
Megan E. Rulli

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File #: 207779

September 3, 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: Malcolm Hudson v. Duquesne Light Company
Docket No. C-2024-3050683

Dear Secretary Chiavetta:

Attached for filing please find the Preliminary Objections on behalf of Duquesne Light Company in response to the Complaint of Malcolm Hudson in the above-referenced proceeding. Copies will be 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

Malcolm Hudson
22 Kenwood Avenue
Apt. 2
Pittsburgh, PA 15210
Wolfcrow09@proton.me

Date: September 3, 2024



Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Malcolm Hudson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3050683
	:	
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 OBJECTIONS 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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mrulli@postschell.com

Date: September 3, 2024

Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Malcolm Hudson,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3050683
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTIONS OF
DUQUESNE LIGHT COMPANY TO
THE COMPLAINT OF MALCOLM HUDSON**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes Duquesne Light Company (“Duquesne Light” or the “Company”) and hereby files these Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Formal Complaint of Malcolm Hudson (“Complainant”) be dismissed in its entirety because the Commission lacks subject matter jurisdiction over the claims raised therein, which pertain solely to whether the Complainant’s purported negotiable instrument, *i.e.*, a “1099-A instrument,” must be accepted as payment of the Complainant’s balance with the Company. Alternatively, if the Complaint is not dismissed in its entirety, Duquesne Light requests that portions of the Complaint requesting damages be dismissed because the Commission has no authority to award damages.

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 August 13, 2024, Duquesne Light was served with the above-captioned Complaint. The issues raised in the Complaint relate to claims that Duquesne Light is required to accept the Complainant’s “1099-A instrument” as payment for the outstanding balance on his electric service account pursuant to the Uniform Commercial Code (“UCC”), as well as other legal theories that rely on interpretations of “House Joint Resolution 192,” 15 U.S.C. § 1602(L), UCC 3-601, 31 U.S.C. § 3123, 18 U.S.C. § 8, and “The Gold Standard Act 1933” to support claims that the Company “fail[ed] to validate the [Complainant’s] debt properly, engag[ed] in extortionate practices, and den[ied] lawful payment instruments.” (Letters dated June 20 and August 9, 2024, attached to the Complaint.)

3. The Complainant does not claim that the Company billed him in violation of the Public Utility Code, the Commission’s regulations or orders, or the Company’s Commission-approved tariff.

4. As relief, the Complainant requests, among other things, for Duquesne Light to compensate him “for any undue stress, financial loss, or other damages resulting from the extortionate demands for payment and the denial of the 1099-A instrument.” (Letter dated August 9, 2024, attached to the Complaint.)

5. Duquesne Light herein files these Preliminary Objections to the Complaint. For the reasons explained below, Duquesne Light respectfully requests that the Complaint be dismissed pursuant to Section 5.101(a)(1) of the Commission’s regulations because the

Commission lacks subject matter jurisdiction to determine whether the Complainant's purported tender, *i.e.*, the "1099-A instrument," is a negotiable instrument that must be accepted by Duquesne Light as payment. 52 Pa. Code § 5.101(a)(1). To the extent the Complaint is not dismissed in its entirety, the Company requests that those portions of the Complaint requesting damages be dismissed pursuant to Section 5.101(a)(2) of the Commission's regulations because a request for damages constitutes impertinent matter. 52 Pa. Code § 5.101(a)(2).

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 COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMMISSION LACKS SUBJECT MATTER JURISDICTION OVER THE CLAIMS RAISED THEREIN

9. Duquesne Light incorporates by reference Paragraphs 1 through 8 as if fully set forth herein.

10. The issues raised in the Complaint relate to claims that Duquesne Light is required to accept the Complainant's "1099-A instrument" as a negotiable instrument in payment for the outstanding balance on his electric service account pursuant to the UCC. In addition, the Complainant raises similar claims that his debt has already been discharged based on legal interpretations of "House Joint Resolution 192," 15 U.S.C. § 1602(L), UCC 3-601, 31 U.S.C. § 3123, 18 U.S.C. § 8, and "The Gold Standard Act 1933." (Letters dated June 20 and August 9, 2024, attached to the Complaint.)

11. The Complainant does not allege that the Company billed him in violation of the Public Utility Code, the Commission's regulations or orders, or the Company's Commission-

approved tariff. Neither does the Complainant dispute the amount of the balance on his electric service account.

12. 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).

13. It is well-established that the Commission lacks jurisdiction to determine if an instrument is negotiable, as that determination requires a legal interpretation of the UCC and does not fall within the Commission’s authority under the Public Utility Code or the the Commission’s regulations or orders. *See Guyton v. Philadelphia Gas Works*, Docket No. F-2022-3030775, 2022 Pa. PUC LEXIS 432, *9-10 (Order entered December 22, 2022) (citing *Mendoza v. Peoples Natural Gas Company, LLC*, Docket No. F-2018-3003833 (Order entered October 8, 2020); *Delgato v. PPL Electric Utility Corp.*, Docket No. C-2017-2633999 (Order entered March 2, 2018); *Alkhatib v. PECO Energy Co.*, C-2011-2242125, 2012 Pa. PUC LEXIS 37 (Order entered January 12, 2012) (“*Alkhatib*”).

14. Here, the Commission “lacks jurisdiction to entertain the Complaint in the first instance” because “[i]n order to determine if the Complainant’s instruments are a reasonable manner of payment, the Commission would be required to determine the instruments’ negotiability which is a question of law governed by application of the UCC, and in particular 13 Pa. C.S. § 3104.” *See Alkhatib* at *13, 18 (granting PECO’s preliminary objections in part and dismissing the complaint for lack of subject matter jurisdiction without a hearing where the complainant argued PECO was required to accept certain “negotiable instruments” other than U.S. dollars in payment of her debt with the utility).

15. As such, “a hearing would not enable [the Complainant] to better explain [his] positions or provide additional facts which would alter the inevitable conclusion that this Commission lacks jurisdiction to entertain the Complaint in the first instance.” *Alkhatib* at *18.

16. Thus, the Commission should dismiss the Complaint pursuant to Section 5.101(a)(1) of the Commission’s regulations because the Commission lacks subject matter jurisdiction over the claims raised therein. 52 Pa. Code § 5.101(a)(1).

IV. PRELIMINARY OBJECTION NO. 2: THE COMPLAINANT’S REQUEST FOR DAMAGES SHOULD BE DISMISSED BECAUSE THE COMMISSION HAS NO POWER TO AWARD DAMAGES

17. Duquesne Light incorporates by reference Paragraphs 1 through 16 as if fully set forth herein.

18. The portions of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

19. As relief, the Complainant requests, among other things, for Duquesne Light to compensate him “for any undue stress, financial loss, or other damages resulting from the extortionate demands for payment and the denial of the 1099-A instrument.” (Letter dated August 9, 2024, attached to the Complaint.)

20. It is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. *See DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977).

21. Here, the Complainant’s request for damages is impertinent matter “in the sense that it is irrelevant to [the] cause of action” because the Commission lacks authority to award damages. *See Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013 (order sustaining preliminary objections)). Indeed, requests for damages are regularly stricken from

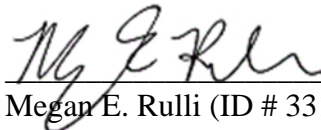
complaints as being impertinent matter. *See, e.g., id.* at pp. 3, 5; *Powell v. Verizon Pa., Inc.*, Docket No C-2011-226876, 2011 Pa. PUC LEXIS 652, at *8-9, 16-17 (Dec. 21, 2011), *adopted by Comm'n*, 2012 PA. PUC LEXIS 374 (Order Entered Mar. 1, 2012); *J.E. Culbertson Co. v. Pa. Elec. Co.*, Docket No. C-2010-2204947, 2011 Pa. PUC LEXIS 781, at *8-9, 12 (Feb. 4, 2011), *adopted by Comm'n*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

22. Therefore, consistent with longstanding Commission precedent, the Complainant's request for damages is impertinent matter and should be stricken from his Complaint pursuant to 52 Pa. Code § 5.101(a)(2).

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: September 3, 2024

Attorney for Duquesne Light Company

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Malcolm Hudson,	:	
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Complainant,	:	
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v.	:	No: C-2024-3050683
:	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

VERIFICATION

I, Roxanne Morris, 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).



Roxanne Morris

09/03/24

Date