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March 23, 2023

Via Electronic Filing

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

**RE: Todd Elliott Koger v. Duquesne Light Company
Docket No. C-2023-3038703**

Dear Secretary Chiavetta:

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

Emily M. Farah
Counsel, Regulatory

Enclosures

cc: Certificate of Service (w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TODD ELLIOTT KOGER,	:	
Complainant	:	
	:	
v.	:	No. C-2023-3038703
	:	
DUQUESNE LIGHT COMPANY,	:	
Respondent.	:	
	:	

PRELIMINARY OBJECTIONS

Pursuant to 52 Pa. Code §§ 5.101(a)(1)-(2), Duquesne Light files its preliminary objections to Complainant Todd Elliott Koger’s above-captioned formal complaint (“Complaint”), and states as follows:

I. INTRODUCTION

1. Duquesne Light seeks to dismiss the Complaint in its entirety for two reasons. First, because the Pennsylvania Public Utility Commission (“Commission”) lacks jurisdiction to rule on the portions of the formal complaint rooted in the United States Code, 42 USC 1981, 1983, and 1985. Complaint ¶¶ 4. Second, the Commission lacks jurisdiction to grant Complainant the requested relief, namely, compensatory and punitive damages. Complaint ¶ 5. Third, the Complaint includes scandalous and impertinent statements that are legally irrelevant and should be stricken. Complaint ¶¶ 4-5.

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

II. BASIS FOR PRELIMINARY OBJECTIONS

3. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

4. The Commission's procedural regulations allow a party to file preliminary objections to pleadings where the Commission lacks jurisdiction over the proceeding. See 52 Pa. Code § 5.101(a)(1).

5. The Commission's procedural regulations also allow a party to file preliminary objections to pleadings for the inclusion of a scandalous or impertinent matter. See 52 Pa. Code § 5.101(a)(2).

6. On March 3, 2023, the Company was electronically served with the Complaint.

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

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

Commission jurisdiction over federal law, lack of Commission jurisdiction to grant monetary damages, and due to the inclusion of impertinent statements in the Complaint.

III. ARGUMENT

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

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

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

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

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

13. The Commission does not have jurisdiction over claims arising under the United States Code. White v. PPL Elec. Utilities Corp., Docket No. C-2018-3003468, 2019 WL 2250756 (May 6, 2019) (stating the Commission has no jurisdiction to determine if an issue violates a complainant's constitutional rights).

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

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

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

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

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

B. The portions of the Complaint requesting civil or punitive damages must be dismissed because the Commission does not have jurisdiction to grant such relief

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

20. It is well established that the Commission does not have jurisdiction over actions for damages. Horowitz v. PECO, Docket No. C-2013-2382740, 2013 WL 7019109, at *3 (Dec. 30, 2013).

21. In Elkin v. Bell Telephone Co., 420 A.2d 371 (Pa. 1980), the Superior Court of Pennsylvania stated: "The courts retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility's performance of its legally imposed and contractually

adopted obligations are examined and applied to a given set of facts.” Elkin, 420 A.2d at 379 (citations omitted).

22. Further, “[t]here is no question that the Commission lacks authority to award damages.” Horowitz at *3, citing Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994); Elkin v. Bell Telephone Co., 420 A.2d 371 (Pa. 1980); Feingold v. Bell Telephone Co. of Pa., 383 A.2d 791 (Pa. 1977); Ostrov v. I.F.T., Inc., 586 A.2d 409 (Pa. Super. 1991); Poorbaugh v. Pa. Pub. Util. Comm’n, 666 A.2d 744 (Pa. Cmwlt. 1995).

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

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

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

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

C. The portions of the Complaint requesting civil or punitive damages must be dismissed because the Commission does not have jurisdiction to grant such relief

27. “Scandalous or impertinent matter” is defined as statements that are immaterial and inappropriate to the proof of the cause of action. Common Cause/Pennsylvania v. Commonwealth of Pennsylvania, 710 A.2d 108, 115 (Pa. Cmwlt. Ct. 1998); Brennan v. Smith, 299 A.2d 683 (Pa. Cmwlt. Ct. 1972).

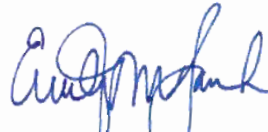
28. Specifically, Complainant's references to an alleged conspiracy or misconduct involving municipality employees or lawyers are entirely unrelated to Complainant's electric utility service.

29. While Duquesne Light denies Complainant's allegations, those allegations are immaterial to his claims, inappropriately raised, and have no bearing on the subject action.

30. For these reasons, the Complaint should be dismissed and/or his request for relief should be stricken as impertinent.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain its Preliminary Objections and dismiss the Complaint with prejudice and/or strike Complainant's request for relief as impertinent.

DUQUESNE LIGHT COMPANY



Emily M. Farah
Counsel for Duquesne Light Company

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TODD ELLIOTT KOGER,	:	
Complainant	:	
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v.	:	No. C-2023-3038703
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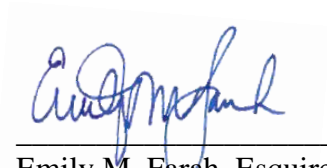
CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAILING ONLY

Todd Elliott Koger
515 Kelly Avenue
Pittsburgh, PA 15221
kogerfriend@gmail.com

Dated this 23rd day of March, 2023.



Emily M. Farah, Esquire
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Counsel for Duquesne Light Company