

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James King	:	
	:	
v.	:	C-2024-3051627
	:	
Duquesne Light Company	:	

**INTERIM ORDER JONING AN
INDISPENSABLE PARTY**

On October 15, 2024, James King (Complainant) filed a Formal Complaint (Complaint) against Duquesne Light Company (Duquesne or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes marked “[t]he utility is threatening to shut off my service or has already shut off my service” and “[i]ncorrect charges are on my bill.” In an available space, the Complainant provided the following statement:

I believe I have been incorrectly billed by Duquesne Light. I am disputing the total balance of \$9,631.78. There are charges on my bill that also say NRG retail solution. \$262.55. I have no idea what these are as well.

Under the “requested relief” section of the Complaint, the Complainant advised “I would like the termination of my service to be stopped until we are able to resolve this issue of the incorrect billing total.”

On November 4, 2024, the Respondent filed an Answer to the Complaint. In the Answer, the Respondent admitted that the Company issued a termination notice to the Complainant. The Respondent denied that its issuance of a termination notice was in violation of the Public Utility Code, the Commission’s regulations, or the Company’s Commission-approved tariff. The Respondent further denied that the Complainant’s electric service bill(s) contain incorrect charges.

Also on November 4, 2024, the Respondent filed the Preliminary Objection of Duquesne Light Utilities Corporation to the Complaint of James King (Preliminary Objection). In the Preliminary Objection, the Respondent averred that the Complaint should be dismissed because the Complainant failed to join a necessary party. The Respondent indicated: that, according to the Complaint and its own investigation, the Complainant is a shopping customer who receives competitive electric generation supply service from electric generation supplier (EGS) Reliant Energy Northeast LLC d/b/a NRG Retail Solutions (NRG); that the Complainant alleges he was enrolled with EGS NRG without his consent and that his electric service bills contain incorrect charges related to that enrollment; that the Complainant's allegations concerning slamming are unrelated to electric distribution or default generation supply service provided by Duquesne to the Complainant; that the Complainant infers that there are incorrect charges on his account due to enrollment with NRG; that NRG is a necessary party to this proceeding, given that the Complainant's allegations and requested relief pertain directly to NRG; that 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; that without NRG, the Commission cannot resolve the dispute or award relief concerning the material allegations in the Complaint against NRG; that the Complainant has failed to join a necessary party, NRG, in this proceeding; that the portions of the Complaint containing allegations that the Complainant was enrolled with NRG without his consent should be summarily dismissed as against Duquesne Light, pursuant to 52 Pa. Code § 5.101(a)(5); and that to the extent that the allegations in the Complaint regarding slamming are not summarily dismissed, the Respondent requests that an order be issued joining NRG to the instant proceeding as an indispensable party. The Respondent endorsed the Preliminary Objection with a Notice to Plead advising the Complainant he had ten days to file a response to the Preliminary Objection.

The Complainant did not file a response to the Respondent's Preliminary Objection.

By Motion Judge Assignment Notice dated November 18, 2024, the Respondent's Preliminary Objection was assigned to me for disposition.

In Pennsylvania, “an indispensable party is one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction.” *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 379 (Pa. 1975). Failure to join an indispensable party goes to the court’s jurisdiction and, if not raised by the parties, should be raised *sua sponte*. *Posel v. Redevelopment Authority of Philadelphia*, 71 Pa. Commw. 115, 121 (1983). The Pennsylvania Supreme Court has established that “the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party...In order to make the analysis, however, one must refer to the nature of the claim and the relief sought.” *Cry, Inc. v. Mill Service, Inc.*, 536 Pa. 462, 486-489 (Pa. 1994). Adopting the criteria articulated in *Mechanicsburg Area School District v. Kline*, 494 Pa. 476, 481 (Pa. 1981), the court’s test for determining indispensability involved “at least” the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

In this case, a review of the record in this matter along with the Supreme Court’s test for determining indispensability supports finding that NRG should be joined as an indispensable party. The Complainant specifically challenged charges from NRG appearing on his bill, so NRG has an interest related to the Complainant’s Complaint. NRG should have an opportunity to address and defend those charges. NRG’s right to address and defend its charges is essential to the merits of this case. Lastly, holding a hearing without at least providing NRG an opportunity to address and defend its charges would be a violation of NRG’s due process rights. Therefore, instead of dismissing the Complaint for failure to join a necessary party, NRG will be joined as an indispensable party to this proceeding. This will give the Complainant an opportunity to address his billing concerns against both Duquesne and NRG.

In the interim, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement

discussions amongst themselves for this proceeding as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Duquesne Light Company in the above-captioned proceeding at Docket No. C-2024-3051627 is granted in that Reliant Energy Northeast LLC d/b/a NRG Retail Solutions is joined in this proceeding as an indispensable party.

2. That the Secretary's Bureau shall serve a copy of this Order and the Formal Complaint on Reliant Energy Northeast LLC d/b/a NRG Retail Solutions.

3. That Reliant Energy Northeast LLC d/b/a NRG Retail Solutions shall file an Answer to the Formal Complaint filed in this matter within twenty (20) days of the date of this Order.

Date: December 17, 2024

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge

C-2024-3051627 - JAMES KING v. DUQUESNE LIGHT COMPANY

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