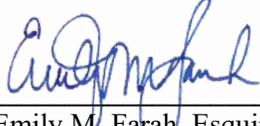
TODD KOGER, SR.	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2020-3020394
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

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

Todd Koger, Sr.  
515 Kelly Avenue  
Pittsburgh, PA 15221

Dated this 6<sup>th</sup> day of July, 2020.

  
\_\_\_\_\_  
Emily M. Farah, Esquire  
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Counsel for Respondent, Duquesne Light  
Company