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August 11, 2020

Via Electronic Filing

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North 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 Motion for Judgment on the Pleadings for the above-captioned matter. A copy of this document and the enclosed filing have been served upon Complainant in accordance with Commission regulations.

Respectfully,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a faint, larger version of the signature.

Emily M. Farah
Counsel for Duquesne Light Company

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD KOGER, SR. :
:
Complainant, :
:
vs. :
:
DUQUESNE LIGHT COMPANY, :
:
Respondent. :

No: C-2020-3020394

**MOTION FOR JUDGMENT ON
THE PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company

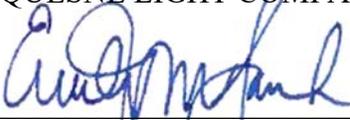
Counsel of Record for this Party:
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411 Seventh Avenue, MD 15-7
Pittsburgh, PA 15219

NOTICE TO PLEAD

TO COMPLAINANT TODD KOGER, SR.:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.103 OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MOTION FOR JUDGMENT ON THE PLEADINGS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files this Motion for Judgment on the Pleadings pertaining to the Formal Complaint (“Present Complaint”) filed by Todd Koger, Sr. (“Complainant”), pursuant to 52 Pa. Code § 5.102(a) and states as follows:

INTRODUCTION

1. The Presiding Administrative Law Judge should dismiss the Present Complaint filed by Todd Koger, Sr. because the undisputed facts establish Complainant is not entitled to a re-litigation of the issues pertaining to whether Complainant is the electric account holder for the 515 Kelly Avenue, Pittsburgh, PA 15221 (the “Property”), whether there was any wrongdoing associated with Complainant’s participation in the energy assistance programs or the Company’s Customer Assistance Program (“CAP”), or whether the Company improperly threatened to terminate electric service to the Property, and those allegations must be dismissed.

2. On June 16, 2020, Duquesne Light was served with the Present Complaint.

3. In response to the Present Complaint, on July 6, 2020, Duquesne Light filed: (a) Answer and New Matter, and (b) Preliminary Objections.

4. The Answer and New Matter contained a “Notice to Plead” addressed to Complainant, which stated: **“YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT’S RESPONDENT’S NEW MATTER WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.63 OR A JUDGMENT MAY BE ENTERED AGAINST YOU.”** (emphasis in original).

5. The Preliminary Objections contained a “Notice to Plead” addressed to Complainant, which stated: **“YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT’S 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.”** (emphasis in original).

6. Complainant did not file responses to either the Answer and New Matter or Preliminary Objections.

7. 36 days have elapsed since Duquesne Light filed its Answer and New Matter, and Preliminary Objections.

8. By failing to respond to the New Matter, the Commission can find that Complainant has admitted to the allegations contained therein. See 52 Pa. Code § 5.63(b) (“Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted”); Stefanowicz v. Pennsylvania-American Water Co., No. C-20078165, 2008 WL 8014613, at *4 (May 22, 2008) (“The Commission's Regulations clearly provide that failure to respond to affirmative allegations in New Matter may cause those allegations to be deemed admitted.”).

9. As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

UNDISPUTED FACTS

10. In its New Matter, the Company stated that the Present Complainant should be dismissed because the allegations are barred by the doctrine of claim preclusion. Answer and New Matter ¶ 18.

11. The Present Complaint seeks to re-litigate the issues presented at the hearing for a previous complaint at docket number C-2019-3013238 (“Previous Complaint”). Answer and New Matter ¶¶ 4, 11-15.

12. In the Previous Complaint, the Complainant alleged that the Company is threatening to shut off his services or has already terminated service at the Property. Answer and New Matter ¶ 12.

13. In the Previous Complaint, the Complainant made allegations related to his participation in the energy assistance programs, including Duquesne Light Company’s CAP. Answer and New Matter ¶ 13.

14. In its Answer to the Previous Complaint, Duquesne Light denied Complainant’s allegations, and further clarified that the account holder for the Property is Todd Koger, Jr., not the Complainant. Answer and New Matter ¶ 14.

15. Similarly, in its Answer to the Present Complaint, Duquesne Light denied all Complainant’s material allegations and maintained that the account holder for the Property is Todd Koger, Jr., not the Complainant. Answer and New Matter ¶ 4, 26.

16. In the Present Complaint, the Complainant makes the same allegations related to the electric account holder for the Property, the Company’s attempts to terminate electric service

at the Property, and the Complainant's participation in energy assistance programs. Answer and New Matter ¶ 17.

17. On January 9, 2020 and February 25, 2020 the Commission held telephonic hearings for the allegations raised in the Previous Complaint. Answer and New Matter ¶ 15.

18. As of the date of this filing, the Administrative Law Judge assigned to preside over the Previous Complaint has not yet issued an initial decision, and the Previous Complaint remains open. Answer and New Matter ¶ 4.

LEGAL STANDARD

19. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings.

20. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

21. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against only those facts specifically admitted. Whitlock v. PECO Energy Co., Docket No. F-2015-2488833, 2015 WL 7348610, at *2 (Nov. 3, 2015).

22. A party may move for judgment on the pleadings "after the pleadings are closed, but within a time so that the hearing is not delayed." 52 Pa. Code § 5.102(a).

23. The pleadings are closed, and a hearing has not yet been scheduled for the above-captioned matter. Therefore, the filing of this Motion will not delay a hearing, should one be necessary.

ARGUMENT

24. In addition to the reasons stated in the Preliminary Objections, the Present Complaint should be dismissed because the allegations are barred by the doctrine of claim preclusion.

25. Claim preclusion prevents the re-litigation of “[m]atters which were actually litigated and also matters which should have been litigated in a prior action as part of the same cause of action[.]” Pa. Public Utility Com’n vs. Borough of Phoenixville, Docket Nos. R-00932770 and R-00932770C0001, WL 854385, at *2 (Oct. 1, 1993).

26. Claim preclusion “applies when a formal Complaint repeats and includes the same issues, causes of actions, persons and parties to action, and quality and capacity of the parties suing or being sued.” See Floyd Tillman v. Philadelphia Gas Works, Docket No. C-2014-2445229, 2015 WL 78773839, at *5 (Nov. 4, 2015).

27. Four factors must be met to apply claim preclusion: (1) identity of issues; (2) identify of causes of actions; (3) identify of persons and parties to the action; and (4) identity of the quality and capacity of the parties suing or sued. Ingram v. PECO Energy Co., Docket No. C-2011-2246492, 2012 WL 3553210, at *5 (July 27, 2012) (citing Day v. Volkswagenwerk Aktiengeselishaft, 318 Pa. Superior Ct., 474 A 2d 1313, 1316, 1317 (1983)).

28. All of the above factors to apply claim preclusion exist in this matter. Answer and New Matter ¶ 22.

29. First, the issues raised by the Complainant in the Present Complaint and at hearing for the Previous Complaint are identical. In both matters, the issues 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 CAP, or whether

the Company improperly threatened to terminate electric service to the Property. Answer and New Matter ¶ 23.

30. Second, the causes of actions in both complaints are the same. In both Complaints, Complainant alleges that “[t]he utility is threatening to shut off my service or has already shut off my service,” and provides allegations that fall under the “[o]ther” umbrella on the complaint form. Answer and New Matter ¶ 24.

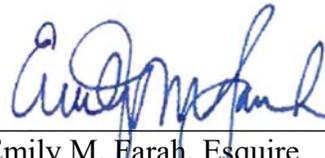
31. Third, since Complainant and Duquesne Light Company are the parties in both proceedings, the parties are identical. Answer and New Matter ¶ 25.

32. Fourth, the capacity of the parties in both matters are the same because Complainant is the customer (and not the account holder) in both complaints and Duquesne Light Company is the public utility providing electric service to the Complainant. Answer and New Matter ¶ 26.

33. In conclusion, the doctrine of claim preclusion bars the Complainant from pursuing the Present Complaint because all of the elements for the claim preclusion are met.

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the Present Complaint on the basis of collateral estoppel and dismiss the Complaint with prejudice.

Respectfully submitted,
DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
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411 Seventh Avenue, MD 15-7
Pittsburgh, PA 15219
(412) 393-6431
Counsel for Duquesne Light Company

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

CERTIFICATE OF SERVICE

I certify that I have this day served a true copy of this Motion for Judgment on the Pleadings 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 11th day of August, 2020



Emily M. Farah, Esquire
PA I.D. No. 322559