

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Tata	:	
	:	
v.	:	# C-2024-3048548
	:	
Duquesne Light Company	:	

**INTERIM ORDER
GRANTING RESPONDENT’S PRELIMINARY OBJECTION**

On April 18, 2024, Timothy Tata (Complainant or Mr. Tata) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission), using the Formal Complaint form. He checked the box indicating that Duquesne Light Company (DLC, Company, or Respondent) was threatening to shut off his service or had already shut off his service. He also checked the “Other” box, writing, “They have denied me my rights under the [Americans with Disabilities Act (ADA)] to make accommodations for me in their practices. I have [a documented medical condition] and they refused for a decade to allow a medical waiver of their requirement to have people enter my home. Being the willfully denied me my rights under the ADA I am at an outrageous bill rate, and in bad standing with them for their willful refusal.” As relief, he requests that his entire past due balance be eliminated.

On May 8, 2024, DLC filed a Preliminary Objection and Answer and New Matter to the Complaint. In its Answer, DLC admits that the Company has issued a termination notice to Complainant but denies that it was in violation of the Public Utility Code, the Commission’s regulations, or the Company’s Commission-approved tariff. DLC further disputed it had denied Complainant his rights under the ADA or failed to make accommodations for Complainant in its practices. DLC averred that, at all times relevant to this Complaint, Complainant was properly billed under the Company’s Residential Service rate, as approved by the Public Utility Commission.

DLC explained that Complainant fails to make the required monthly payments on his electric service bill. It averred Complainant had a prior payment agreement instated by the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3854971 on August 4, 2022, which Complainant defaulted on by failing to make the required payments.

DLC explained that Complainant is currently enrolled in the Company's Customer Assistance Program (CAP). CAP operates under specific eligibility criteria designed to ensure fair and equitable access to assistance. Under the Company's Commission-approved Universal Service and Energy Conservation Plan, which governs the terms of the CAP program, CAP customers whose electric usage exceeds 500 kilowatt-hours (kWh) per month and who have not had a Smart Comfort assessment within the last seven years are required to complete a Smart Comfort visit. Electric heating customers are also required to complete the Smart Comfort assessment. The Smart Comfort visit is a form of energy audit designed to aid CAP customers to conserve electricity. In accordance with the Company's Commission approved Universal Services & Energy Conservation Plan, refusal to complete the Smart Comfort assessment when required is grounds for default from the CAP program.

DLC avers that Complainant's average monthly electric consumption exceeds 500 kWh per month and he has not completed a Smart Comfort assessment within the last seven years, so he is required to perform a Smart Comfort assessment to remain enrolled in CAP. The Company explains it has no record of ever having received an accommodation request from the Complainant or notice of a medical condition warranting such an accommodation, despite numerous contacts with Complainant or a member of his household regarding the Smart Comfort visit requirement.

In the Preliminary Objection, DLC avers the Commission lacks authority over Complainant's claims that it violated the ADA, and requests that those claims be dismissed.

A Notice to Plead was attached to the Preliminary Objection, advising Complainant to file a response within ten (10) days. Complainant did not file a response.

It is now appropriate to rule on the Preliminary Objection.

Discussion

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.¹ The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.³

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.⁴ Nothing in the Public Utility Code empowers the Commission to interpret and enforce the ADA. In fact, the Commission 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.⁵

Here, the Complainant alleges that Duquesne Light has "willfully denied [the Complainant's] rights under the ADA." The portion of the Complaint that alleges that Duquesne Light denied the Complainant's rights under the ADA and are outside of the Commission's subject matter jurisdiction and are dismissed from the Complaint.

¹ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

² *County of Allegheny v. Cmwth. of Pa.*, 490 A.2d 402 (Pa. 1985).

³ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwth. 2007).

⁴ *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. Cmwth. 1998).

⁵ *See Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602, p. 43 (Order entered May 3, 2018).

However, considering Complainant is *pro se*, I am using my discretion to interpret Complainant's allegations to include an allegation that DLC violated 66 Pa.C.S. § 1501. That claim, along with all other claims in the Complaint not dismissed by this Order, shall proceed to an evidentiary hearing. At the hearing, Complainant will have the burden of presenting substantial evidence that DLC violated a regulation, statute, tariff provision or order over which the Commission has authority.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Duquesne Light Company against the Formal Complaint filed by Timothy Tata at Docket Number C-2024-3048548 is granted.
2. That Complainant's claims that Duquesne Light Company violated the Americans with Disabilities Act and denied Complainant rights or accommodations under the ADA are dismissed from the Complaint.
3. That the remaining claims shall move forward to an evidentiary hearing.

May 31, 2024

Date

/s/

Emily I. DeVoe
Administrative Law Judge

C-2024-3048548 - TIMOTHY TATA v. DUQUESNE LIGHT COMPANY

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