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August 24, 2022

Via Electronic Filing

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

Re: Estate of Elsa von Eckartsberg v. Duquesne Light Company
Docket No. F-2022-3034257

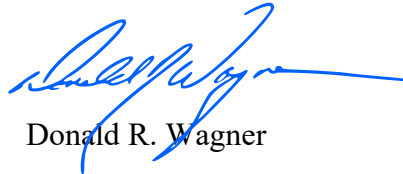
Dear Secretary Chiavetta:

Enclosed for filing are the Preliminary Objections of Respondent, Duquesne Light Company to the above-referenced Complaint. A copy of has been served in accordance with the attached Certificate of Service. Respondent, Duquesne Light Company will concurrently file its Answer and New Matter in the above-referenced Complaint via a separate filing.

If you have any questions, please contact me.

Very truly yours,

STEVENS & LEE



Donald R. Wagner

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ESTATE OF ELSA VON ECKARTSBERG	:	
Complainant	:	
	:	
v.	:	Docket No. F-2022-3034257
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

NOTICE TO PLEAD

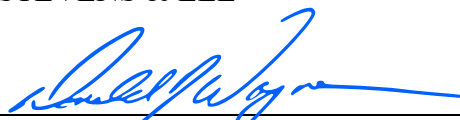
To: *Uta von Eckartsberg as Administrator of the Estate of Elsa von Eckartsberg*

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, pursuant to 52 Pa. Code § 5.101 or a judgment may be entered against you. All pleadings, such as responses to Preliminary Objections, 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. Failure to respond to this Preliminary Objections could result in the dismissal of your case.

STEVENS & LEE



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: August 24, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ESTATE OF ELSA VON ECKARTSBERG	:	
Complainant	:	
	:	
v.	:	Docket No. F-2022-3034257
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

**PRELIMINARY OBJECTIONS OF RESPONDENT,
DUQUESNE LIGHT COMPANY**

Pursuant to 52 Pa Code § 5.101(a)(1) and (a)(2), Duquesne Light Company (“Respondent” or “Company”), by and through its attorneys Stevens & Lee, P.C., hereby files its Preliminary Objections and responds to the Formal Complaint (“Complaint”) filed by the Estate of Elsa von Eckartsburg (“Complainant”) through Uta von Eckartsberg as its Administrator (“Complainant’s Administrator”). In support thereof, the Company avers as follows:

Introduction

1. Respondent 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. As more fully set forth, below, the Company provides Preliminary Objections to the above-captioned Complaint on the grounds that (i) the Commission lacks jurisdiction, pursuant to 52 Pa. Code § 5.101(a)(1); (ii) the Complaint includes scandalous or impertinent matter, pursuant to 52 Pa. Code § 5.101(a)(2); (iii) the Complaint contains insufficient specificity, pursuant to 52 Pa. Code § 5.101(a)(3) and (iv) the Complaint is legally insufficient, pursuant to 52 Pa. Code § 5.101(4).

3. Respondent is timely filing its Answer and New Matter to the Complaint contemporaneously with this Preliminary Objection.

Legal Standard

4. The Commission regulation at 52 Pa. Code § 5.21(a) provides that a person may file a formal complaint with the Commission claiming a violation of a statute that the Commission has jurisdiction to administer, or a regulation or order of the Commission.

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. 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, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. City of Pittsburg v. Pa. Public Utility Commission, 42 A.2d

348 (Pa. Super. 1945), Norfolk Southern Ry. v. Pennsylvania Public Utility Commission, 875 A.2d 1243 (Pa. Cmwlth. 2005).

7. The Commission has initial jurisdiction over “matters involving the reasonableness, adequacy or sufficiency of a public utility’s service, facilities or rates.” DeFrancesco et al. v. Western Pennsylvania Water Company, 435 A.2d 616 (Pa. Super. 1981) vacated and remanded on other grounds, 435 A.2d 595 (1982). To the extent the Complaint includes matters not involving the reasonableness, adequacy or sufficiency of a public utility’s service, facilities or rates, the Commission does not have jurisdiction over such matters.

8. To be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about 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 WL 2003281, at *1 (Pa. P.U.C. May 7, 2014).

9. Additionally, the Commission regularly dismisses complaints for insufficient specificity when a complainant fails to allege “clear and concise statement of the act or omission being complained of as well as a clear and concise statement of the relief sought as required by the Commission's regulations.” Alice Ann Belmonte-Gates v. PECO Energy Co., F-2012-2332583, 2013 WL 596066, at *8 (Jan. 24, 2013) (J. Cheskis) (citing 52 Pa. Code §§ 5.22(a)(3)).

10. The Commission may dismiss a formal complaint without a hearing if, in the Commission’s opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b), 52 Pa. Code § 5.21(d).

11. 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).

12. Pursuant to 52 Pa. Code § 1.4(e), the Commission may order redundant, immaterial, impertinent, or scandalous matter stricken from documents filed with it. See, e.g. Stephen and Pamela Goforth v. Pa. Elec. Co., No. F-2019-3013482, 2020 WL 7239800, at *11 (Pa. P.U.C. Dec. 3, 2020), striking from complainants’ Exceptions and the attachments thereto various references to religion and religious beliefs, derogatory comments towards Commission staff, and other assorted topics not relevant to the proceeding as redundant, immaterial, impertinent and scandalous.

13. A request for relief that is not legally available in the cause of action pleaded is “impertinent matter” in the sense that it is irrelevant to that cause of action. Common Cause/Pennsylvania v. Commonwealth of Pennsylvania, 710 A.2d 108, 115 (Pa. Cmwlth. Ct. 1998); Brennan v. Smith, 299 A.2d 683 (Pa. Cmwlth. Ct. 1972), Kevin Maromonte v. People’s Nat. Gas Co. LLC Equitable Division, No. C-2015-2468911, 2005 WL 1606137, at *4 (Pa. P.U.C. March 31, 2005).

14. A preliminary objection in the nature of a motion to strike off impertinent matter is the appropriate method to challenge an erroneous prayer for damages. Hudock v. Donegal Mut. Ins. Co., 264 A.2d 688 (Pa. 1970).

15. The Complaint, whittled of all redundant, immaterial, impertinent and scandalous matter, is essentially a dispute over utility billing and pending termination of electric utility service for past due unpaid balances. See Complaint ¶4.

16. However, the Complaint includes numerous immaterial, impertinent and/or scandalous references, allegations and requests for relief that are not relevant to the utility billing and utility service termination dispute, are not within the Commission’s jurisdiction, are not sufficiently specific and/or are not legally sufficient.

17. Given the foregoing, it is proper and in the public interest to strike from the Complaint, all immaterial, impertinent and/or scandalous matter and dismiss the counts of the Formal Complaint that are not plead with sufficient specificity, are legally insufficient and/or beyond the Commission's jurisdiction.

Complainant's Allegations

18. By way of background, the building in which Complainant's Administrator's residence is located, Imperial House, is a multi-level condominium building (hereinafter, the "Building") located at 5600 Munhall Road, Pittsburgh, Pennsylvania with approximately 140 units.

19. The Complaint includes references to the Building's compliance with what is presumed to be, the Uniform Construction Code ("UCC") and alleged representations by an individual purported by Complainant to be a member of the Building's condominium association. Complaint ¶4.

20. The Complaint alleges that the Building is not up to code, has no sprinkler system, no up-to-date fire extinguisher inspections, building inspections or fire code inspections. Complaint ¶4.

21. The Complaint makes disparaging references to Commission staff. Complaint ¶4.

22. The Complaint demands, as requested relief, that "someone conduct a full, complete, independent investigation of my concerns as they impact the safety and wellbeing (physically and financially) of the seniors and disabled occupants of this building including myself." Complaint ¶5.

23. The Complaint demands, as requested relief, "a complete accounting of all [Respondent] related charges from 2008 through present." Complaint ¶5.

24. The Complaint demands, as requested relief, “the funds extorted from the estate by retaliatory threats to shut down in response to legitimate complaints.” Complaint ¶5.

25. The Complaint demands, as requested relief, “the PUC to self-report to the [Department of Justice] regarding whether or not it is obligated to comply with the ADA and the Rehabilitation Act.” Complaint ¶5.

26. The Complaint demands, as requested relief, “the identity of the subscriber who is identified only by number on my accounts [handwritten in – “subscriber ID # 0652832550”]”.

27. The Complaint demands, as requested relief, “I want Drawing No. [handwritten in margin – DLC Drawing No. 11037-17 (illegible) DBV 5491, P. 99] because it is part of my mother’s chain of title and it is the best source to identify who the actual owner this building is and was because Bernstein and his BOD have no authority here whatsoever.” Complaint ¶5.

28. The Complaint demands, as requested relief, “I want a copy of the complete electronic file maintained by [Respondent] and Bernstein containing all communications to and from the Estate and my mother or any person or entity who has had access to our allegedly confidential records” Complaint ¶5.

29. The Complaint demands, as requested relief, “[Respondent’s] regulatory counsel should be investigated for harassment and instruct to withhold from any and all shut-down threats or any billing until this matter is fully and objectively investigated as opposed to speaking to PUC staff once for less than ten minutes late Friday afternoon more than 45 days after my informal complaint was filed.” Complaint ¶5.

Preliminary Objections

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).”

30. 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).

31. The Complaint contains numerous immaterial, impertinent and/or scandalous references, allegations and requests for relief that are not relevant to the utility billing and utility service termination dispute, are not within the Commission’s jurisdiction, are not sufficiently specific and/or are not legally sufficient.

32. Specifically, the following claims for relief are legally insufficient, are not sufficiently specific, and/or are beyond the Commission’s jurisdiction and should be dismissed:

- a. Requested Relief No. 1 (“I want someone to conduct a full, complete independent investigation of my concerns as they impact the safety and wellbeing (physically and financially) of the seniors and disabled occupants of the building including myself”)
- b. Requested Relief No. 2 (“a complete accounting of all [Respondent] related charges from 2008 through present.”)
- c. Requested Relief No. 3 (“I want the funds extorted from the estate by retaliatory threats to shut down in response to legitimate complaints”).
- d. Requested Relief No. 4 (“I would like the PUC to self-report to the DOJ regarding whether or not it is obligated to comply with the ADA and the Rehabilitation Act.”)

- e. Requested Relief No. 6 (“I want Drawing No. [handwritten in margin – DLC Drawing No. 11037-17 (illegible) DBV 5491, P. 99] because it is part of my mother’s chain of title and it is the best source to identify who the actual owner this building is and was because Bernstein and his BOD have no authority here whatsoever.”)
- f. Requested Relief No. 8 (“Duquesne Light Co. regulatory counsel should be investigated for harassment and instruct to withhold from any and all shut-down threats or any billing until this matter is fully and objectively investigated as opposed to speaking to PUC staff once for less than ten minutes late Friday afternoon more than 45 days after my informal complaint was filed.”)

33. To the extent the Complaint demands, as requested relief, “a complete accounting of all [Respondent] related charges from 2008 through present”, Complainant has only been the accountholder since 2020, therefore such demand is immaterial and impertinent. Also see Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312(a), which precludes the Commission from ordering refunds of amounts paid more than four years prior to the filing of a complaint. Enoch Jerome v. PECO Energy Co., No. F-2010-2196584, 2012 WL 3042058, at *5 (Pa. P.U.C. July 19, 2012). Additionally such demand is insufficiently specific.

34. Pursuant to 52 Pa. Code § 57.28(a)(2), an electric distribution company is not responsible for the ownership and maintenance of the customer’s facilities beyond its service point.

35. “Service point” is defined in 52 Pa. Code § 57.1 as the location of interconnection designated by the electric utility in its Commission-approved tariff where the utility's service supply lines terminate and the customer's facilities for receiving service begin.

36. To the extent the Complaint includes allegations that the Building is not up to code, has no sprinkler system, no up-to-date fire extinguisher inspections, building or fire code inspections, the Commission lacks jurisdiction over such claims; and such claims are legally insufficient because they do not set forth an act or thing done or omitted to be done or about 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.

37. To the extent Complaint includes allegations that the Building is not up to code, has no sprinkler system, no up-to-date fire extinguisher inspections, building or fire code inspections, such claims are immaterial or impertinent because of the Commission's lack of jurisdiction and because they are legally insufficient.

38. To the extent the Complaint includes material regarding the Building's condominium association, any member of the Building's condominium association, or any person other than the Company, such matters do not involve the reasonableness, adequacy or sufficiency of a public utility's service, facilities or rates, such material is not within the Commission's jurisdiction, is legally insufficient and is therefore, immaterial or impertinent.

39. To the extent the Complaint makes claims regarding the Commission's compliance with the Americans with Disabilities Act, claims regarding the actions of the Commission's employees, claims regarding the Building's compliance with applicable building codes, claims of fraud, claims of lack of accommodation, claims of harassment and retaliation, claims regarding the actions of an outside counsel of the Company, such claims lack sufficient specificity and are legally insufficient.

40. To the extent Complainant seeks relief that is not legally available in the cause of action pleaded, it is therefore "impertinent matter" in the sense that it is irrelevant to that cause of action and should be stricken from the Complaint.

WHEREFORE, for all the reasons stated herein Respondent Duquesne Light Company respectfully requests that your Honorable Commission sustain its Preliminary Objections, strike all redundant, immaterial, impertinent, or scandalous matter from the Complaint, and dismiss the claims for relief identified herein pursuant to 52 Pa. Code § 5.101(a)(1), 52 Pa. Code § 5.101(a)(3) and 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,

STEVENS & LEE



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: August 24, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

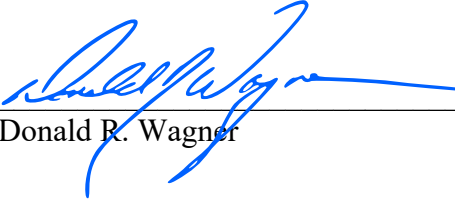
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Complainant	:	
	:	
v.	:	Docket No. F-2022-3034257
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAIL

Uta von Eckartsberg as Administrator for the Estate of Elsa von Eckartsberg
5600 Munhall Road, Unit 309
Pittsburgh, PA 15217
Email: uvoneck@outlook.com
Email: uvoneck38@gmail.com



Donald R. Wagner

Dated: August 24, 2022