BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LAURA ANDRACCHIO JOHNSON, and
CHARLES JOHNSON,

Complainants,

v.
DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2022-3032695

COMPLAINANTS' MEMORANDUM PURSUANT TO THE COMMISSION'S OCTOBER 20, 2022, INTERIM ORDER

Filed on behalf of Complainants
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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMPLAINANTS' MEMORANDUM PURSUANT TO THE COMMISSION'S OCTOBER 20, 2022, INTERIM ORDER

I. Introduction

Complainants Laura Andracchio Johnson and Charles Johnson ("Complainants") respectfully submit this Memorandum in response to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") October 20, 2022, Interim Order Pulling DLC's Preliminary Objections Out of Abeyance And Setting A Deadline For The Filing Of Memoranda And Reply Memoranda. The nature of the Commission's questions regarding jurisdiction require a recitation of the complete facts of the matter, set forth at section II. Complainants respond to the Commission's legal questions at Sections III and IV.

II. Summary of Facts Alleged In Current Complaint

In June 2016, the owners of a 19-acre residential property located at 235 Ridgehaven Lane, Indiana Township, Pennsylvania ("property" or "Ridgehaven property") publicly listed it for sale on several internet sites, and posted two Howard Hanna "For Sale" signs at the property. The property remained listed for sale for almost a year, until May 22, 2017, when Complainants bought

it. Before that, between January and April 5, 2017, Duquesne Light secretly plotted two high voltage power line routes through the property while being on actual or constructive notice of its public for-sale status. Duquesne Light designated one route as its "preferred" route and the other as an alternative route in connection with its planned public outreach for a new transmission line project known as the "West Deer Reliability Project." The property was one of the largest and most critical parcels impacted by the West Deer Project because it was the only parcel through which the preferred and alternative routes intersected, and thus was the only property impacted by both routes, not just one route. The property therefore was more likely to be impacted than any other property in the project as of April 2017.

Duquesne Light identified the sellers of the Ridgehaven property as its owners shortly after plotting the routes in April 2017 and while the property was still publicly listed for sale. Duquesne Light was not yet filing a siting application, but was preparing to announce the routes for public outreach purposes, and had decided to notify property owners along the routes. Having made this decision, rather than promptly notifying the sellers of the Ridgehaven property, Duquesne Light held the information about the routes through their property for almost two months while the property continued to be listed. On June 2, 2017, Duquesne Light mailed the notice to the sellers' attention at the property address, ten days after Complainants had unwittingly bought the property for $1.3 million. The post office forwarded the notice to the sellers at their new address. Also on June 2, 2017, Duquesne Light announced the West Deer project on its website and posted a map dated April 7, 2017, showing the two routes through the property and designating one as "preferred." The website stated that construction would start in August 2018.

Complainants learned about the routes and reviewed Duquesne Light's announcement and April 7, 2017, map on its website, in a state of shock, as they were moving to the property on June

7, 2017. Seeing the two-month-old map with routes through the property they had just bought two weeks earlier, they were traumatized and felt wholly deceived, as there had been no available information about the routes or the West Deer Project before their purchase. Complainants would not have bought the property had they known about the routes, because the proposed high voltage lines would be located directly behind the residence, be visible at all times and blight a panoramic view of woods and hills, require the deforestation of several acres of trees on the property, and present potential health and safety hazards. In other words, Duquesne Light's designs on the Ridgehaven property posed an existing threat to its condition, aesthetics and value, and was material information of which potential buyers had the right to know, even though Duquesne Light was not yet filing a siting application. Duquesne Light's announcement of the routes for public outreach purposes created uncertainty about the future of the property, and materially and negatively affected its desirability and perception to buyers.

About four months after Complainants bought the Ridgehaven Property, in September 2017, Duquesne Light sent a certified notice to Complainants that it would be contacting them "to discuss acquiring the right of way needed" to build a transmission line on one of the potential routes. Second Amended Complaint, ¶50-51. Duquesne Light enclosed a "NOTICE OF EMINENT DOMAIN POWER" and requested access to the property. At the same time, Duquesne Light posted a new route map for the West Deer project on its website, adding a third route along the Pennsylvania Turnpike, but not designating any route as "preferred." [1]

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[1] The Ridgehaven property was located in the heart of what has long been known as the Indiana Township Agricultural Zone, or "AgZone," in which large parcels of land have been preserved for generations for farming, forests, wildlife and greenspaces. Duquesne Light's managers did not discover that fact about the area until two months after they completed plotting the routes, because they conducted no public outreach until after mapping and announcing the routes. It was then that they learned that the routes dissected the AgZone, and were advised by a local AgZone Committee,

Complainants never heard again from Duquesne Light about the right of way, but they lived with the threat posed by the routes, the September 2017 notice, and the cloud they placed on the Ridgehaven property for three years. Complainants asked Duquesne Light and its counsel many times in writing and in phone conversations throughout those years whether Duquesne Light still intended to present a route through the property to the PUC and if so, when, and whether it still needed access for a right of way. They also told Duquesne Light in February 2020 that they wanted to sell the property and needed to know if Duquesne Light's intentions had changed since 2017, because they would be required to disclose the routes to potential buyers. Throughout all those years and inquiries, Duquesne Light refused -- in writing -- to answer Complainants' questions, and declined to provide any non-public information. And the only public information was on the utility's website, which continually posted the routes and stated its intent to complete the West Deer Project, but extended the timeline from the original date of August 2018. Complainants therefore refrained from listing the property for sale, anticipating that they could not sell it or would have to sell it at a steep discount due to having to disclose the 2017 routes.

Duquesne Light, however, has admitted for the first time in this proceeding that ***it knew in Spring 2019*** that the property was not going to be impacted and was no longer on a preferred route. New Matter, ¶22; see also Answer at ¶4, p. 5 ("***In or around Spring 2019***, the Company re-evaluated the feasibility of the proposed Project routes and ***determined the Ridgehaven Property***

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on which Complainant Laura Johnson sat, that a route along the Turnpike was less impactful and more environmentally sound. An Indiana Township employee had drawn the Turnpike route on a map and attempted to show it to Duquesne Light's project manager during the initial "public outreach" in June 2017, but was rebuffed. Complainant Laura Johnson later obtained the map and presented it to the AgZone Committee, which presented it to Richard Riazzi, Duquesne Light's CEO at the time, in summer 2017. Mr. Riazzi apparently advocated the route internally, because it was added to the utility's potential routes in September 2017.

***would not be impacted*.”). In all the years that Complainants implored Duquesne Light for that information, the utility withheld it. Complainants will therefore add this fact, and the facts in their Reply to New Matter at ¶22, to their claims against Duquesne Light to allege intentional misconduct in withholding material information about the property from its owners, which unnecessarily prolonged the cloud on the property.[2] Complainants believe that Duquesne Light withheld the information in retaliation for Complainants' lawsuit against it, brought in Spring 2019, and possibly because Complainant Laura Johnson sat on the AgZone Committee which was fighting the routes. See n. 1.

In September 2020, while Complainants still had no answer from Duquesne Light about the routes through their property, Duquesne Light removed the routes from its website and extended the timeline for the project to 2025. Complainants then contacted the number Duquesne Light provided for inquiries on its website and asked about the Ridgehaven property. They were told, for the first time, that the property was not "impacted." They then asked the project manager to confirm the absence of impact in writing because they wished to sell the property. The project manager responded that their property was still on two "alternative" routes, but not on Duquesne Light's new "preferred" route. Complainants then attempted to sell the property, but two buyers consecutively declined because of the alternative routes.

After being told that two buyers had walked due to the routes, Duquesne Light's former attorney, to whom Complainants had unavailingly addressed their earlier inquiries, provided

[2] See ¶22 of Complainants' Reply to New Matter and exhibits cited therein for details regarding Complainants' multiple written inquiries to Duquesne Light in 2020 about the September 2017 Notice and the status of the routes, and Duquesne Light's refusals to provide any information.

Complainants with a letter in November 2020 stating that Duquesne Light did not anticipate that the property would be impacted by any route. They were then able to sell the property.

III. The Issues To Be Resolved And Complainants' Proposed Answers

The Commission has directed the parties to address the issue:

i. Does the Commission have jurisdiction over any portion of the Complaint filed in this matter?

ii. If no:

1. Is it appropriate to grant/sustain the Preliminary Objections?

2. If the Preliminary Objections are granted/sustained, what is the appropriate disposition of the Complaint?

October 20, 2022, Interim Order Pulling Duquesne Light's Preliminary Objections Out of Abeyance And Setting A Deadline For the Filing of Memoranda and Reply Memoranda.

For the reasons set forth below, the Commission does not have jurisdiction over any portion of the Complaint. It would not be appropriate to grant or sustain the Preliminary Objections, however, because Duquesne Light argues that the Complaint should be dismissed on the grounds that no PUC regulation, rule or order is at issue. Preliminary Objections at ¶3. That argument (a) incorrectly implies that the Commission should resolve and dismiss Complainants' entire action, which includes common law tort causes of action against the utility, over which the state courts have exclusive jurisdiction;[3] and (b) directly contradicts Duquesne Light's argument that the

[3] Utilities are subject to common law negligence duties regardless of the presence or absence of an applicable regulation. *De Francesco*, 453 A.2d at 597 (negligence claim existed in absence of PUC rule, regulation or policy); *Schriner*, 501 A.2d at 1130-1131 (same; like here, "gravamen" of claim was that plaintiffs "sustained injury due solely to the negligence of" the utility).

Commission has jurisdiction of this matter under 66 Pa. C.S. A. §§1501 and 102, which Duquesne Light made to the Court of Common Pleas, the Superior Court and Supreme Court of Pennsylvania to transfer the matter to the Commission. Therefore, the correct disposition of Duquesne Light's Preliminary Objections would be to strike them from the record and decide the issue defined by the Commission separately.

If, however, the Commission deems it appropriate to grant or sustain the preliminary objections, then the answer to question ii.2. is as follows: The appropriate disposition of the Complaint is to refer the matter back to the Court of Common Pleas for resolution of the common law tort claims through the state court litigation process. The Commission does not have jurisdiction over those claims and cannot properly resolve them, as discussed below.

IV. The PUC Does Not Have Jurisdiction Over Any Portion Of The Complaint

A. Duquesne Light had a Duty of Care to Potential Buyers of Property

Complainants allege that Duquesne Light had actual or, at a minimum, constructive notice that the Ridgehaven property was for sale because it had been publicly listed on the internet and with signage for seven months before Duquesne Light began plotting its routes, was still publicly listed while Duquesne Light was plotting its routes, and continued to be publicly listed for sale for seven weeks after Duquesne Light completed the routes. Duquesne Light therefore owed a duty of care to potential or contingent buyers like Complainants to promptly disclose the routes to the sellers and/or Complainants, who would have declined to buy the property due to the uncertainty and threat posed by the routes.[4] Duquesne Light, however, delayed its notice for two months after

[4] The facts also call into question the reasonableness of Duquesne Light's decision to plot and officially announce the routes ***before*** conducting public outreach. Had Duquesne Light conducted

it had plotted the routes, thereby withholding material, negative information about the property from potential buyers like Complainants and causing foreseeable harm—namely, the unwitting purchase of residential property without material, available information that would have changed their decision to purchase, and which created a cloud on the property.

Complainants have alleged four causes of action against Duquesne Light for this alleged misconduct, all common law tort claims: Count I, Negligent Failure to Immediately or Promptly Disclose The Routes To Property Owners (Second Amended Complaint ("Complaint") ¶¶66-73); Count II: Negligent Failure to Notify Plaintiffs Of The Routes Through The Ridgehaven Property (Complaint ¶¶74-86); Count III: Breach of Assumed Duty to Notify (Complaint ¶¶87-93); and Count IV: Reckless Disregard for Plaintiffs' Rights as Purchasers of Property Along Its Routes (Complaint ¶¶94-96).

To these four counts, Complainants intend to add a fifth count alleging Duquesne Light's intentional withholding of material information about the Ridgehaven Property from Complainants from Spring 2019 through November 2020, and thereby intentionally prolonging a cloud on it.

As discussed below, the PUC does not have jurisdiction over any of these claims.

B. The PUC Lacks Jurisdiction Over Complainants' Common Law Claims

A Pennsylvania court may transfer a matter to the PUC only if the PUC has "primary jurisdiction" over the matter. *Schriner v. Pennsylvania Power & Light Co.*, 384 Pa. Super. 177, 501 A.2d 1128, 1130 (1985). Primary jurisdiction may be found "where the subject matter is

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public outreach before plotting and announcing the routes, it would have learned about the Turnpike Route, which is now its preferred route, and avoided the emotional distress it clearly caused to property owners along the AgZone routes, the time invested by AgZone residents to organize and oppose the routes, which is well documented, and the expenditure of ratepayer funds to plot routes that apparently will not be presented to the PUC.

within an agency's jurisdiction *and* where it is a complex matter requiring special competence, with which the judge or jury would not or could not be familiar." *Id.* at 1130, citing *Elkin*, 123, 420 A.2d 371, 377 (emphasis original). Thus, the Commission's subject matter jurisdiction is a prerequisite for a finding of primary jurisdiction. *Id.*

1. The Commission Does Not Have Subject Matter Jurisdiction

In support of its motion to bifurcate the liability portion of this case and transfer it to the Commission, Duquesne Light argued that the Commission has subject matter jurisdiction under 66 Pa. C.S. §1501, "Character of Service and Facilities." See Docket at GD No. 19-007611, Document No. 13, Duquesne Light's Brief in Support of Motion to Bifurcate and Transfer (Dec. 26, 2019) at 7 ("Transfer Brf."). Section 1501 provides:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

Pennsylvania courts have held that §1501 limits the PUC's subject matter jurisdiction to "ensuring the adequacy, efficiency, safety and reasonableness of public utility services, facilities and/or rates." *Schriner*, 501 A.2d at 1130, citing 66 Pa. C.S. §1501 and *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 3, 383 A.2d 791, 792 (1977).

Duquesne Light's alleged negligence in delaying an unregulated, voluntary, public outreach notice of proposed routes to sellers of one impacted for-sale property does not "draw into question" the adequacy, efficiency, safety or reasonableness of electric services. *See, e.g. De Francesco v. Western Penn. Water Co.*, 499 Pa. 374, 453 A.2d 595, 597 (1982) (controversy alleging water company's negligence in failing to provide water pressure at fire hydrant was "not one in which the general reasonableness, adequacy or sufficiency of a public utility's service is drawn into question"). Pennsylvania appellate courts have held that where a utility's negligence uniquely harms one litigant, the PUC does not have subject matter jurisdiction under §1501. *See, e.g. id.; Schriner*, 501 A.2d at 1130 (PUC did not have subject matter jurisdiction over dairy farmers' negligence claims against PP&L for injury to dairy cattle as a result of stray voltage from transmission lines, which raised "traditional concepts of negligence which only tangentially address the reasonableness, adequacy and sufficiency of the electric service being provided by PP&L."); *Ostrov v. I.F.T., Inc.*, 402 Pa. Super. 87, 586 A.2d 409, 415 (1991) (whether service was negligently provided to one litigant was for court to resolve).

Duquesne Light also argued to the Court of Common Pleas that the definition of "service" under 66 Pa. C.S. §102 is broad enough to encompass its unregulated, public outreach notice. See Transfer Brf. at 7. However, Pennsylvania appeals courts have declined to apply §102 to encompass events which are more like utility services than events of this case. *See, e.g*, *Schriner*, 501 A.2d at 1130 (claims alleging harm from stray voltage from transmission line were not within PUC's subject matter jurisdiction); *De Francesco*, 453 A.2d at 597 (claims alleging water company failed to provide water pressure at hydrant were not within PUC's jurisdiction).

Accordingly, the PUC does not have subject matter jurisdiction, so that the Commission need not even reach the issue of primary jurisdiction. However, even if the Commission would

find that it has subject matter jurisdiction, primary jurisdiction cannot be established under the facts of the Complaint in this matter, as discussed below.

2. The Commission Does Not Have Primary Jurisdiction

Even if subject matter jurisdiction exists, primary jurisdiction may be found only "where it is a complex matter requiring special competence, with which the judge or jury would not or could not be familiar." *Schriner*, 501 A.2d at 1130, citing *Elkin*, 420 A.2d at 377. This is not such a matter.

First, primary jurisdiction cannot exist in the absence of a governing PUC regulation or policy. *De Francesco*, 453 A.2d at 597 (vesting primary jurisdiction in the PUC was improper where resolution of claims "depended on no rule or regulation predicated on the peculiar expertise of the PUC, no agency policy, no question of service or facilities owed to the general public, and no particular standard of safety or convenience articulated by the PUC."). *Accord, Schriner*, 501 A.2d at 1130-1131, and *Hoch v. Philadelphia Electric Co.*, 341 Pa. Super. 598, 492 A.2d 27, 32 (1985). Duquesne Light has objected to the Complaint precisely on the ground that it does not allege PUC rules, regulations or orders. See Preliminary Objections ¶3. Indeed, Duquesne Light's delayed notice to the Ridgehaven property sellers was not regulated by the PUC because Duquesne Light was not filing a siting application at the time, and has not filed one since. Complaint ¶¶7, 9, 61, 88-89. The PUC does not regulate pre-siting application notices to property owners, but leaves them to the discretion of utilities. Complaint ¶¶61, 88-89.[5]

[5] *See, e.g.*, Final Order Establishing Interim Guidelines, M-2009-2141293, 2010 Pa. PUC LEXIS 2069, *16-22 (Nov. 5, 2010) (commenting as follows regarding utilities' pre-siting application communications: "public utility informational outreach is very company-specific to the service area," "the type and quality of the communication process will vary by public utility service area," and "informational public outreach and education about a proposed transmission project begins long before the formal application is made"; and then declining to issue a rule that would require

The absence of a PUC regulation alone negates the need for the "peculiar expertise" of the PUC. *De Francesco*, 453 A.2d at 597 (primary jurisdiction improper where resolution of claims "depended on no rule or regulation predicated on the peculiar expertise of the PUC, no agency policy, no question of service or facilities owed to the general public, and no particular standard of safety or convenience articulated by the PUC."); *accord, Schriner*, 501 A.2d at 1130-1131, and *Hoch v. Philadelphia Electric Co.*,. 341 Pa. Super 598, 492 A.2d 27, 32 (1985). Duquesne Light's method of notifying property owners, including when to notify them, was of its own volition and entirely optional, as was Duquesne Light's decision to publicly announce routes it was not yet presenting to the PUC.

Second, the liability question in this case raises common law negligence principles: what was reasonably foreseeable, what Duquesne Light reasonably should have known, and what would be reasonable conduct upon plotting two routes through a publicly listed property, identifying its sellers and knowing or being on constructive notice of the for-sale status. This is, therefore, not "a complex matter requiring special competence, with which the judge or jury would not or could not be familiar." *Schriner*, 501 A.2d at 1130. Resolving the question of whether Duquesne Light breached common law duties "falls within the scope of the ordinary business of courts." *De Francesco*, 453 A.2d at 597. Pennsylvania courts have repeatedly asserted primary jurisdiction over negligence claims against utilities because they are within the understanding of judges and juries. *Id.*; *Schriner*, 501 A.2d at 1130-1131 (trial court properly asserted jurisdiction over negligence claims against electric utility for harm resulting from stray voltage); *Poorbaugh v.*

PUC involvement in a utility's communications with owners and the public before siting applications are filed).

Pennsylvania PUC, 666 A.2d 744, 749, 751 (Pa. Cmwlth. 1995) (PUC abused discretion in deciding claim that a utility was careless and negligent because the case was "not a complex matter requiring the special expertise of the PUC in order to resolve it," even though the subject matter was "encompassed by the Utility Code"); *Hausner*, 2017 Phila. Ct. Com. Pl. LEXIS 155, *8-12 (asserting jurisdiction over tort claims against utility arising out of fire allegedly caused due to deterioration of high voltage electrical line).

Indeed, the Supreme Court cautioned in *Elkin* that "courts should not be too hasty in referring a matter to an agency, or to develop a 'dependence' on the agencies whenever a controversy remotely involves some issue falling arguably within the domain of the agency's 'expertise.'" 420 A.2d at 377. Pennsylvania courts have heeded that admonition and declined to vest primary jurisdiction in the PUC to adjudicate common law tort claims against utilities, because such claims are within the ordinary business of courts and require no agency expertise. *See, e.g.*, *De Francesco*, 453 A.2d at 597 (negligence claim against water utility for failing to provide water pressure at a hydrant "require[d] no recondite knowledge or experience and falls within the scope of the ordinary business of our courts" and "was within the [] authority of the courts"); *Drafto Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 806 A.2d 9 (Pa. Super. July 25, 2002) (attempted termination of gas service did not raise a complex issue requiring deferment to the PUC); *Schriner*, 501 A.2d at 1130-1131 (upholding interlocutory order holding that the court of common pleas, not the PUC, had primary jurisdiction over negligence claims against an electric utility for injury to dairy cattle as a result of stray voltage from milking equipment electrified by power company, because the matter was not one peculiarly within the agency's area of expertise and the court was well-suited to determine the issue); *Poorbaugh v. Pennsylvania PUC*, 666 A.2d 744, 748-752 (Pa. Comwlth. 1995) (vacating order of PUC and remanding to PUC for transfer back to Common

Pleas court, which had transferred to PUC, to adjudicate negligence claims arising out of fire allegedly caused by power company's negligence because case was not a complex matter requiring PUC expertise).[6]

Third and finally, Complainants' claim that Duquesne Light negligently delayed notifying sellers of one impacted property does not concern services to the general public or "an entire geographic area," and therefore would not require deferment to the PUC even if the agency had subject matter jurisdiction. *Draftco*, 806 A.2d 9, 15-16 (Pa. Super. 2002) (matters affecting a particular litigant, as opposed to the general public, are for courts to resolve), citing *Ostrov*, 586 A.2d at 415; *Poorbaugh*, 666 A.2d at 748, 751 (Supreme Court has distinguished questions affecting an entire geographic area rather than one claimant in determining whether the PUC has jurisdiction), citing *Feingold*, 383 A.2d 791, 796 n.7. This case therefore "does not involve the need for uniformity and consistency" of any policy. *Poorbaugh*, 666 A.2d at 751 (rejecting the utility's argument that "uniformity and consistency of agency policy" was needed because the plaintiff's "claim is that of one individual, not an entire geographic area.").

The liability determination in this case arises from facts that are specific to Complainants, uncannily unique and unlikely to occur again in the future:

- The property at issue was the only impacted parcel, out of about 300, on ***two*** of three potential routes, one of which was "Preferred";

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[6] See also *Feingold v. Bell of Pennsylvania* 477 Pa. 1, 383 A.2d 791, 796 n.7 (1977), which predates *Elkin* (question of whether damages were caused by breach of a legal duty owed to claimant by utility was "of the type traditionally disposed of by courts of law, and we do not see how the 'administrative expertise' of the PUC would contribute to the resolution of this issue"); *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894, *908-909 (Pa. Commw. Oct. 14, 2016) (Trial court properly overruled electric company's preliminary objections to claim which required construction of Alternative Energy Act because "[o]ur courts of common pleas construe statutes every day.").

- The property had been publicly listed on the internet and with physical signage for ten months by the time Duquesne Light finished mapping the two routes;
- Duquesne Light had plotted the routes and identified the property as impacted at least seven weeks before Complainants bought it;
- Duquesne Light had identified the sellers long before Complainants bought the property; and
- Duquesne Light did not send the notice until ten days after Complainants bought the property.

Such unusual facts fail to support the need- or even the potential -- for a uniform regulatory approach. Any future case raising such issues would be likewise highly unique, and would depend on multiple varying facts such as when the utility identifies a parcel and its owners, when it maps the routes, how many routes go through the property, when the utility provides notice to the owners, whether a property is publicly listed for sale and for how long, and if and when it sold. Issues arising under such unique and apparently rare facts cannot be resolved by a "uniform approach," and are more appropriately addressed by courts and juries on a case by case basis.

C. The Complaint Should Be Referred Back To The Court Of Common Pleas Regardless of Whether The Commission Sustains Or Overrules Duquesne Light's Preliminary Objections

The Commission has posed the questions of whether it is appropriate to grant or sustain Duquesne Light's Preliminary Objections if the Commission does not have jurisdiction; and if the objections are sustained in the absence of jurisdiction, what is the appropriate disposition of the Complaint? Interim Order at 5-6. Because the Preliminary Objections argue for dismissal of the Complaint on the ground that it does not allege violations of rules, regulations or orders of the

PUC, they are unfounded and misguided for a few reasons and should be either stricken or overruled. Preliminary Objections at ¶3.

First, Complainants have from the inception of this case argued that it does not involve PUC rules, regulations or orders, but that it is premised in common law tort. A simple review of their Complaint makes this clear. Second, in order to have this case transferred to the Commission, Duquesne Light argued to three Pennsylvania courts that the Commission has subject matter and primary jurisdiction of the matter, citing 66 Pa. C.S. §§1501 and 102 as a basis for subject matter jurisdiction. Therefore, Duquesne Light has made judicial admissions which contradict the argument it is making in its Preliminary Objections to the Commission.

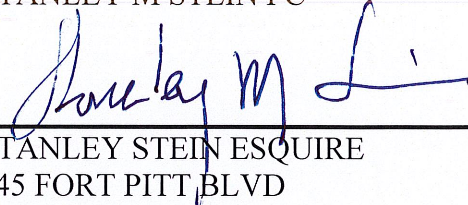
Regardless of whether the Commission overrules, sustains or strikes the Preliminary Objections, however, the result cannot be to dispose of Complainants' common law tort claims stated at Counts I through IV of the Complaint. Those claims must properly be allowed to proceed in state court because the Commission does not have jurisdiction to resolve them or to award damages. Therefore, referral of the case back to the Allegheny County Court of Common Pleas is the proper disposition of the Complaint, regardless of the disposition of the objections.

V. Conclusion

For the reasons set forth herein, Complainants respectfully submit that the Commission does not have jurisdiction over any portion of their Complaint, and the case should be transferred back to the Court of Common Pleas to proceed with litigation and resolution in state court, which has jurisdiction over tort claims against utilities. Duquesne Light's Preliminary Objections should be stricken because (1) they fail to acknowledge that the Complaint pleads entirely common law causes of action, and (2) the objections directly contradict Duquesne Light's arguments for transferring the matter to the Commission, which were made to the Common Pleas, Superior and

Supreme Courts of Pennsylvania. If the Commission sustains the Preliminary Objections, then Complainants' claims sounding in tort (Counts I-IV, and an additional count to be alleged for intentional misconduct) survive and are appropriately resolved in the state courts of Pennsylvania.

STANLEY M STEIN PC



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CERTIFICATE OF SERVICE

I, Stanley M. Stein, Esquire, do hereby certify that true and correct copy of **COMPLAINANTS' REPLY TO NEW MATTER** was served on the 2nd day of November 2022 upon the following:

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Respectfully submitted,
By: ***/s/ Stanley M. Stein***