

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Andracchio Johnson and	:	
Charles Johnson	:	
	:	
v.	:	C-2022-3032695
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Emily I. DeVoe  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint filed by Complainants against Duquesne Light Company (DLC). Complainants do not allege DLC committed any violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. As such, Complainants' Complaint must be dismissed and transferred back to the Court of Common Pleas.

**HISTORY OF THE PROCEEDINGS**

On May 13, 2022, Laura Andracchio Johnson (Ms. Johnson) and Charles Johnson (Mr. Johnson) (collectively, Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission), using the Commission's Formal Complaint form, against Duquesne Light Company (Respondent, DLC, or

Company). Attached to the Complaint were Exhibits A-C.<sup>1</sup> Complainants averred they purchased property at 235 Ridgehaven Lane, Pittsburgh, PA 15238<sup>2</sup> (subject property) on May 22, 2017, from the former owners (sellers). Complainants aver the subject property was listed for sale by the sellers from June 2016 through May 2017. Complainants aver that in early 2017, DLC began mapping potential routes for a high voltage power line as part of DLC's West Deer Reliability Project (WDRP). Complainants allege that, by April 7, 2017, DLC had finished mapping the potential routes and had designated a route through a "critical parcel" of the subject property as a "preferred" route. Complainants submit that DLC knew the subject property was listed for sale on the internet, with physical yard signs, and was publicly listed as contingent during the last few weeks of April/May 2017. Complainants aver DLC had actual or constructive notice at all times during its mapping process in 2017 that the subject property was being marketed to the public and that an unwitting buyer (Complainants) were about to purchase the property.

Complainants argue DLC acted "negligently and recklessly" by failing to "timely" notify the sellers of DLC's plan for the power line, who, Complainants argue, would have been obligated to notify Complainants prior to the sale of the property, or Complainants themselves, who DLC knew or should have known were the identified buyers. Complainants also allege DLC subsequently issued a notice to Complainants informing them of DLC's intent to exercise its eminent domain power over the property. Complainants allege the notice was "threatening" and "traumatizing."

Complainants argue DLC's June 2017 announcement and the subsequent eminent domain notice "placed a cloud on the property that rendered it unsaleable and/or devalued the property." Complainants submit DLC had a "duty to act reasonably to remove the cloud from the property as quickly as practical and to not unreasonably prolong it."

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<sup>1</sup> Exhibit A is the Second Amended Complaint, with attachments A-C, that Complainants filed in the Court of Common Pleas of Allegheny County against DLC at Docket No. GD-19-007611. Exhibit B is an Allegheny County Court of Common Pleas Order entered February 19, 2020. Exhibit C is an Order entered January 7, 2022, by the Supreme Court of Pennsylvania, Western District.

<sup>2</sup> Complaint, Exhibit A.

Complainants allege DLC breached this duty owed to Complainants by failing to provide Complainants any non-public information about the routes, failing to file any application with the Commission, and extending the timeline for the project twice, thus extending the “cloud” DLC had created over the property for years, resulting in Complainants missing out on two potential buyers when they listed their house for sale in September 2020.

The sole basis of Complainants’ argument is that DLC acted recklessly and negligently, committing common law torts against Complainants. Complainants do not allege DLC violated any Commission rule, regulation, order, or tariff provision in their Complaint.

Complainants explain they initially brought action against DLC in Allegheny County Court of Common Pleas, alleging various tort claims based upon Complainant’s belief DLC owed, and subsequently breached, a duty of care to Complainants. Common Pleas Judge Della Vecchia overruled DLC's preliminary objections but stayed the case “pending a determination by the PUC as to the duty owed by Defendants for Plaintiffs regarding the location of the proposed transmission line and the appropriate time to give Notice thereof.”<sup>3</sup> Complainants appealed the decision on the grounds that the Commission does not have jurisdiction to make that determination, as Complainants’ lawsuit is based in common law tort claims. Complainants explain that they exhausted their appeals to the Superior and Supreme Courts before filing the instant Complaint with the Commission.

Under “Requested Relief,” on the Formal Complaint form Complainants wrote,

**Under protest,** Complainants request the PUC make two determinations:

1. Whether the PUC has jurisdiction to determine the duty owed by [DLC] to [Complainants] regarding (1) the location of proposed transmission lines impacting property that was publicly listed for sale and which

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<sup>3</sup> See Complaint, Exhibit B.

Complainants were about to buy, and (2) the appropriate time to give Notice thereof to the owner of the property, where DLC had mapped two high voltage power lines through the property before Complainants bought it, and had prepared a notice to the sellers before Complainants bought the property, but did not mail the notice until eleven days after Complainants bought it.

2. If the PUC determines that it has jurisdiction to make the above determination, then Complainants request that the PUC determine that DLC acted negligently and recklessly and is consequently liable to Complainants under common law tort principles for the harm Complainants suffered as a result of DLC's acts and failures to act, as DLC's conduct in providing notice and announcing the West Deer Project was not governed by PUC regulations.<sup>[4]</sup>

Under "Legal Representation," Complainants listed Mr. Stanley M. Stein, Esq. and Laura Andracchio, Esq.

On June 21, 2022, DLC filed an Answer, New Matter, and a Preliminary Objection pursuant to 52 Pa. Code §5.101(a)(4), arguing that the Complaint was legally insufficient. In its Answer, DLC admits it issued a notice to property owners potentially impacted by the West Deer Project around June 2017. DLC admits the notice it sent to the subject property was addressed to the sellers. DLC also admits it sent a notice to Complainants in September 2017, in accordance with 52 Pa. Code §§ 57.91(a)-(b). DLC denies it owed any duty or had a duty to notify the sellers prior to that date. DLC argues its notice of its eminent domain ability was issued consistent with Commission regulation found in 52 Pa. Code § 57.91(a). DLC argues it has not violated, and Complainants do not aver DLC violated, any Commission regulation, rule, or order.

In its Preliminary Objection, DLC argues the Complaint is legally insufficient because the Complaint fails to set forth "an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation or claimed

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<sup>4</sup> (Emphasis added).

violation of, a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.”<sup>5</sup> As relief, DLC seeks dismissal of the Complaint.

On July 11, 2022, Complainants filed a response to the Preliminary Objection. Complainants reiterate that they believe their common law tort claims are properly before the common pleas court, and this matter is before the Commission “because of an incorrect Order in the Court of Common Pleas.” Complainants argue Duquesne Light knew when it moved to transfer this matter to the Commission that the Complaint did not allege any violation of any Commission rule, statute or regulation. Complainants argue DLC has wasted the time and resources of the Commission as well as the time and resources of the Court of Common Pleas by frivolously seeking the removal of an action it knew is based in common law. Further, for the first time in their pleadings before the Commission, Complainants argue the June 2017 and September 2017 notices were in violation of the Commission’s *Final Order Establishing Interim Guidelines for the Filing of Electric Transmission Line Siting Applications (Siting Order)*.<sup>6</sup>

On July 14, 2022, the Commission issued an Initial Call-In Telephone Hearing Notice, scheduling an evidentiary hearing for September 6, 2022. On July 18, 2022, the Commission issued a Prehearing Order.

On July 22, 2022, I issued an Interim Order holding the Preliminary Objections in Abeyance and converting the September 6, 2022, proceeding to a prehearing conference.

The parties subsequently agreed to reschedule the prehearing conference to September 13, 2022, due to a scheduling conflict. A Notice was issued on September 1, 2022, rescheduling the prehearing conference.

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<sup>5</sup> *Drake v. Pa. Elec. Co.*, No. C-2014-2413771, 2014 WL2003281, at \*1 (Pa. P.U.C. May 7, 2014).

<sup>6</sup> Docket No. M-2009-2141293 at 12 (Order entered Nov. 4, 2010), codified at 52 Pa. Code §§ 69.3101-3107

The September 13, 2022, proceeding convened as scheduled. Ms. Johnson, an attorney licensed in the Commonwealth of Pennsylvania, represented herself, and had additional counsel assisting her. The Company was represented by counsel. After hearing considerable oral argument on the Preliminary Objections, I directed the parties to confer regarding the threshold jurisdictional issue in this matter and options to procedurally move the case forward and provide a status update by email.

On September 26, 2022, Counsel sent me an email advising they were unable to agree on the threshold jurisdictional issue in this matter and each party presented their proposed issue.

On October 20, 2022, I issued an Interim Order pulling the Preliminary Objection out of abeyance and setting deadlines for the filing of memoranda. I indicated that any request for oral argument on the Preliminary Objection must be made by November 11, 2022.

On November 3, 2022, Complainants filed their memoranda, and, on November 4, 2022, DLC filed its memorandum.

On November 16, 2022, the parties each filed reply memoranda. Complainants served exhibits to accompany their reply memoranda. The parties requested oral arguments.

On November 22, 2022, the Commission issued a Hearing Notice, scheduling oral arguments on the Preliminary Objection for December 8, 2022.

On December 8, 2022, the parties participated in oral arguments on the Preliminary Objection. Ms. Johnson appeared on behalf of Complainants. Ms. Johnson's co-counsel, Mr. Stein was not present. Mr. Michael Gruin appeared on behalf of DLC, and was accompanied by Michael Zimmerman, Esq., in-house counsel for DLC. After

lengthy discussion and argument, DLC withdrew its Preliminary Objection<sup>7</sup> and the parties agreed to meet and confer regarding how to style a motion to resolve the ultimate issue of whether the Commission has jurisdiction over the claims made in Complainant's Complaint. The parties also agreed the previously filed memoranda could be incorporated by reference in the motion and reply.

Complainants filed a Motion for Determination that the PUC Lacks Jurisdiction to Decide the Question Transferred By the Court of Common Pleas, and To Transfer the Matter Back to the Court of Common Pleas (Motion) on December 22, 2022, and DLC filed its Response on January 9, 2023.

On March 28, 2023, I issued an Interim Order closing the hearing record.

This matter is now ripe for adjudication.

#### FINDINGS OF FACT

1. The Complainants are Laura Andracchio Johnson and Charles Johnson.
2. The Respondent, Duquesne Light Company, is a jurisdictional public utility.
3. The subject property is 235 Ridgehaven Lane, Pittsburgh, PA, 15238.<sup>8</sup>
4. On May 13, 2022, Complainants filed a Complaint against DLC, alleging DLC committed various common law torts against Complainants.

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<sup>7</sup> Tr 110.

<sup>8</sup> Complaint, Exhibit A.

5. On June 21, 2022, DLC filed an Answer, New Matter, and a Preliminary Objection.
6. On July 11, 2022, Complainants filed a response to the Preliminary Objection, arguing for the first time that DLC violated the Commission's *Siting Order*.
7. A prehearing conference was held on September 13, 2022.
8. Complainants withdrew their claim that DLC violated the Commission's *Siting Order* on the record at the September 13, 2022 conference.
9. On October 20, 2022, I issued an Interim Order pulling the Preliminary Objection out of abeyance and setting deadlines for the filing of memoranda.
10. On November 3, 2022, Complainants filed their memoranda on the Preliminary Objection, and, on November 4, 2022, DLC filed its memoranda.
11. On December 8, 2022, oral arguments were held on the Preliminary Objection.
12. DLC withdrew its Preliminary Objection at the oral argument on December 8, 2022.
13. Complainants filed a Motion on December 22, 2022, seeking an order from the Commission that the Commission lacks jurisdiction to determine the "duty owed by DLC to Complainants regarding the location of the proposed transmission line and the appropriate time to give notice thereof."

DLC filed its Response to the Motion on January 9, 2023.

14. At no point do Complainants, in their Complaint, Memoranda on the Preliminary Objection, oral arguments on the record during the September 13, 2022 conference, or oral arguments on the Preliminary Objection on December 8, 2022, allege DLC committed any violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. Complainants do not allege DLC committed any violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.

15. Complainant Ms. Johnson is an attorney licensed in the Commonwealth of Pennsylvania.

### DISCUSSION

This is a unique case, with a complex procedural history. As a preliminary matter, I note that Ms. Johnson, an attorney licensed in the Commonwealth of Pennsylvania, has represented herself and her husband, with the assistance of additional counsel, throughout these proceedings. Ms. Johnson is an educated, articulate, sophisticated Complainant who is well aware of the claims and arguments she is making, as well as their implications. In other cases involving *pro se* Complainants, I have utilized my discretion to carefully consider whether there is *any* possible violation of a regulation, statute or order that can reasonably be inferred from what a Complainant has written. In this case, Ms. Johnson is a legally-savvy attorney who is fully capable of making and responding to legal arguments, and understanding the legal process before the Commission.

In the Complaint, Complainants explain they initially brought action against DLC in Allegheny County Court of Common Pleas, alleging various tort claims based upon Complainant's belief DLC owed, and subsequently breached, a duty of care to Complainants. There, DLC filed preliminary objections alleging the Court of Common Pleas lacked jurisdiction over Complainants' claims and argued instead that the Commission had proper jurisdiction. Common Pleas Judge Della Vecchia overruled DLC's preliminary objections but stayed the case "pending a determination by the PUC as to the duty owed by Defendants for Plaintiffs regarding

the location of the proposed transmission line and the appropriate time to give Notice thereof.”<sup>9</sup> Complainants appealed the decision on the grounds that the Commission does not have jurisdiction to make that determination, as Complainant’s lawsuit is based in common law tort claims. Complainants explain that they exhausted their appeals to the Superior and Supreme Courts before filing the instant Complaint with the Commission.

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 (Code).<sup>10</sup> The Commission must act within, and cannot exceed, its jurisdiction.<sup>11</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>12</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>13</sup> The Public Utility Code provides, “The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility **in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.**”<sup>14</sup> The Commission’s rules provide, “A person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, **in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.**”<sup>15</sup>

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<sup>9</sup> See Complaint, Exhibit B.

<sup>10</sup> *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>11</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa.Super. 1945).

<sup>12</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>13</sup> *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992).

<sup>14</sup> 66 Pa.C.S. § 701 (emphasis added).

<sup>15</sup> 52 Pa. Code § 5.21 (emphasis added).

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail.<sup>16</sup> The offense must be a violation of the Public Utility Code, a Commission Regulation or Order or a violation of a Commission-approved tariff.<sup>17</sup>

Complainants have consistently and repeatedly explained in both writing and orally that their claims against DLC are common law tort claims base on recklessness and negligence. During the September 22, 2022, conference, I asked Ms. Johnson to clearly identify “whether she was alleging that [DLC] violated any Commission order, regulation, statute, tariff provision over which the Commission has jurisdiction.”<sup>18</sup> Ms. Johnson responded, “No, Your Honor. We are not alleging they’ve violated any regulations or rules.”<sup>19</sup>

When Mr. Gruin pointed out that Complainants’ reference to and discussion of the *Siting Order* in their response to the New Matter could be interpreted as a claim that DLC violated that Order, Ms. Johnson responded,

The reason that we added that to our preliminary objections, and it was never in any complaint filed, is because Duquesne Light actually referenced one of the regulations. And we said no, if you really read the full regulation then they did violate it. But we - **we would withdraw that because we never intended this to be a PUC regulation case....**We filed this case in Common Pleas Court, not the PUC, in 2019 because we alleged Common Law Tort, negligence and recklessness. **The Complainants specifically allege that no PUC rules or regulations or statutes were involved.** It was specifically in the complaint. **The Complainants alleged that all of Duquesne Light's misconduct was outside PUC regulations** because they weren't applying for approval of any of the routes.”<sup>20</sup>

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<sup>16</sup> *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

<sup>17</sup> 66 Pa.C.S. § 701.

<sup>18</sup> Tr. 9.

<sup>19</sup> Tr. 10.

<sup>20</sup> Tr. 10 (emphasis added).

Ms. Johnson further explained,

[A] violation of the [*Siting Order*] is not the ... regulation we are basing our case on. We never stated it in our original complaint in the Common Pleas Court which is attached to our complaint in the PUC. It's not alleged anywhere, and we don't really want to allege that. We - it's just basically a point of argument. **The whole - the whole claim, our entire claim is based on negligence, recklessness, and possibly now intentional misconduct under Common Law Tort Principle.**<sup>21</sup>

I asked Ms. Johnson directly whether she believed DLC violated Section 1501, or any Commission order, regulation, or statute over which the Commission has jurisdiction, and she replied, "No, we do not."<sup>22</sup>

Ms. Johnson argued Complainants filed their Complaint with the Commission solely because they were directed to do so by the Common Pleas judge, not because they believe the Commission has any jurisdiction over their claims. Ms. Johnson explained,

[I] immediately after the complaint was filed [in Common Pleas Court], Duquesne Light moved to transfer the case from Common Pleas to the PUC on the ground that the case raises issues under Sections 102 and 1501 of the Public Utility Code, which spans all the utilities provision and services. They expressly argued in court pleadings that the PUC should decide this case because it involves Duquesne Light's provision of services to consumers under those sections, 102 and 1501.

The Common Pleas judge then based on that motion to transfer, ordered [Complainants] to get a decision on liability from the PUC basically ignoring the fact that the case involved Common Law Tort since it's a Common Law Tort claim.... The critical point is that whether or not the case involves a PUC regulation or PUC statute or rule, the [Complainants] have expressly stated **claims for common law negligence and recklessness....** So Duquesne Light and [the] Common Pleas judge appear to be

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<sup>21</sup> Tr. 22 (emphasis added).

<sup>22</sup> Tr. 24.

ignoring the **common law nature of this case**, which we've argued all along. **We've argued that it shouldn't be at the PUC.** [I]f the PUC doesn't have jurisdiction to decide the common law claims **as we've been alleging all along**, then the case shouldn't be dismissed but it should be transferred back to the Common Pleas Court."<sup>23</sup>

Complainants repeated their position in their Memorandum they filed in response to DLC's Preliminary Objection, which was incorporated by reference into the Motion they filed.<sup>24</sup> In their Memoranda, Complainants maintain, "[T]he Commission does not have jurisdiction over any portion of the Complaint."<sup>25</sup> Complainants argue utilities are subject to common law negligence duties regardless of the presence of an applicable regulation.<sup>26</sup> Complainants submit that state courts have exclusive jurisdiction over these kinds of claims.<sup>27</sup>

Complainants argue that their Complaint does not expressly allege and cannot reasonably be inferred to allege a violation of 66 Pa.C.S. § 1501 (Section 1501), which is the statute granting the Commission the broadest authority and is generally considered to be a "catch-all" for claims brought before the Commission. Section 1501 reads,

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

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<sup>23</sup> Tr. 11-13 (emphasis added).

<sup>24</sup> Although DLC subsequently withdrew the Preliminary Objection, Complainants agreed to have the memoranda remain in the docket so they could be incorporated by reference in the Motion and Response to the Motion.

<sup>25</sup> Complainant's Memoranda, p 7.

<sup>26</sup> Complainant's Memoranda, p 7, (citing *De Francesco v. Western Penn. Water Co.*, 453 A.2d 595 (*De Francesco*) (negligence claim existed in absence of PUC rule, regulation, or policy); *Schriner v. Pennsylvania Power & Light Co.*, 501 A.2d 1128 (Pa. Super. 1985) (*Schriner*)).

<sup>27</sup> Complainant's Memoranda, p 7.

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.<sup>[28]</sup>

Complainants argue Pennsylvania courts have held that Section 1501 limits the PUC’s subject matter jurisdiction to “ensuring the adequacy, efficiency, safety and reasonableness of public utility services, facilities and/or rates.”<sup>29</sup> DLC’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.<sup>30</sup> Complainants further aver that Pennsylvania appellate courts have held that where a utility’s negligence uniquely harms one litigant, the Commission does not have subject matter jurisdiction under Section 1501.<sup>31</sup>

Complainants report that Duquesne Light 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. Complainants respond that Pennsylvania appeals courts have declined to apply Section 102 to encompass events which are more like utility services than events of this case.<sup>32</sup>

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<sup>28</sup> 66 Pa.C.S. § 1501.

<sup>29</sup> *Schriner*, 501 A.2d at 1130 (citing 66 Pa.C.S. § 1501 and *Feingold v. Bell of Pa.*, 383 A.2d 791 (1977)).

<sup>30</sup> Complainant’s Memoranda, p. 11 (citing *De Francisco*, 453 A.2d at 597).

<sup>31</sup> Complainant’s Memoranda, p. 11 (citing *Schriner*, 501 A.2d at 1130).

<sup>32</sup> Complainant’s Memoranda, p. 11 (citing *Schriner*, 501 A.2d at 1130; *De Francisco*, 453 A.2d at 597).

In its Memoranda, DLC argues Complainant’s Complaint does in fact raise issues under Section 1501, since the definition of “service” under 66 Pa.C.S. § 102 is defined broadly. DLC submits that, while not specifically referencing Section 1501, the Complaint’s allegations explicitly raise issues regarding the reasonableness of Duquesne Light’s planning and public communications in connection with a transmission line project.<sup>33</sup> “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.”<sup>34</sup> DLC argues 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.<sup>35</sup> In light of the common pleas court’s order, DLC argues 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 Complaint, violated Section 1501.<sup>36</sup>

DLC argues 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. DLC argues Complainants have carefully structured their Complaint so that the Commission will find that it lacks jurisdiction, which would effectively overturn the Bifurcation Order – something that the Superior Court and Supreme Court both refused to do.<sup>37</sup> DLC submits 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

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<sup>33</sup> DLC Memoranda, p. 6.

<sup>34</sup> DLC Memoranda, p. 6 (citing *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).

<sup>35</sup> DLC Memoranda, p. 6.

<sup>36</sup> *Id.*

<sup>37</sup> DLC Memoranda, p. 8.

Complainants' allegations regarding Duquesne Light's actions in connection with the transmission line project.<sup>38</sup>

DLC also argues that a party wishing to withdraw a Complaint has the burden of proving that the withdrawal is in the public interest.<sup>39</sup> DLC argues that Complainants should not be permitted to withdraw their Complaint because it would not be in the public interest. DLC maintains that allowing Complainants to withdraw their Complaint would be directly contrary to the common pleas court's explicit direction in its order.

Further, DLC argues the Complaint raises important issues regarding transmission line approval issues and the timing and content of public communications regarding proposed transmission line projects. DLC submits that the public interest requires the creation of uniform and consistent rules regarding the existence, nature and extent of the duties owed by electric distribution companies (EDCs) to the public, to customers, and to potentially affected property owners in connection with the planning and construction of transmission lines. According to DLC, 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. DLC argues 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. DLC maintains that 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. According to DLC, 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.

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<sup>38</sup> *Id.*

<sup>39</sup> 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”).

DLC points to the Commission's holding in *DRIVE for a Declaratory Order Regarding the Expansion of its Community Broadband Network* to support its contention that the Commission has authority to require a party that initiated an action to continue the litigation even if the party subsequently states an unwillingness to do so.<sup>40</sup> 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 resolution.

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.

DLC argues the same analysis applies to the present matter. Even though this matter involves a Formal Complaint rather than a Petition for Declaratory Order, DLC argues 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 requirements apply.<sup>41</sup> 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

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<sup>40</sup> Docket No. P-2021-3025296 (Order entered July 20, 2022). DLC Memoranda, p. 9.

<sup>41</sup> DLC Memoranda, p. 10.

of those processes, DLC argues it would not be in the public interest to permit the Complainants to withdraw their Complaint or otherwise refuse to submit to the Commission’s jurisdiction over their allegations.<sup>42</sup>

Ultimately, the issue(s) here are whether the Complaint makes allegations that **DLC violated, any law which the commission has jurisdiction to administer, or any regulation or order of the commission,**<sup>43</sup> and if not, whether the Commission can reasonably infer such a claim from the allegations made in the Complaint. Complainants have clearly, repeatedly, and consistently argued they made no such claim in their Complaint, explaining that their claims against DLC lie solely in common law tort. As previously noted, Ms. Johnson is an attorney, well-versed in applicable regulations, statutes, and case-law. She is more than capable of articulating her claims and the basis of those claims. The complainant “owns” the complaint, and by that I mean complainants are the only ones who can dictate which claims and allegations they make in a legal proceeding.

While I have authority to direct parties to amend pleadings to conform to the evidence that is presented at an evidentiary hearing<sup>44</sup> or to “to state their claims more fully or in more detail,”<sup>45</sup> there is no regulation that permits me to override a complainant’s clearly expressed statement of her claims and substitute my own that run contrary to hers. There is no regulation or statute that permits me to force her to add *and litigate* claims she does not wish to make, especially considering she will ultimately bear the burden of proving those claims at an evidentiary hearing.

I understand that the common pleas court bifurcated Complainants’ civil action and transferred some claims to the Commission, but this does not necessarily confer jurisdiction over the Complaint to the Commission. It is the Public Utility Code, not a common pleas court

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<sup>42</sup> *Id.*

<sup>43</sup> 66 Pa.C.S. § 701 (emphasis added).

<sup>44</sup> 55 Pa.Code § 5.92.

<sup>45</sup> 55 Pa.Code § 5.93(a).

judge, that grants the Commission its authority and jurisdiction. Further, I note the common pleas court order directs the Commission to determine “the *duty* owed by Defendants for Plaintiffs regarding the location of the proposed transmission line and the appropriate time to give Notice thereof.” The word “duty” is commonly understood in the legal field to relate to common law tort actions. The Code requires utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities. A utility either complies with Section 1501 or it violates it. The Commission does not determine “duties” owed by utility companies, only whether those utilities violate the Commission’s regulations.

DLC argues this case is similar to *DRIVE*, and Complainants should not be permitted to effectively withdraw their Complaint as it is not in the public interest. Although Complainants are not seeking to withdraw the Complaint, DLC argues the cases are similar enough to be instructive. To the extent the *DRIVE* case is relevant, the instant case is distinguishable. First, *DRIVE* voluntarily filed its Petition with the Commission. Complainants filed their Complaint “under duress” to keep their civil action alive. Second, *DRIVE* wanted to withdraw a complaint they, at least initially, agreed the Commission had jurisdiction to decide. Complainants here argue the Commission *does not* and *never had* jurisdiction over the claims in their Complaint. Third, *DRIVE*’s Petition implicated “a number of important policy considerations and controversies” involving the interests of several telephone utilities who opposed the withdrawal request. Here, Complainants’ Complaint is based on a very specific set of facts unique only to them.

Complainants “own” their Complaint and have clearly and consistently insisted they are not alleging DLC violated any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. As such, the Commission lacks jurisdiction over the Complaint. I lack the authority (and inclination) to force Complainant to amend her Complaint to make claims which would invoke Commission jurisdiction, and the common pleas court order cannot confer jurisdiction. There are no public interest or policy considerations that would necessitate forcing Complainants to move forward with their Complaint. As such, Complainant’s Motion must be granted and the Complaint dismissed.

## CONCLUSIONS OF LAW

1. In order to be legally sufficient, a complaint must allege that (1) the respondent is a jurisdictional public utility and (2) that it has violated some statute, regulation, order, or tariff provision. 66 Pa.C.S. § 332(a), 52 Pa. Code § 5.21(a).

2. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

3. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

4. A hearing in this matter is not necessary to the public interest.

5. The Commission does not have jurisdiction to hear the Complaint filed in this matter.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion filed by Complainants Laura Andracchio Johnson and Charles Johnson on December 22, 2022, at Docket No. C-2022-3032695, is granted.

2. That the Formal Complaint filed by Laura Andracchio Johnson and Charles Johnson against Duquesne Light Company at Docket No. C-2022-3032695 is dismissed for lack of Commission jurisdiction.

3. That Complainants shall not file another complaint with the Commission against Duquesne Light Company on the same or similar facts as alleged in the instant Complaint, unless Complainants clearly identify a statute, rule, regulation, or Commission order violated by Duquesne Light Company.

4. That this matter be transferred back to the Allegheny County Court of Common Pleas.

5. That this proceeding at Docket C-2022-3032695 be marked closed.

Dated: June 22, 2023

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/s/  
Emily I. DeVoe  
Administrative Law Judge