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July 12, 2023

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 Duquesne Light Company's Exceptions to the Initial Decision in the above referenced matter. A copy has been served in 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
RA-OSA.gov (via email)
Administrative Law Judge Emily DeVoe

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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	:	

DUQUESNE LIGHT COMPANY’S EXCEPTIONS TO INITIAL DECISION

Pursuant to 52 Pa Code § 5.533, Duquesne Light Company (“Duquesne Light”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. The Initial Decision should be rejected because it incorrectly determined that the Commission does not have jurisdiction over the Formal Complaint in this matter, and incorrectly determined that dismissal of the Complainants Formal Complaint over the objection of the Respondent is in the public interest.

The pleadings filed in this case raise important issues regarding the appropriateness 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 exercise its jurisdiction and apply its expertise to resolve these issues. These issues 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 (“Bifurcation Order”) which bifurcated these issues from the civil action and explicitly transferred them to the Commission for a conclusive determination. 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 should now be no question that the Complainants' allegations regarding Duquesne Light's customer communications in connection with the proposed transmission project are within the Commission's jurisdiction to resolve, and that those issues must be resolved by the Commission before the Complainants' civil action against Duquesne Light may proceed.

Having exhausted their appeals of the Bifurcation Order, the Complainants reluctantly filed their Formal Complaint "under protest" to obtain Commission review of the issues related to the notices given by Duquesne Light in connection with the proposed transmission line, as directed by the Bifurcation Order. But rather than accepting the Bifurcation Order's direction to seek a Commission determination on the appropriateness of Duquesne Light's notices in connection with the transmission line siting process, the Complainants have instead used the Formal Complaint process to collaterally attack the Bifurcation Order and argue that the Commission does not in fact have jurisdiction over the Complaint. The Complainants' collateral attack culminated in a Motion to Transfer the Matter back to the Court of Common Pleas, which was granted by the Initial Decision.

The Commission should reject the Complainants' continued efforts to resist the Commission's jurisdiction over these transmission line siting issues, overturn the Initial Decision, and exercise its jurisdiction to make the determinations requested by the Bifurcation Order. The Formal Complaint filed in this matter 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. The public interest would not be served

by rejecting the Bifurcation Order's explicit directive that these issues be conclusively determined by the Commission, and simply transferring the matter back to the Common Pleas Court, as the Initial Decision recommends.

I. Background and Procedural History

On September 5, 2019, the Complainants filed in a civil action against Duquesne Light in the Court of Common Pleas of Allegheny County ("Civil Action"). In the Civil Action, the Complainants allege 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 is still pending, and 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 home at 235 Ridgehaven Lane, Indiana Township, Pennsylvania ("Ridgehaven Property").

In the Civil Action, Duquesne Light filed a Motion to Bifurcate and Transfer the Civil Action to the Pennsylvania Public Utility Commission ("Bifurcation Motion"). 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 Michael Della Vecchia of the Court of Common Pleas of Allegheny County granted the Bifurcation Motion and issued the 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.”*¹

The Complainants appealed the Bifurcation Order to the Pennsylvania Superior Court, which denied the appeal per curiam on March 15, 2021². 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, 2021.³

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 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”. Importantly, the Complainants’ Formal Complaint included their Second Amended Complaint in the Civil Action as Exhibit A. That document, which is incorporated by referenced into the Formal Complaint, outlines the sequence of events related to the Complainants’ purchase and subsequent sale of the Ridgehaven Property, and includes specific allegations regarding actions and communications by Duquesne Light that the Complainants allege were improper.

On June 21, 2022, Duquesne Light 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 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 violation of, a statute which the Commission has jurisdiction to administer, or of a regulation or order of the

¹ A copy of the Bifurcation Order is attached to the Formal Complaint as Exhibit B.

² *Charles Johnson and Laura Johnson, v. DQE Holdings, Duquesne Light Company, Inc. and Duquesne Light Company*, Docket No. 44 WDM 2020 (March 15, 2021)

³ See Exhibit C to the Formal Complaint.

Commission.” Duquesne Light’s Answer and New Matter filed included 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.

On July 11, 2022, Complainants filed a response to the Preliminary Objections. Complainants reiterated their belief that their claims are properly before the Common Pleas Court, and their view that this matter is before the Commission “because of an incorrect Order in the Court of Common Pleas.” Complainants also argued, *inter alia*, that Duquesne Light’s notices were in violation of the Commission’s *Final Order Establishing Interim Guidelines for the Filing of Electric Transmission Line Siting Applications (Siting Order)*.

On July 14, 2022, the Commission issued an Initial Call-In Telephone Hearing Notice, scheduling an evidentiary hearing for September 6, 2022. On July 22, 2022, ALJ Emily DeVoe issued an Interim Order holding the Preliminary Objections in Abeyance and converting the September 6, 2022, proceeding to a prehearing conference. A Notice was issued on September 1, 2022, rescheduling the prehearing conference to September 13, 2023.

At the September 13, 2022 prehearing conference both parties presented oral argument on the Preliminary Objections. Following oral argument, ALJ DeVoe directed the parties to confer regarding the threshold jurisdictional issue in this matter and options to procedurally move the case forward.

On October 20, 2022, ALJ DeVoe issued an Interim Order pulling the Preliminary Objection out of abeyance and setting deadlines for the filing of memoranda. On November 3, 2022, Complainants filed their memorandum, and, on November 4, 2022, Duquesne filed its memorandum. On November 16, 2022, the parties each filed reply memoranda.

On December 8, 2022, the parties participated in oral arguments on the Preliminary Objection. During oral arguments, Duquesne Light withdrew its Preliminary Objection, with no objection from the Complainants, 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 Formal Complaint.

On December 22, 2023, the 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 ("Transfer Motion"). On January 9, 2023, Duquesne Light filed its Response to the Complainants' Transfer Motion.

On June 22, 2023, the Initial Decision was issued. The Initial Decision held that the Commission does not have jurisdiction over the Formal Complaint, and that there are no public interest or policy considerations that would necessitate forcing the Complainants to move forward with their Complaint.

II. Exceptions

A. Exception No. 1– The Initial Decision Incorrectly Determined That the Formal Complaint Does Not Raise Issues that Are Within the Commission's Jurisdiction

The Initial Decision is premised on the mistaken finding that "the Complainants do not allege that DLC committed any violation of a statute which the Commission has jurisdiction to administer or a regulation or order of the Commission".⁴ To the contrary, the Formal Complaint clearly 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.).

⁴ See Initial Decision, Finding of Fact 14. See also Conclusion of Law 5

The Formal Complaint, including the Exhibits incorporated by reference therein, explicitly 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 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 to make a determination regarding 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.⁵ 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).

⁵ See Formal Complaint, at Paragraph 4, and Exhibit B to Duquesne Light’s Answer and New Matter.

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.⁶ 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.

The Initial Decision justified its conclusion by asserting that the Commission does not determine "duties" owed by utility companies, as the word "duty" is commonly understood in the legal field to relate to common law tort actions.⁷ The conclusion is simply wrong, as the Commission and the courts routinely use the word "duty" when examining a public utility's obligations under the Public Utility Code and the Commission's orders and regulations. There are numerous examples of the Commission and the courts examining and determining whether utilities have fulfilled their "duties" to customers and the public. See, for example, the often-cited Pennsylvania Supreme Court decision in *Rohrbaugh v. Pennsylvania Public Utility Commission*, 556 Pa. 199, (1999), wherein the Supreme Court granted allocatur in order to "determine whether a utility company violates its duty to provide reasonable and adequate service as required by Section 1501 of the Public Utility Code." (emphasis added). See also, *Harris v. Philadelphia Gas Works*, Docket No. C-200055643, Order entered April 2, 2007 ("Under the Code, the Company has a duty to provide reasonable and adequate service),

⁶ See Formal Complaint, at Paragraph 4, and Exhibit C to Duquesne Light's Answer and New Matter.

⁷ Initial Decision, at p. 19.

Pennsylvania Public Utility Commission v. Little Washington Wastewater Company — *Northeast Consolidated Division*, Docket Nos. R-2008-2081738, et. al, Order Entered September 24, 2009 (“Upon review of the record and the Further Recommended Decision, we find that LW-NE has not been shown to have violated its statutory duty to provide reasonable and adequate service to its customers, pursuant to Section 1501.”) and *Taylor v. West Penn Power Company*, Docket No. C-00934770, Order Entered July 14, 1993 (“The Public Utility Code imposes upon every public utility a duty to furnish and maintain adequate, efficient and reasonable service and facilities that shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.)(emphasis added). As these cases illustrate, the Commission certainly does determine the “duties” owed by utility companies to customers and the public, and the Initial Decision’s holding to the contrary is incorrect and should be overturned.

B. Exception No. 2- Upholding the Initial Decision Would Permit an Improper Collateral Attack on the Common Pleas Court’s Bifurcation Order

The Initial Decision improperly reverses the Bifurcation Order’s directive to refer certain issues in the Civil Action to the Commission for a conclusive determination.⁸ Both the Pennsylvania Superior Court and the Pennsylvania Supreme Court rejected the Complainants’ appeals and upheld the Bifurcation Order’s transfer of those issues to the Commission.

Despite the clear directive from the Common Pleas Court and appellate courts, the Complainants have improperly continued to litigate the merits of the Bifurcation Order throughout the course of this proceeding. While the Complainants eventually did file a Formal Complaint to the Commission after exhausting their appeals of the Bifurcation Order, the Complainants have continued to challenge the legitimacy of the Bifurcation Order’s referral of

⁸ See Ordering Paragraph 4

certain issues to the Commission for resolution. The Complainants' filed their Complaint "under protest"⁹. Next, the Complainant's argued in their response to Duquesne Light's Preliminary Objections that this matter is before the Commission "because of an incorrect Order in the Court of Common Pleas."¹⁰ The Complainants continued to advocate their view that the Commission has no jurisdiction over any aspect of their Complaint in their Memorandum in support of transferring this matter back to the Common Pleas Court. In fact, the Complainants' entire Memorandum filed in response to the October 22, 2022 Interim Order was devoted to re-litigating the merits of the Bifurcation Order's directive to refer any issues from the Civil Action to the Commission for resolution.

This collateral attack on the Bifurcation Order should not have been permitted, and it was an error of law for that collateral attack to be upheld by the Initial Decision. The Complainants had a full opportunity to oppose the Bifurcation Motion in briefs and argument before Judge Della Vecchia at the trial court in the Civil Action. After Judge Della Vecchia granted the Bifurcation Motion and ordered that certain issues in the Civil Action must be resolved by the Commission, the Complainants continued to argue to both the Pennsylvania Superior Court and the Pennsylvania Supreme Court that the Commission had no jurisdiction over any of their allegations. Both the Superior Court and the Supreme Court rejected the Complainants' appeals and upheld the Bifurcation Order's transfer of issues to the Commission. Once the Pennsylvania Supreme Court rejected the Complainants' appeal, the issue of whether the Commission has jurisdiction over any aspect of the Complainant's allegations should have been definitively and conclusively resolved. Yet, instead of respecting the orders of the three separate courts that have ruled against them on the jurisdictional issue and moving forward to seek the determination

⁹ See Formal Complaint, at ¶ 5.

¹⁰ Complainants' Response to Preliminary Objections, at p. 5

ordered by the Bifurcation Order, the Complainants instead asked the ALJ to ignore or reject the Bifurcation Order. The Initial Decision should have rejected this collateral attack on the Bifurcation Order.

In granting the Complainant's Transfer Motion, the Initial Decision ignored the precedent of the *Alderwoods* case. In *Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home v. Duquesne Light Company*, Docket No. C-2016-2522634 (Order entered October 13, 2016) ("*Alderwoods*"), the Commission was presented with a nearly identical attempted collateral attack on a Common Pleas Court transfer order, and the Commission unanimously rejected the collateral attack and found no reasons to reject the transfer from the court. Just like in this case, the complainant in the *Alderwoods* case initiated a civil complaint against Duquesne Light alleging negligence and seeking monetary damages. The trial court, just like in this case, bifurcated the matter and referred the negligence issue to the Commission for resolution. The complainants in *Alderwood*, just like the Complainants in this case, appealed the bifurcation order to Superior Court and lost. The complainants in *Alderwoods* proceeded to file a formal complaint with the Commission, but then immediately asked the Commission to reject its own jurisdiction over the matter - just like the Complainants in the present case have done. After the ALJ ruled against them, the complainants in *Alderwoods* sought Commission review by filing a Petition for Interlocutory Review and Answer to a Material Question. By Order entered October 13, 2016, the Commission unanimously declined to overturn the ALJ, stating:

“ Thus, two civil courts, on three separate occasions, have directed that the question of whether Duquesne violated its duty under the Pennsylvania Public Utility Code to provide safe and reasonable service be transferred to the Commission for a determination. We see no reason to reject the courts' decisions and to refuse to accept the transfer.” (emphasis added).

The exact same logic applies to the present situation. Three separate courts have determined that the Commission should determine what duty was owed by Duquesne Light to the Complainants regarding the location of the proposed transmission line and the appropriate time to give notice thereof. The issue is squarely within the Commission's jurisdiction, as explained in more detail below, and therefore it was improper for the Initial Decision to countenance the Complainants' collateral attack and grant their request to effectively withdraw their Complaint and transfer the matter back to the Common Pleas Court.

C. Exception No. 3 –Granting the Complainants' Transfer Motion Effectively Permitted the Withdraw of the Formal Complaint, Which is Contrary to the Public Interest

The Initial Decision incorrectly determined that the Complainants should not be required to litigate their Formal Complaint because it was filed "under duress", and incorrectly determined that there are no public interest or policy considerations that should require the Complainants to continue litigating their Formal Complaint.¹¹ 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 frame their claims as not involving any violation of Commission regulation, order, tariff provision, or statute.¹² The Complainants did this in order to persuade the

¹¹ Initial Decision, at p. 19 and Ordering Paragraph 1

¹² This strategic framing of the Complainants' claims to avoid Commission jurisdiction is relied upon repeatedly in the Initial Decision, at pages 11-14, to justify the granting of the Transfer Motion

ALJ that the Commission lacks jurisdiction, which would effectively overturn the Bifurcation Order – something that the Superior Court and Supreme Court both refused to do. The Initial Decision erred by relying on this strategic framing by the Complainants rather than following the directives of the Bifurcation Order and accepting the Courts’ determination that the Complainant’s allegations did in fact raise issues that were within the Commission’s jurisdiction. 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.

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*”).

In this case, the Complainants did not technically file a petition requesting leave to withdraw their Formal Complaint, but their Transfer Motion sought the same result, i.e., a dismissal of their Complaint over the objection of the Respondent, and the same public interest analysis applies. It is certainly not in the public interest to allow the Complainants to withdraw their Formal Complaint in this matter, and the Initial Decision’s granting of the Transfer Motion was in error. First, granting the Complainants’ Transfer Motion was 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.

Secondly, 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 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. Regardless of the calculated vagueness and strategic framing of the Formal Complaint, there can be no doubt 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 or any specific regulation. For these reasons, the public interest would not be served by allowing the Complainants to simply withdraw their Complaint or by ruling that the Commission does not have jurisdiction over the allegations of the Formal Complaint.

It should also be noted that denying the Complainants' Transfer Motion would not place any additional burden on the parties or the Commission. The pleadings in this case contain all of the relevant documentation regarding Duquesne Light's notices to the public regarding its

transmission line siting, and therefore no evidentiary hearings should be required in order for the Commission to make its determination whether Duquesne Light's actions were appropriate 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.).

III. Conclusion

For the reasons set forth above, Duquesne Light respectfully requests that the Commission issue an Order which:

- 1) Grants Duquesne Light's Exceptions,
- 2) Rejects the Initial Decision,
- 3) Denies the Complainant's Transfer Motion,
- 4) Determines that the Commission has jurisdiction over the allegations in the Formal Complaint related to the duty owed by Duquesne Light regarding the location of the proposed transmission line and the appropriate time to give notice thereof, and
- 5) Remands the matter back to the ALJ for such proceedings as may be necessary to make a determination on the merits of whether Duquesne Light acted reasonably under Section 1501 of the Public Utility Code and in compliance with the Commission's orders and regulations in connection with its customer communications in connection with the proposed transmission project.



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: July 12, 2023

**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 Exceptions 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. ELECTRONIC MAIL

Laura Andracchio Johnson
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VIA ELECTRONIC MAIL

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Michael Gruin

Dated: July 12, 2023