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September 6, 2023

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Duquesne Light Company's Reply to Complainant's Motion for Mistrial and New Hearing is enclosed for filing. A copy of this letter and the enclosed filing have been served upon the Complainant in accordance with Pennsylvania Public Utility Commission regulations.

Please contact me if you have any questions, comments, or concerns.

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

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY TO COMPLAINANT’S MOTION FOR MISTRIAL AND NEW HEARING

Pursuant to 52 Pa Code § 5.103(c), Respondent Duquesne Light Company (“Duquesne Light” or the “Company”), files its Response to the Complainant’s “Motion for Mistrial and New Hearing” filed by Todd Koger at the above-captioned docket number, stating as follows:

BACKGROUND AND PROCEDURAL HISTORY

Complainant filed a formal complaint at Docket No. C-2023-3038703 (the “Complaint”) with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) on March 2, 2023, regarding electric service provided to 515 Kelly Avenue, Pittsburgh, PA 15221 (the “Property”). Duquesne Light filed a timely Answer on March 23, 2023, which acknowledged that the Complainant has filed five formal complaints, including the above-captioned Complaint, within the last five years and denied all material allegations in the Complaint.¹ With its Answer, the Company contemporaneously filed Preliminary Objections seeking to dismiss the Complaint in its entirety for lack of jurisdiction and the presence of scandalous or impertinent matter.

On June 5, 2023, the Administrative Law Judge (“ALJ”) issued its First Interim Order Sustaining Preliminary Objections in part but denying the Company’s request for dismissal in its entirety. Specifically, the Complainant’s requests for compensatory and punitive damages, the allegations arising

¹ Answer to Formal Complaint, Docket No. C-2023-3038703, at ¶ 4.

under federal statutes, and the assertions of criminal and state civil proceedings were dismissed. The Complainant's allegations concerning reasonableness of service remained for hearing.

On August 16, 2023, an evidentiary hearing was held. During the hearing, the Complainant attempted to enter evidence relating to previously settled formal complaints, at Docket Nos. C-2019-3013238, C-2020-3020394, C-2021-3026214, and C-2022-3032231,² collectively referred to hereinafter as "Prior Complaints." Each of the Prior Complaints was closed after a Certificate of Satisfaction was filed and unopposed.³ The most recent Certificate of Satisfaction related to the Prior Complaints was filed at Docket No. C- 2022-3032231 on September 21, 2022.

At hearing, ALJ ruled that evidence related to claims made in the Prior Complaints would not be considered. Additionally, the ALJ provided Complainant until August 28, 2023 to submit late-filed exhibits for occurrences *after* September 2022.

The day after hearing, on August 17, 2023, Complainant filed a Motion for Mistrial and New Hearing ("Motion"), alleging "Due Process was breached by the hearing limiting the 'discussion of the facts' to events occurring after September of 2022." While the Motion did not contain a "Notice to Plead" as required by 52 Pa. Code § 5.103(b),⁴ the Company provides the within response, and respectfully requests the Motion be denied. In support thereof, Duquesne Light states as follows:

REPLY TO COMPLAINANT'S MOTION FOR MISTRIAL AND NEW HEARING

1. The ALJ properly denied the Complainant's request to submit testimony or exhibits for matters that occurred before September 2022, which is when the most recent Certificate of Satisfaction at Docket No. C-2022-3032231 was filed between Complainant and the Company.

² Complainant has filed five formal complaints in the last five years, including the present formal complaint. The formal complaints are identified by Docket Nos. C-2019-3013238, C-2020-3020394, C-2021-3026214, C-2022-3032231, and C-2023-3038703. Two of the five formal complaints, at Docket Nos. C-2019-3013238 and C-2020-3020394, were consolidated pursuant to the Second Interim Order Consolidating Formal Complaint Proceedings, Amending Caption and Ordering the Scheduling of a Telephone Conference dated October 14, 2020.

³ As noted on each of the Certificates of Satisfaction, the Complainant had 10 days from the date of filing to render an objection to the Certificate of Satisfaction. No objections were filed to any of the Certificates of Satisfaction.

⁴ 52 Pa. Code § 5.103(b) provides, in part: "Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion."

2. The Commission has repeatedly held that a matter resolved through an unobjected Certificate of Satisfaction prohibits a complainant from raising the same issues before the Commission a second time. Wright v. Philadelphia Gas Works, Docket No. C-2013-2368462 (June 10, 2014); Creehan v. Duquesne Light Company, Docket No. C-2012-2297124 (May 23, 2013); Reynolds v. PPL Electric Utilities Corporation, Docket No. C-2011-2255268, (January 5, 2012).

3. In Wright v. Philadelphia Gas Works, the Commission ruled that “Section 316 of the Public Utility Code, 66 Pa.C.S. 316, operates to preclude litigants from pursuing the same claims that have been conclusively resolved before the Commission, through an unobjected to Certificate of Satisfaction.” Titus, COL No. 8, *citing* Creehan v. Duquesne Light Company; Reynolds v. PPL Electric Utilities Corporation.

4. In addition to the well-established rule that an unopposed Certificate of Satisfaction firmly establishes that the Complainant’s concerns have been satisfactorily resolved, a presiding officer has the authority to exclude irrelevant, immaterial or unduly repetitive evidence pursuant to 52 Pa. Code § 5.483 and 52 Pa. Code § 5.401.

5. 52 Pa. Code § 5.483 controls the powers of the officer presiding over a Pennsylvania Public Utility Commission (“PUC” or the “Commission”) hearing, which “includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence[.]” 52 Pa. Code § 5.483(a).

6. Further, 52 Pa. Code § 5.401 provides that evidence will be excluded if it is repetitious or cumulative, or its probative value is outweighed by undue delay or waste of time. 52 Pa. Code § 5.401(b).

7. Here, the ALJ ruled that evidence related to the Prior Complaints, which were all resolved and marked as closed after no objections were rendered to the Certificate(s) of Satisfaction, would not be admissible at the August 16, 2023 hearing.

8. The Certificate of Satisfaction dated September 21, 2022, at Docket No. C-2022-3032231 states, in pertinent part, “Respondent and Complainant Todd E. Koger (“collectively, “Parties”) have come to an agreement that there was *no wrongdoing by either Party*, and that the Complaint filed by the Complainant to the Pennsylvania Public Utility Commission at Docket No. C-2022-3032231 ... *has been satisfied*” (emphasis added).

9. As noted in the Company's Answer to the present Complaint, no objection was filed to the Certificate of Satisfaction. See FN 1.

10. The present Complaint, the 2022 formal complaint at Docket No. C-2022-3032231, and the Motion contain nearly *identical* allegations about Complainant's applications for payment assistance through the Low Income Home Energy Assistance Program ("LIHEAP") in or around March 2022, among other things.

11. For example, paragraph 13 of the Motion ("Todd Elliott Koger faxed on 3-occasions a 'shut off' notice to LIHEAP") is also stated in paragraph 4 of the 2022 formal complaint at Docket No. C-2022-3032231 and paragraph 4 of the present Complaint.

12. Given that Complainant's allegations pertaining to events that occurred in or around March 2022 were subject to the unopposed Certificate of Satisfaction dated September 21, 2022, at Docket No. C-2022-3032231, the ALJ properly denied the Complainant's request to submit testimony or exhibits for matters that occurred before September 2022.

13. Not only is the ALJ's ruling consistent with Commission case law precluding complainants from re-litigating claims that are subject to an unopposed Certificate of Satisfaction, but the ALJ's ruling is also consistent with Sections 5.483 and 5.401 of the Public Utility Code, which exclude unduly repetitive evidence. See 52 Pa. Code §§ 5.483(a), 5.401(b).

14. The ALJ appropriately excluded evidence that (a) included allegations in a prior formal complaint proceeding that was closed after no objections were rendered against the Certificate of Satisfaction filed in September 2022 and (b) unduly repetitive.

15. Given the foregoing, Duquesne Light Company respectfully requests Complainant's Motion be denied.

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WHEREFORE, Respondent Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission deny the Motion for Mistrial and a New Hearing.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
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(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

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vs.	:	No: C-2023-3038703
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **REPLY TO COMPLAINANT’S MOTION FOR MISTRIAL AND NEW HEARING** upon the participant listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

BY ELECTRONIC MAILING ONLY

The Honorable Conrad A. Johnson
Administrative Law Judge
Piatt Place Downtown
301 Fifth Avenue #220
Pittsburgh, PA 15222
cojohnson@pa.gov

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

Dated this 6th day of September, 2023



Emily M. Farah
PA I.D. No. 322559
Counsel for Respondent,
Duquesne Light Company