

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Tata	:	
	:	C-2024-3048548
v.	:	C-2024-3050149
	:	
Duquesne Light Company	:	

**INTERIM ORDER
REOPENING DOCKET, CONSOLIDATING COMPLAINTS, GRANTING
PRELIMINARY OBJECTION TO SECOND COMPLAINT
AND SCHEDULING EVIDENTIARY HEARING**

First Complaint

On April 18, 2024, Timothy Tata (Complainant or Mr. Tata) filed a Formal Complaint (First 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 an Answer and New Matter to the Complaint, as well as a Preliminary Objection. DLC admitted that it served a termination notice on Complainant due to nonpayment. DLC averred that Complainant’s account balance was \$3,063 as of the date of its Answer. The Company averred Complainant fails to make the required monthly payments of his electric bill. DLC further argued that Complainant was awarded a prior payment arrangement (PAR) by the Commission’s Bureau of Consumer Services (BCS) Case No.

3854971 on August 4, 2022, which defaulted because Complainant failed to make the required payments.

DLC further explained that Complainant is currently enrolled in its customer assistance program (CAP). 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 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 averred 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 explained 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 its New Matter, DLC alleged Complainant's claims for alleged violations occurring more than three years prior to the filing of the Complainant are time-barred by the Commission's statute of limitations, and any claims that DLC violated the ADA are outside the scope of the Commission's jurisdiction.

In the Preliminary Objection, DLC averred 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.

On May 24, 2024, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On May 31, 2024, I issued an Interim Order granting DLC's Preliminary Objection. I explained, "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," but I also noted,

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.

On May 31, 2024, the Commission issued a Hearing Notice, scheduling an evidentiary hearing for June 25, 2024.

On May 31, 2024, I issued a Prehearing Order.

On June 20, 2024, DLC filed a certificate of satisfaction pursuant to 52 Pa. Code § 5.24(c), averring the parties had reached a settlement and Complainant acknowledged that the Complaint was satisfied. The certificate of satisfaction advised Complainant of his right to object in writing within ten days.

On June 20, 2024, the Commission issued a Hearing Cancellation Notice, cancelling the hearing scheduled for June 25, 2024.

On July 10, 2024, the Commission marked Docket Number C-2024-3048548 closed, since Complainant filed no objection by that date.

On July 18, 2024, Complainant emailed me, but did not copy counsel for DLC. He wrote, “They reneged on their side of the deal and kept all the erroneous charges they illegally charged me while removing my right to privacy.”

I forwarded this email to the Commission’s Secretary’s Bureau, requesting they serve this *ex parte* communication on DLC, docket the objection to the certificate of satisfaction, and re-open the docket.

On July 18, 2024, the Secretary’s Bureau uploaded Complainant’s email into the Commission’s online docket, but did not reopen the docket.

Second Complaint

On July 18, 2024, Complainant filed a second Complaint at Docket No. C-2024-3050149 (Second Complaint). Complainant’s Second Complaint was nearly identical to his initial Complaint.

On August 7, 2024, DLC filed an Answer and New Matter to the Second Complaint, which were nearly identical to that filed in C-2024-3048548.

On August 8, 2024, Complainant filed a Response to the New Matter. He argued that the Pennsylvania Constitution requires DLC to submit “just cause” before demanding entry into his home domicile, which they have not done. He further avers that,

[I]t is a complete breech of my constitutional rights to deny discounts offered to those that willfully let you breech their right to privacy of their person or effect to unwarranted searches, which the smart comfort visit absolutely is. They used my refusal of an invasion of privacy to financially penalize me for refusal where they did not ever insist on removing the rights from someone allowing them entry, or wealthy enough to pay their bill without help. People that use 500mw of power a month are EVERY household, as the average is 1Kw or more per month. To whit, Duquesne Light refused me discounts offered to people that didn't understand they could refuse an unlawful search of their effects.

On August 8, 2024, DLC filed a Preliminary Objection to the Second Complaint, again arguing that Complainant’s allegations that DLC violated the ADA should be dismissed for lack of Commission jurisdiction.

The Preliminary Objection contained a Notice to Plead, directing Complainant to file a response within ten days.

Complainant did not file a response.

On September 9, 2024, the Commission issued a Motion Judge Assignment Notice, assigning the matter at C-2024-3050149 to me.

On October 16, 2024, the Secretary’s Bureau reopened the case at C-2024-3048548.

It is now appropriate to render a decision on the Preliminary Objection filed at C-2024-3050149.

Discussion of Preliminary Objection to Second Complaint

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *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). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections. *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 curiam*, 924 A.2d 1203 (Pa. 2007). Only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

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

In the Second Complaint, Complainant alleges that Duquesne Light has “willfully denied [the Complainant’s] rights under the ADA.” The portion of the Second Complaint that alleges that Duquesne Light denied Complainant rights under the ADA are outside of the Commission’s subject matter jurisdiction and are dismissed from the Second Complaint.

However, like with Complainant’s initial Complaint, 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 Second Complaint not dismissed by this Order, shall proceed to an evidentiary hearing. At the hearing, Complainant will have the burden to present substantial evidence the Company violated a statute which the Commission has jurisdiction to administer, a tariff provision, or a regulation or order of the Commission. 52 Pa. Code § 5.12(a).

Reopening of C-2024-3048548; Consolidation of the Two Dockets

Although Complainant’s objection to the certificate of service filed in the First Complaint was untimely, out of an abundance of caution, and in attempt to preserve Complainant’s due process rights in that matter, I directed the Secretary’s Bureau to reopen the docket at C-2024-3048548. The Secretary’s Bureau reopened the docket at C-2024-3048548 on October 16, 2024.

The Commission’s regulations provide, “The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.” 52 Pa Code § 5.81(a).

The First Complaint is nearly identical to the Second Complaint, and DLC's Answers are also nearly identical. Therefore, the two cases are consolidated under Docket Number C-2024-3048548.

Scheduling of Evidentiary Hearing

It is now appropriate to schedule an evidentiary hearing in this consolidated matter. I will be directing the Commission to schedule an evidentiary hearing.

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-2024-3050149 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 at C-2024-3050149.
3. That the docket at C-2024-3048548 is reopened.
4. That the matters at Docket No. C-2024-3048548 and Docket No. C-2024-3050149 are consolidated under Docket No. C-2024-3048548.
5. That the consolidated matters be scheduled for an evidentiary hearing.

October 22, 2024
Date

/s/
Emily I. DeVoe
Administrative Law Judge

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