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July 29, 2021

Via Electronic Filing

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

RE: Benjamin Kroop v. Duquesne Light Company
Docket No. F-2021-3027160

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by Benjamin Kroop. A copy of this document and the enclosed filing was served upon the parties indicated in the Certificate of Service.

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

Enclosure

cc: Certificate of Service (w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BENJAMIN KROOP,	:	
	:	
Complainant,	:	
	:	
v.	:	No: F-2021-3027160
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTIONS

Filed on behalf of Respondent
Duquesne Light Company

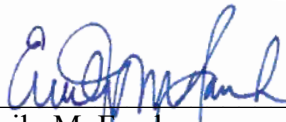
Counsel for Respondent:
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Pittsburgh, PA 15219

NOTICE TO PLEAD

TO COMPLAINANT BENJAMIN KROOP:

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S PRELIMINARY OBJECTION WITHIN 10 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.101 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**

BENJAMIN KROOP,	:	
	:	
Complainant,	:	
	:	
v.	:	No: F-2021-3027160
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code §§ 5.101(a)(1), 5.101(a)(4), Duquesne Light Company (“Duquesne Light” or the “Company”) files its Preliminary Objections to Complainant Benjamin Kroop’s Formal Complaint (“Complaint”), and states as follows:

I. INTRODUCTION & BACKGROUND

1. As more fully set forth, below, Duquesne Light seeks to dismiss the portion of the above-captioned Complaint disputing the Company’s actions related to the request to change the Complainant’s supplier, because it does not constitute a violation of Pennsylvania Public Utility Commission (“Commission”) rules or orders.

2. Duquesne Light also seeks to dismiss the portions of the above-captioned Complaint requesting financial compensation, because the Commission lacks jurisdiction to grant the Complainant relief in the form of monetary damages.

3. On June 9, 2021, the Company was electronically served with the Complaint for the above-captioned docket.

4. Duquesne Light is timely filing its Answer and New Matter to the Complaint contemporaneously with the present Preliminary Objections.

5. In addition to its Preliminary Objections and the Answer and New Matter, Duquesne Light is also filing a Motion to Join AEP Energy, Inc. (“AEP”) as an indispensable party to this proceeding,

II. LAW

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

7. 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.

8. The Commission’s procedural regulations allow a party to file a Preliminary Objection to pleadings that are legally insufficient. See 52 Pa. Code § 5.101(a)(4).

9. To be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code § 5.22(a)(4).

10. The Commission’s procedural regulations additionally allow a party to file a Preliminary Objection where the Commission lacks jurisdiction over the proceeding. See 52

Pa. Code § 5.101(a)(1).

11. 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).

III. ARGUMENT

A. The Commission should dismiss the Complaint on the basis of legal insufficiency because it fails to identify a violation of a Commission rule, regulation, or order.

12. In the Complaint, the Complainant alleges, in part, dissatisfaction with the rejection of his EGS's request to switch his electric generation supplier ("EGS").

13. Specifically, the Complaint states: "I submitted a change of provider request and it was denied by Duquesne Light." Complaint ¶ 5.

14. The allegation(s) in preceding paragraph refer to the rules and procedures as outlined in the Company's Electric Generation Supplier Coordination Tariff ("Supplier Tariff").

15. Public utility tariffs have the full force and effect of law and are binding on the customer and utility alike. Pennsylvania Elec. Co. v. Pennsylvania Pub. Util. Comm'n, 663 A.2d 281, 284 (Pa. Commw. Ct. 1995).

16. Here, on October 13, 2020, AEP submitted an electronic generation supplier change request to Duquesne Light for the Garage and Floor 1 through the Company's Electronic Data Interchange ("EDI").

17. The Company's Supplier Tariff Rule 5.1.1., attached to the Company's Answer and New Matter as Exhibit B, requires EGSs to provide the Company with the customer's supplier agreement number.

18. The switch request did not provide the Complainant's supplier agreement numbers. See Answer and New Matter Exhibit A.

19. The Company's Supplier Tariff Rule 5.2.4, enclosed as Answer and New Matter Exhibit C, requires Duquesne Light to notify the EGS of the switch rejection and the reason for the rejection within 1 business day.

20. Pursuant to the Supplier Tariff, on October 13, 2020, the Company notified AEP that the switch request was rejected because the Complainant's supplier agreement numbers were not provided. See Answer and New Matter Exhibit A.

21. In all, Duquesne Light's rejection of the supplier switch request is a reflection of the Company's compliance with its Supplier Tariff and the rules contained therein.

22. Given the foregoing, the Complaint fails to allege that the Company violated any rules or laws.

23. In fact, the Company's actions reflect that it fully adhered to the Supplier Tariff rules, which carry the full force and effect of law.

24. Even viewing the Complaint in light most favorable to the Complainant, the Complaint is legally insufficient because it fails to state any violation of the Supplier Tariff, and further fails to state a violation of the Public Utility Code, Pennsylvania Public Utility Commission ("Commission") regulation, rule, or order.

25. Being that the Complaint is legally insufficient, it must be dismissed in accordance with 52 Pa. Code § 5.101(a)(4).

B. The portion of the Complaint requesting monetary compensation must be dismissed because the Commission lacks jurisdiction to award the Complainant with the relief requested in the form of civil damages.

26. The Complaint is requesting, in part, to be issued “compensation for my time dealing with this issue.” Complaint ¶ 5.

27. 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).

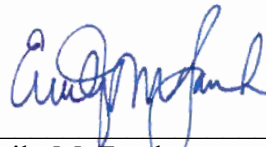
28. The Commission’s jurisdiction is limited only to “regulatory matters essential to utility service.” Horowitz at *3.

29. 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. Ct. 1991); Poorbaugh v. Pa. Pub. Util. Comm’n, 666 A.2d 744 (Pa. Commw. Ct. 1995).

30. Because Complainant’s relief includes a request for damages and granting of such relief is outside the Commission’s jurisdiction, the portion of the Complaint seeking monetary damages must be dismissed.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections and dismiss the above-captioned formal complaint with prejudice.

DUQUESNE LIGHT COMPANY



Emily M. Farah
Counsel for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BENJAMIN KROOP,	:	
	:	
Complainant,	:	
	:	
v.	:	No: F-2021-3027160
	:	
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(s) listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

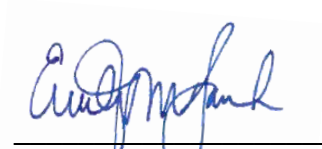
VIA FIRST-CLASS MAILING AND ELECTRONIC MAILING

Benjamin Kroop
233 Main Street
Pittsburgh, PA 15201
benkroop@gmail.com

VIA FIRST-CLASS MAILING ONLY

AEP Energy, Inc.
1 Easton Oval
Suite 200
Columbus, OH 43219

Dated this 29th day of July, 2021.



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Company