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May 16, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Adam Tercek v. Duquesne Light Company
Docket No. C-2022-3032118

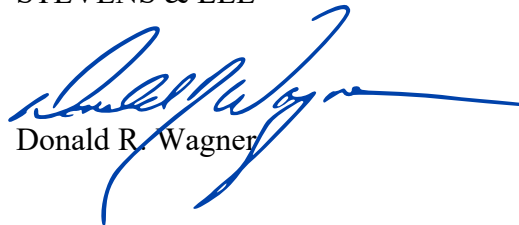
Dear Secretary Chiavetta:

Enclosed for filing are the Preliminary Objections of Respondent, Duquesne Light Company to the above-referenced Complaint. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Donald R. Wagner

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ADAM TERCEK	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3032118
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

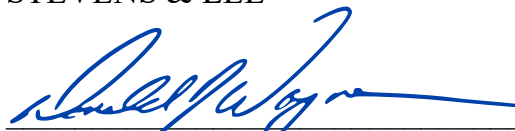
To: *Adam Tercek*

You are hereby notified to file a written response to the attached Preliminary Objection of Duquesne Light Company within ten (10) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Preliminary Objection within ten (10) days of service, the facts set forth by Duquesne Light Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to the Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for Duquesne Light Company.

STEVENS & LEE



Donald R. Wagner (Attorney I.D. No. 80280)

David R. Beane (Attorney I.D. No. 53343)

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COUNSEL FOR DUQUESNE LIGHT COMPANY

DATE: May 16, 2022

**BEFORE THE
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ADAM TERCEK	:	
Complainant	:	
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**PRELIMINARY OBJECTION OF RESPONDENT,
DUQUESNE LIGHT COMPANY**

AND NOW, Duquesne Light Company (sometimes hereinafter “Respondent” or “Company”), by and through its attorneys Stevens & Lee, P.C., hereby files this Preliminary Objection requesting dismissal of that part of a Formal Complaint of Adam Tereck (hereinafter “Complainant”) which seeks an award of civil monetary damages. As set forth below, the objectionable portion of the Formal Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(4) because it is legally insufficient in that the relief sought by the Complaint cannot be granted by the Commission as a matter of law.

I. INTRODUCTION

1. On April 26, 2022, the Company was served with a notice of a Formal Complaint (“Complaint”) filed by the Complainant against Duquesne Light Company. A copy of the Complaint is attached hereto as Exhibit 1 and is incorporated herein by reference.

2. The Commission’s Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. *See*, 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency. The

Company's Preliminary Objection requests the dismissal of a claim for damages alleged in the Complaint for legal insufficiency under 52 Pa. Code § 5.101(a)(4). The Commission lacks jurisdiction to enter an award of damages. It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. *See Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

3. Simultaneously with the filing of this Preliminary Objection, the Company is also filing an Answer and New Matter in response to the Complaint.

II. Preliminary Objection under 52 Pa. Code § 5.101(a)(4) – Legal Insufficiency

4. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4) is comparable to Pa. R.C.P. 1028(a)(4), "legal insufficiency of a pleading (demurrer)."

5. The principles applied in ruling upon a demurrer are well-settled:

[W]hen ruling on preliminary objections, [the] Court considers as true all well-pleaded facts which are material and relevant. Specifically, a preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom. In determining whether to sustain a demurrer the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. A demurrer will not be sustained unless the face of the complaint shows that the law will not permit recovery, and any doubts should be resolved against sustaining the demurrer. *Giffin v. Chronister*, 151 Pa.Cmwlth. 286, 290, 616 A.2d 1070, 1072 (1992) (citations omitted).

6. One of the items of relief requested by the Complaint in this case is that Complainant "be compensated for the loss in value of [his] property." *See* Complaint, at paragraph 5.

7. Complainant's diminution claim seeks to hold the Company responsible for an alleged reduction in the fair market value of his property that Complainant contends has been caused by humming originating from three pole mounted step-down

transformers on Complainant's property. It is evident that an award of damages for such a claim is beyond the power of the Commission to order.

8. The Complaint in part seeks a finding of monetary responsibility for damages against the Company, and as such, it is legally insufficient and fails to state a claim for which relief can be granted.

9. Even if the facts alleged in the Complaint were proven to be true, the Commission could not award the relief requested by the Complainant. The Complainant's request that the Company be held responsible for damages is a request for compensation which is beyond the authority the General Assembly has granted to the Commission.

10. Although it has general jurisdiction over service disputes between public utilities operating in Pennsylvania and their customers, the Commission, as a creation of the General Assembly, only has the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Public Utility Code does not grant the Commission the authority to award damages, and there is no question that the Commission lacks authority to award damages. *See, Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991).

11. The relief sought by the Complainant (i.e., in part, an award of damages to compensate the Complainant for an alleged loss in value to his property which Complainant contends has been caused by humming from three pole mounted step-down transformers on his property), is a civil law and insurance matter that is the province of the courts, not a matter of public utility law for the Commission to determine.

12. For the reasons set forth above, that portion of paragraph 5 of the Complaint which seeks damages is legally insufficient because such relief is beyond the jurisdiction of the Commission, and therefore, should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, Respondent Duquesne Light Company respectfully requests that your Honorable Commission grant its Preliminary Objection and dismiss that portion of paragraph 5 of the Complaint seeking damages pursuant to 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,

STEVENS & LEE



Donald R. Wagner (Attorney I.D. No. 80280)

David R. Beane (Attorney I.D. No. 53343)

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Email: *david.beane@stevenslee.com*

COUNSEL FOR DUQUESNE LIGHT
COMPANY

DATE: May 16, 2022

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DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAIL

Adam Tercek
571 Dewalt Drive
Pittsburgh, PA 15234
Email: *atercek4148@gmail.com*



Donald R. Wagner

DATED: May 16, 2022