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December 14, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Benjamin Kroop v. Duquesne Light Company; Docket No. F-2021-3027160;
**PRELIMINARY OBJECTIONS OF AEP ENERGY, INC. TO FORMAL
COMPLAINT**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission are the Preliminary Objections of AEP Energy, Inc to Formal Complaint in the above-captioned proceeding. Copies of the Preliminary Objections have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Bryce R. Beard
Counsel for AEP Energy, Inc.

TSS/jld

Enclosure

cc: Administrative Law Judge Jeffrey A. Watson
Per Certificate of Service

CERTIFICATE OF SERVICE

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

VIA FIRST-CLASS MAIL

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Counsel for Duquesne Light Company

Benjamin Kroop
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Todd S. Stewart
Bryce R. Beard

DATED: December 14, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

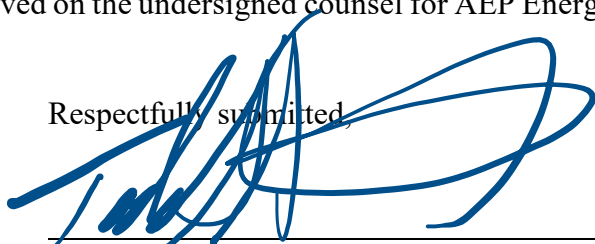
BENJAMIN KROOP,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2021-3027160
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

TO: Benjamin Kroop
233 Main Street
Pittsburgh, PA 15201

Pursuant to 52 Pa. Code § 5.61, you are hereby notified that you may file a written response to the attached Preliminary Objections of AEP Energy, Inc. to Formal Complaint within ten (10) days from service of this notice. Any response must be filed with the Secretary of the Pennsylvania Public Utility Commission and served on the undersigned counsel for AEP Energy, Inc.

Respectfully submitted,



Todd S. Stewart, Attorney I.D. No. 75556
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DATED: December 14, 2021

Counsel for AEP Energy, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PRELIMINARY OBJECTIONS OF AEP ENERGY, INC.
TO FORMAL COMPLAINT**

NOW COMES AEP Energy, Inc. (“AEPE”), by and through its counsel, Hawke McKeon & Sniscak LLP, pursuant to 52 Pa. Code § 5.101 and hereby submits these Preliminary Objections to the Complaint of Mr. Benjamin Kroop filed May 28, 2021. AEPE was joined as a party on November 22, 2021. The legal basis of the Preliminary Objections is that the Complaint is legally insufficient because it requests compensation in the form of contract damages calculated as the difference between what Mr. Kroop paid for the electric generation supply service he received from October 14, 2020 through the date of his informal complaint, and also seeks compensation for his time in addressing his complaint. As discussed below, The Pennsylvania Public Utility Commission (“Commission”) is not statutorily authorized to award damages. The Complaint also is legally insufficient as to AEPE in that it does not allege that AEPE has engaged in “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). That is, Mr. Kroop claims that there were incorrect supplier charges on his bill, but it is clear from the plain language of the complaint that this complaint is directed to Duquesne Light Company which: 1) produces the bill; and 2) rejected Mr. Kroop’s enrollment as a customer of AEPE. This is despite Mr. Kroop’s failure to correct his rejected enrollment, notice of which he admits to having received.

For the reasons set forth below, AEPE ask that its Preliminary Objections be granted, and the Complaint be dismissed against AEPE.

I. ARGUMENT

A. Legal Standard.

1. The Commission’s regulations allow a respondent to file preliminary objections to a complaint. 52 Pa. Code § 5.101. Preliminary motion practice before the Commission is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994) (citing Pa. R. Civ. P. 1017). A preliminary objection in civil practice seeking dismissal of a pleading will be granted where relief is clearly warranted and free from doubt. *Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

2. In determining whether to sustain preliminary objections, all well-pleaded material, factual averments, and all inferences fairly deducible therefrom are presumed to be true. *Marks v. Nationwide Ins. Co.*, 762 A.2d 1098, 1099 (Pa. Super. Ct. 2000), *appeal denied*, 788 A.2d 381 (Pa. 2001). The pleaders’ conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion should not be considered to be admitted as true. *Id.* The preliminary objections should be sustained if, based on the facts averred by the plaintiff, the law

says with certainty that no recovery is possible. *Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. Ct. 2011), *appeal denied*, 50 A.3d 126 (Pa. 2012).

B. Preliminary Objection 1: The Complaint seeks Damages which the Commission cannot award.

3. The only relief sought by the Complainant is for alleged damages for the difference in rates that Complainant paid on his Duquesne bill to what he could have been charged had his attempt to enroll as a customer of AEPE through Duquesne’s enrollment process been successful. Complaint, ¶ 5. The duration of the damages period, as alleged in the Complaint, appears to run from his first attempt to enroll on October 13, 2020 through the filing of his complaint. *Id.*¹

4. The Complainant also requests to be compensated for his time “dealing with this issue”. *Id.*

5. The requested relief does not constitute an error, miscalculation, or incorrect charge on the Complainant’s bill as to AEPE. Indeed, as discussed in AEPE’s Answer and New Matter, Complainant attempted to enroll two accounts with AEPE through Duquesne’s enrollment process which Duquesne rejected, and subsequently enrolled a third account on April 16, 2021, which he canceled 6 days later on April 22, 2021, without ever receiving service from AEPE. At no time did AEPE charge Complainant or provide him any service. Therefore, the relief sought as to the difference between what he paid and could have paid and compensation for his time amount to nothing more than compensatory damages and cannot, under any fairly deducible inference, be awarded as to AEPE.

¹ Mr. Kroop attempted to enroll on October 13, 2020, but the enrollment was rejected by Duquesne on October 14, 2020.

6. It is well established that the Commission lacks the power or jurisdiction to determine or award damages. *See Elkin v. Bell Telephone Company of Pennsylvania*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Telephone Company of Pennsylvania*, 383 A.2d 791 (Pa. 1977). Therefore, the Complaint seeking damages should be dismissed as legally insufficient and outside the Commission’s jurisdiction pursuant to 52 Pa. Code § 5.101(a)(1) and (a)(4).

C. Preliminary Objection 2: The Complaint is legally insufficient as to AEPE in that it does not allege any violation of the law by AEPE.

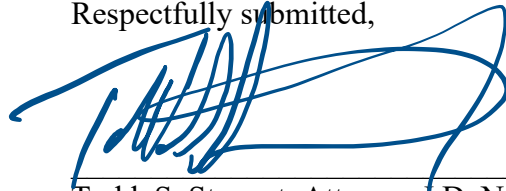
7. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code § 5.22(a)(4); *see, e.g., James Drake v. Pennsylvania Electric Co.*, Docket No. C-2014-2413771, Initial Decision Sustaining Preliminary Objection and Dismissing Complaint, 2014 WL 2003281, *4 (May 7, 2014)

8. Mr. Kroop admits that he received a notice that his enrollment with Duquesne was rejected (Complaint, ¶ 5) but rather than address that issue, he did nothing. Even if Mr. Kroop can prove that Duquesne improperly rejected his enrollment on October 14, 2020, there is no allegation, indeed no inference, that AEPE did anything in violation of the law at any time. It also is clear that Mr. Kroop was not enrolled as an AEPE customer, and so the “incorrect supplier charges” on his bill could not have been AEPE’s. Accordingly, the complaint is legally insufficient as to AEPE and must be dismissed.

II. CONCLUSION

WHEREFORE, AEP Energy, Inc. respectfully requests the Formal Complaint be dismissed with prejudice for the reasons stated herein and that the Commission grant such other and further relief as it deems just and proper.

Respectfully submitted,



Todd S. Stewart, Attorney I.D. No. 75556
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Counsel for AEP Energy, Inc.

DATED: December 14, 2021

VERIFICATION

I, Frank Willson, certify that I am the Vice President of Residential and Small Business Solutions, for AEP Energy, Inc., and that, in this capacity, I am authorized to and do make this Verification, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that I expect AEP Energy, Inc. to be able to prove same at any hearing hereof. I understand that false statements made therein are made subject to the penalties in 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

DATE: December 14, 2021



Frank Willson
VP of Residential & Small Business Solutions
AEP Energy, Inc.