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January 11, 2024

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 Answer to the Petition for Reconsideration 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)

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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 ANSWER TO PETITION FOR
RECONSIDERATION**

Duquesne Light Company (“Duquesne Light”) hereby files its Answer to the Petition for Reconsideration (“Petition”) filed by the Complainants Laura Andracchio Johnson and Charles Johnson (“Complainants”). As set forth below, the Petition filed by the Complainants provides no basis to rescind or amend the December 21, 2023 Opinion and Order issued by the Public Utility Commission (“Commission”) in this proceeding, and therefore, the Petition should be denied.

I. Background and Procedural History

On September 5, 2019, the Complainants filed 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.”

The Complainants appealed the Bifurcation Order to the Pennsylvania Superior Court, which denied the appeal per curiam on March 15, 2021. 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.

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 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).

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.

Duquesne Light filed Exceptions to the Initial Decision on July 12, 2023, and the Complainants filed Reply Exceptions on August 1, 2023. By Order entered on December 21, 2023, the Commission granted Duquesne Light's first Exception, and concluded that the Commission does have jurisdiction over the issues raised in the Complaint. On December 31, 2023, the Complainants filed their Petition for Reconsideration.

II. Argument

The well-established standards for granting reconsideration or clarification of a prior Commission order are set forth in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982). (“*Duick*”):

A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

(*Duick*, at 59).

In the Opinion and Order, the Commission correctly concluded 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. The Complainants’ Petition provides no “new or novel arguments” or “considerations that appear to have been overlooked by the Commission” that would justify reconsideration. To the contrary, the Petition inaccurately characterizes the scope of the Commission’s determinations regarding the issues raised by the Complaint, and simply restates the same arguments that the Complainants have made throughout this proceeding.

At the outset, the Petition inaccurately characterizes the Commission as finding only that Duquesne Light’s interactions with the public and communications from 2017 to 2020 constituted the types of services that are to be reasonably provided by a public utility under 66 PA. C.S. §1501 (“Section 1501”). *See* Petition, at p. 3. To the contrary, the Commission identified numerous aspects of the Complainants’ allegations that implicate Section 1501,

including issues related to planning, notice and communication with respect to a transmission line siting project. The Commission correctly determined that the Complaint alleged a broad range of unreasonable service, even though the Formal Complaint did not specifically reference Section 1501. The Commission summarized the Formal Complaint's allegations as follows:

(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.

Opinion and Order, at p. 24

Besides improperly characterizing the Commission's findings, all of the Complainants' arguments in support of reconsideration were already presented to the Commission and rejected, and therefore they provide no basis for reconsideration under the longstanding *Duick* criteria.

Complainants' first argument is that they never alleged a violation of Section 1501, so it is improper for the Commission to characterize their Formal Complaint as alleging

unreasonable service under Section 1501. The Complainants have made this argument repeatedly throughout this proceeding, and their Petition adds nothing new to the analysis that justifies reconsideration by the Commission. It is irrelevant that the Complainants did not explicitly allege a violation of Section 1501 in their Formal Complaint, because it is clear that the allegations in their Formal Complaint raise issues regarding the reasonable of services provided by Duquesne Light. “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). In this case, the Commission has made the correct determination about the scope of its jurisdiction over the Complainants allegations, and the Complainants over nothing new or novel in their argument to justify reconsideration of that determination.

The next section of the Complainants’ Petition (arguments 2, 3 and 4, on pages 4-8) attempts to justify reconsideration by yet again challenging the decision by the Court of Common Pleas to bifurcate the case. The Complainants’ arguments on this point have been repeatedly rejected, and their continued attempt to collaterally attack the Bifurcation Order must be rejected. The bifurcation and jurisdictional issues have already been conclusively resolved by the Court of Common Pleas and the Pennsylvania Superior Court, yet the Complainants once again are attempting to litigate the merits of the Bifurcation Order in this proceeding. The Complainant’s arguments on this point were addressed in detail in Duquesne Light’s Second Exception to the Initial Decision. Once the Pennsylvania Supreme Court rejected the Complainants’ Petition for Allowance of Appeal, the issue of whether the

Commission has jurisdiction over any aspect of the Complainant's allegations was definitively and conclusively resolved. The Petition for Reconsideration raises nothing new or novel on this point, and instead simply rehashes the same arguments that the Complainants have made before the Court of Common Pleas, the Pennsylvania Superior Court, the Pennsylvania Supreme Court, the Administrative Law Judge (in the Motion to Transfer), and the Commission (in the Reply Exceptions). Duquesne Light has fully addressed these arguments in its Exceptions, which Duquesne Light incorporates herein by reference.

The Complainants' next argument, on page 9 of their Petition, challenges the Commission's finding that the Complaint raises issues concerning Duquesne Light's communications and interactions with the public, because they assert that their Formal Complaint is only focused on communications with the Complainants about their parcel of land. This argument, however, is factually incorrect, because the Formal Complaint implicates multiple issues under the Commission's regulations and orders regarding transmission line siting, not just communications about a single parcel of land. The Formal Complaint alleges that Duquesne Light acted improperly in connection with the June 2017 public announcement of potential transmission line routes and the solicitation of input from nearby property owners.¹ 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). In response to these allegations, Duquesne Light has asserted that its public outreach was prudent and aligned with Commission policy. The Formal Complaint also makes additional allegations that a separate notice issued by Duquesne Light to inform

¹ See Formal Complaint, at Paragraph 4, and Exhibit B to Duquesne Light's Answer and New Matter.

property owners of the company's ability to take property by eminent domain was improper.² Duquesne Light issued this second notice in order 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 disputed that it was required under the Commission's regulations. The reality is that the Formal Complaint and Duquesne Light's Answer and New Matter clearly outline a disagreement over the correct interpretation of a specific Commission regulation, and there can be no doubt the Commission has jurisdiction to resolve this dispute. The Complainants' Petition raises nothing new or novel on this point, and the single case cited by the Complainants on this point, *Poorbaugh v. Pennsylvania PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995)), was previously cited during the Preliminary Objections stage of this proceeding. At that time, Duquesne Light distinguished *Poorbaugh* because it was a case involving a common occurrence (a fire) that affects all types of industries and is not unique to regulated utilities. By contrast, the issues in this Formal Complaint relate to the transmission line siting process, which are complex and sensitive issues that are unique to the regulated utility industry, and it is well-settled that the Commission has exclusive jurisdiction over them in Pennsylvania.

The Complainants next assert, on pages 9-10 of their Petition, that because their claims are "property rights claims," the Commission does not have jurisdiction over them. This argument is also factually incorrect, as the Complaint clearly and repeatedly makes allegations about Duquesne Light's conduct, not about the Complainants' ownership or rights in their property, and the Complaint is clearly seeking remedies for that conduct, not for an adjudication of the ownership in the property. While this "property rights" claim may be "new or novel", it is factually wrong and contradicted by all of Complainants'

² See Formal Complaint, at Paragraph 4, and Exhibit C to Duquesne Light's Answer and New Matter.

extensive advocacy in this case since it was first initiated back in 2019 in the Civil Action, and continuing through the appellate courts and throughout this proceeding.

The Complainants' Petition concludes by disputing the Commission's finding that the definition of "service" under 66 PA. C.S. §102 ("Section 102") extends to the Duquesne Light's activities and communications at issue in this case. There is nothing "new or novel" about this argument, as the Commission clearly already considered and rejected the assertion that the Formal Complaint does not make claims about utility service by Duquesne. The issue of what constitutes utility service under Section 102 was addressed at length in Duquesne Light's Exceptions (at pp. 7-8) and the Complainants' Reply to Exceptions (at pp. 14-15). In its Opinion and Order, the Commission accurately referenced the caselaw precedent interpreting Section 102's definition of "service" and correctly held that the term "service", as defined in Section 102, is "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 ...". The Complainants' Petition attempts to distinguish the two cases referenced by the Commission (*Country Place Treatment Co.* and *Lolly*), but provides no justification or new or novel argument for finding that the definition of "service" in Section should not extend to the transmission line planning and communication activities raised by the Complaint.

WHEREFORE, for the reasons set forth above and in Duquesne Light's previously filed Exceptions in this matter, Duquesne Light respectfully requests that the Commission deny the Petition for Reconsideration, and issue an Order upholding the December 21, 2023 Opinion and Order in its entirety.



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Dated: January 11, 2024

**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 Answer to Petition upon the party listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL

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Michael Gruin

Dated: January 11, 2024