

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held December 21, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Laura Andracchio Johnson and  
Charles Johnson

C-2022-3032695

v.

Duquesne Light Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Duquesne Light Company (Duquesne or Company) on July 12, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Emily I. DeVoe, issued June 22, 2023, in the above-captioned proceeding. The Initial Decision dismissed the Formal Complaint (Complaint) filed by Laura Andracchio Johnson (Ms. Johnson) and Charles Johnson (Mr. Johnson) (collectively, the Complainants) on May 13, 2023. The Complainants filed Reply

Exceptions on August 1, 2023. For the reasons stated below, we shall grant, in part, and deny, in part, Duquesne’s Exceptions, and modify the ALJ’s Initial Decision, consistent with this Opinion and Order.

## **I. History of Proceeding**

On May 13, 2022, the Complainants filed a Complaint with the Commission against Duquesne using the Commission’s Formal Complaint form.<sup>1</sup> Attached to the Complaint were Exhibits A-C.<sup>2</sup> The Complainants averred that they sued Duquesne for negligent and reckless conduct because Duquesne failed to notify them and/or former property owners about two routes for a high voltage power line that Duquesne mapped through a parcel of property in 2017 for a reliability project. The Complaint included a summary of the matter. Complaint at 3-5.

In summarizing the matter, the Complainants stated that they purchased property at 235 Ridgehaven Lane, Pittsburgh, PA 15238 (Subject Property) in May 2017. The Complainants averred that while the Subject Property was for sale, Duquesne began mapping potential routes for a high voltage line as part of the West Deer Reliability Project, and by April 7, 2017, completed mapping the potential routes and designated a preferred route through a parcel of the Subject Property. The Complainants contended that Duquesne had notice and knew the Subject Property was listed for sale during the mapping process in 2017. In addition, the Complainants alleged that Duquesne subsequently issued a threatening and traumatizing notice informing the Complainants of

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<sup>1</sup> The Complaint lists Mr. Stanley M. Stein, Esq. and Laura Andracchio, Esq. under “Legal Representation.” Complaint at 7.

<sup>2</sup> Exhibit A is the Second Amended Complaint that the Complainants filed in the Court of Common Pleas of Allegheny County against Duquesne at Docket No. GD-19-007611. Exhibit B is an Allegheny County Court of Common Pleas Order entered February 19, 2020 (Bifurcation Order). Exhibit C is an Order entered January 7, 2022, by the Supreme Court of Pennsylvania, Western District.

its intent to exercise its eminent domain over the Subject Property. I.D. at 2; Complaint at 3.

The Complainants contended that Duquesne's announcement regarding the potential route of the high voltage line and the eminent domain notice "placed a cloud on the property that rendered it unsaleable and/or devalued the property," and that Duquesne had a "duty to act reasonably to remove the cloud from the property as quickly as practical and to not unreasonably prolong it." *Id.* The Complainants alleged that Duquesne breached this duty owed to them by not providing any non-public information about the routes, failing to file any application for approval of any route with the Commission, and extending the timeline for the project twice. The Complainants stated that the cloud created over the Subject Property by Duquesne resulted in them missing out on two potential buyers when their house was listed for sale in September 2020. I.D. at 3; Complaint at 3-4.

Furthermore, the Complainants stated that they brought an action against Duquesne in 2019 in the Allegheny County Court of Common Pleas, alleging that Duquesne breached a duty of care to the Complainants. However, the Common Pleas Judge overruled preliminary objections filed by Duquesne 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." I.D. at 3; Complaint at 3-4. The Complainants appealed that decision arguing that the Commission does not have jurisdiction to make such a determination because the lawsuit is based in common law tort claims. The Complainants stated that they exhausted their appeals to the Superior and Supreme Courts before filing the instant Complaint with the Commission. *Id.*

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

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 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.

Complaint at 5.

On June 21, 2022, Duquesne filed an Answer, New Matter, and a Preliminary Objection. In its Answer, Duquesne admitted, in part, and denied, in part, the Complaint. Answer at 2-6. Duquesne admitted that it issued a notice to property owners potentially impacted by the West Deer Project around June 2017, and that the notice sent to the Subject Property was addressed to the sellers. In addition, Duquesne admitted that it also sent a notice to the Complainants in September 2017, pursuant to 52 Pa. Code §§ 57.91(a)-(b). Duquesne denied that it owed any duty to notify the sellers prior to that date. Duquesne contended that the notice of its eminent domain ability was

issued consistent with Commission regulation found in 52 Pa. Code § 57.91(a). Duquesne argued that it has not violated any Commission regulation, rule, or order. I.D. at 4; Answer at 3-4.

In its Preliminary Objection, Duquesne argued that the Complaint is legally insufficient because it fails to allege any violation of Commission rule, regulation, or orders. Preliminary Objection at 2. As relief, Duquesne requested dismissal of the Complaint. Answer at 9; Preliminary Objection at 8.

The Complainants filed a response to the Preliminary Objection on July 11, 2022. The Complainants argued that they believe that their common law tort claims are properly before the common pleas court, and that this matter is before the Commission “because of an incorrect Order in the Court of Common Pleas.” I.D. at 5; Opposition to Preliminary Objections at 5.

On July 22, 2022, an Interim Order was issued holding the Preliminary Objections in Abeyance. On October 20, 2022, a subsequent Interim Order was issued removing the hold on the Preliminary Objection. The Parties participated in oral arguments on the Preliminary Objection on December 8, 2022. Following lengthy discussion and argument, Duquesne withdrew its Preliminary Objection and the Parties agreed to meet and confer regarding how to style a motion to resolve the issue of whether the Commission has jurisdiction over the claims made in the Complaint. *Id.* at 5-7.

On December 22, 2022, 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 (Motion or Transfer Motion). Duquesne filed its Response on January 9, 2023. *Id.* at 7.

The record was closed on March 28, 2023. *Id.*

In the Initial Decision issued on June 22, 2023, ALJ DeVoe dismissed the Complaint because the Complainants do not allege that Duquesne committed any violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. The Initial Decision concluded that the Complaint must be dismissed and transferred back to the Court of Common Pleas. *Id.* at 1, 19, 20-21.

As noted, *supra*, Duquesne filed Exceptions on July 12, 2023. The Complainants filed Reply Exceptions on August 1, 2023.

## **II. Background**

The ALJ stated that the issues here are whether the Complaint makes allegations that Duquesne violated any law which the Commission has jurisdiction to administer, or any regulation or order of the Commission, and if not, whether the Commission can reasonably infer such a claim from the allegations made in the Complaint. I.D. at 18 (citing 66 Pa. C.S. § 701).

The Complainants argued that the Commission does not have jurisdiction over any portion of the Complaint, but rather the state courts have jurisdiction over these kinds of claims. The Complainants contended that the Complaint does not expressly allege and cannot be reasonably inferred to allege a violation of 66 Pa. C.S. § 1501. I.D. at 10, 13; Complainants' Memoranda at 7. The Complainants further averred that their claims against Duquesne are common law tort claims based on recklessness and negligence. In addition, the Complainants stated that they are not alleging that Duquesne violated any Commission rules, regulations, or statutes, but rather all of Duquesne's misconduct was outside of Commission regulations. Complainants' Memoranda at 11; Tr. at 10. Moreover, Ms. Johnson specifically stated that the Complainants do not

believe that Duquesne violated 66 Pa. C.S. § 1501, or any Commission order, regulation, or statute over which the Commission has jurisdiction. I.D. at 12; Tr. at 22.

The Complainants argued that they filed their Complaint 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. I.D. at 12-13; Tr. at 11-13. The Complainants averred that Pennsylvania courts have held that 66 Pa. C.S. § 1501 limits the Commission’s subject matter jurisdiction to “ensuring the adequacy, efficiency, safety and reasonableness of public utility services, facilities and/or rates.” To the contrary, the Complainants contended that Duquesne’s alleged negligence in delaying an unregulated, voluntary, public outreach notice of proposed routes to sellers of an impacted for-sale property does not trigger questions regarding the adequacy, efficiency, safety or reasonableness of electric services. Furthermore, the Complainants submitted that Pennsylvania appellate courts have held that where a utility’s negligence harms only one litigant, the Commission does not have subject matter jurisdiction under 66 Pa. C.S. § 1501, and that the courts have declined to apply 66 Pa. C.S. § 102 to encompass events which are more like utility services than the events of this case. I.D. at 14; Complainant’s Memoranda at 11.

On the other hand, Duquesne argued that the Complaint raises issues under 66 Pa. C.S. § 1501, because the definition of “service” under 66 Pa. C.S. § 102 is defined broadly. Duquesne averred that the allegations in the Complaint raise issues regarding the reasonableness of Duquesne’s planning and public communications in connection with a transmission line project. Specifically, Duquesne submitted that: “[w]hen 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.” I.D. at 15; Duquesne Memoranda at 6. Duquesne further argued that the Court of Common Pleas already ruled that the

Commission has jurisdiction over these issues, and the Complaint reinforces this conclusion, even if it does not cite 66 Pa. C.S. § 1501. *Id.*

Duquesne further argued that the Complaint raises issues regarding transmission line approval issues and the timing and content of public communications regarding proposed transmission line projects, and that the Commission is vested with the authority to regulate the siting of transmission lines. Duquesne contended that the Commission has 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. I.D. at 16.

Furthermore, Duquesne argued 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 states that it does not believe the matter should be adjudicated by the Commission. Duquesne submitted that the Commission should reject the Complainant's attempt to avoid the directives of the Court of Common Pleas and the arguments that the Commission lacks jurisdiction, and instead confirm that it has the jurisdiction to resolve the Complaint regarding Duquesne's actions in connection to the transmission line project. I.D. at 15-16; Duquesne Memoranda at 6-8.

Additionally, Duquesne argued that a Complainant has the burden of proving that the withdrawal of a complaint is in the public interest, and that permitting the Complainants to withdraw the Complaint would not be in the public interest and would be contrary to the order of the Common Pleas Court. I.D. at 16; Duquesne Memoranda at 8 (citing *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*)). Duquesne contended that in *DRIVE* the Commission held that it had the authority to require a party that initiated an action to continue the litigation even if the party subsequently states an unwillingness to do so due to public

interest considerations implicated in that case. Duquesne averred that the same analysis applies to the instant matter. I.D. at 17.

### **III. Discussion**

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

#### **A. Legal Standards**

##### **1. Burden of Proof**

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). That is, a complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent utility. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of

the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980) (*Norfolk*).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent utility is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

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. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). The offense must be a violation of the Code or a Commission Regulation or Order. 66 Pa. C.S. § 701.

## **2. Jurisdiction**

Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. *Riedel v. The Human Relations Comm’n of the City of Reading*, 559 Pa. 33, 739 A.2d 121 (1999). 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 Code. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 157 Pa. Super. 595, 43 A.2d 348 (1945). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 152 Pa. Cmwlth. 409, 619 A.2d 390 (1992), *app denied*, 536 Pa. 633, 637 A.2d 293 (1993). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 303 Pa. Super. 148, 449 A.2d 621 (1982), nor can jurisdiction be obtained by waiver or estoppel. *Scott v. Bristol Twp. Police Dep't*, 669 A.2d 457 (Pa. Cmwlth. 1995).

### **3. Safe, Adequate and Reasonable Electric Service**

A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

#### **§ 1501. Character of service and facilities.**

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. 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.

66 Pa. C.S. § 1501. Section 1501 of the Code does not require a public utility to provide perfect service, but a public utility is obligated to provide service that is reasonable and adequate. *Analytical Lab Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Order entered December 21, 2007).

## **B. ALJ's Initial Decision**

In her Initial Decision, ALJ DeVoe made fifteen Findings of Fact and reached five Conclusions of Law. I.D. at 7-9; 20. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ dismissed the Complaint after finding that the Complainants do not allege that Duquesne committed any violation of a statute which the Commission has jurisdiction to administer, or a regulation or order of the Commission. In addition to dismissing the Complaint, the Initial Decision orders that this matter be transferred back to the Allegheny County Court of Common Pleas. I.D. at 1, 19, 20-21.

The ALJ stated that the Complainants have “clearly, repeatedly, and consistently argued they made no such claim in their Complaint, explaining that their

claims against [Duquesne] lie solely in common law tort.”<sup>3</sup> I.D. at 18. The ALJ concluded that a complainant “owns” the complaint, meaning that a complainant is the only one who can dictate which claims and allegations they make in a legal proceeding. I.D. at 18.

Furthermore, the ALJ stated that she has the authority to direct a party to amend pleadings to conform to evidence presented at an evidentiary hearing or to state claims more fully or in more detail pursuant to 52 Pa. Code §§ 5.92 and 5.93(a), but there is no regulation that permits an ALJ to override a complainant’s clearly expressed statement of her claims and substitute their own, and potentially contrary, statement. In addition, the ALJ found that there is no regulation or statute that permits an ALJ to force a complainant to add and litigate claims the complainant does not wish to make, especially because the complainant bears the burden of proving such claims at an evidentiary hearing. I.D. at 18.

In addition, the ALJ concluded that the Common Pleas Court’s bifurcation of the Complainants’ civil action and transfer of some claims to the Commission does not necessarily confer jurisdiction over the Complaint to the Commission. Rather, the ALJ stated that the Code, not a Common Pleas Court Judge, grants the Commission its authority and jurisdiction. The ALJ also found that the Commission does not determine “duties” owed by utility companies; instead, the Commission only determines whether utility companies violate the Commission’s Regulations. To that end, the ALJ took issue with the order from the Common Pleas

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<sup>3</sup> The ALJ noted that Ms. Johnson is a “legally savvy” attorney “well versed in applicable regulations, statutes, and case law,” who is “fully capable of making and responding to legal arguments, and understanding the legal process before the Commission.” The ALJ further described Ms. Johnson as an “educated, articulate, sophisticated Complainant who is well aware of the claims and arguments she is making, as well as their implications” and “more than capable of articulating her claims and the basis of those claims. I.D. at 9, 18.

Court directing the Commission to determine “the duty owed by [Duquesne] for [the Complainants’] regarding the location of the proposed transmission line and the appropriate time to give Notice thereof.” The ALJ noted that a “duty” is commonly understood in the legal field to relate to common law tort actions. The ALJ further clarified that the Code requires utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and that a utility either complies with or violates 66 Pa. C.S. § 1501. I.D. at 18-19.

Moreover, the ALJ distinguished the *DRIVE* case to which Duquesne referred for several reasons. The ALJ stated that the petitioner in *DRIVE* voluntarily filed a Petition with the Commission, but here the Complainants filed their Complaint “under duress” in order to keep their civil action alive. The ALJ also stated that the petitioner in *DRIVE* wanted to withdraw a complaint that they initially agreed was subject to the Commission’s jurisdiction to decide; however, the Complainants in the instant matter argue that the Commission does not and never had jurisdiction over the claims in the Complaint. Further, the ALJ noted that the issues in *DRIVE* raised several important policy considerations that impacted the interests of several telephone utilities, as compared to the instant proceeding where the Complaint deals with a very specific set of facts unique to the Complainants. I.D. at 19.

Finally, the ALJ concluded that the Complainants “own’ their Complaint and have clearly and consistently insisted they are not alleging [Duquesne] violated any law which the [C]ommission has jurisdiction to administer, or of any regulation or order of the [C]ommission.” As a result, the ALJ found that the Commission lacks jurisdiction over the Complaint. In addition, the ALJ stated that she lacks “the authority (and inclination) to force Complainant to amend her Complaint to make claims which would invoke Commission jurisdiction, and the [C]ommon [P]leas [C]ourt order cannot confer jurisdiction,” and that “[t]here are no public interest or policy considerations that would necessitate forcing Complainants to move forward with their Complaint.” I.D. at 19.

## **C. Exceptions and Replies**

### **1. Duquesne's Exception No. 1 and the Complainants' Reply**

In its Exception No. 1, Duquesne argues that the Initial Decision incorrectly determined that the Complaint does not raise issues that are within the Commission's jurisdiction and is based on the mistaken finding that the Complaint does not allege violations by Duquesne under a statute which the Commission has jurisdiction to administer or a Commission Regulation or order. Rather, Duquesne avers that the Complaint raises issues regarding whether it provided reasonable service under 66 Pa. C.S. § 1501 and several Commission Regulations with respect to transmission line siting and notice of eminent domain power (citing 52 Pa. Code §§ 57.71, et seq. and 57.91, et seq.). Duquesne submits that the Complaint alleges that Duquesne acted improperly in interacting with the public and customers and requests a Commission determination regarding Duquesne's duties and appropriateness of its actions in connection with a potential transmission line project. Exc. at 6-7.

Furthermore, Duquesne avers that the Complaint raises issues regarding the reasonableness of Duquesne's planning and public communications in connection with a transmission line project. Duquesne states that the Common Pleas Court already ruled that the Commission has jurisdiction to make a determination regarding these aspects of the Complainants' allegations, and that allegations contained in the Complaint reinforce the conclusion that the Commission is the proper entity to resolve these issues. Duquesne argues that the allegations in the Complaint trigger Commission jurisdiction under 66 Pa. C.S. § 1501 in addition to other Regulations and orders. Specifically, Duquesne contends that the Complainants' allegations regarding the June 2017 public announcement of potential transmission line routes and solicitation of input from property owners 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 November 4, 2010), codified at 52 Pa. Code §§ 69.3101-3107, and that the Commission is the correct entity to adjudicate this issue. Also, Duquesne argues that the issues raised in the Complaint with respect to Duquesne's notice, and its timing, informing property owners of its ability to take property by eminent domain was improper, implicates 52 Pa. Code § 57.91 and is properly before the Commission to resolve the dispute. Exc. at 7-9.

In addition, Duquesne contends that the Initial Decision's conclusion that the Commission does not determine "duties" owed by utility companies because "duty" is commonly understood in the legal field to relate to common law tort actions is wrong. Rather, Duquesne argues that the Commission and the courts have used the word "duty" and have determined "duties" when examining a public utility's obligations under the Code and Commission Regulations and orders. Exc. at 9-10 (citing *Rohrbaugh v. Pa. PUC*, 556 Pa. 199 (Pa. 1999); *Harris v. Philadelphia Gas Works*, Docket No. C-20055642 (Order entered April 2, 2007); *Pa. PUC v. Little Washington Wastewater Co. - Northeast Consolidated Division*, Docket Nos. R-2008-2081738, et. al. (Order entered September 24, 2009); *Taylor v. West Penn Power Co.*, Docket No. C-00934770 (Order entered July 14, 1993)).

In their Reply to Exception No. 1, the Complainants contend that the Initial Decision correctly determined that the Commission does not have primary jurisdiction to determine liability. The Complainants argue that the Commission does not have jurisdiction to hear the Complaint since the Complainants do not allege any statutory or regulatory violations, and because the claims in the Complaint do not confer primary jurisdiction and do not fall under 66 Pa. C.S. § 1501. R. Exc. at 11-12.

The Complainants aver that the Commission does not have subject matter jurisdiction over the Complainant's claims because they do not raise issues within the Commission's jurisdiction. The Complainants argue that the transfer of this matter to the

Commission was improper. R. Exc. at 12 (citing *Schriner v. Pennsylvania Power & Light Co.*, 501 A.2d 1128 (Pa. Super. 1985)). The Complainants contend that their claims do not implicate reasonable service under 66 Pa. C.S. § 1501. While Duquesne argues that the Complaint raises issues regarding the reasonableness of its planning and public communications in connection with a transmission line project, the Complainants aver that this case has nothing to do with customers, Duquesne’s planning, or how Duquesne interacted with the public. Rather, the Complainants argue that this case is about duties Duquesne owed to purchasers of property two months after Duquesne finished mapping routes through it, and that Duquesne breached common law duties of care by failing to promptly notify the sellers that it had mapped two high-voltage line routes through their property listed for sale. The Complainant states that Duquesne’s alleged negligence in delaying this “unregulated, voluntary outreach notice” does not implicate the reasonableness of electric service. R. Exc. at 13.

Contrary to Duquesne’s assertion that the definition of “service” under 66 Pa. C.S. §102 is broad enough to encompass the public notice at issue here, the Complainants aver that Pennsylvania appeals courts have declined to apply Pa. C.S. § 102 to events resembling utility services far more than the “dilatatory communications” alleged here. The Complainants further argue that, even if subject matter jurisdiction exists, primary jurisdiction may not be found in the instant matter because it is not a complex matter that requires special competence or with which a judge or jury would not be familiar. R. Exc. at 14-15.

Furthermore, the Complainants argue that the Commission lacks primary jurisdiction because primary jurisdiction cannot exist in the absence of a governing Commission Regulation or policy. R. Exc. at 15. The Complainants aver that Duquesne’s notice to the property sellers was not regulated by the Commission because Duquesne did not file a siting application at the time, and because the Commission does not regulate pre-siting application notices to property owners. R. Exc. 15 (citing *Final Order*

*Establishing Interim Guidelines*, M-2009-2141293 (Order entered November 5, 2010). Also, the Complainants submit that the absence of a Commission regulation negates the need for the expertise of the Commission. R. Exc. at 16.

In addition, the Complainants argue that the liability question in this matter raises common law negligence principles, and this is not a complex matter with which the judge or jury would not be familiar, so it falls within the ordinary business of the courts. Further, the Complainants aver that the issue regarding Duquesne's delayed notice to the property sellers of one property does not concern service to the general public and does not need to be deferred to the Commission for handling. Also, the Complainants contend that the facts in the instant case are specific and unique to the Complainants, are unlikely to occur again in the future, and do not require a uniform regulatory approach. R. Exc. at 16-19.

Moreover, the Complainants argue that the Commission does not have jurisdiction over this matter under its Interim Guidelines for The Filing of Electric Transmission Line Siting Applications at 52 Pa. Code § 69.3101-3107. The Complainants aver that Duquesne's announcement was pre-siting outreach which is not required or regulated by the Commission. Rather, the Complainants submit that the Interim Guidelines require information to be included with a siting application; therefore, Duquesne's June 2017 notice to the property sellers is not governed by the Interim Guidelines. R. Exc. at 19-20.

## **2. Duquesne's Exception No. 2 and the Complainants' Reply**

In its Exception No. 2, Duquesne argues that upholding the Initial Decision would permit an improper collateral attack on the Common Pleas Court's Bifurcation Order because the Initial Decision reverses the directive to refer certain issues in the civil action to the Commission. Duquesne avers that the Complainants have improperly

continued to litigate the merits of the Common Pleas Court's Bifurcation Order throughout this proceeding. Duquesne notes that although the Complainants filed the Complaint with the Commission after exhausting their appeals of the Bifurcation Order, they have continued to challenge the referral of certain issues to the Commission for resolution. Duquesne points out that the Complainants filed the Complaint under protest and continued to advocate their view that the Commission has no jurisdiction over any aspect of their Complaint throughout this proceeding. Moreover, Duquesne contends that the Common Pleas Court Judge ordered that certain issues must be resolved by the Commission, and the Pennsylvania Superior Court and Pennsylvania Supreme Court both upheld the transfer of issues to the Commission. Rather than follow the orders of three separate courts, Duquesne argues that the Complainants instead asked the ALJ to ignore the Common Pleas Court's order. Exc. at 10-11. Moreover, Duquesne contends that the Initial Decision's granting of the Complainant's Transfer Motion ignored Commission precedent. *Id.* at 12 (citing *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)). Duquesne submits that three separate courts have determined that the Commission should determine what duty was owed by Duquesne to the Complainants regarding the location of the proposed transmission line and the appropriate time to give notice thereof; therefore, this issue is within the Commission's jurisdiction, and it was improper for the Initial Decision to uphold the Complainants' collateral attack on the Common Pleas Court's directive and grant the request to effectively withdraw the Complaint and transfer the matter back to the Common Pleas Court. *Id.* at 13.

In their Reply to Exception No. 2, the Complainants aver that the Initial Decision does not collaterally attack the Common Pleas Court's Bifurcation Order. Instead, the Complainants contend that Duquesne misrepresents the Common Pleas Court's ruling because it did not expressly conclude that the Commission has jurisdiction over the issues in the Complaint and only stayed the case pending a determination by the

Commission. The Complainants further argue that no appellate court ruled on the propriety of the Common Pleas Court's order bifurcating and transferring these issues to the Commission or that the Commission has jurisdiction over the issues in this matter. R. Exc. at 21.

Furthermore, the Complainants argue that it was incumbent on the Common Pleas Court Judge to resolve the question of jurisdiction. The Complainants aver that there was no reason for these issues to be transferred to the Commission because they involve negligence and recklessness claims. The Complainants state that none of Duquesne's conduct raised in this proceeding is remotely related to providing electric service. R. Exc. at 21-22.

### **3. Duquesne's Exception No. 3 and the Complainants' Reply**

In its Exception No. 3, Duquesne argues that the Initial Decision's granting of the Complainant's Transfer Motion effectively permitted the withdrawal of the Complaint. Duquesne avers that the Initial Decision incorrectly determined that the Complainants should not be required to litigate the Complaint because it was filed under duress, and that there are no public interest or policy considerations that should require the Complainants to continue litigating the Complaint. To the contrary, Duquesne contends 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. Duquesne submits that the Initial Decision erred by not finding that the Commission has jurisdiction to resolve the allegations contained in the Complaint. In addition, Duquesne argues that the Commission is the agency with the technical expertise to resolve controversies regarding a utility's actions with respect to transmission line planning and siting, and the public interest requires uniform and consistent rules regarding these issues. Exc. at 13-14.

Duquesne further argues that there can be no doubt that the first relief requested by the Complaint is within the Commission's jurisdiction, even if the Complainants refused to cite to 66 Pa. C.S. § 1501 or any specific Commission Regulation. Duquesne contends that the public interest would not be served by allowing the Complainants to withdraw the Complaint or by ruling that the Commission does not have jurisdiction over the allegations of the Complaint. Finally, Duquesne avers that no evidentiary hearings should be required for the Commission to determine whether Duquesne's actions were appropriate under 66 Pa. C.S. § 1501 and the Commission's Regulations regarding transmission line siting and eminent domain at 52 Pa. Code § 57.71, *et seq.*, and 57.91, *et seq.*, because the pleadings in this case contain all of the relevant documentation regarding Duquesne's public notices regarding its transmission line siting. Exc. at 15.

In their Reply to Exception No. 3, the Complainants argue that the Initial Decision dismissed the Complaint, which was filed under protest, and did not require a public interest analysis. The Complainants aver that Duquesne's reliance on *DRIVE* to support its argument that the Initial Decision improperly permits the Complainants to withdraw the Complaint without showing that it is in the public interest lacks merit. Furthermore, the Complainants state that denying transfer to the Common Pleas Court would be an enormous, unnecessary added burden on the Parties and the Commission. The Complainants submit that litigating whether Duquesne was providing reasonable service under 66 Pa. C.S. § 1501 will not resolve the Complainants' causes of action in common tort law, which will still need to be resolved in civil court. The Complainants state that even if the Commission determines that Duquesne provided reasonable service under 66 Pa. C.S. § 1501, it will only delay resolution of the essence of the Complainant's claims. R. Exc. at 23-25.

#### **D. Disposition**

The crux of the matter in the instant proceeding is whether or not the Commission has jurisdiction over the parties and subject matter raised in the Complaint. If so, the next step is to determine whether the Complainants satisfied their burden of proving that Duquesne failed to provide safe, adequate, and reasonable service, in violation of 66 Pa. C.S. § 1501.

In her Initial Decision, the ALJ found that the Commission lacks jurisdiction over the Complaint because the Complainants do not allege that Duquesne committed any violation of a statute which the Commission has jurisdiction to administer, or a regulation or order of the Commission. I.D. at 19. To the contrary, Duquesne disagrees with the ALJ's Initial Decision and contends that the Complaint raises issues regarding whether Duquesne provided reasonable service under 66 Pa. C.S. § 1501 and other Commission Regulations with respect to transmission line siting and notice of eminent domain power. Exc. at 6-7. The Complainants, on the other hand, agree with the ALJ's Initial Decision and argue that the Commission does not have subject matter jurisdiction over the Complainant's claims because they do not raise issues within the Commission's jurisdiction. R. Exc. at 12.

Upon review, we agree with Duquesne. It is not clear that the Commission is precluded from hearing the Complaint as a matter of law; rather, we conclude that the issues raised by the Complainants in their Complaint are within the Commission's jurisdiction because they are issues regarding whether Duquesne provided reasonable service under 66 Pa. C.S. § 1501 and other Commission Regulations.

As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (Code). 66 Pa. C.S.A. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the

pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 427 Pa. 562, 237 A.2d 602 (1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. PUC.*, 182 A.2d 267 (Pa. Super. 1962); and *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa. Cmwlt. 1978). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

Section 1501 of the Code provides that a public utility has a duty to maintain safe, adequate, and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. The term “service” is defined broadly under 66 Pa. C.S. § 102. Section 102 of the Code, defines “service” as:

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 . . . .

66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlt. 1995). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlt. 1990) (public utility failed to use reasonable means to notify landowner of vegetation removal). For example, inappropriate and unreasonable treatment to customers can be interpreted as inadequate service. *See, Barbara R. Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Opinion and Order entered May 9, 2011) (citing *Edward T. O’Toole v. Metropolitan*

*Edison Co.*, Docket No. C-20030854 (Order entered May 9, 2005)). Quality customer service is expected of all regulated utilities. *Id.*

Upon a review of the Complaint on its face, we find that the Complainants appear to allege that Duquesne acted improperly with respect to its interactions with the public and customers. Specifically, the Complaint alleges that: (1) Duquesne failed to inform the Complainants and former property owners about two routes for a high voltage power line; (2) Duquesne did not timely notify the sellers of the property purchased by the Complainants regarding the potential routes for the power line; (3) Duquesne subsequently mailed a threatening Notice of Eminent Power to the Complainants; (4) the notices provided by Duquesne were not required by Commission Regulations because an application to the Commission was not yet filed by Duquesne to construct a power line through the Complainant's property; (5) Duquesne repeatedly refused to provide any information about potential routes of the power line to the Complainants; and (6) Duquesne did not timely notify the Complainants of the decision that the preferred route of the line was no longer through the Complainant's property. Complaint at 3-4. These issues are precisely the types of services that are to be reasonably provided by a public utility under 66 Pa. C.S. § 1501.

Although the Complainants state that the Complaint was filed "under protest," and they suggest that Duquesne's actions were negligent, reckless, and breached certain duties owed to the Complainants, *Id.*, we conclude that the basis of the claims set forth in the Complaint raise issues that fall squarely within the Commission's jurisdiction in determining whether certain services provided by Duquesne were reasonable under the Code. *See*, 66 Pa. C.S. §§ 102 and 1501. Furthermore, these allegations raise issues regarding the reasonableness of Duquesne's planning, notice and public communications with respect to a transmission line siting project, even though the Complaint does not specifically reference 66 Pa. C.S. § 1501.

Moreover, defining “service” broadly, which includes “any and all acts” related to the function of utility service, as well as customer service, supports a finding that the issues raised in the Complaint fall within the types of utility service that are to be reasonably provided under 66 Pa. C.S. § 1501. *See*, 66 Pa. C.S. § 102; *West Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990); *Barbara R. Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Order entered May 9, 2011). Therefore, we find that the Commission has jurisdiction to determine whether Duquesne’s actions with respect to the timing and communications regarding the potential route and siting of a transmission line on the Complainant’s newly purchased property, which were raised in the Complaint, violated 66 Pa. C.S. § 1501.<sup>4</sup> To be clear, while the Commission cannot adjudicate whether Duquesne acted negligently or recklessly, or find that Duquesne is liable to the Complainants under common tort law principles, as the Complainants request, the Commission is the proper entity to resolve the issues raised in the Complaint regarding whether Duquesne provided reasonable service under 66 Pa. C.S. § 1501 and other regulations within the Commission’s jurisdiction with respect to Duquesne’s communications and interactions with the public and customers regarding the route and siting of a potential transmission line.

For the reasons set forth above, we shall grant Duquesne’s Exception No. 1. Inasmuch as we are concluding that the Commission has jurisdiction over the issues raised in the Complaint and granting Duquesne’s Exception No. 1, we find that it is not necessary to consider Duquesne’s Exception Nos. 2 and 3; therefore, those Exceptions will be denied.

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<sup>4</sup> We also note that, in addition to 66 Pa. C.S. § 1501, the allegations raised in the Complaint may also raise issues within the Commission’s jurisdiction with respect to the Commission’s Regulations regarding transmission line siting and the disclosure of eminent domain power at 52 Pa. Code §§ 57.71, *et seq.* and 57.91, *et seq.*

Although the Commission may 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 desire to continue with the matter before the Commission,<sup>5</sup> we will not require the Complainants to litigate a Formal Complaint before the Commission that they are not interested in pursuing, especially because the Complainants would bear the burden of proving their claims at an evidentiary hearing. The Complainants filed their Complaint “under protest,” and consistently and repeatedly averred that their claims against Duquesne are common law tort claims based on recklessness and negligence and that they are not alleging that Duquesne violated any Commission Regulations or rules. I.D. at 11; Tr. at 9-13, 24; Complainants’ Memoranda at 7. Forcing a reluctant litigant to proceed forward with a Complaint that they clearly have no interest in litigating would be an inefficient use of resources of the Parties and of this Commission. While the Commission clearly has jurisdiction over the issues alleged in the Complaint, we conclude that it is not in the public interest, and that there is no reason, to force the Complainants here to move forward with the Complaint against their will.

To that end, we will hold this matter in abeyance to afford the Complainants the opportunity to decide whether they wish to pursue the Complaint. Specifically, the Complainants must decide whether or not they wish to proceed with their Complaint before this Commission, as directed by the Bifurcation Order issued by the Allegheny Court of Common Pleas. Therefore, within thirty (30) days, the Complainants shall inform the Commission’s Secretary, in writing at this docket, whether they are interested in proceeding with their Complaint, as filed, before the Commission, or file an amended Formal Complaint in this matter. If the Complainants choose to move forward with their Complaint, as filed, or to file an amended Formal Complaint, the Commission’s Secretary shall re-assign this matter to the Office of Administrative Law

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<sup>5</sup> See, 52 Pa. Code § 5.94 (Withdrawal of pleadings in a contested proceeding); *DRIVE* (Commission required a party that initiated an action to continue the litigation even though it stated its unwillingness to do so).

Judge for further proceedings in this matter as deemed necessary. In the event the Complainants do not respond within thirty (30) days indicating that they wish to proceed with their Complaint, as filed, or they do not file an amended Formal Complaint, the Commission's Secretary shall dismiss the Complaint and close this proceeding. To the extent the Complainants choose the latter option, the Commission takes no position regarding if or how the Complainants' decision not to proceed with their Complaint, or file an amended Formal Complaint in this proceeding, may impact the Allegheny Court of Common Pleas' Bifurcation Order and the related civil action.

#### **IV. Conclusion**

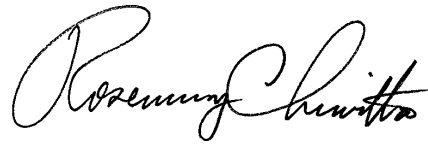
For the reasons set forth above, we shall grant, in part, and deny, in part, the Exceptions of Duquesne, and therefore, modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of Duquesne Light Company, filed on July 12, 2023, to the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on June 22, 2023, at this docket, are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Emily I. DeVoe, issued on June 22, 2023, at this docket, is modified, consistent with this Opinion and Order.
3. That this matter be held in abeyance, consistent with this Opinion and Order.

4. That within thirty (30) days, Laura Andracchio Johnson and Charles Johnson shall inform the Commission's Secretary, in writing at this docket, whether they are interested in proceeding with their Complaint, as filed, before the Commission, or file an amended Formal Complaint in this matter. In the event that Laura Andracchio Johnson and Charles Johnson do not respond to the Commission's Secretary within thirty (30) days indicating that they wish to proceed with their Complaint, as filed, or they do not file an amended Formal Complaint, the Commission's Secretary shall dismiss the Complaint and close this proceeding.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: December 21, 2023