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September 27, 2023

**Via Electronic Filing**

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

**RE: Schaaf Excavating v. Duquesne Light Company**  
**Docket No. C-2023-3042244**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings in the above-mentioned matter. A copy of this document and the enclosed filing have been served upon the Complainant and Complainant's counsel in the manner(s) indicated in the enclosed Certificate of Service.

Please contact me with any questions, comments, or concerns.

Respectfully,

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  
Duquesne Light Company

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCHAAF EXCAVATING,

:

:

Complainant,

:

:

v.

:

No: C-2023-3042244

:

DUQUESNE LIGHT COMPANY,

:

:

Respondent.

:

**MOTION FOR JUDGMENT ON  
THE PLEADINGS**

Filed on behalf of Respondent  
Duquesne Light Company

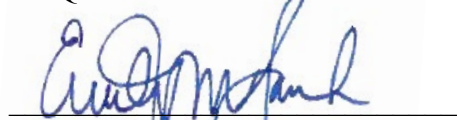
Counsel of Record for this Party:  
Emily M. Farah, Esquire  
PA I.D. No. 322559  
[efarah@duqlight.com](mailto:efarah@duqlight.com)  
411 Seventh Avenue, Mail Drop 15-7  
Pittsburgh, PA 15219

**NOTICE TO PLEAD**

**TO SCHAAF EXCAVATING:**

**YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.103 OR A JUDGMENT MAY BE ENTERED AGAINST YOU.**

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire  
Attorney for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCHAAF EXCAVATING,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2023-3042244
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files this Motion for Judgment on the Pleadings pertaining to the above-captioned formal complaint (“Complaint” or “Formal Complaint”) filed by Schaaf Excavating (“Complainant” or “Schaaf”) regarding electric service at 1016 Wood Street, Rear, Pittsburgh, PA 15221 (the “Building”), pursuant to 52 Pa. Code § 5.102(a), and states as follows:

**I. OVERVIEW**

1. The Complaint must be dismissed because the Complainant is a business corporation represented by a non-attorney representative.
2. Pursuant to 52 Pa. Code §§ 1.21-22, a business corporation must be represented in this proceeding by an attorney licensed to practice law in the Commonwealth of Pennsylvania See Complaint ¶¶1,4; Answer and New Matter ¶¶14-18.
3. Accordingly, Duquesne Light’s Motion for Judgment on the Pleadings should be granted, and the Formal Complaint should be dismissed with prejudice.

## II. FACTUAL AND PROCEDURAL BACKGROUND

4. On August 15, 2023, the above-captioned Formal Complaint was served upon Duquesne Light.

5. The Complainant in the Formal Complaint proceeding is Schaaf Excavating (“Complainant” or “Schaaf”). See Complaint ¶¶1.

6. On September 5, 2023, the Company filed a timely Answer and New Matter to the Formal Complaint.

7. Duquesne Light’s Answer and New Matter, included a “Notice to Plead” addressed to Complainant, which stated, **“YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN NEW MATTER WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE §5.63 OR A JUDGEMENT MAY BE ENTERED AGAINST YOU.”** (bold in original).

8. 22 days have passed since the Answer and New Matter was filed with the Pennsylvania Public Utility Commission (“Commission”) and served upon the Complainant.

9. Complainant has not filed a response to Duquesne Light’s New Matter as of the date of this filing.

10. By failing to respond to the New Matter, the Commission can find that Complainant has admitted to the allegations contained therein. See 52 Pa. Code § 5.63(b) (“Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted”); Stefanowicz v. Pennsylvania-American Water Co., C-20078165, 2008 WL 8014613, at \*4 (Pa. P.U.C. May 22, 2008) (“The Commission's Regulations clearly provide that failure to respond to affirmative allegations in New Matter may cause those allegations to be deemed admitted.”).

11. Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

### **III. LEGAL STANDARD**

12. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings.

13. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

14. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against only those facts specifically admitted. Whitlock v. PECO Energy Co., Docket No. F-2015-2488833, 2015 WL 7348610, at \*2 (Nov. 3, 2015).

15. A party may move for judgment on the pleadings “after the pleadings are closed, but within a time so that the hearing is not delayed.” 52 Pa. Code § 5.102(a).

16. The pleadings are closed in this case, and a hearing has not yet been scheduled.

17. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing, should one be necessary.

### **IV. ARGUMENT**

18. Under 52 Pa. Code §§ 1.21-22, a company must have an attorney licensed to practice law in the Commonwealth of Pennsylvania represent them in this proceeding.

19. Complainant is not represented by counsel, but by Kellie Fleming, who is a non-attorney representative of the Complainant. Complaint ¶¶8-9; Answer and New Matter ¶ 16.

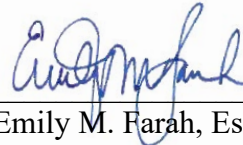
20. The pleadings in this matter show that there is no genuine issue of material fact as to whether the Complainant is a business entity being represented by a non-lawyer in this proceeding. As such, the Company is entitled to judgement as a matter of law.

21. Given that the Complainant, Schaaf, is not represented by a licensed attorney in this proceeding, the Formal Complaint must be dismissed. 52 Pa. Code §§ 1.21-22.

**WHEREFORE**, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission grant its Motion for Judgement on the Pleadings, deny the relief sought by the Complainant, and dismiss the Complaint with prejudice.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



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Emily M. Farah, Esquire  
PA I.D. No. 322559  
411 Seventh Avenue, Mail Drop 15-7  
Pittsburgh, PA 15219  
(412) 393-6431  
Counsel for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SCHAAF EXCAVATING,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2023-3042244
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

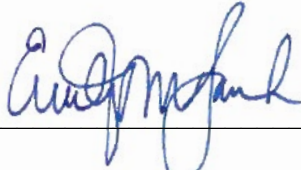
**CERTIFICATE OF SERVICE**

I certify that I have this day served a true copy of this Motion for Judgement on the Pleadings upon the participant(s) listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

**VIA FIRST-CLASS MAILING ONLY**

Schaaf Excavating  
P.O. Box 187  
Finleyville, PA 15332

Dated this 27th day of September, 2023.

  
\_\_\_\_\_  
By: Emily M. Farah, Esquire  
PA I.D. No. 322559