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June 21, 2022

**Via Electronic Filing**

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

**RE: Laura Andracchio Johnson and Charles Johnson v. Duquesne Light Company  
Docket No. C-2022-3032695**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Preliminary Objections to the Formal Complaint filed by Laura Andracchio Johnson and Charles Johnson at the above-mentioned docket. A copy of this document and the enclosed filing were served upon Complainants, 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

Enclosure

cc: Certificate of Service (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAURA ANDRACCHIO JOHNSON, and :  
CHARLES JOHNSON, :  
 :  
Complainants, :  
 : No: C-2022-3032695  
v. :  
 :  
DUQUESNE LIGHT COMPANY, :  
 :  
Respondent. :

**PRELIMINARY OBJECTION**

Filed on behalf of Respondent  
Duquesne Light Company

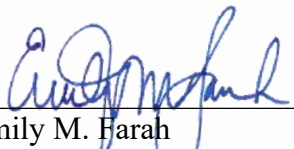
Counsel of Record for this Party:  
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**NOTICE TO PLEAD**

**TO COMPLAINANTS LAURA ANDRACCHIO JOHNSON AND CHARLES JOHNSON:**

**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**

LAURA ANDRACCHIO JOHNSON, and :  
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 : No: C-2022-3032695  
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DUQUESNE LIGHT COMPANY, :  
 :  
Respondent. :

**PRELIMINARY OBJECTION**

Pursuant to 52 Pa. Code § 5.101(a)(4), Duquesne Light Company (“Duquesne Light” or the “Company”) files its Preliminary Objection to the above-captioned Formal Complaint (“Complaint”) filed by Laura Andracchio Johnson and Charles Johnson (collectively, “Complainants”), and states as follows:

**I. INTRODUCTION**

1. Duquesne Light is a “public utility” and an “electric distribution company” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 102, 2803.

2. On June 1, 2022, the Company was electronically served with Complainants’ Complaint at the above-captioned docket.

3. As more fully set forth, below, Duquesne Light seeks to dismiss the above-captioned Complaint on the basis of legal insufficiency, given that the Complaint fails to allege any violation of Pennsylvania Public Utility Commission (“Commission” or “PUC”) rule, regulation, or orders. See 52 Pa. Code § 5.101(a)(4).

4. Duquesne Light is timely filing its Answer and New Matter to the Complaint

contemporaneously with this Preliminary Objection.

## II. LEGAL STANDARD

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 to pleadings that are legally insufficient. See 52 Pa. Code § 5.101(a)(4).

7. 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." Drake v. Pa. Elec. Co., No. C-2014-2413771, 2014 WL2003281, at \*1 (Pa. P.U.C. May 7, 2014).

8. Section 703(b) of the Code allows the Commission to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessarily in the public interest. 66 Pa. C.S. § 703(b).

9. Preliminary Objections on the basis of legal insufficiency promote judicial economy by avoiding hearing(s) where there are no factual disputes. Campisi v. PECO Energy

Co., No. C-2014-2434501, 2014 WL 4644282, at \*1 (Pa. P.U.C. Sept. 3, 2014).

10. For the sole purpose of ruling on Preliminary Objections, the Commission must assume all well-pleaded facts in the Complaint are true. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

11. Here, and as more fully set forth below, the Complainants fail to allege that the Company has violated any Public Utility Code, Commission regulations or orders.

12. To the contrary, Duquesne Light has demonstrated adherence to, not violation of, the relevant Commission standards.

13. Given the foregoing, it is proper and in the public interest to dismiss the Complaint as legally insufficient, without a hearing.

### **III. COMPLAINANTS' ALLEGATIONS**

14. Complainants purchased their former residence,<sup>1</sup> 235 Ridgehaven Lane, Pittsburgh, PA 15238 (the “Ridgehaven Property”), on May 22, 2017. Complaint ¶ 4.

15. The Complaint alleges dissatisfaction with two Company notices regarding a potential transmission line project, referred to hereinafter as the “West Deer Project” or the “Project.”

16. Complainants received a notice issued by Duquesne Light regarding the West Deer Project on June 7, 2017. Complaint ¶ 4.

17. In September 2017, Complainants received a notice with information on the Company’s eminent domain powers. Complaint ¶ 4.

18. The Complaint alleges that the June 2017 and September 2017 notices placed a cloud on the Ridgehaven Property. Complaint ¶ 4.

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<sup>1</sup> Complainants no longer reside at the Property. See Complaint Exhibit A at ¶ 8.

19. The Company did not, and has not, applied for PUC approval of the West Deer Project. Complaint ¶ 4.

20. The Complaint alleges that the Company's obligation to notify impacted property owners was not triggered until Duquesne Light filed for PUC approval of the Project, stating: "[Duquesne Light] was not required by PUC regulations to provide either notice because it was not yet submitting—and to date has not submitted—an application to the PUC for approval of any route through the [Ridgehaven Property]." Complaint ¶ 4.

21. As relief, the Complainants request a determination and order from the Commission to establish that Duquesne Light owed, and breached, a duty to provide notice of the planning of the construction of the West Deer facilities. Complaint ¶ 5.

#### IV. ARGUMENT

22. Accepting all facts alleged in the Complaint as true, the Complainants fail to allege that the Company has violated the Code, Commission regulations, or orders. See County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

23. Regarding the notice Complainants received in June 2017, the Commission's policy is that it is prudent for a public utility to begin the public outreach and educational process before a formal line siting application is filed with the Commission. Final Order Establishing Interim Guidelines for the Filing of Electric Transmission Line Siting Applications, No. M-2009-2141293 at 12 (Nov. 4, 2010).

24. The notice Complainants received in June 2017 was issued by Duquesne Light for the purpose of beginning public outreach and education for the West Deer Project.

25. The Company's issuance of the notice that the Complainants received in June 2017 did not violate a Commission rule, order, regulation, or directive.

26. In fact, the Company's outreach to the property owners potentially impacted by the Project was prudent and aligned with Commission policy. See Final Order Establishing Interim Guidelines (Nov. 4, 2010).

27. Because the Complaint fails to allege that the June 2017 notice constituted an act or thing done or omitted to be done in violation of a Commission rule, regulation or order, it must be deemed legally insufficient. See Drake v. Pa. Elec. Co.

28. Regarding the notice Complainants received in September 2017, 52 Pa. Code § 57.91(a) prohibits public utilities from communicating with property owners "for the purpose of negotiating for the acquisition of a transmission line right-of-way, with a property owner or with a property owner's representative, until at least 15 days after receipt by the property owner or the property owner's representative of the notice required in this section."

29. 52 Pa. Code § 57.91(b) requires utilities disclose their ability to take property by eminent domain.

30. The September 2017 notice included information on the Company's power to take property by eminent domain and a permission form to allow a permission form to allow the Company or its representatives to enter the Ridgehaven Property. Complaint ¶ 4.

31. The September 2017 notice complies with the Company's obligations under 52 Pa. Code §§ 57.91(a)-(b).

32. Contrary to the Complainants' assertion, Duquesne Light's obligation to notify impacted property owners is not triggered by the Company's application for PUC approval of the Project. See 52 Pa. Code § 57.91(a).

33. Instead, the obligation to inform potentially impacted property owners along a transmission project route is triggered by the utility's desire to negotiate rights-of-way. See 52

Pa. Code § 57.91(a).

34. At the time the September 2017 notice was issued to Complainants, the Ridgehaven Property was along one of the preferred routes for the Project. Complaint ¶ 4.

35. Duquesne Light's issuance of the September 2017 notice was squarely within the requirements set forth in 52 Pa. Code §§ 57.91(a)-(b), as the Company contemplated the need for a transmission right-of-way in or around the Ridgehaven Property.

36. Because the Complaint fails to allege that the September 2017 notice constituted an act or thing done or omitted to be done in violation of a Commission rule, regulation or order, it must be deemed legally insufficient. See Drake v. Pa. Elec. Co.

## V. CONCLUSION

37. The Company and the Complainants agree that the June 2017 and September 2017 notices were issued prior to the Company's application to the PUC for approval of the Project.

38. The Complainants' contention is that the June 2017 and September 2017 notice were unnecessary because the Company did not, and has not, applied for Commission approval of the Project.

39. To the contrary, the Company issued the June 2017 and September 2017 notices prior to seeking Commission approval for the West Deer Project in accordance with PUC policy and regulations.

40. First, the June 2017 notice was issued in accordance with the prudent utility practices outlined in the Commission's Final Order Establishing Interim Guidelines for the Filing of Electric Transmission Line Siting Applications, at No. M-2009-2141293.

41. Second, the September 2017 notice was issued in accordance with PUC

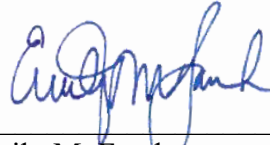
regulations 52 Pa. Code §§ 57.91(a)-(b).

42. Given the foregoing, the Complaint fails to allege that either the June 2017 or September 2017 notice constituted an act or thing done or omitted to be done in violation of a Commission rule, regulation, or order. See Drake v. Pa. Elec. Co.

43. As such, the Complaint is legally insufficient because it fails to allege that the June 2017 or September 2017 notices were issued in violation of a Commission rule, regulation or order. See Drake v. Pa. Elec. Co.

**WHEREFORE**, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objection and dismiss the Complaint with prejudice.

DUQUESNE LIGHT COMPANY



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Emily M. Farah  
Counsel for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAURA ANDRACCHIO JOHNSON, and :  
CHARLES JOHNSON, :  
 :  
Complainants, :  
 : No: C-2022-3032695  
v. :  
 :  
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 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**

Laura Andracchio Johnson and Charles Johnson  
203 Fairview Road  
Pittsburgh, PA 15238  
[landracchio@comcast.net](mailto:landracchio@comcast.net)

Stanley M. Stein, Esq.  
445 Fort Pitt Blvd., Ste 150  
Pittsburgh, PA 15219  
[smstein@smsteinlaw.com](mailto:smstein@smsteinlaw.com)  
(Counsel for Complainants)

Dated this 21st day of June, 2022.

  
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Emily M. Farah, Esquire  
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Counsel for Respondent, Duquesne Light  
Company