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May 25, 2022

**Via Electronic Filing**

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

**RE: Todd Koger v. Duquesne Light Company**  
**Docket No. C-2022-3032231**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by Todd Elliot Koger at the above-mentioned docket. A copy of this document and the enclosed filing were served upon Complainant, as indicated on 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".

Emily M. Farah  
Counsel, Regulatory

cc: Todd Elliot Koger (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD ELLIOTT KOGER,

Complainant,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2022-3032231

**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 TODD ELLIOTT KOGER:**

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S PRELIMINARY OBJECTION(S) 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**

TODD ELLIOTT KOGER,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2022-3032231
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS**

Pursuant to 52 Pa. Code § 5.101(a)(1), Duquesne Light files its preliminary objections to Complainant Todd Elliot Koger’s above-captioned formal complaint (“Complaint”), and states as follows:

**I. INTRODUCTION**

1. Duquesne Light seeks to dismiss the Complaint in its entirety for two reasons. First, because the Pennsylvania Public Utility Commission (“Commission”) lacks jurisdiction to rule on the portions of the formal complaint rooted in the United States Code, 42 USC 1981, 1983, and 1985. Complaint ¶ 4. Second, the Commission lacks jurisdiction to grant Complainant the requested relief, namely, civil monetary damages. Complaint ¶ 5.

2. Because the Commission lacks jurisdiction over the Complainant’s allegations in the Complaint, and because the Commission does not have the authority to award the Complainant with civil monetary damages, the Complaint must be dismissed in its entirety.

## II. BASIS FOR PRELIMINARY OBJECTIONS

3. 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.

4. The Commission's procedural regulations allow a party to file a preliminary objection to pleadings that fail to comply with the rules of administrative practice or where the Commission lacks jurisdiction over the proceeding. See 52 Pa. Code § 5.101(a)(1).

5. The Commission's procedural regulations also allow a party to file a preliminary objection to pleadings on the basis that there is a pending prior proceeding or agreement for alternative dispute resolution. See 52 Pa. Code § 5.101(a)(6).

6. On May 5, 2022, the Company was electronically served with Complainant's Formal Complaint at the above-captioned docket.

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

8. As more fully set forth below, these Preliminary Objections request the Commission dismiss the above-captioned Complaint in its entirety due to the lack of

Commission jurisdiction over federal law and lack of Commission jurisdiction to grant monetary damages.

### III. ARGUMENT

A. The portions of the Complaint alleging violations of federal law must be dismissed because the Commission lacks jurisdiction to adjudicate claims arising from the United States Code.

9. Commission regulations allow parties to file preliminary objections on the basis that the Commission lacks jurisdiction over the proceeding. 52 Pa. Code § 5.101(a)(1).

10. The Commission lacks subject matter jurisdiction to decide the Complainant's allegations regarding violation of the United States Code, Equal Rights Under the Law, 42 USC § 1981, Civil Action for Deprivation of Rights 42 USC § 1983, and Conspiracy to Interfere with Civil Rights, 42 USC § 1985.

11. The Commission may only exercise powers that are expressly conferred upon it by the legislature. See Feingold v. Bell of Pa., 383 A.2d 791, 794 (Pa. 1978).

12. The Commission must act within its jurisdiction, and may only hear complaints regarding the Pennsylvania Code, Commission Regulations, or Commission Order. 66 Pa. C.S. § 701; Haleema B. Alkhatib v. PECO Energy Co., Docket No. C-2011-2242125, 2012 WL 641672, at \*5 (Jan. 12, 2012); City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348, 348 (Pa. Super. 1945).

13. The Commission does not have jurisdiction over claims arising under the United States Code. White v. PPL Elec. Utilities Corp., Docket No. C-2018-3003468, 2019 WL

2250756 (May 6, 2019) (stating the Commission has no jurisdiction to determine if an issue violates a complainant's constitutional rights).

14. The Commission has held that claims relating to violations of the United States Constitution were beyond the Commission's subject matter jurisdiction. See James Coppedge v. PECO Energy Co., Docket No. F-2009-2135893, 2010 WL 3183815, at \*1 (July 29, 2010).

15. Here, the Complaint alleges that the Company violated Complainant's constitutional rights by allegedly violating the federal laws, 42 USC §§ 1981, 1983, and 1985. See Complaint ¶ 4.

16. Application and interpretation of the constitution and federal law are outside of the Commission's express jurisdiction of Pennsylvania Code, Commission Regulations, or Commission Order. Complaint, ¶ 4; 66 Pa. C.S. § 701; Haleema B. Alkhatib v. PECO Energy Co., Docket No. C-2011-2242125, 2012 WL 641672, at \*5 (Jan. 12, 2012).

17. Therefore, the Commission lacks jurisdiction over the Complainant's allegations that are rooted in alleged constitutional violations and alleged violations of federal law.

18. Consequently, because the Commission lacks jurisdiction, the portions of the Complaint that allege violations of federal law must be dismissed pursuant to 52 Pa. Code § 5.101(a)(1).

B. The remaining portions of the Complaint must be dismissed because the Commission does not have jurisdiction to grant the Complainant the requested relief in the form of civil damages.

19. The above paragraphs are incorporated as if fully restated herein.

20. 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).

21. 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).

22. 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).

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

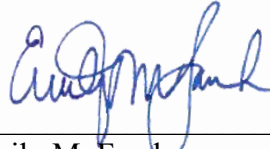
24. The Complainant is requesting to be “made ‘whole’” by way of “compensatory relief and ‘punitive damages.’” Complaint ¶ 5.

25. Clearly, the sole relief sought in the Complaint is an award of monetary damages from the Company.

26. Because Complainant’s requested relief is a request for monetary compensation, and granting of such relief is outside the Commission’s jurisdiction, the Complaint must be dismissed in its entirety.

**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

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a horizontal line.

Emily M. Farah  
Counsel for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD ELLIOTT KOGER,	:	
	:	
Complainant,	:	
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v.	:	No: C-2022-3032231
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DUQUESNE LIGHT COMPANY,	:	
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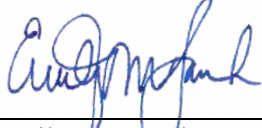
**CERTIFICATE OF SERVICE**

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

**VIA FIRST-CLASS MAILING & ELECTRONIC MAILING**

Todd Elliot Koger  
515 Kelly Avenue  
Pittsburgh, PA 15221  
[kogerfriend@gmail.com](mailto:kogerfriend@gmail.com)

Dated this 25th day of May, 2022.

  
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Emily M. Farah, Esquire  
PA I.D. No. 322559  
(412) 393-6431  
EFarah@duqlight.com  
Counsel for Duquesne Light Company