
Megan E. Rulli

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File #: 205863

May 8, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Timothy Tata v. Duquesne Light Company
Docket No. C-2024-3048548

Dear Secretary Chiavetta:

Attached for filing please find the Preliminary Objection on behalf of Duquesne Light Company in response to the Complaint of Timothy Tata in the above-referenced proceeding. Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Megan E. Rulli

MER/kl
Attachment

cc: Certificate of Service

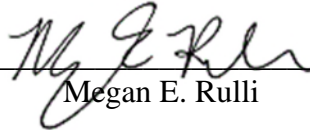
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST-CLASS MAIL

Timothy Tata
609 McMasters Avenue
Turtle Creek, PA 15145
Timothye81@yahoo.com

Date: May 8, 2024



Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Tata,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3048548
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



Megan E. Rulli (ID # 331981)

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Phone: 717-731-1970

Fax: 717-731-1985

mrulli@postschell.com

Date: May 8, 2024

Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Tata,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3048548
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
DUQUESNE LIGHT COMPANY TO
THE COMPLAINT OF TIMOTHY TATA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes Duquesne Light Company (“Duquesne Light” or the “Company”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the portions of the Formal Complaint of Timothy Tata (“Complainant”) be dismissed that allege violations of the Americans With Disabilities Act (“ADA”), because the Commission lacks subject matter jurisdiction over these claims.

In support thereof, Duquesne Light states as follows:

I. BACKGROUND

1. Duquesne Light is a “public utility,” an “electric distribution company,” and a “default service provider” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 102, 2803.

2. On April 18, 2024, Duquesne Light was served with the above-captioned Complaint. The issues raised in the Complaint relate to a termination notice issued to the Complainant due to nonpayment and the Complainant’s enrollment in the Company’s Customer Assistance Program (“CAP”). (Complaint ¶ 4.)

3. In the Complaint, the Complainant alleges that the Company has “denied [the Complainant] his rights under the ADA to make accommodations for [the Complainant] in [its] practices.” (Complaint ¶ 4.)

4. As relief, the Complainant requests for his entire outstanding balance to be forgiven. (Complaint ¶ 5.)

5. Duquesne Light herein files this Preliminary Objection to the Complaint. For the reasons explained below, Duquesne Light respectfully requests that the portions of the Complaint pertaining to allegations that the Company violated the Complainant’s rights under the ADA, be dismissed pursuant to Section 5.101(a)(1) of the Commission’s regulations.

II. STANDARD OF REVIEW

6. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of a capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

7. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonable deducible therefrom. *Stilp v. Commonwealth*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (“*Stilp*”) (citing *Dep’t of Gen. Servs. v. Bd. Of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)), *affirmed*, 974 A.2d 491 (Pa. 2009). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2008), *affirmed*, 963 A.2d 670 (Pa. 2009). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp* at 781.

8. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp* at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super 1992)).

III. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANT’S ALLEGATIONS THAT DUQUESNE LIGHT VIOLATED HIS RIGHTS

**UNDER THE ADA SHOULD BE DISMISSED BECAUSE THE COMMISSION
LACKS SUBJECT MATTER JURISDICTION OVER THESE CLAIMS**

9. Duquesne Light incorporates by reference Paragraphs 1 through 9 as if fully set forth herein.

10. The portions of the Complaint pertaining to allegations that the Company violated the Complainant's rights under the ADA should be dismissed because the Commission lacks subject matter jurisdiction over these claims.

11. As a creature of statute, the Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication." *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted).

12. Nothing in the Public Utility Code empowers PUC the ability to interpret and enforce the ADA. In fact, the PUC has consistently held that it lacks jurisdiction to determine whether a person has a disability defined by the ADA and to enforce the ADA's provisions. *See Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, p. 43 (Order entered May 3, 2018).

13. Therefore, if the Complainant believes he has a valid ADA claim, he must initiate that action in a court of competent jurisdiction. *See, e.g., Krouse v. American Sterilizer Co.*, 872 F. Supp. 203, 205-206 (W.D. Pa. 1994) (noting that state and federal courts have concurrent jurisdiction over ADA cases).

14. Here, the Complainant alleges that Duquesne Light has "willfully denied [the Complainant's] rights under the ADA." (Complaint ¶ 4).

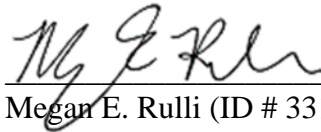
15. These portions of the Complaint allege that Duquesne Light denied the Complainant's rights under the ADA and are outside of the Commission's subject matter jurisdiction.

16. Thus, the Commission should dismiss the allegations in the Complaint related to the ADA pursuant to 52 Pa. Code § 5.101(a)(1).

IV. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission grant these Preliminary Objections.

Respectfully submitted,



Megan E. Rulli (ID # 331981)

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Date: May 8, 2024

Attorney for Duquesne Light Company

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	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

VERIFICATION

I, Regina Scott, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).


Regina Scott

5/8/2024
Date