
Megan E. Rulli

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File #: 208903

November 4, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: James King v. Duquesne Light Company
Docket No. C-2024-3051627

Dear Secretary Chiavetta:

Attached please find the Preliminary Objection of Duquesne Light Company in response to the Complaint of James King in the above-referenced proceeding. Copies are being provided per the Certificate of Service.

Respectfully submitted,



Megan E. Rulli

MER/dmc
Attachment

cc: Certificate of Service

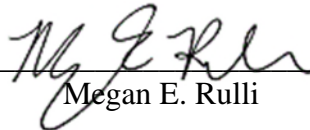
CERTIFICATE OF SERVICE

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

James King
1739 Norsen Drive
Pittsburgh, PA 15243
Jrking6680@gmail.com

Date: November 4, 2024


Megan E. Rulli

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James King,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3051627
	:	
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 OBJECTION 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)
Post & Schell, P.C.
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mrulli@postschell.com

Date: November 4, 2024

Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James King,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3051627
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

**PRELIMINARY OBJECTION OF
DUQUESNE LIGHT UTILITIES CORPORATION TO THE
COMPLAINT OF JAMES KING**

AND NOW, comes Duquesne Light Company (“Duquesne Light”) and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the portions of the Complaint filed by James King (“Complainant”) containing allegations that he was enrolled without his consent with an electric generation supplier be summarily dismissed as against Duquesne Light. 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. By Secretarial Letter dated October 15, 2024, Duquesne Light was served with the above-captioned Complaint. In the Complaint, the Complainant raises allegations that his electric

service bill(s) contain incorrect charges due to an enrollment with electric generation supplier (“EGS”) Reliant Energy Northeast LLC d/b/a NRG Retail Solutions (“NRG”) without his consent. (Complaint ¶ 4.)

3. Duquesne Light herein files this Preliminary Objection to the Complaint. For the reasons explained below, Duquesne Light respectfully requests that the portions of the Complaint alleging that the Complainant was enrolled without his consent with an EGS be summarily dismissed as against Duquesne Light pursuant to Section 5.101(a)(5) of the Commission’s regulations, 52 Pa. Code § 5.101(a)(5), due to the nonjoinder of a necessary party, *i.e.*, the EGS at issue.

II. STANDARD OF REVIEW

4. 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 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).

5. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom.

Stilp v. Cmwlth., 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005)); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). 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. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

6. 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). 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).

III. PRELIMINARY OBJECTION NO. 1 – THE COMPLAINANT HAS FAILED TO JOIN A NECESSARY PARTY

7. Duquesne Light incorporates by reference Paragraphs 1 through 6 as if fully set forth herein.

8. The Complaint should be dismissed because the Complainant has failed to join a necessary party.

9. Under Pennsylvania law, “a necessary party is one whose presence, while not indispensable, is essential if the court is to resolve completely a controversy and to render complete relief.” *Pa. Human Relations Comm'n v. Phila. Sch. Dist.*, 651 A.2d 177 (Pa. Cmwlth. 1993) (citation omitted.)

10. According to the Complaint and following further investigation by Duquesne Light, the Complainant is a shopping customer who receives competitive electric generation supply service from EGS NRG. (See Complaint ¶ 4.)

11. NRG is a licensed EGS that is authorized to offer, render, furnish or supply electricity or electric generation services in the Commonwealth of Pennsylvania, including within Duquesne Light's service territory. See *License Application of Reliant Energy Northeast, LLC d/b/a Reliant Energy for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generation Services as a Supplier of Retail Electric Power*, Docket No. A-2010-2192350 (Order entered October 18, 2010).¹

12. The Complainant alleges that he was enrolled with EGS NRG without his consent and that his electric service bill(s) contain incorrect charges related to that enrollment. (Complaint ¶¶ 4, 5.)

13. The Complainant's allegations concerning slamming are unrelated to electric distribution or default generation supply service provided by Duquesne Light to the Complainant. (Complaint ¶ 4.)

14. In his request for relief, the Complainant infers that there are incorrect charges on his account due to the enrollment with NRG. (Complaint ¶ 5.)

15. Here, NRG is a necessary party to this proceeding, given that the Complainant's allegations and requested relief pertain directly to NRG.

¹ On July 10, 2013, Reliant Energy Northeast, LLC d/b/a Reliant Energy filed a letter with the Commission stating that the licensee would also do business under the additional trade names of NRG Residential Solutions and NRG Retail Solutions. The license name change was approved by Secretarial Letter issued August 12, 2013, at Docket No. A-2010-2192350.

16. The Commission's determination in this case could affect NRG because NRG provides electric generation supply service and the Complainant alleges that he was enrolled with NRG without his consent.

17. As such, without NRG, the Commission cannot resolve the dispute or award relief concerning the material allegations in the Complaint against NRG.

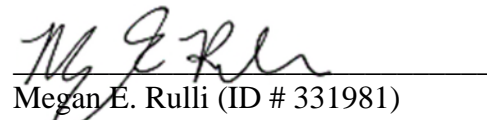
18. Based on the foregoing, the Complainant has failed to join a necessary party, *i.e.*, NRG, in this proceeding. Therefore, the portions of the Complaint containing allegations that the Complainant was enrolled without his consent with NRG should be summarily dismissed as against Duquesne Light, pursuant 52 Pa. Code § 5.101(a)(5).

19. To the extent that the allegations in the Complaint regarding slamming are not summarily dismissed, Duquesne Light respectfully requests that an Order be issued joining NRG to the instant proceeding as an indispensable party.

IV. CONCLUSION

WHEREFORE, Duquesne Light Company respectfully requests that the portions of the Complaint containing allegations that the Complainant was enrolled without his consent with an electric generation supplier be summarily dismissed as against Duquesne Light pursuant to 52 Pa. Code § 5.101(a)(5).

Respectfully submitted,



Megan E. Rulli (ID # 331981)

Post & Schell, P.C.

17 North Second Street, 12th Floor

Harrisburg, PA 17101-1601

Phone: 717-731-1970

Fax: 717-731-1985

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Date: November 4, 2024

Attorney for Duquesne Light Company

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James King,	:	
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v.	:	No: C-2024-3051627
	:	
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

11/04/24

Date