

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Todd Elliott Koger	:	
	:	
v.	:	C-2023-3038703
	:	
Duquesne Light Company	:	

**SECOND INTERIM ORDER**  
**REOPENING THE RECORD TO RULE ON POST HEARING**  
**MOTIONS AND RECLOSING THE RECORD**

**PROCEDURAL HISTORY**

On March 2, 2023, Complainant Todd Elliott Koger (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (DLC). Complainant in pertinent part alleges that DLC 1) has an ongoing pattern of misconduct and bad faith; 2) knowingly violated agreements at Docket Nos. C-2019-3013238 and C-2020-3020394; 3) knowingly withheld the termination notice in January and February 2023, thereby resulting in LIHEAP CRISIS repeatedly denying Complainant's grant application; 4) violated federal statutes, i.e., 42 U.S.C. 1981, 1983 and 1985; 5) terminated his electric service without cause on April 28, 2022; 6) conspired with municipal employees to withhold termination notices, resulting in the denial of his LIHEAP grant; and 7) is involved with municipal employees, who are subject to federal and state criminal and civil proceedings. Complaint ¶ 4.

For relief, Complainant asks the Commission 1) to reopen Docket Nos. C-2019-3013238 and C-2020-3020394; 2) to make him whole; 3) to issue a restraining order against DLC; and 4) to award actual compensatory relief and punitive damages. Complaint ¶ 5.

DLC filed and served an Answer and Preliminary Objections (PO) on March 23, 2023. DLC averred in pertinent part as follows. DLC admitted issuing termination notices to the Complainant's service address, located at 515 Kelly Avenue, Pittsburgh, PA 15221 in or around February 21, 2023, but the company denied such termination notices were improper. Duquesne Light denied withholding termination notices from the Complainant. DLC admitted terminating Complainant's electric service on April 28, 2022, but denies that such termination was improper. DLC alleged Complainant's account balance is \$324.53, all of which is overdue. DLC alleged Complainant previously filed four other formal complaints in the last 5 years, and each complaint was closed with the filing of a Certificate of Satisfaction. DLC denied that the Company has violated the terms of any settlement with the Complainant. DLC alleged the Company lawfully terminated Complainant's electric service on April 28, 2022, for an unpaid balance of \$439.33. DLC denied withholding termination notices from the Complainant, and the company asserted the most recent termination notice was issued to the Complainant on February 21, 2023. DLC denied the remaining material allegations of the Complaint. For relief, DLC requested dismissal of the Complaint with prejudice.

On June 5, 2023, a *First Interim Order* was issued sustaining DLC's preliminary objections that 1) the Commission lacked jurisdiction over claims rooted in federal statutes; 2) the Commission lacked jurisdiction to award compensatory or punitive damages; and 3) allegations of conspiracy or misconduct involving municipality employees, who are subject to federal criminal and state civil proceedings, were entirely unrelated to Complainant's electric utility service and constituted scandalous or impertinent matter, and therefore these allegations were stricken from the Complaint.

On August 16, 2023, the evidentiary hearing convened in this matter. During the hearing I clarified Complainant's allegations at issue: 1) DLC's ongoing pattern of misconduct and bad faith; 2) DLC's termination of electric service without cause; and 3) DLC's involvement with municipal employees to withhold termination notice resulting in the denial of a LIHEAP grant. Tr. 12-13. Matters relating to Complainant's previously settled formal complaints<sup>1</sup> would

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<sup>1</sup> See Respondent's Reply to Complainant's Motion to Open Record to Add New Claims, at page 2, referencing Docket Numbers C-2019-3013238, C-2020-3020394, C-2021-3026214, and C-2022-3032231.

not be considered because those prior complaints had been resolved with the filing of a Certificate of Satisfaction.<sup>2</sup> Tr. 12-14. However, Complainant would be permitted to present testimony and evidence relevant to his allegation that DLC had not honored certain matters pursuant to the Certificate of Satisfaction. Tr. 13-14. Accordingly, the parties were directed to present their testimony and evidence relevant to matters occurring after September 21, 2022, the date of the most recent Certificate of Satisfaction. *Id.* Additionally, Complainant was afforded the opportunity to submit late-filed exhibits by August 28, 2023, in support of his Complaint. Tr. 53-59. In turn, DLC would have 10 days to object to Complainant's late-filed exhibits or to file the Company's late-filed exhibits by September 7, 2023. Tr. 59. Neither party submitted any late-filed exhibits within the prescribed time.

On August 17, 2023, Complainant filed a Motion for Mistrial and New Hearing (Motion for Mistrial), alleging, "The Complainant's "Due Process" was breached by the hearing limiting the "discussion of facts" to events occurring after September of 2022 so as to deliberately disregard the explicit allegation(s) maintained in the Complainant's March 2023 Complaint C-2023-3038703." The Motion for Mistrial reiterated Complainant's arguments made during the evidentiary hearing or raised matters previously ruled upon in the *First Interim Order*.

On September 2, 2023, DLC filed a Reply to Complainant's Motion for Mistrial (Reply to Motion for Mistrial). DLC averred in part as follows:

8. The Certificate of Satisfaction dated September 21, 2022, at Docket No. C-2022-3032231 states, in pertinent part, "Respondent and Complainant Todd E. Koger ("collectively, "Parties") have come to an agreement that there was *no wrongdoing by either Party*, and that the Complaint filed by the Complainant to the Pennsylvania Public Utility Commission at Docket No. C-2022-3032231 ... *has been satisfied*" (emphasis added).

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<sup>2</sup> When a complainant raises issues in a previous formal complaint that are resolved with a Certificate of Satisfaction, to which no objection is taken, the matter becomes final, and the complainant is prohibited from raising the same issues in a subsequent proceeding. *See, Titus Wright v Philadelphia Gas Works*, Docket No. C-2013-2368462 (Opinion and Order entered Oct. 23, 2014) (*Titus*). No objection was filed to the Certificate of Satisfaction in Complainant's previous formal complaints.

Reply to Motion for Mistrial ¶ 8.

On October 11, 2023, an interim order was entered closing the record.

On October 12, 2023, Complainant filed a Motion to Open Record Add “New” Claims (Motion to Open Record), averring in part as follows:

1. On October 10, 2023, Administrative Judge Conrad A. Johnson issued an Interim Order “Closing the Record.”
2. Shortly afterwards, Respondent utility company Duquesne Light, in direct retaliation for C-2023-2038703, purposely sent an electrical overload to the Complainant's residence, resulting in property destruction.
3. Throughout the span pertinent to C-2023-3038703 (in addition to the antecedent matters C-2019-3013238 and C-2020-3020394), the complainant had become suspect “Duquesne Light, the respondent utility firm, had implemented a system to willfully inflict harm to real estate, wiring and electronic fixtures, and personal effects.”

Motion to Open Record ¶¶ 1-3.

On October 31, 2023, DLC filed a Reply to the Motion to Open Record, denying the new allegations of the Motion and averring in part that Complainant’s new allegations were outside of the scope of the present proceeding, and therefore, Complainant’s request to reopen the record should be denied. Reply to the Motion to Open Record ¶¶ 16-18.

On November 7, 2023, Complainant filed a pleading titled Nov. 7, 2023, Supplement to Motion to Open Record Add “New” Claims (Supplemental Motion). In his Supplemental Motion, Complainant argued in pertinent part as follows:

- 1) DLC’s witnesses intentionally lied under oath by denying having an address at 424 S. 2<sup>nd</sup> Street in Pittsburgh, PA 15203.
- 2) DLC’s counsel and witnesses mislead the ALJ about available facts relevant to DLC’s involvement with the ongoing criminal collusion plotted

at GD-05-18165 and in violation of the Racketeer Influenced and Corrupt Organizations Act, and 18 U.S.C. § 242.

3) With C-2023-3038703 (in addition to the antecedent matters C-2019-3013238 and C-2020-3020394), and his sworn testimony, complainant identifies “ongoing” intentional acts knowingly done over time to purportedly help veil established illegal practices highlighted in the GD-05-18165, GD-13-5081 (the illegal elimination of Todd Elliott Koger, Sr from the 2013 Wilkinsburg mayoral election); and the continuing GD-23-3494 disruptions of the 2023 District magistrate judge election.

4) On October 11, 2023, DLC’s technician assigned to inspect the service meter box “installed for unexplained reasons” during the time period of the ongoing allegations pleaded at C-2019-3013238 and C-2020-3020394, now admits culpability in failing to meet a heightened obligation to prevent foreseeable harm that imposed an unwarranted risk on the “Koger family” that resulted in years of property damage and harm.

5) DLC repeated disregard of federal and state laws formulated to uphold public wellbeing, safety, and property rights well-pleaded with C-2023-3038703; C-2019-3013238; and C-2020-3020394, and the unmerited disruption of constitutional rights safeguarded by state and federal law imposed and regulated by the PUC requires a criminal inquiry.

6) Complainant additionally requests the ALJ to communicate to the US Attorney Eric G. Olshan the information now identified for investigation the available evidence divulged with the Motion to Reopen the Record

Supplemental Motion ¶¶ 1-5, 9, 10.

On November 28, 2023, DLC filed a Reply to Complainant’s Supplemental Motion (Reply). DLC argued that Complainant’s Supplemental Motion reiterates the claims made at the evidentiary hearing and contained within Complainant’s Motion for Mistrial and Motion to Add New Claims. Reply ¶ 10. DLC incorporated into its Reply the Company’s responses to Complainant’s Motion for Mistrial and Motion to Open Record. Reply ¶¶ 3, 11. DLC requested that the Commission prohibit Complainant from filing any additional motions until a decision on the Motion for Mistrial and Motion to Open Record was rendered.

On December 18, 2023, Complainant filed a Motion to Open Record and/or Filing of “New” Complaint (Second Motion to Open Record). Complainant petitioned to open the record to “add additional retaliatory intentional acts, or alternatively, accept . . . as a “New” supplementary complaint to be joined with the present case C-2023-3038703.” Complainant alleged in part that on December 18, 2023, he received in the mail from DLC a “December 13, 2023 “retaliatory termination” of the Customer Assistance Program (CAP) agreement.” Second Motion to Open the Record ¶ 1. Complainant further alleged the following:

The underlying issues of racism and oppression that accompanied the Koger family’s PUC Complaints (C-2023-3038703, C-2019-3013238 and C-2020-3020394) must be addressed. All residents of Pennsylvania deserve fair and equal representation in the PUC administrative process regardless of their color or race.

Second Motion to Open the Record ¶ 4. Additionally, Complainant repeated his allegations raised in his previous Motions, and he requested actual and punitive damages against DLC.

On December 28, 2023, DLC filed the Company’s Reply To Complainant’s December 18, 2023, Motion To Open Record And/or Filing Of “New” Complaint. DLC incorporated into its Reply its responses to Complainant’s Motion for Mistrial, Motion to Open the Record, and Supplemental Motion and denied all the remaining material allegations. DLC renewed its request that the Commission prohibit the Complainant from filing any additional motions until an Initial Decision was rendered.

## DISCUSSION

### Legal Principles

The Commission’s Rules of Practice and Procedure permit parties to petition to reopen the record. *See* 52 Pa.Code § 5.571. The Commission’s regulations for reopening the record read as follows:

#### **§ 5.571. Reopening prior to a final decision.**

(a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

(b) A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(c) Within 10 days following the service of the petition, another party may file an answer thereto.

(d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

(1) The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.

(2) The Commission may reopen the record after the presiding officer has issued a decision or certified the record to the Commission.

(e) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

### Complainant's Motion for New Trial

The evidentiary hearing in this case convened and concluded on August 16, 2023. On August 17, 2023, Mr. Koger filed a Motion for a New Trial. Generally, trials are conducted in civil and criminal proceedings. As an administrative body the Commission conducts hearings. A fair reading of Mr. Koger's Motion for a New Trial suggests that he is seeking to reopen the record. Accordingly, Mr. Koger's Motion for a New Trial will be treated as a petition to reopen the proceedings.

Under the regulations cited above, a petition to reopen the proceeding must clearly set forth facts claimed to constitute grounds requiring reopening the proceeding. Here the only grounds that Mr. Koger argues in his petition is that he was denied due process

because testimony and evidence was limited to events occurring after September 21, 2022. DLC retorts, “The Certificate of Satisfaction dated September 21, 2022, at Docket No. C-2022-3032231 states, in pertinent part, that Respondent and Complainant Todd E. Koger “have come to an agreement that there was *no wrongdoing by either Party*, and that the Complaint filed by the Complainant . . . at Docket No. C-2022-3032231 . . . *has been satisfied.*” Reply to Motion for Mistrial ¶ 8.

The Commission has held that the filing of Certificate of Satisfaction closes the case and prohibits the complainant from raising the same issues in a subsequent proceeding.<sup>3</sup> Importantly, the Certificate of Satisfaction filed on September 21, 2022, specifically states that the parties agreed “there was *no wrongdoing by either party.*” Notably, Mr. Koger did not file any objection to the Certificate of Satisfaction filed in his previous formal complaints. Consequently, under caselaw, Mr. Koger was precluded from relitigating any matters or events occurring before September 21, 2022. However, as noted above Mr. Koger was afforded the opportunity to present testimony and evidence concerning his claim that DLC did not honor the terms or provisions of the Certificate of Satisfaction. Accordingly, Mr. Koger’s due process argument is without merit and his petition to reopen must be denied.

#### Complainant’s Motion to Open the Record

In his October 12, 2023, Motion to Open the Record, Mr. Koger alleges that shortly after October 10, 2023, DLC purposely sent an electrical overload to his residence thereby resulting in property damage. He further alleges that DLC “throughout the span pertinent to C-2023-3038703 (in addition to the antecedent matters C-2019-3013238 and C-2020-3020394), implemented a system to willfully inflict harm to real estate, wiring and electronic fixtures, and personal effects.” For the reasons stated above the record cannot be opened to relitigate matters related to Docket Nos. C-2019-3013238 and C-2020-3020394. Mr. Koger also reiterates allegations concerning violations of federal statues and criminal activities. These allegations were dismissed in the *First Interim Order* and will not be addressed further.

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<sup>3</sup> See *Titus* cited above, n.2.

Turning to Mr. Koger's allegation that after October 12, 2023, DLC purposely sent an electrical overload to his residence thereby resulting in property damage, DLC denied the allegation. DLC argued that at issue in the present case are allegations of wrongdoing associated with termination notices and LIHEAP grant(s). Thus, DLC retorted that new allegations were outside the present Complaint and pertained to alleged events occurring after the record was closed. Therefore, DLC requested that Complainant be directed to file a new formal complaint for issued outlined in the Motion to Open the Record.

Under the Commission's regulations, the record may be reopened if there is reason to believe that conditions of fact or of law have changed to require, or that the public interest requires, the reopening of the proceeding. Here the public interest is served by addressing the issues in Mr. Koger's present complaint and thereby bring the present case to finality. As DLC notes Mr. Koger has available to him the option of filing a new complaint on matters occurring after the close of the hearing on August 16, 2023. Therefore, Mr. Koger's Motion to Open the Record is denied.

#### Complainant's Supplemental Motion

In his November 7, 2023, Supplemental Motion, Mr. Koger argues 1) DLC's witness lied under oath during the evidentiary hearing; 2) DLC counsel and witnesses mislead the ALJ concerning civil and federal criminal proceedings; 3) matters allegedly occurring on October 11, 2023; and 4) matters previously raised in his post hearing Motions. Mr. Koger's allegation of matters occurring after the evidentiary hearing and matters pertaining to civil and criminal proceeding are addressed above and will not be discussed further. Mr. Koger's allegation concerning the credibility of witnesses is matter for the ALJ to determine and does not constitute grounds for reopening the record. Therefore, Mr. Koger's Supplement Motion is denied.

## Complainant's Second Motion to Open the Record

Mr. Koger's December 18, 2023, Second Motion to Open the Record repeats allegations set forth in his prior, post hearing Motions and adds a new allegation: "The underlying issues of racism and oppression that accompanied the Koger family's PUC Complaints (C-2023-3038703, C-2019-3013238 and C-2020-3020394) must be addressed." As stated above, the Certificate of Satisfaction entered at Docket Nos. C-2019-3013238 and C-2020-3020394 forecloses any relitigating of the issues raised in those dockets. Concerning Mr. Koger's new allegation of "underlying racism and oppression" related to his current Complaint, the Commission's regulations require a petition to reopen to clearly set forth facts claimed to constitute grounds requiring reopening of the proceeding. Mr. Koger's new allegation is conclusory and does not clearly set forth facts as to DLC's alleged "underlying racism and oppression" related to his current Complaint or in providing him reasonable service. Nor does Mr. Koger offer any reasons(s) for not including this new allegation in his current Complaint or raising the issue of "underlying racism and oppression" during the evidentiary hearing. In filing a formal complaint, a complainant is required to raise all issues that he could have known or should have known in one complaint, otherwise judicial proceedings would be piecemeal, thereby resulting in multiple complaints and evidentiary hearings at the expense of judicial economy. Accordingly, Mr. Koger's Second Motion to Open the Record is denied. As DLC notes Mr. Roger has available to him the option of filing a new complaint on matters occurring after the close of the hearing on August 16, 2023.

### CONCLUSIONS OF LAW

1. The Commission's Rules of Administrative Practice and Procedure permit a party at any time after the record is closed but before a final decision is issued to file a petition to reopen the proceeding for the purpose of taking additional evidence. 52 Pa.Code § 5.571.

2. A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. 52 Pa.Code § 5.571.

3. Complainant's petitions to reopen the proceedings does not meet the requirements of the Commissions and regulations. 52 Pa.Code § 5.571.

4. It is not in the public interest to reopen the proceedings in this case. 52 Pa.Code § 5.571.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the record in Todd Elliott Koger v. Duquesne Light Company at Docket No. C-2023-3038703 is hereby reopened to rule on post hearing motions.

2. That Complainant Todd Elliott Koger's 1) Motion for Mistrial and New Hearing, 2) Motion to Open Record Add "New" Claims, 3) Nov. 7, 2023, Supplement to Motion to Open Record Add "New" Claims, and 4) Motion to Open Record and/or Filing of "New" Complaint filed in the case of Todd Elliott Koger v. Duquesne Light Company at Docket No. C-2023-3038703, are hereby denied.

3. That the record at Docket No. C-2023-3038703 is hereby reclosed.

4. That the Initial Decision in this case shall be prepared and issued.

Dated: May 17, 2024

  
Conrad A. Johnson  
Administrative Law Judge

**C-2023-3038703 - TODD ELLIOTT KOGER v. DUQUESNE LIGHT COMPANY**

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