

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steven Williams	:	
	:	
v.	:	C-2024-3047276
	:	
Duquesne Light Company	:	

**INTERIM ORDER  
GRANTING PRELIMINARY OBJECTION AND  
TRANSFERRING MATTER TO MEDIATION**

Background

On March 12, 2024, Steven Williams (Complainant or Mr. Williams) filed a Formal Complaint with the Pennsylvania Public Utility Commission against Duquesne Light Company (Respondent, Company, or DLC). Complainant avers the utility is threatening to shut off his service or has already shut off his service and that he is having a reliability, safety, or quality problem with his electric service at four properties, 1210, 1212, 1214, and 1216 Buena Vista Street, Pittsburgh, PA 15212 (service locations). Complainant also checked the “other” box and included additional averments in a page attached to the Complaint.

Specifically, Complainant avers he and his neighbors and tenants lost electric service on November 20, 2023 for a period of time without advance notice. He observed workers and a boom truck in the alley. When he approached the workers, he avers he asked who was in charge and tried to engage them in conversation about what happened and why. He avers the worker, Jim Pope, identified himself as being in charge, and directed Mr. Williams to call customer service and refused to give Mr. Williams the name of his supervisor.

Mr. Williams further avers he received a call from Rocky Pisano about a week later who identified himself as Mr. Pope’s supervisor. Mr. Williams avers Mr. Pisano explained

the service was temporarily shut off so DLC could protect the lines due to scaffolding being erected in the neighborhood. Mr. Williams avers it was not necessary for DLC to temporarily shut off power under these circumstances. Further, Mr. Williams avers he explained to Mr. Pisano that his tenants “were demanding to know what he had done to cause the power to be shut off” and that a phone call from DLC to Mr. Williams was not sufficient to assuage their concerns. He avers he had to hire Wahl Heating and Plumbing to inspect the properties and certify in front of his tenants that there were no issues with the building or its electrical systems. Mr. Williams avers his relationship with his tenants was “defamed” by DLC’s failure to provide prior notification that the service was going to be shut off on November 20, 2023.

As relief, Mr. Williams requests DLC be required to send a letter of apology to all individuals on the circuit explaining the situation and referencing the Formal Complaint filed by Complainant *on behalf of their behalf*; that copies of this letter be forwarded to DLC’s Human Resources Office to be included in the personnel files for Rocky Pisano and his supervisor or manager; that a letter signed by the Head of Human Resources be included with the copies in the personnel files; that DLC reimburse him for the cost of the services provided by Wahl Heating and Plumbing.

On April 1, 2023, 202C explains its records show Complainant is the property owner of 1210, 1212, 1214, and 1216 Buena Vista Street, the properties at 1210 and 1216 Buena Vista Street each have three residential meters and one commercial meter, and the properties at 1212 and 1214 Buena Vista Street each have one residential meter. Respondent admits there was a temporary service interruption to the service locations on November 20, 2023, from approximately 11:34 am to 11:41 am, so that construction could be safely carried out at a nearby YMCA. DLC denies that this service interruption violated the Commission’s regulations or the Public Utility Code. Further, DLC avers it attempted to be responsive to Mr. Williams on site the day of the service interruption and thereafter.

In its Preliminary Objection, Respondent contends that the Commission lacks jurisdiction to adjudicate defamation claims, and Complainant’s claim that DLC defamed him should be stricken from the Complaint. Further, DLC argues Complainant lacks standing to

bring claims on behalf of unidentified members of the public, and, to the extent Complainant is raising claims on behalf of others, those claims should also be stricken from the Complaint. Finally, DLC argues the Commission lacks authority to award damages, and Complainant's request for reimbursement should be stricken from the Complaint. The Preliminary Objection contained a Notice to Plead, requiring Complainant to file a response within 10 days of service.

Complainant did not file response to the Preliminary Objections.

On May 1, 2024, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

The Preliminary Objection is ripe for disposition.

### Discussion

The grounds for preliminary objections are limited. Section 5.101(a)(1), provides that preliminary objections may be granted where the Commission lacks jurisdiction to resolve a dispute.<sup>1</sup>

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.<sup>2</sup> In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.<sup>3</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>4</sup> All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the

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<sup>1</sup> 52 Pa.Code § 5.101(a)(1).

<sup>2</sup> *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>3</sup> *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996).

<sup>4</sup> *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

preliminary objections.<sup>5</sup> Only those facts specifically admitted may be considered against the non-moving party.<sup>6</sup> A preliminary objection which seeks dismissal of a pleading will only be granted where relief is clearly warranted and free from doubt.<sup>7</sup>

As a creature of legislation, the Commission possesses only the authority that the General Assembly has specifically granted to it in the Public Utility Code. That is, the Commission has only the powers expressly conferred or necessarily implied by its enabling statute.<sup>8</sup>

Defamation “is the tort of detracting from a person’s reputation, or injuring a person’s character, fame, or reputation, by false and malicious statements.”<sup>9</sup> “Nothing contained in the Public Utility Code or the PUC’s regulations vests the PUC with the authority to consider and decide tort claims by private citizens.”<sup>10</sup> Therefore, the Commission lacks jurisdiction to adjudicate Complainant’s defamation claim, and it must be stricken from the Complaint.

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<sup>5</sup> *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006), *aff’d per curium*, 924 A.2d 1203 (Pa. 2007).

<sup>6</sup> *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

<sup>7</sup> *Interstate Traveller Services, Inc. v. Pa. Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Application of K&F Medical Transport, LLC*, Docket No. A-2008-2020353 (Final Order July 8, 2008).

<sup>8</sup> *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967). See also *Department of Environmental Resources v. Butler County Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982), and *Pequea Township v. Department of Environmental Protection*, 716 A.2d 678, 686 (Pa.Cmwlth. 1998).

<sup>9</sup> *Joseph v. The Scranton Times*, 959 A.2d 322, 334 (Pa. Super. 2008), app. dismissed as moot, 982 A.2d 1223 (Pa. 2009).

<sup>10</sup> *Davis v. PPL Sustainable Energy Fund*, 2011 Pa. Dist. & Cnty. Dec. LEXIS 593 (C.P. Lackawanna 2011) (holding that the plaintiff’s cause of action for defamation could not have been raised before the Commission and so was not barred by the doctrine of res judicata); see also *DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595, 597 (Pa. 1982) (finding the Commission did not have jurisdiction to determine water utility’s liability for negligent failure to provide adequate water service to extinguish a fire on plaintiff’s property); *Ostrov v. I. F. T., Inc.*, 586 A.2d 409, 415 (Pa. 1991) (holding that “matters involving not what service the utility owed to the general public, but rather whether the service provided to a particular litigant was negligently provided, are for the courts to resolve.”).

In discussing his requested relief, Mr. Williams wrote he was filing the instant Complaint on behalf of other individuals. Under Pennsylvania law, “[i]n seeking judicial resolution of a controversy, a party must establish as a threshold matter that he has standing to maintain the action.”<sup>11</sup> “[T]he core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge.”<sup>12</sup> To have standing, a party must establish that its interest is substantial, direct, and immediate.<sup>13</sup> To establish a party’s interest is “substantial,” the interest must exceed the interest “of all citizens in procuring obedience to the law.”<sup>14</sup> Further, the party’s interest is “direct” when “there is a causal connection between the asserted violation and the harm complained of,” and the interest is “immediate” when “that causal connection is not remote or speculative.”<sup>15</sup>

In the instant case, Complainant has no standing to bring claims on behalf of unidentified members of the public on his circuit who may have been affected by the seven minute outage at issue in the Complaint. Such claims would have to be brought by those unidentified individuals against Duquesne Light, not the Complainant. Therefore, Complainant’s claims and requests for relief raised on behalf of other individuals are stricken from the Complaint

Finally, Complainant’s request for reimbursement for the cost of the services provided by Wahl Plumbing and Heating is a request for damages. Although the Commission has general jurisdiction over the rates and services of public utilities operating in Pennsylvania, the Public Utility Code simply does not grant the Commission the authority to award damages in

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<sup>11</sup> *Stilp v. Commonwealth*, 940 A.2d 1227, 1233 (Pa. 2007).

<sup>12</sup> *Fumo v. City of Phila.*, 972 A.2d 487, 496 (Pa. 2009) (citing *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 280-81 (Pa. 1975)).

<sup>13</sup> *See Del-Aware Unlimited. v. Commonwealth*, 551 A.2d 1117, 1121 (Pa. Cmwlth. 1988) (citation omitted); *1000 Grandview Ass’n v. Mt. Washington Assocs.*, 434 A.2d 796, 797 (Pa. Super. 1981) (citation omitted).

<sup>14</sup> *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003).

<sup>15</sup> *City of Phila. v. Commonwealth*, 838 A.2d 566, 577 (Pa. 2003).

this case.<sup>16</sup> The Court of Common Pleas retains original jurisdiction over suits for monetary damages. Therefore, Complainant's claim for reimbursement (i.e. monetary damages) is stricken from the Complaint.

Therefore, Complainant's defamation claims, claims raised on behalf of others, and claims seeking damages are stricken from the Complaint. The remaining claims raised in the Complaint are appropriate to move forward at this stage of the litigation. If an evidentiary hearing in this matter were to be held in this matter, Complainant would bear the burden to show by substantial evidence that the Company violated some statute, regulation, order, or tariff provision.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of West Penn Power Company to the Formal Complaint filed by Steven Williams at Docket No. C-2024-3047276 is granted.
2. That Complainant's claim that Respondent committed the tort of defamation against him is struck from the Complaint.
3. That Complainant's claims and requests for relief raised on behalf of other individuals are struck from the Complaint.
4. That Complainant's request for damages is struck from the Complaint.

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<sup>16</sup> *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995). See also *Pettko v. Pennsylvania American Water Company*, 39 A.3d 473 (Pa. Cmwlth. 2012).



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