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Megan E. Rulli

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File #: 209506

November 27, 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: Donna L. Shawfield Bennett v. Duquesne Light Company**  
**Docket No. F-2024-3052032**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of Duquesne Light Company in response to the Complaint of Donna L. Shawfield Bennett 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

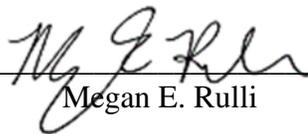
**CERTIFICATE OF SERVICE**

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**

Donna L. Shawfield Bennett  
2700 Omar Street  
Chesapeake, VA 23324-2952

Date: November 27, 2024

  
\_\_\_\_\_  
Megan E. Rulli

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

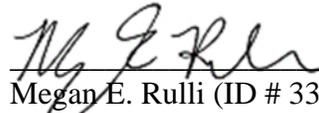
Donna L. Shawfield Bennett,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2024-3052032
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

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**NOTICE TO PLEAD**

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YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS 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.

  
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Megan E. Rulli (ID # 331981)  
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Date: November 27, 2024

Attorney for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna L. Shawfield Bennett,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. F-2024-3052032
	:	
Duquesne Light Company,	:	
	:	
Respondent.	:	

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**PRELIMINARY OBJECTIONS OF  
DUQUESNE LIGHT COMPANY TO THE COMPLAINT OF  
DONNA L. SHAWFIELD BENNETT**

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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: (1) the portions of the Formal Complaint of Donna L. Shawfield Bennett (“Complainant”) alleging violations of Titles 13 and 18 of the Pennsylvania Code be dismissed because the Pennsylvania Public Utility Commission (“Commission”) lacks subject matter jurisdiction over those claims; and (2) the 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 November 8, 2024, Duquesne Light was served with the above-captioned Complaint. The issues raised in the Complaint relate to claims that the Complainant’s electric service bills contain incorrect charges and that Duquesne Light is in violation of “Pennsylvania codes Title 13: §3310, §3311, §3502, & §3603, along with others . . .” (Complaint ¶¶ 4-5.)

3. As relief, the Complainant requests, among other things, for her electric service bills to be corrected and for “the reparation of \$5,446.00 under these laws credited to this account.” (Complaint ¶ 5.)

4. Duquesne Light herein files these Preliminary Objections to the Complaint. For the reasons explained below, Duquesne Light respectfully requests that the portions of the Complaint alleging violations of Titles 13 and 18 of the Pennsylvania Code be dismissed pursuant to Section 5.101(a)(1) of the Commission’s regulations because the Commission lacks subject matter jurisdiction over those claims, 52 Pa. Code § 5.101(a)(1), and that the portions of the Complaint requesting damages be dismissed pursuant to Section 5.101(a)(2) of the Commission’s regulations because the Commission has no authority to award damages, 52 Pa. Code § 5.101(a)(2).

## **II. STANDARD OF REVIEW**

5. 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).

6. 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.

7. 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 OBJECTIONS**

#### **A. PRELIMINARY OBJECTION NO. 1 – PORTIONS OF THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE COMMISSION LACKS SUBJECT MATTER JURISDICTION OVER THE CLAIMS RAISED THEREIN**

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

9. The issues raised in the Complaint relate to claims that Duquesne Light is in violation of certain portions of Title 13 of the Pennsylvania Code, specifically “Pennsylvania codes Title 13: §3310, §3311, §3502, & §3603, along with others . . .” as well as Title 18 of the Pennsylvania Code, 18 Pa. Code § 4107. (Complaint ¶ 5.)<sup>1</sup>

10. 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).

11. The Commission must act within its jurisdiction and may only hear complaints regarding the Public Utility Code, Commission regulations, or Commission orders. *See Alkhatib v. PECO Energy Co.*, Docket No. C-2011-2242125, 2012 Pa. PUC LEXIS 37, at \*13-14 (Jan. 12, 2012) *citing* 66 Pa. C.S. § 701.

12. Application and interpretation of these provisions of Pennsylvania law are outside of the Commission’s express jurisdiction of Pennsylvania Code, Commission regulations, or Commission orders. *See* 66 Pa. C.S. § 701; *Alkhatib v. PECO* at \*13-14.

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<sup>1</sup> Duquesne Light notes that Title 13 of the Pennsylvania Code does not contain §§ 3502 or 3603, so the Company is without sufficient knowledge or information as to what portions of the Pennsylvania Code the Complainant is attempting to reference. (Complaint ¶ 5.)

13. As such, the Commission does not have jurisdiction over claims raised in the Complaint arising under Title 13 (related to the enforcement of instruments) or Title 18 of the Pennsylvania Code (related to fraudulent business practices). *See id.*

14. Thus, the Commission should dismiss the portions of the Complaint alleging violations of the Pennsylvania Code pursuant to Section 5.101(a)(1) of the Commission's regulations because the Commission lacks subject matter jurisdiction over those claims. 52 Pa. Code § 5.101(a)(1).

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

15. Duquesne Light incorporates by reference Paragraphs 1 through 14 as if fully set forth herein.

16. The portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages.

17. In the Complaint, the Complainant requests damages totaling \$5,446.00, related to alleged violations of certain sections of the Pennsylvania Code. (Complaint ¶5.)

18. It is well-established that the Commission does not have the 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).

19. 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-2011-2264876, 2011 Pa. PUC LEXIS 652, at \*8-9, 16-17 (Dec. 21, 2011), *adopted by Commission*, 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 Commission*, Docket No. C-2010-2204947 (Order Entered Apr. 8, 2011).

20. Therefore, Duquesne Light respectfully requests that the Complaint's request for damages be summarily dismissed 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,



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Megan E. Rulli (ID # 331981)

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Date: November 27, 2024

Attorney for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna L. Shawfield Bennett

Complainant,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

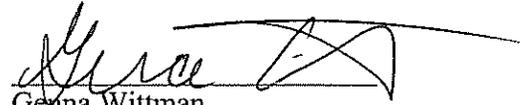
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No: F-2024-3052032

**VERIFICATION**

I, Genna Wittman, 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).

11-27-24  
Date

  
Genna Wittman