



**Emily M. Farah**  
Counsel, Regulatory

411 Seventh Avenue  
Mail drop 15-7  
Pittsburgh, PA 15219

Tel: 412-393-6431  
efarah@duqlight.com

April 7, 2021

**Via Electronic Filing**

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

**RE: Joel Wilkes v. Duquesne Light Company**  
**Docket No. C-2021-3024389**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by Joel Wilkes. Copies of this document and the enclosed filing were served upon Complainant in accordance with Commission regulations.

Please feel free to contact me if you have any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a light blue circular stamp.

Emily M. Farah  
Counsel, Regulatory

cc: Joel Wilkes (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOEL WILKES,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2021-3024389
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS**

Filed on behalf of Respondent  
Duquesne Light Company

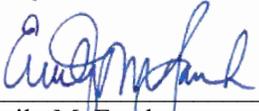
Counsel of Record for this Party:  
Emily M. Farah, Esquire  
PA I.D. No. 322559  
[efarah@duqlight.com](mailto:efarah@duqlight.com)  
(412) 393-6431  
411 Seventh Avenue, MD 15-7  
Pittsburgh, PA 15219

**NOTICE TO PLEAD**

**TO COMPLAINANT JOEL WILKES:**

**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**

JOEL WILKES,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2021-3024389
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS**

Pursuant to 52 Pa. Code § 5.101(a)(1) and 52 Pa. Code § 5.101(a)(5), Duquesne Light files its Preliminary Objections to the above-captioned Formal Complaint (“Complaint”) filed by Joel Wilkes (“Complainant”), and in support thereof, states as follows:

**I. INTRODUCTION**

1. Duquesne Light seeks to dismiss the Complaint because the Pennsylvania Public Utility Commission (“Commission” or “PUC”) lacks the legal authority and jurisdiction to provide Complainant with the requested relief in the form of a monetary judgment.

2. Duquesne Light further seeks to dismiss the Complaint in its entirety because the Complaint fails to join a necessary party to this proceeding, namely, Casper Colosimo & Son, Inc. (“Casper Colosimo”), who is the third-party contractor who performed the construction described in the Complaint.

3. Because the sole relief sought in the Complaint is relief the Commission lacks the legal authority to award, and because the Complainant failed to join a necessary party to this action, the Complaint must be dismissed in its entirety.

## **II. BACKGROUND**

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

5. 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.

6. The Commission's procedural regulations allow a party to file a preliminary objection where the Commission lacks jurisdiction over the proceeding, or for nonjoinder of a necessary party. See 52 Pa. Code §§ 5.101(a)(1), 5.101(a)(5).

7. On March 18, 2021, the Company was electronically served with the Complaint at the above-captioned docket.

8. Duquesne Light is timely filing its Answer contemporaneously with these Preliminary Objections.

## **III. LAW AND ARGUMENT**

- A. The Complaint must be dismissed because the Commission is unable to award the Complainant with the relief sought by the Complainant, namely, an award of monetary damages.**

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

10. Specifically, Complainant states, “I would like Duquesne Light to pay my Plumber for the repair to my sewer line, fix the sidewalk, sanitize my basement, pay me for all expenses incurred and back rent.” The Complainant further requests to be “compensated for the repairs to my sewer line, sidewalk, basement and back rent.” Complaint Statement Paper.

11. Because the relief sought is for monetary damages, the Complaint must be dismissed.

12. 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).

13. 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).

14. 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).

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

16. Because Complainant’s sole relief is a request for monetary damages in the amount of \$812.13, and granting of such relief is outside the Commission’s jurisdiction, the Complaint must be dismissed.

**B. The Complaint must be dismissed because the Complainant failed to join a necessary party, namely, the third-party contractor who performed the work near the Property Casper Colosimo, Inc.**

17. The Complaint correctly states that the Duquesne Light hired a third-party contractor to perform certain duct bank installation work that allegedly caused the sewer line damage on or near Complainant's property, located at 1442 Columbus Avenue, Pittsburgh, PA 15233.

18. Specifically, Complainant states, "Duquesne Light subcontracted the work out to another company to put the Vault in." Complaint Statement Paper.

19. Because Complainant failed to join Casper Colosimo, the party who performed the work that allegedly damaged Complainant's sewer line, the Complaint must be dismissed.

20. Duquesne Light hired Casper Colosimo to perform construction services on the condition that Casper Colosimo's work would be performed in a skillful, workmanlike, and professional manner and in accordance with generally accepted industry practices.

21. Further, Casper Colosimo agreed to defend, indemnify, and hold Duquesne Light harmless from damage to any property that Casper Colosimo may cause in the course of performing its work.

22. Because Complainant's cause of action against Duquesne Light is misplaced, and the party who is responsible for the alleged damage is Casper Colosimo, not Duquesne Light, 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**

JOEL WILKES,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2021-3024389
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

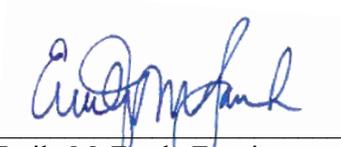
**CERTIFICATE OF SERVICE**

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):

**VIA ELECTRONIC MAILING ONLY**

Joel Wilkes  
1204 Sheffield Street  
Pittsburgh, PA 15233  
[Joelwilkes\\_2@yahoo.com](mailto:Joelwilkes_2@yahoo.com)

Dated this 7th day of April, 2021

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