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November 4, 2022

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Memorandum on Preliminary Objections of Respondent, Duquesne Light Company in the above referenced. A copy has been served accordance with the attached Certificate of Service.

If you have any questions, please contact me.

Best Regards

STEVENS & LEE



Michael A. Gruin

Enclosures

cc: Certificate of Service
ALJ Emily Devoe (via email)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MEMORANDUM REGARDING DUQUESNE LIGHT COMPANY’S PRELIMINARY
OBJECTIONS**

In accordance with the Interim Order issued on October 20, 2022 in this matter, Duquesne Light Company (“Duquesne Light”) hereby files its Memorandum regarding the proper disposition of its Preliminary Objections to the Formal Complaint. As set forth below, 1) it is clear that the Commission has jurisdiction over the allegations raised in the Formal Complaint, and 2) it is well settled that the Commission can require a party to litigate a matter if it is in the public interest to do so, even if the party does not wish to continue with litigation before the Commission.

I. Statement of Questions Presented

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

Proposed Answer: Yes. The Formal Complaint clearly raises issues over which the Commission has jurisdiction. See Section IV.A, *infra*, for a discussion of the issues over which the Commission has jurisdiction

B. What authority does the Commission have to force a complainant to litigate a complaint, incurring time and expense, when the complainant argues the Commission does not have authority over the complaint? Include appropriate citations to the Code, caselaw, or other legal authority.

Proposed Answer: Yes. The Commission can reject the Complainant’s request to cease litigating the matter before the Commission if it is in the public interest to do so. See Section IV.B, *infra*.

II. Introduction and Summary of Argument

The pleadings filed in this matter raise important issues regarding the reasonableness of an Electric Distribution Company’s (“EDC”) processes and customer communications in connection with a potential transmission line project that are uniquely within the Commission’s jurisdiction to resolve, and it is in public interest for the Commission to apply its expertise to resolve these issues. The issues in question were first raised by the Complainants in a civil action brought against Duquesne Light in the Court of Common Pleas of Allegheny County (“Common Pleas Court”). The Common Pleas Court issued an Order which bifurcated the issues from the civil action and transferred them to the Commission for resolution. The Pennsylvania Superior Court upheld the Common Pleas Court’s Order, and Pennsylvania Supreme Court denied the Complainant’s Petition for Allowance of Appeal. As such, there is no question that the allegations regarding Duquesne Light’s customer communications in connection with the proposed transmission project must be resolved by the Commission before the Complainants’ civil action against Duquesne Light may proceed. Any attempt by the Complainants to resist the Common Pleas Court’s transfer to the Commission must be rejected. The Complainants’ resistance to allowing the Commission to make a determination on the issues in question, both in their Formal Complaint and at the September 13, 2022 Prehearing Conference, is essentially an improper collateral attack on the Common Pleas Court’s decision to bifurcate the issues and seek a determination from the Commission. The Complainants’ resistance does not change the fact that the pleadings in this case clearly raise the issue of whether Duquesne Light provided reasonable service under Section 1501 of the Public Utility Code in connection with its transmission line project communications, and the Commission clearly has jurisdiction over this

issue. The Formal Complaint raises important issues regarding transmission line approval issues and the timing and content of communications regarding proposed transmission line projects. It is in the public interest for all utilities to be subject to a consistent, uniform set of requirements associated with transmission project communications, rather than a patchwork of ad hoc requirements that could result from rejecting the civil court's directive to seek a resolution on these issues from the Commission. For the reasons set forth below in Section IV.B, the public interest requires that the allegations in the Formal Complaint be adjudicated by the Commission, and any attempt by the Complainants to seek a withdrawal of their Formal Complaint without a determination on the merits should be rejected as being contrary to the public interest.

III. Background and Procedural History

This matter is before the Commission as a result of an Order issued by Judge Michael Della Vecchia of the Court of Common Pleas of Allegheny County, in a civil action filed by the Complainants against Duquesne Light ("Civil Action"). In the Civil Action, the Complainants alleged that Duquesne Light acted negligently with respect to the timing and content of communications that Duquesne Light sent to potentially affected property owners in connection with the tentative planning of a 138 kV transmission line project in northeastern Allegheny County, hereinafter referred to as the "West Deer Project" or "Project". The Complainants' Civil Action seeks monetary damages from Duquesne Light for costs, expense, inconvenience, stress, emotional distress, loss of time and other reasons related to the purchase and subsequent sale of their property at 235 Ridgehaven Lane, Indiana Township, Pennsylvania ("Ridgehaven Property"). The Complainants' Second Amended Complaint in the Civil Action was attached as Exhibit A to their Formal Complaint, and it outlines the alleged sequence of events related to the purchase of the Ridgehaven Property, the communications from Duquesne Light, and the Complainants subsequent sale of the Ridgehaven Property. Duquesne Light's Answer and New

Matter filed in this matter includes copies of the notices issued in connection with the West Deer Project, records of other communications with the Complainants, and property records reflecting the fact that the Complainants sold the Ridgehaven Property for \$159,480 more than their purchase price.

In the Civil Action, Duquesne Light filed a Motion to Bifurcate and Transfer the Civil Action to the Pennsylvania Public Utility Commission (“Bifurcation Motion”), a copy of which is attached hereto as Appendix 1. The Bifurcation Motion argued that issues related to the duty of a public utility regarding notices to prospective property purchasers and property owners of plans to construct a high voltage electric transmission line must be analyzed and resolved by the Commission under the doctrine of primary jurisdiction.

On February 19, 2020, Judge Della Vecchia granted the Bifurcation Motion and issued an Order (“Bifurcation Order”) which stayed the Civil Action “pending a determination by the PUC as to the duty owed by Defendant to Plaintiffs regarding the location of the proposed transmission line and the appropriate time to give notice thereof.” A copy of the Bifurcation Order is attached hereto as Appendix 2.

The Complainants appealed the Bifurcation Order to the Pennsylvania Superior Court, which denied the appeal per curiam on March 15, 2021¹. The Complainants then filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, which Petition was denied by the Court on December 21, 2021.

Having exhausted their appeals of the Bifurcation Order, the Complainants then filed their Formal Complaint with the Commission, which was served on Duquesne Light on June 1, 2022. For requested relief, the Formal Complaint requested two determinations from the

¹ *Charles Johnson and Laura Johnson, v. DQE Holdings, Duquesne Light Company, Inc. and Duquesne Light Company*, Docket No. 44 WDM 2020 (March 15, 2021)

Commission “under protest”: 1) a variation of the determination required by the Bifurcation Order, and 2) a determination of whether Duquesne Light acted negligently and recklessly and is consequently liable to the Complainants “under common law tort principles”. On June 21, 2022 Duquesne Light filed an Answer and New Matter and Preliminary Objections to the Formal Complaint.²

IV. The Formal Complaint Clearly Raises Issues Over Which the Commission has Jurisdiction, and the Commission Can Reject the Complainant’s Request to Cease Litigating the Matter Before the Commission

- A. The Formal Complaint Raises Issues Regarding Whether Duquesne Light Provided Reasonable Service under §1501 of the Public Utility Code, the Commission’s Regulations Regarding Transmission Line Siting (52 Pa. Code § 57.71, et seq.) and the Commission’s Regulations Regarding Disclosure of Eminent Domain Power (52 Pa. Code § 57.91, et seq.).

The Formal Complaint, including the Exhibits incorporated by reference therein, clearly alleges that Duquesne Light acted improperly in its interactions with the public and customers, and requests a determination from the Commission regarding the scope of Duquesne Light’s duties and the appropriateness of its actions in connection with a potential transmission line project. These allegations raise issues under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, which requires that:

“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.”

The term “service” is defined broadly under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102 as follows:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and

² Duquesne Light’s position on its Preliminary Objections is addressed in Section V, below.

all facilities used, furnished, or supplied by public utilities ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them ...”

The Commonwealth Court has held that under Section 102 of the Code a utility's “service” is not confined to the distribution of electrical energy but also includes “any and all acts” related to that function. West Penn Power Co. v. Pennsylvania Public Utility Commission, 578 A.2d at 77 (Pa. Cmwlth 1990).

While not specifically referencing Section 1501 of the Public Utility Code, the Formal Complaint’s allegations explicitly raise issues regarding the reasonableness of Duquesne Light’s planning and public communications in connection with a transmission line project. “When a utility’s failure to maintain reasonable and adequate service is alleged, **regardless of the form of the pleading in which the allegations are couched**, it is for the PUC initially to determine whether the service provided by the utility has fallen short of the statutory standard required of it.” *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. 1981) (emphasis added). See also, *County of Erie v. Verizon North, Inc.*, 879 A.2d 357 (Pa. Cmwlth 2005). The Common Pleas Court has already ruled in the Civil Action that the Commission has jurisdiction over these aspects of the Complainants’ allegations, and the explicit allegations in the Formal Complaint reinforce the conclusion that the Commission is the proper entity to resolve these issues, even if the Formal Complaint does not specifically cite to Section 1501 of the Public Utility Code. In light of the Bifurcation Order’s transfer of this matter to the Commission and the allegations in the Formal Complaint regarding the reasonableness of Duquesne Light’s communications, there can be no question at this point that the Commission has jurisdiction to resolve whether or not Duquesne Light’s actions, as alleged in the Formal Complaint, violated Section 1501.

In addition to making allegations that trigger the Commission's jurisdiction under Section 1501, the Formal Complaint's allegations also raise issues under other specific Commission regulations and orders. The Formal Complaint alleges that Duquesne Light acted improperly in connection with its June 2017 public announcement of potential transmission line routes and the solicitation of input from nearby property owners.³ These issues implicate the guidance provided by the Commission's Final Order Establishing Interim Guidelines for the Filing of Electric Transmission Line Siting Applications, Docket No. M-2009-2141293 at 12 (Order entered Nov. 4, 2010), codified at 52 Pa. Code §§ 69.3101-3107. In response to these allegations, Duquesne Light has asserted that its outreach was prudent and aligned with Commission policy. Clearly the Commission, and not the Court of Common Pleas, is the correct entity to adjudicate this issue. See Final Order Establishing Interim Guidelines (Nov. 4, 2010).

The Formal Complaint makes additional allegations that a separate notice issued by Duquesne Light to inform property owners of the company's ability to take property by eminent domain was improper.⁴ Duquesne Light issued this second notice to comply with the Commission's regulation at 52 Pa. Code § 57.91. The Complainants have alleged that the timing of the notice was improper and not required under the Commission's regulations. Duquesne Light has explained why the Complainants are not correct and why the notice was proper under the regulations. With the Formal Complaint and Answer/New Matter clearly outlining a disagreement over the correct interpretation of a Commission regulation, there can be no doubt the Commission has jurisdiction to resolve the dispute.

B. Allowing the Complainants to Withdraw the Formal Complaint is Not in the Public Interest, and the Commission Must Deny a Request to Withdraw a Formal Complaint if it is Not in the Public Interest

³ See Formal Complaint, at Paragraph 4, and Exhibit B to Duquesne Light's Answer and New Matter.

⁴ See Formal Complaint, at Paragraph 4, and Exhibit C to Duquesne Light's Answer and New Matter.

It is well settled that the Commission has the authority to require a party to litigate a matter that the party brought before the Commission, even if that party makes it clear that they do not believe the matter should be adjudicated by the Commission. In both their Formal Complaint and their subsequent advocacy, the Complainants have expressed disagreement with the Common Pleas Court's Bifurcation Order, and continue to allege that the Commission does not have any jurisdiction over any aspect of their Civil Action. The Complainants are reluctant litigants to the Commission, and they have attempted to strategically posture their claims as not involving any violation of Commission regulation, order, tariff provision, or statute. The Complainants have done this in order to invite the Commission to find that it lacks jurisdiction, which would effectively overturn the Bifurcation Order – something that the Superior Court and Supreme Court both refused to do. The Commission should reject the Complainants' attempt to avoid the directives of the Bifurcation Order, and the Commission should unequivocally confirm that it has the jurisdiction to resolve the Complainants' allegations regarding Duquesne Light's actions in connection with the transmission line project.

Importantly, in order to cease litigating a Formal Complaint, a Complaint must file a petition to the Commission under 52 Pa. Code §5.94 requesting leave to withdraw the Formal Complaint and setting forth the reasons for the withdrawal. In connection with a petition to withdraw any pleading in a contested matter, the Commission has held that the party seeking the withdrawal has the burden of proving that the withdrawal is in the public interest. See, *Petition of DRIVE for a Declaratory Order Regarding the Expansion of its Community Broadband Network*, Docket No. P-2021-3025296 (Order entered July 20, 2022) (“*DRIVE*”).

It is certainly not in the public interest to allow the Complainants to withdraw their Formal Complaint in this matter. As a threshold matter, such a withdrawal would be directly contrary to the Common Pleas Court's explicit direction in Bifurcation Order to obtain a

determination from the Commission on the issues raised in the Complaint. Taking an action that conflicts with a direct Order of the Common Pleas Court that was subsequently upheld by both the Superior Court and Supreme Court is not in the public interest.

More importantly, as explained above, the Formal Complaint raises important issues regarding transmission line approval issues and the timing and content of public communications regarding proposed transmission line projects. The public interest requires the creation of uniform and consistent rules regarding the existence, nature and extent of the duties owed by EDCs to the public, to customers, and to potentially affected property owners in connection with the planning and construction of transmission line. Allowing such questions to be determined on a case-by-case, county-by-county basis will create widespread confusion, uncertainty, and litigation for every future transmission line project in the Commonwealth. The Commission is the agency that has been vested with the authority to regulate the siting of transmission lines, and it has issued guidelines and regulations in furtherance of that authority. The only way to ensure a uniform and consistent regime to provide clear guidance to utilities, property owners, the courts, and the general public on utilities' obligations in connection with transmission line projects is for the Commission to resolve complaints about those obligations. The Commission is the agency with the technical expertise to balance the interests of all stakeholders and resolve questions and controversies regarding utilities' actions in connection with transmission line planning and siting. For these reasons, the public interest would not be served by allowing the Complaint to simply withdraw their Complaint or to refuse to acknowledge the validity of the Court's ruling that the Commission has jurisdiction over the allegations of the Formal Complaint.

The Commission's recent Order in the *DRIVE* case is instructive on the issue of whether or not the Commission can require a party that initiated an action to continue the litigation even if the party subsequently states an unwillingness to do so. In that case, DRIVE filed a Petition for

a Declaratory Order, and asked the Commission to declare that Section 3014(h) of the Public Utility Code did not apply to DRIVE's project, and that DRIVE's project would not subject DRIVE to the Commission's jurisdiction as a public utility. DRIVE then filed a Petition to Withdraw the Petition for Declaratory Order, stating that it did not wish to incur the additional expense of a trial before an administrative law judge, review by the Commissioners, and possible appellate litigation. However, several telephone utilities opposed the withdrawal request, on the grounds that DRIVE's Petition produced a controversy over which the Commission has jurisdiction and which required a resolution⁵. The presiding Administrative Law Judge ("ALJ") recommended granting DRIVE's Petition to Withdraw, stating that it is not in the public interest to require a Petitioner to litigate its own petition when it now wished to withdraw it. The Commission then reversed the ALJ, and held that the public interest considerations favored rejection of DRIVE's Petition for Withdrawal, citing to a number of important policy considerations and controversies that were implicated by the Petition.

The same analysis applies to the present matter. Even though this matter involves a Formal Complaint rather than a Petition for Declaratory Order, the same regulation that governs withdrawal of a Petition for Declaratory Order governs a Formal Complaint (52 Pa. Code §5.94), and the same public interest requirement apply. Because of the importance of having controversies related to transmission line siting processes resolved in a consistent and uniform way by the agency with the technical expertise and regulatory oversight of those processes, it would not be in the public interest to permit the Formal Complaints to withdraw their Formal Complaint or otherwise refuse to submit to the Commission's jurisdiction over their allegations.

⁵ Notably, the telephone utilities that opposed the withdrawal of DRIVE's Petition initially filed Preliminary Objections to DRIVE's Petition, just as Duquesne Light initially filed Preliminary Objections to the Formal Complaint in this matter.

As the Commission stated in *DRIVE*, at p. 24 "Withdrawal is not in the public interest when the controversy remains Once the Commission's jurisdiction is invoked, the public interest may be greater than an individual petitioner's interest." In the present case, the controversy over the appropriateness and reasonableness of Duquesne Light's actions will remain even if the Complainants get their wish to have the Commission reject jurisdiction over their allegations. As such, the public interest will clearly not be served by relinquishing Commission jurisdiction over those allegations, especially when the Court in the Civil Action has already determined that the Commission should resolve the issues of the appropriateness of Duquesne Light's actions.

V. Disposition of Preliminary Objections

Duquesne Light initially filed Preliminary Objections to the Formal Complaint on the grounds of legal insufficiency. At the time the Preliminary Objections were filed, Duquesne Light did not realize that the Complainants were attempting a collateral attack on the validity Bifurcation Order, especially in light of the Superior Court and Supreme Court's rejection of their appeals. However, based on the explanations provided by the Complainants and the concerns expressed by the presiding ALJ at the prehearing conference, Duquesne Light now believes it is appropriate for its Preliminary Objections to be withdrawn or in the alternative granted only with respect to the second relief requested by the Formal Complaint (i.e. the request for a determination that Duquesne Light acted negligently and recklessly and is liable under "common law tort principles"). For the reasons outlined above, Duquesne Light submits that the first relief requested by the Formal Complaint is squarely within the Commission's jurisdiction to resolve, notwithstanding the Complainants' refusal to cite to Section 1501 of the

Public Utility Code, and Duquesne Light proposes to make the appropriate filing to withdraw its Preliminary Objections to the Formal Complaint's first requested relief.



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: November 4, 2022

APPENDIX 1
BIFURCATION MOTION FILED IN CIVIL ACTION

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CHARLES JOHNSON and
LAURA JOHNSON,

Plaintiffs,

vs.

DQE HOLDINGS, LLC, DUQUESNE
LIGHT COMPANY, INC., AND
DUQUESNE LIGHT COMPANY,

Defendants

CIVIL DIVISION

Case No: GD 19 - 007611

**DEFENDANTS' SECOND MOTION TO
BIFURCATE AND TRANSFER ACTION
TO THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

Filed on Behalf of the Defendant:
Duquesne Light Company

Counsel of Record for This Party:

Gary P. Hunt, Esquire
PA I.D. No. 23556

J. Andrew Salemme, Esquire
PA I.D. No. 208257

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CHARLES JOHNSON and
LAURA JOHNSON,

CIVIL DIVISION

Plaintiffs,

Case No: GD 19 - 007611

vs.

DQE HOLDINGS, LLC, DUQUESNE
LIGHT COMPANY, INC., AND
DUQUESNE LIGHT COMPANY,

Defendants.

**SECOND MOTION TO BIFURCATE AND TRANSFER ACTION
TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Defendant Duquesne Light Company (“Duquesne Light”), through its attorneys, Tucker Arensberg, P.C., files this Second Motion to Bifurcate and Transfer Action to the Pennsylvania Public Utility Commission (“PUC”).

1. On September 5, 2019, Plaintiffs filed a Complaint in this matter alleging negligence on the part of Defendants.

2. On October 8, 2019, Plaintiffs filed a three count Amended Complaint, alleging two counts of negligence and a count for “reckless disregard”, against Defendants and asserting that Defendants breached a duty to timely disclose and notify Plaintiffs, as prospective property purchasers, of potential routes for construction of a high voltage utility line through property that Plaintiffs ultimately purchased.

3. Following the filing of Preliminary Objections and a Motion to Bifurcate and Transfer Action to the Pennsylvania Public Utility Commission, Plaintiffs submitted a Second Amended Complaint, which added a count for “Breach of Assumed Duty to Notify”.

4. The issues and questions that arise from the Second Amended Complaint directly implicate the jurisdiction and expertise of the PUC.

5. The claims of the Plaintiffs also directly implicate the PUC regulatory scheme governing the procedures for planning and giving notice of plans to build electric transmission lines, to which Duquesne Light and all electric utilities in Pennsylvania are subject.

6. Issues regarding the duty of a public utility regarding notice to prospective property purchasers and property owners of plans to construct a high voltage electric transmission line must be analyzed and resolved by the agency legislatively charged with making such determinations and with the special expertise needed to make such determinations -- the PUC.

7. The doctrine of primary jurisdiction provides that where an agency (like the PUC) has been established to handle a particular class of claims, a trial court should refrain from exercising jurisdiction until the agency has made a determination within the purview of its expertise, despite the fact that the trial court may have concurrent jurisdiction over the claim. Elkin v. Bell Tel. Co. of Pa., 420 A.2d 371, 377 (Pa. 1980).

8. As the Pennsylvania Supreme Court has noted, "the PUC has long been recognized as the appropriate forum for the adjudication of issues involving the reasonableness, adequacy and sufficiency of public utility services." Elkin, 420 A.2d at 374; Duquesne Light Co. v. Monroeville Borough, 298 A.2d 252 (Pa. 1972).

9. Where the subject matter of an action is within the PUC's jurisdiction, and where it is a complex matter requiring special competence outside the experience of a judge or jury, the proper procedure is for the court to refer the matter to the PUC for a determination of liability. Elkin, 420 A.2d 371; Optimum Image, Inc. v. Phila. Elec. Co., 600 A.2d 553 (Pa. Super. 1991).

10. As noted above, this action involves questions as to the nature, timing and extent of the duties, if any, owed by an electric utility to a prospective property purchaser and/or property owner with respect to notice of alternative routes for the construction of a transmission line.

11. Duquesne Light and all Pennsylvania electric utilities are required by law to submit to the PUC for approval detailed plans, including proposed routes, for the construction of new transmission lines. 52 Pa. Code §57.71.

12. The PUC has adopted regulations governing the procedures to be followed in planning and locating transmission lines. 52 Pa. Code Chapter 57, et. seq., Subchapter G, *Commission Review Of Siting And Construction Of Electric Transmission Lines*.

13. Those regulations specifically impose certain notice requirements, including who is to get notice, when they are to get notice, and the contents of such notice.

14. Because the heavily regulated issues relating to the delivery of electric service, the siting of transmission lines, and the reasonableness, efficiency, and safety obligations imposed on Duquesne Light (and other Pennsylvania electric companies) by the PUC's regulations, the need for the PUC's expertise is manifest.

15. The issues presented in this lawsuit have far reaching implications to Duquesne Light and all electric utilities on matters that are properly subject to the careful consideration and guidance of the PUC, which has regulatory power to which Duquesne Light is subject, as well as rule-making power.

16. In cases where a customer sues a public utility for damages based upon the utility's purported failure to provide adequate, reasonable or safe service, the Pennsylvania Supreme Court has adopted a bifurcated procedure allowing the PUC to determine liability and, if necessary, the court to determine damages. See Elkin, 420 A.2d 371; Optimum Image, 600 A.2d 553.

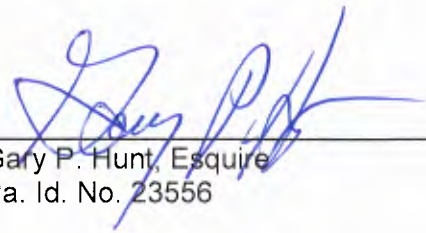
17. Duquesne Light respectfully submits that, although this Court may have concurrent jurisdiction over Plaintiffs' claims, the question of the duties owed by Duquesne Light to the Plaintiffs regarding the timing and sequencing of notices to the Plaintiffs regarding the planning and routing of new transmissions lines should be transferred to the PUC for resolution.

WHEREFORE, Duquesne Light respectfully requests that this Court enter the attached Order bifurcating this matter and transferring it to the PUC for a determination of liability.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: _____



Gary P. Hunt, Esquire
Pa. Id. No. 23556

J. Andrew Salemme, Esquire
Pa. Id. No. 208257

1500 One PPG Place
Pittsburgh, PA 15222

Counsel for Defendant,
Duquesne Light Company

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Signature: _____

Name: Gary P. Hunt

Attorney No.: 23556

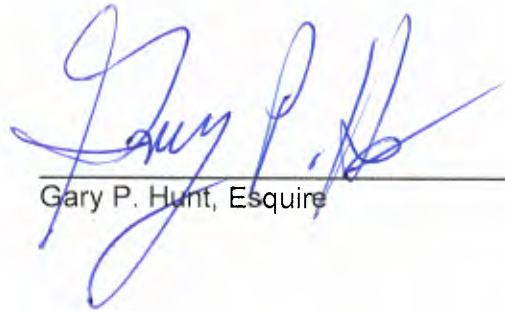
Name: J. Andrew Salemme

Attorney No.: 208257

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Bifurcate and Transfer Action to the Pennsylvania Public Utility Commission ("PUC") has been served upon Plaintiffs via first class mail at the address set forth below, on this 26TH day of December 2019:

Stanley M. Stein, Esquire
Stanley M. Stein, P.C.
445 Fort Pitt Boulevard
Suite 150
Pittsburgh, PA 15219



Gary P. Hunt, Esquire

APPENDIX 2
BIFURCATION ORDER

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CHARLES JOHNSON and
LAURA JOHNSON,

Plaintiffs,

vs.

DQE HOLDINGS, LLC, DUQUESNE
LIGHT COMPANY, INC., AND
DUQUESNE LIGHT COMPANY,

Defendants.

CIVIL DIVISION

Case No: GD 19 - 007611

ORDER OF COURT

AND NOW, to wit, this 18th day of Feb, 2020, upon consideration

of the within Preliminary Objections it is hereby ORDERED ADJUDGED AND DECREED that the Preliminary Objections are ~~SUSTAINED~~ ^{overruled} and the Second Amended Complaint is ~~dismissed~~.

and Defendant is given 30 days to file an answer, however few matters w/ stayed pending a determination by the DC as to the duty owed by Ds to TB regarding the location of the proposed transmission line & the appropriate time to send notice thereof

BY THE COURT:

[Handwritten signature]

2020 FEB 19 AM 8:00

COURT OF COMMON PLEAS
2020 FEB 18 PM 3:17

Centusheel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAURA ANDRACCHIO JOHNSON &	:	
CHARLES JOHNSON	:	
Complainant	:	
	:	Docket 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 Memorandum upon the party listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA U.S. FIRST CLASS AND ELECTRONIC MAIL

Laura Andracchio Johnson
Charles Johnson
203 Fairview Road
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Email: landracchio@comcast.net

VIA ELECTRONIC MAIL

Stanley Stein, Esquire
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445 Fort Pitt Blvd.
Suite 150
Pittsburgh, PA 15219
Email: smstein@smsteinlaw.com



Michael Gruin

Dated: November 4, 2022