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February 5, 2024

VIA EFILE

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

Re: Susan Hineman v. Duquesne Light Company
Docket No. C-2023-3044412

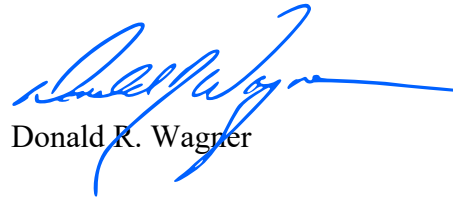
Dear Secretary Chiavetta:

Enclosed for filing is a Motion for Judgment on the Pleadings in the above captioned matter. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Donald R. Wagner

Enclosure

cc: The Honorable Jeffrey A. Watson (jeffwatson@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SUSAN HINEMAN	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3044412
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

NOTICE TO PLEAD

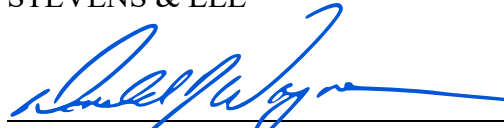
To: *Susan Hineman*

You are hereby notified to file a written response to the attached Motion for Judgment on the Pleadings of Duquesne Light Company within twenty (20) days from the date of service of this notice. If you do not file a written response to the enclosed Motion for Judgment on the Pleadings within twenty (20) days of service, judgment may be entered against you. All pleadings, such as responses to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

You must also serve a copy of your response on the undersigned counsel for Duquesne Light Company. Failure to respond to this Motion for Judgement on the Pleadings could result in the dismissal of your case.

STEVENS & LEE



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: February 5, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SUSAN HINEMAN	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3044412
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS
DUQUESNE LIGHT COMPANY**

Pursuant to 52 Pa Code § 5.102, Duquesne Light Company (“Duquesne Light” or “Company”), by and through its attorneys Stevens & Lee, hereby files this Motion for Judgment on the Pleadings.

I. OVERVIEW

1. The Commission should dismiss those portions of the Complaint requesting monetary damages because the Commission does not have jurisdiction or authority to award civil damages.
2. Complainant’s sole request for relief in the Complaint is for monetary damages.
3. Specifically, the Complaint takes issue with Duquesne Light’s denial of Complainant’s claim for property damage and includes an itemization of the damages for which she is seeking compensation.
4. Accordingly, Duquesne Light’s Motion for Judgment on the Pleadings should be granted, and those portions of the Complaint seeking monetary damages should be dismissed.
5. Additionally, Complainant filed the Complaint on behalf of her restaurant business, Harold’s Inn; Complainant is not represented by counsel, but by a non-attorney representative of the Company.

6. Duquesne Light respectfully requests that the Presiding Officer assigned to this proceeding issue an Order requiring the Complainant to have an attorney enter an appearance by a date certain, in advance of the hearing.

7. If the Complainant fails to comply with the requested Order, Duquesne Light requests the Complaint be dismissed with prejudice.

II. FACTUAL AND PROCEDURAL BACKGROUND

8. On November 27, 2023, Duquesne Light was electronically served with the Complaint.

9. In the Complaint, Complainant alleges that Duquesne Light is responsible for damage to her commercial property located at 2134 Brodhead Rd., Aliquippa, PA 15001 (the “Property”) arising from work on a nearby transformer by the Company and as relief, is requesting reimbursement for an itemized list of alleged damages. Complaint ¶5, pp. 7–8.

10. Duquesne Light, on December 18, 2023, timely filed its Answer and New Matter contemporaneously with its Preliminary Objections.

11. The Answer and New Matter incorporated a Notice to Plead.¹

12. The Preliminary Objections incorporated a Notice to Plead.²

13. In its New Matter, Duquesne Light noted that although Susan Hineman is listed as the Complainant, Duquesne Light provides commercial electric service to Harold’s Inn at the property and the electric service account that is the subject of the Complaint is in the name of Harold’s Inn. See New Matter, ¶¶ 15-16.

¹ **YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO WITHIN NEW MATTER WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE §5.63 OR A JUDGMENT MAY BE ENTERED AGAINST YOU.** (bold in original).

² **YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT’S PRELIMINARY OBJECTIONS WITHIN 10 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.101 OR A JUDGMENT MAY BE ENTERED AGAINST YOU.** (bold in original).

14. It is clear that the Complainant filed the Complaint on behalf of her restaurant business, Harold's Inn. See Complaint pp. 1, 7-16.

15. Throughout the Complaint, the Complainant seeks relief on behalf of Harold's Inn, not the Complainant as an individual.

16. Specifically, the Complainant provides invoices pertaining to equipment and services provided to Harold's Inn at the Property. Complaint pp. 11-16.

17. Additionally, the Complainant signs the Complaint as the "Owner and President". Complaint ¶11.

18. In its Preliminary Objections, Duquesne Light requested that the Commission dismiss those portions of the Complaint requesting monetary damages because the Commission does not have jurisdiction or authority to award civil damages.

19. Forty-nine (49) days have elapsed since Duquesne Light filed its Answer and New Matter on December 18, 2023.

20. Forty-nine (49) days have elapsed since Duquesne Light filed its Preliminary Objections on December 18, 2023.

21. The Complainant did not file an Answer or any response to Duquesne Light's New Matter.

22. By failing to respond to New Matter, the Commission can find that Complainant has admitted 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.”). As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

23. The Complainant did not file an any response to Duquesne Light’s Preliminary Objections.

24. As of the date of this Motion, no attorney licensed in the Commonwealth has entered a notice of appearance on behalf of Complainant in the docket for this Complaint.

25. The Commission’s regulation at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that 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).

26. The pleadings are closed in this case, and a hearing has not yet been scheduled. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing.

III. LAW AND ARGUMENT

27. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

28. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlt. 1989).

29. The pleadings in this case reveal that Duquesne Light is entitled to judgment as a matter of law.

30. It is well established that the Commission does not have jurisdiction over actions for damages. Horowitz v. PECO, Docket No. C-2013-2382740 (Dec. 30, 2013).

31. Accepting all the Complainant's allegations as true for purposes of the present Motion for Judgment on the Pleadings, it is clear that the Complainant requests monetary damages. Complaint pp. 3, 7-8.

32. Specifically, the Complaint takes issue with Duquesne Light's denial of Complainant's claim for property damage, which includes an itemization of the damages. See Complaint pp. 7-8.

33. The Complainant attached various invoices associated with alleged damage that the Complainant's business experienced and included a copy of a check from Harold's Inn for an invoice. Complaint p. 11-16.

34. The Commission does not have jurisdiction over actions for damages. Horowitz v. PECO.

35. Because Complainant's sole requested relief is a request for monetary compensation for alleged property damage and granting such relief is outside the Commission's jurisdiction, such portions of the Complaint must be dismissed.

36. Additionally, 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.

37. The absence of an attorney where one is required deprives the Commission of the necessary jurisdiction to adjudicate the matter. Bush v. Pittsburgh Water & Sewer Authority, No.

C-2019-3013323, 2019 WL 6831400, at *4 (Dec. 2, 2019), citing McCain v. Curione, et al., 527 A.2d 591 (Pa. Cmwlth. 1987).

38. Complainant is not represented by counsel, but by a non-attorney representative of the company. Complaint ¶¶ 10-11.

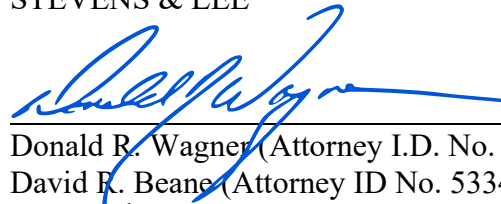
39. Given the foregoing, Duquesne Light respectfully requests that the Presiding Officer assigned to this proceeding issue an Order requiring the Complainant to have an attorney enter an appearance by a date certain, in advance of the hearing.

40. If the Complainant fails to comply with the requested Order, Duquesne Light requests the Complaint be dismissed with prejudice.

WHEREFORE, for all the reasons stated herein, Duquesne Light Company respectfully requests that your Honorable Commission grant its Motion for Judgment on the Pleadings and dismiss the Complaint with prejudice.

Respectfully submitted,

STEVENS & LEE



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David R. Beane (Attorney ID No. 53343)

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Reading, PA 19601

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david.beane@stevenslee.com

COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: February 5, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SUSAN HINEMAN	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3044412
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings 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

Susan Hineman
Owner, Harold's Inn
2134 Broadhead Road
Aliquippa, PA 15001
haroldsinn@comcast.net
*Accepts eService



Donald R. Wagner

Dated: February 5, 2024