

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yvette Farrow	:	
	:	
v.	:	F-2024-3052519
	:	
Duquesne Light Company	:	

ORDER
DENYING PRELIMINARY OBJECTIONS

On December 9, 2024, Yvette Farrow (Ms. Farrow or Complainant) filed a Formal Complaint against Duquesne Light Company (Duquesne Light or Company). The Formal Complaint was served on Duquesne Light on December 16, 2024. In the Complaint, Ms. Farrow alleges that she would like a payment agreement; that she is having a reliability, safety or quality problem with her utility service; and that she is being treated unfairly regarding her eligibility for Duquesne Light’s Customer Assistance Program (CAP). As relief, Ms. Farrow requests that Duquesne Light and CAP allow her to pay an amount based on her income, instead of the total amount of her bill.

On January 6, 2025, Duquesne Light filed an answer and new matter to the Formal Complaint. Duquesne Light’s new matter included a notice to plead. Duquesne Light denies that Ms. Farrow is entitled to a payment arrangement, averring that she has received, and failed to adhere to, two Commission-initiated payment agreements. The Company denies it has provided Complainant unreasonable service as it relates to the reliability, safety or quality of electric service. The Company denies that Complainant is being treated unfairly regarding her eligibility for CAP. No response to Duquesne Light’s new matter has been filed.

Also on January 6, 2025, Duquesne Light filed preliminary objections to the Formal Complaint. The preliminary objections included a notice to plead. Duquesne Light’s preliminary objections request that the portions of the Formal Complaint related to reliability,

safety, or quality of electric service be dismissed as legally insufficient per 52 Pa. Code § 5.101(a)(4). Duquesne Light avers dismissal is appropriate because the Formal Complaint only details Ms. Farrow's request to be re-enrolled in CAP, and does not concern the reliability, safety, or quality of her electric service. No response to Duquesne Light's preliminary objections has been filed.

On February 19, 2025, a motion judge assignment notice was issued, assigning me as the presiding officer.

Duquesne Light's preliminary objections are ready for disposition.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69 (Pa. P.U.C. 1994) (*Equitable*). Section 5.101(a) provides:

(a) *Grounds*. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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 a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Tel. 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 Complainant and should dismiss the complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; see also, *Interstate Traveler Services, Inc. v. Commonwealth, Dep't of Env'tl. Res.*, 406 A.2d 1020 (Pa. 1979).

Under the standards of disposing of preliminary objections and viewing the Complaint in a light most favorable to Complainant, I disagree with Duquesne Light that the portion of the Formal Complaint alleging a reliability, safety or quality problem with Complainant's utility service should be dismissed. To dismiss this portion of the Complaint, I would need to accept that, even if all the facts set forth in the Formal Complaint are true, the Complainant fails to set forth a claim for which the Commission can grant relief as a matter of law. *Scott v. Metro. Edison Co.*, C-2009-2083345 (Initial Decision issued Mar. 20, 2009). Preliminary objections in the form of legal insufficiency, also known as a demurrer, will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. *Cnty. Life Support Sys., Inc. v. Commonwealth*, 689 A.2d 1014 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. *Id.*; see also, *Hoffman v. Misericordia Hosp. of Phila.*, 267 A.2d 867 (Pa. 1970) ("the question presented by the demurrer is whether on the facts averred, the law states with certainty that no recovery is possible").

Additionally, the Commission has held that, in the normal course, a *pro se* complaint should not be dismissed without first providing a hearing during which the *pro*

se complainant could further explain his or her position and the factual basis for the complaint. *Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*). *Pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. There are some cases where a hearing would not enable the complainant to better explain her position or provide additional facts that would alter the inevitable conclusion that the complaint should be dismissed. *See Vata v. Phila. Gas Works*, Docket No. C-2009-2149960 (Order entered August 24, 2010). This case is not one of those instances. Duquesne Light does not assert that an allegation concerning reliability, safety or quality of utility service is legally insufficient in and of itself. Instead, Duquesne Light asserts that Ms. Farrow has failed to provide a basis for her allegation that she is having a reliability, safety or quality problem with her utility service. First, Ms. Farrow may have checked the box in the Formal Complaint alleging she is having a reliability, safety or quality problem, believing that it was appropriate to make such an indication as it relates to her CAP enrollment. However, if Ms. Farrow indicates at a hearing that her allegations regarding reliability, safety or quality are unrelated to the CAP claims raised in her Formal Complaint, I will provide Duquesne Light an adequate opportunity to respond. Claims involving an alleged reliability, safety or quality problem are not legally insufficient in and by themselves and, per *Carlock*, I find that Ms. Farrow may be able to further explain the basis for her allegations at a hearing. *See* 66 Pa.C.S. § 1501. Therefore, Duquesne Light's preliminary objections are denied.

An evidentiary hearing on the Formal Complaint will be held on April 3, 2025, starting at 10:00 a.m. Complainant will be responsible at the hearing to demonstrate by a preponderance of the evidence that Duquesne Light has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing Duquesne Light's preliminary objections.

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. The parties are also reminded that the presiding officer may participate in settlement discussions upon agreement of all parties. 52 Pa.Code § 5.223(c); *see also*, 52 Pa.Code § 5.231(c).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Duquesne Light Company at Docket Number F-2024-3052519 on February 20, 2025 are denied.

2. That the Formal Complaint filed by Yvette Farrow at Docket Number F-2024-3052519 will proceed to a hearing to be held on Thursday, April 3, 2025 beginning at 10:00 a.m. To participate in the hearing on April 3, 2025, parties must call 888-456-5124 and enter pin number 9563241 when prompted.

Date: February 27, 2025

_____/s/
John M. Coogan
Administrative Law Judge

F-2024-3052519 - YVETTE FARROW v. DUQUESNE LIGHT COMPANY

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