

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Malcolm Hudson	:	
	:	
v.	:	C-2024-3050683
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Preliminary Objections filed by Duquesne Light Company and dismisses the Formal Complaint on the grounds the Pennsylvania Public Utility Commission lacks jurisdiction over the subject matter and does not have the statutory authority to grant the relief requested in the Formal Complaint.

**HISTORY OF THE PROCEEDING**

On August 13, 2024, Malcolm Hudson (Complainant or Mr. Hudson) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent) alleging his electric distribution company, Duquesne Light, engaged in deliberate negligence and improperly handled debt validation, payment instruments and acknowledgment of prepaid debt. Specifically, Complainant alleged Duquesne Light is

in violation of House Joint Resolution 192 (HJR 192), 15 U.S.C. § 1602(L), the Uniform Commercial Code (UCC) and other relevant laws. He requested the Commission order Duquesne Light to: formally acknowledge his electric service debt is prepaid in accordance with HJR 192; correct all of Respondent's records to indicate Complainant's debt has been discharged with no further payments due; compensate Complainant for any undue stress, financial loss and other damages from Respondent's "extortionate demands" for payment and the denial of the 1099-A instrument; and formally confirm Respondent will comply with UCC requirements. Complainant attached the following five documents to his Complaint: Complainant's letter dated August 9, 2024; Complainant's Notice to Duquesne Light of Conditional Acceptance dated June 20, 2024; Duquesne Light's Utility Company Report dated June 12, 2024; Duquesne Light's Utility Company Report dated July 10, 2024; and a copy of Form 1099-A for the Tax Year 2023 concerning Acquisition or Abandonment of Secured Property.

On September 3, 2024, Duquesne Light filed an Answer in which Duquesne Light generally denied the allegations. Duquesne Light noted Complainant established service at the service address on October 2, 2023, and was enrolled in the Company's Customer Assistance Program (CAP) between June 29, 2022, and August 3, 2024. The Company asserted Complainant began receiving CAP benefits while receiving electric service from Respondent at a different service address under a different electric service account, and the CAP enrollment was transferred into the current account when Complainant moved into the current service address. Respondent noted the current overdue account balance was \$185.19. Duquesne Light requested the Commission dismiss the Complaint in its entirety and with prejudice.

Also, on September 3, 2024, Duquesne Light filed Preliminary Objections, with a Notice to Plead within ten days. Duquesne Light asserted Complainant's allegations do not concern any matter over which the Commission has jurisdiction, and the Commission does not have the statutory authority to grant the relief requested in the

Complaint. Duquesne Light requested the Commission dismiss the Complaint, pursuant to 52 Pa. Code § 5.101, because the Commission lacks subject matter jurisdiction over the claims raised. Complainant did not respond to the Preliminary Objections as of the date of this Initial Decision.

On September 5, 2024, the Commission's Office of Administrative Law Judge (OALJ) issued an Initial Telephonic Hearing Notice scheduling an Initial Telephonic Hearing for November 13, 2024.

The Preliminary Objections are ready for decision. For the reasons set forth below, the presiding officer grants the Preliminary Objections, dismisses the Complaint and cancels the hearing scheduled for November 13, 2024.

#### FINDINGS OF FACT

1. Complainant is Malcolm Hudson.
2. Respondent is Duquesne Light Company.
3. Complainant listed the service address on the Formal Complaint as 22 Kenwood Avenue, Apt. 2, Pittsburgh, Pennsylvania 15210.
4. On August 13, 2024, Complainant filed a formal complaint with the Commission against Duquesne Light alleging Duquesne Light engaged in deliberate negligence and improperly handled debt validation, payment instruments and acknowledgment of prepaid debt, in violation of House Joint Resolution 192 (HJR 192), 15 U.S.C. § 1602(L), the Uniform Commercial Code (UCC) and other relevant laws.
5. On September 3, 2024, Duquesne Light filed an Answer.

6. Also on September 3, 2024, Duquesne Light filed Preliminary Objections with a Notice to Plead.

7. Complainant did not file an answer to Duquesne Light's Preliminary Objections.

### DISCUSSION

The Commission regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer; however, under the regulation at 52 Pa. Code § 5.21(d), the Commission is authorized to dismiss a complaint if a hearing is not necessary. Under the Commission's regulation at 52 Pa. Code § 5.101(a)(1), a party may file a preliminary objection to dismiss a pleading for lack of Commission jurisdiction, because judicial economy is served by avoiding a hearing where no factual dispute exists. If there exists no factual issue pertinent to the resolution of a case, a hearing is unnecessary.<sup>1</sup>

#### Preliminary Objections

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in the Code at 52 Pa. Code § 5.101(a) as follows:

---

<sup>1</sup> See 66 Pa.C.S. § 703(a); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954).

- (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 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.

Here, Duquesne Light's Preliminary Objections assert lack of Commission jurisdiction, pursuant to 52 Pa. Code § 5.101(a)(1), in that the Complaint failed to allege that Duquesne Light violated the Public Utility Code, Commission regulations or Commission orders. Duquesne Light asserts that Commission jurisdiction is lacking because the Commission cannot resolve the matter of whether Complainant's instruments or documents are a reasonable manner of payment. The negotiability of Mr. Hudson's instruments is governed by the application of the UCC, specifically 13 Pa.C.S. § 3104,<sup>2</sup> over which the Commission does not have authority.

In addition, Duquesne Light's Preliminary Objections assert dismissal is warranted to the extent Mr. Hudson requests monetary damages due to the Commission's well-established precedent that it lacks the authority to order a public utility to pay damages. Duquesne Light alleges Mr. Hudson's request for damages is "impertinent

---

<sup>2</sup> This section of Pennsylvania Statutes, Title 13, provides for negotiable instruments under the Commercial Code and includes the definition of "negotiable instrument."

matter,” as referenced in 52 Pa. Code § 5.101(a)(2), and is irrelevant to the cause of action because the Commission lacks authority to award monetary damages.

Preliminary objection practice before the Commission is analogous to Pennsylvania civil practice regarding preliminary objections.<sup>3</sup> A specific preliminary objection asserting lack of Commission jurisdiction is analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure. The Commission ruled, in *Montague v. Philadelphia Electric Co.*, 66 Pa.P.U.C. 24 (1988), that it would follow the standard that preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is warranted clearly and free from doubt.<sup>4</sup>

The Commission may not rely upon the factual assertions of the moving party (i.e., Duquesne Light) but must accept as true for purposes of disposing of the Preliminary Objections all well pleaded, material facts of the nonmoving Party (i.e., Mr. Hudson), as well as every reasonable inference from those facts.<sup>5</sup> The Commission must view the factual assertions in the Complaint in the light most favorable to Mr. Hudson, as the non-moving Party, and should dismiss the Complaint only if it appears Complainant would not be entitled to relief under any circumstances as a matter of law.<sup>6</sup>

---

<sup>3</sup> *Equitable Small Transportation Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994) (*Equitable*).

<sup>4</sup> *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

<sup>5</sup> *County of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988).

<sup>6</sup> *Equitable, supra*.

## Commission Jurisdiction and Legal Sufficiency

The Commission, as a creation of the Pennsylvania General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.<sup>7</sup> Accordingly, the Commission must act within, and cannot exceed, its jurisdiction.<sup>8</sup> A party to a proceeding cannot confer or grant jurisdiction upon the Commission where jurisdiction does not exist.<sup>9</sup> The Commission must have subject matter jurisdiction as a prerequisite to the exercise of its power before it can decide a controversy.<sup>10</sup>

Duquesne Light contended the Complaint raised issues that are outside the subject matter jurisdiction of the Commission. Duquesne Light asserted the Complaint concerns issues over the negotiability of instruments as interpreted under the UCC. Duquesne Light is correct in its assertions. The Commission only possesses the authority specifically delegated and granted to it by the Pennsylvania Legislature and as outlined in the Public Utility Code, and the Commission's regulations and orders.<sup>11</sup> Nowhere is the Commission authorized to resolve disputes involving the negotiability of financial instruments or tax forms, or payments made or allegedly prepaid, when arising from interpretation of the UCC.<sup>12</sup>

---

<sup>7</sup> *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008) (*Shedlosky*); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977) (*Feingold*).

<sup>8</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

<sup>9</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>10</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

<sup>11</sup> *Shedlosky*; *Feingold*.

<sup>12</sup> *Feitt v. Peoples Nat. Gas Co. LLC – Equitable Div.*, Docket No. F-2018-3003833 (Opinion and Order entered Oct. 8, 2020) (*Feitt*).

Complainant alleged Duquesne Light engaged in deliberate negligence and improperly handled debt validation, payment instruments and acknowledgment of prepaid debt, in violation of HJR 192, the UCC and other relevant laws arising out of federal law and/or federal policy and regulation. Mr. Hudson asserts the Commission is empowered to force Duquesne Light to acknowledge payment for electric service with the federal HJR 192, and to absolve Mr. Hudson of making any future payments for electric service. Mr. Hudson is incorrect about what the Commission is empowered to do.

To be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent [utility] in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.”<sup>13</sup> Furthermore, pursuant to 52 Pa. Code § 5.22(a)(5), the Complaint must include a “clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation” which shows the utility is in violation of a law which the Commission has jurisdiction to administer.<sup>14</sup>

Complainant fails to include any statement of an act of Duquesne Light or an omission of an act by Duquesne Light that violates a law the Commission has jurisdiction to administer. The Complaint contains no allegations concerning any violation of the Pennsylvania Public Utility Code, or any Commission regulation or order by the utility. Pursuant to 52 Pa. Code § 5.101(a)(4), the Complaint is legally insufficient because it fails to allege that Respondent violated the Public Utility Code, Commission regulations or Commission orders.

---

<sup>13</sup> 52 Pa. Code § 5.22(a)(4).

<sup>14</sup> See 66 Pa.C.S. § 701; 52 Pa. Code § 5.22.

## Conclusion

Viewing the factual assertions in the light most favorable to Mr. Hudson for the purpose of disposing of the Preliminary Objections, it is clear these Preliminary Objections must be granted, the initial hearing must be cancelled and the Complaint herein must be dismissed.

Here, Mr. Hudson alleged Duquesne Light failed to comply with the federal Uniform Commercial Code and federal Joint House Resolution when Duquesne Light sent bills to Complainant requiring payment for electric service provided to Complainant at the service address and because Duquesne Light sought to terminate electric service due to non-payment for the same electric service. However, it is state law that permits and requires Duquesne Light to send bills to consumers demanding payment to electric service provided to customers.

Further, the Commission is empowered through state (Pennsylvania) law and it is state law which granted the Commission its authority to act. However, in the Complaint, Complainant references federal regulations and law and insists the Commission must render an opinion and act pursuant to the federal laws. The Commission is not empowered to do that.<sup>15</sup> Since the Complaint fails to state a claim which the Commission is authorized to rule on pursuant to state provisions, Duquesne Light's Preliminary Objections – which allege the Complaint is outside the jurisdiction of the Commission – are correct.

The Complaint failed to assert any fact or set of facts to support the Complaint that the bills Duquesne Light sent to Complainant were incorrect or contained incorrect charges pursuant to state law. The Complaint failed to allege Duquesne Light

---

<sup>15</sup> *Shedlosky; Feingold; Feitt.*

engaged in any activity in violation of the Pennsylvania Public Utility Code, or the Commission's regulations and Orders. Complainant does not specifically address or even allege how Duquesne Light violated any law over which the Commission has jurisdiction other than to assert the public utility is wrong and negligent to charge Complainant for his electric service and to threaten termination of service due to non-payment by Complainant.

Duquesne Light is correct to ask the Commission to dismiss the Complaint because the Complaint does not explain or specify how Duquesne Light violated the Public Utility Code, and/or the Commission's regulations and orders. Accordingly, the presiding officer will grant Duquesne Light's Preliminary Objections because the Commission lacks jurisdiction over the dispute and due to the insufficient specificity of the Complaint.

#### CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over the subject matter of this dispute because the Formal Complaint does not allege a matter over which the Commission has authority or claim a violation of a statute over which the Commission has jurisdiction to administer. 52 Pa. Code § 5.21; *Shedlosky v. Pa. Electric Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

2. The Formal Complaint does not raise a claim that, if proven, would show Respondent failed in any way to furnish and maintain adequate, efficient, safe and reasonable service and facilities. 66 Pa.C.S. § 1501; 52 Pa. Code § 5.101(a)(4); *Feitt v. Peoples Nat. Gas Co. LLC – Equitable Div.*, Docket No. F-2018-3003833 (Opinion and Order entered Oct. 8, 2020).

3. Respondent, as a party in this proceeding, is entitled to file preliminary objections, in response to a pleading such as the Formal Complaint, if Respondent alleges, inter alia, a lack of Commission jurisdiction and/or alleges insufficient specificity of a pleading, such as the Formal Complaint. 52 Pa. Code § 5.101(a).

4. A presiding officer is authorized to rule in cases involving a question of jurisdiction and may render a final determination prior to a hearing by issuing an initial decision. 52 Pa. Code § 5.103.

5. The Commission may dismiss any complaint without a hearing if a hearing is not necessary to the public interest. 52 Pa. Code § 5.21(d).

6. A hearing in this matter is not necessary or in the public interest. 52 Pa. Code § 5.21(d).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Duquesne Light Company in the matter of Malcolm Hudson versus Duquesne Light Company at Docket No. C-2024-3050683 are granted.

