

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deyde L. Montanez	:	
	:	
v.	:	C-2024-3051295
	:	
Duquesne Light Company	:	

**ORDER**  
**GRANTING PRELIMINARY OBJECTIONS**

**HISTORY OF THE PROCEEDING**

On September 20, 2024, Deyde L. Montanez (“Ms. Montanez” or “Complainant”) filed a Formal Complaint (“Formal Complaint”) against Duquesne Light Company (“Duquesne” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), alleging that there were incorrect charges on her bill. In her Complaint, Ms. Montanez states the following in support of her incorrect billing allegations.

On December 5, 2023, the electricity rate provided by Duquesne Light Co. was increased. I have evidence that the electricity service rate was tampered with. I spent too much time trying to resolve this issue, neglecting my work activities. I ended up paying the amount they charged out of desperation for the time invested, which was \$1,137.94. With solid evidence that the electric service had been manipulated, I decided to pay, and the dispute was closed under docket number F-2023-3040836. (The agreement is attached as document number 1).

Complaint, ¶ 4.

For relief, Ms. Montanez states the following:

Moreover, we paid \$270.00 to receive an estimate for the repair of the air conditioner compressor, which was broken due to the power outage in the area. The repair of the compressor will cost (attached as document number 3) \$2,100.25, which has not yet been done. In July 2023, we had charges of \$123.54 while the air conditioner was working. In July 2024, we had an increased in electricity usage with charges of \$172.96. The total of my claim is \$5,000.00. I am claiming the initial disputed amount of \$1,137.94, the cost of the inspection to assess the damage caused by the outage, \$270.00, and the cost of repairing the air conditioner compressor, \$2,100.25. Additionally, I want to claim compensation for the time I have invested in this situation, which has impacted my work. I also claim compensation for the time lost on September 17 due to the power cut by the company. My house is the office for two businesses that have suffered losses because of this.

Complaint, ¶ 5.

Ms. Montanez also included the following attachments to her Complaint: a letter from Duquesne to Ms. Montanez containing the terms of the settlement resolving the First Complaint, emails in Spanish between Ms. Montanez and Home Depot concerning the air conditioner compressor warranty, the invoice for the repair of the air conditioner compressor, and Ms. Montanez's July 2023 and July 2024 electric bills.

On October 10, 2024, Duquesne filed an Answer with New Matter to the Complaint, properly endorsed with a Notice to Plead. In its Answer, Duquesne denies that Ms. Montanez's electric bill contains incorrect charges. Duquesne admits to terminating Ms. Montanez's electric service on September 17, 2024, and to restoring her service the following day after receiving payment for the outstanding balance her account. Duquesne asserts that the Formal Complaint represents an attempt by Ms. Montanez to relitigate issues resolved in the First Complaint proceeding.

In its New Matter, Duquesne asserts that Ms. Montanez through her Formal Complaint is attempting to relitigate issues that were resolved through the First Complaint proceeding. Specifically, Duquesne asserts that the parties reached a settlement of the First Complaint wherein Duquesne agreed to apply a credit to Ms. Montanez's account and Ms.

Montanez agreed to pay the remainder of the then outstanding balance. Resolution of the First Complaint, Duquesne asserts, was evidenced by the filing of a Certificate of Satisfaction at the First Complaint docket with the Commission, which was not objected to by Ms. Montanez.

Duquesne concluded its Answer with New Matter by requesting that the Formal Complaint be denied.

Also on October 10, 2024, Duquesne filed Preliminary Objections to the Complaint, properly endorsed with a Notice to Plead. In its Preliminary Objections, Duquesne argues that Ms. Montanez in her Formal Complaint is attempting to relitigate issues previously addressed and resolved in the First Complaint proceeding. Specifically, Duquesne notes that in the First Complaint, Ms. Montanez alleged that her December 2022 to March 2023 bills were incorrect which represented a dispute in the amount of \$1,137.94. The First Complaint was resolved through settlement and resolution of the First Complaint was evidenced by the filing of a Certificate of Satisfaction with the Commission that was not objected to by Ms. Montanez. As such, pursuant to 52 Pa. Code § 5.101(a)(4), Duquesne seeks dismissal of the portions of the Formal Complaint that are attempting to relitigate the issues resolved in the First Complaint proceeding. Duquesne additionally seeks dismissal of the Formal Complaint's claims for damages, pursuant to 52 Pa. Code § 5.101(a)(2), arguing that the Commission does not have the authority to order a public utility to pay damages.

Ms. Montanez did not file a Reply to Duquesne's New Matter or an Answer to Duquesne's Preliminary Objections.

On November 15, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer over this proceeding.

Duquesne's Preliminary Objections are procedurally ready to be ruled upon. For the reasons discussed below, the Preliminary Objections will be granted.

#### DISCUSSION

Respondent in this matter filed Preliminary Objections to the Formal Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

- (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).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v.*

*Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

*Legal insufficiency*

Respondent asserts that the Formal Complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4), in that it raises the same issues and claims raised in the First Complaint.

Viewing the Formal Complaint in the light most favorable to Complainant, Respondent is correct in that at least a portion of the Formal Complaint raises the same issues raised and resolved in the First Complaint. Complainant cites to the First Complaint in her Formal Complaint and indicates that she is disputing the amount that she initially disputed in the First Complaint (\$1,137.94). In the First Complaint, Complainant alleged that her December 2022 to March 2023 bills were incorrect.

Complainant admits that the First Complaint was closed and resolved through settlement and includes the settlement letter as an attachment to the Formal Complaint. The settlement letter indicates that as part of the settlement Respondent will apply a credit to Complainant's account. At the First Complaint docket, a Certificate of Satisfaction was filed to which Complainant did not object.

Section 316 of the Public Utility Code ("Code"), 66 Pa.C.S. § 316, states the following:

Whenever the [c]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon

all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa.C.S. § 316.

The Commission has previously determined that a certificate of satisfaction, which was not objected to, and resulted in the closing of the case, conclusively determined that the issues had been resolved to the satisfaction of the complainant and as such bars the complainant from raising the same issues in a subsequent proceeding, pursuant to Section 316 of the Code.

In *Reynolds v. PPL Electric Utilities Corporation*, Docket No. C-2011-2255268 (Opinion and Order entered January 5, 2012) (“*Reynolds*”), the Commission in reviewing a complaint that raised matters previously resolved through a certificate of satisfaction found that 66 Pa.C.S. § 316 prohibited the complainant from raising the same issues before the Commission a second time.

In *Creehan v. Duquesne Light Company*, Docket No. C-2012-2297124, (Opinion and Order entered May 23, 2013) (“*Creehan*”), the Commission affirmed its prior ruling in *Reynolds* and held that 66 Pa.C.S. § 316 precluded a complainant from raising issues a second time that had been settled in a previous proceeding. In *Creehan*, the complainant attempted to relitigate the same issues that he had raised in a prior case. The complainant in *Creehan* became dissatisfied with his prior settlement of the issues, but did not object to the certificate of satisfaction filed in the previous action within ten days. In addition, the complainant in *Creehan* accepted a credit in the settlement of the prior case. The Commission ruled in *Creehan* that a complainant cannot accept the prior settlement credit, fail to object to the certificate of satisfaction, and then file a second complaint to pursue the same claims.

Accordingly, here, Complainant cannot file another complaint raising the same issues as in her First Complaint because those issues have already been resolved through the filing of a certificate of satisfaction at the First Complaint docket, to which she did not object. Further, Respondent credited Complainant’s account pursuant to the terms of the First Complaint

settlement between the parties. For these reasons, Respondent's Preliminary Objection concerning legal insufficiency will be granted.

### *Impertinent Matter*

Respondent also asserts that the Formal Complaint includes impertinent matter, pursuant to 52 Pa.Code § 5.101(a)(4), in that it includes claims for monetary damages which the Commission lacks the jurisdiction to award.

Viewing the Formal Complaint in the light most favorable to Complainant, Complainant seeks compensation from Respondent relating to damage caused to her air conditioner compressor and for the time that she has spent investigating this situation and for her electricity being shut off on September 17, 2024. Respondent is correct that as a matter of law that the Commission does not have the authority to award damages. *See Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977) (holding that the Commission does not have the authority to award damages); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977) (holding that the Commission does not have the authority to award damages), *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980). For these reasons, Respondent's Preliminary Objection concerning impertinent matter will be granted.

### *Conclusion*

In conclusion, Respondent's Preliminary Objections will be granted in the Ordering paragraphs below. Although Complainant cannot receive the relief she specifically requested in her Complaint, Complainant raised incorrect billing allegations in her Complaint. In comparing her July 2024 bill to her July 2023 bill, Complainant appears to be specifically challenging her July 2024 bill as being too high. Complainant also stated in her Complaint that "On December 5, 2023, the electricity rate provided by Duquesne Light Co. was increased. I have evidence that the electricity service rate was tampered with." Complaint, ¶ 4. A hearing will be held on the matters in the Complaint not dismissed by this Order.



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