

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Todd Elliott Koger, Sr. and Elliot-Todd Koger	:	
	:	
v.	:	C-2025-3054190
	:	
Duquesne Light Company	:	

INTERIM ORDER
GRANTING PRELIMINARY OBJECTIONS

On or about March 26, 2025, Todd Elliott Koger, Sr. and Elliot-Todd Koger (Complainants) filed a Formal Complaint with the Commission against Duquesne Light Company (Respondent, Company or Duquesne Light) related to claims that Duquesne Light is in violation of certain portions of the Pennsylvania Code, the United States Code, and federal law, including 18 Pa.C.S. § 4911, 18 Pa.C.S. § 1911, 18 U.S.C. § 3057(a), 18 U.S. Code §§ 1961-1968, and Title VI of the Civil Rights Act of 1964.¹ Complainants also averred that Duquesne Light and/or its representatives “intentionally” and/or “criminally” misrepresented facts during the ongoing Chapter 7 Bankruptcy Petition proceeding of Elliot-Todd Parker Koger before the United States Bankruptcy Court for the Western District of Pennsylvania at Docket No. 24-210801-GLT (Chapter 7 Petition).²

On April 15, 2025, Duquesne Light filed Preliminary Objections to the Complaint, requesting that the Commission dismiss the portions of the Complaint that: (1) alleges violations of Title 18 of the Pennsylvania Code, the Pennsylvania Human Relations Act and Title VI of the Civil Rights Act of 1964 because the Commission lacks subject-matter jurisdiction over those claims; and (2) allege Duquesne Light made

¹ Complaint ¶ 4.
² Complaint ¶ 4.

false representations during the Chapter 7 Petition proceeding and that request damages because they constitute scandalous or impertinent matter.

On April 15, 2025, Duquesne Light filed an Answer to the Formal Complaint essentially denying the material averments set forth in the Complaint.

On April 24, 2025, Complainants filed an Amended Complaint.

On May 15, 2025, Respondent filed an Answer to the Amended Complaint, essentially denying the material averments set forth in the Amended Complaint.

On May 15, 2025, The Respondent also filed Preliminary Objections to the Amended Complaint. In its Preliminary Objections to the Amended Complaint, Respondent requested that the Commission dismiss the portions of the Amended Complaint that: (1) alleges violations of Title 18 of the Pennsylvania Code, the Pennsylvania Human Relations Act and Title VI of the Civil Rights Act of 1964 because the Commission lacks subject-matter jurisdiction over those claims; and (2) allege Duquesne Light made false representations during the Chapter 7 Petition proceeding and request damages because they constitute scandalous or impertinent matters.

Complainants did not file a response to the Preliminary Objections of Respondent.

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 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.³

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.⁴ 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). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible.⁵ For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery.⁶

³ 52 Pa. Code § 5.101(a)

⁴ *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005).

⁵ *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987).

⁶ *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

In its first Preliminary Objection, Respondent asserts that portions of the Amended Complaint should be dismissed because the Commission lacks subject-matter jurisdiction over the claims raised therein. Respondent argues the Commission lacks subject-matter jurisdiction to decide the Complainants' allegations regarding violations of 18 Pa.C.S. §§ 911, 2709, 4906, 5301, the Pennsylvania Human Relations Act, and Title VI of the Civil Rights Act of 1964.⁷

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.”⁸ 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, at *13-14 (Jan. 12, 2012) *citing* 66 Pa. C.S. § 701.

Respondent correctly asserts the Commission does not have jurisdiction over claims arising under Title 18 of the Pennsylvania Code, the Pennsylvania Human Relations Act, or Title VI of the Civil Rights Act of 1964. Application and interpretation of federal law, the Pennsylvania Human Relations Act, and Title 18 of the Pennsylvania Code are outside of the Commission's express jurisdiction of the Public Utility Code, Commission regulations, or Commission orders.⁹ Accordingly, the Commission lacks jurisdiction over these claims.

Under the circumstances, the portions of the Amended Complaint alleging violations of 18 Pa.C.S. §§ 911, 2709, 4906, 5301, the Pennsylvania Human Relations Act, and Title VI of the Civil Rights Act of 1964 pursuant to Section 5.101(a)(1) of the Commission's regulations will be dismissed because the Commission lacks subject-matter jurisdiction over those claims. 52 Pa. Code § 5.101(a)(1).

⁷ Amended Complaint, Prayer for Relief.

⁸ *Feingold v. Bell*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted).

⁹ *See* 66 Pa. C.S. § 701; *Alkhatib v. PECO* at *13-14.

In its second preliminary objection, Respondent asserts that portions of the Amended Complaint should be dismissed because they constitute scandalous or impertinent matters. Scandalous or impertinent matter is defined as statements that are immaterial and inappropriate to the proof of the cause of action.¹⁰ Complainants aver that Duquesne Light and/or its representatives made false statements during the Chapter 7 Petition proceeding.¹¹ Respondent submits these claims are immaterial to the claims before the Commission, are inappropriately raised, and have no bearing on the subject action. Respondent further asserts these arguments were previously heard and rejected by the Bankruptcy Court overseeing the Bankruptcy Petition. Specifically, Respondent asserts that on March 31, 2025, Chief United States Bankruptcy Judge Gregory L. Taddonio issued an Order (Bankruptcy Order) at the Bankruptcy Petition docket denying two Motions for Sanctions filed by the Complainants, which raised these same arguments. Accordingly, Respondent concludes the portions of the Complaint related to the ongoing Chapter 7 Petition proceeding should be stricken as impertinent pursuant to Section 5.101(a)(2) of the Commission's regulations. 52 Pa. Code § 5.101(a)(2).

The Respondent also argues that the portion of the Complaint requesting damages should be dismissed because the Commission cannot award damages. In the Amended Complaint, Complainants request that the Commission requires the Respondent to compensate Complainants for the full extent of the damage resulting from the October 11, 2023, electrical event and its subsequent bad faith actions.¹² Respondent asserts that the Commission does not have the authority to order public utility to pay damages, as requested by the Complainants.¹³

¹⁰ *Common Cause/Pennsylvania v. Commonwealth of Pennsylvania*, 710 A.2d 108, 115 (Pa. Cmwlth. Ct. 1998); *Brennan v. Smith*, 299 A.2d 683 (Pa. Cmwlth. Ct. 1972).

¹¹ *See, e.g.*, Amended Complaint ¶¶ 57- 61.

¹² Amended Complaint, Prayer for Relief (d).

¹³ *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).

Respondent asserts that Complainants' 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.¹⁴ Accordingly, Duquesne Light requests that the Amended Complaint's request for damages be dismissed pursuant to 52 Pa. Code § 5.101(a)(2).

Respondent correctly argues that the Commission lacks subject-matter jurisdiction to decide the Complainants' allegations regarding violations of 18 Pa.C.S. § 4911, 18 Pa.C.S. § 1911, 18 U.S.C. § 3057(a), 18 U.S. Code §§ 1961-1968, and Title VI of the Civil Rights Act of 1964, as alleged in the Amended Complaint. The Commission must act within its jurisdiction and may only hear complaints regarding the Public Utility Code, Commission regulations, or Commission orders.¹⁵ The Commission does not have jurisdiction over claims arising under the United States Code.¹⁶ Accordingly, the Commission lacks jurisdiction over the Complainant's allegations that are rooted in alleged violations of federal law and Title 18 of the Pennsylvania Code and the portions of the Complaint alleging violations of Title 18 of the Pennsylvania Code, Title 18 of the U.S. Code, and Title VI of the Civil Rights Act of 1964, and such claims will be dismissed pursuant to Section 5.101(a)(1) of the Commission's regulations because the Commission lacks subject-matter jurisdiction over those claims.¹⁷

The Respondent also correctly argues that portions of the Amended Complaint include scandalous or impertinent matters which are immaterial and inappropriate to the proof of the cause of action. Complainants allege that Duquesne Light and/or its representatives made false statements during the Chapter 7 Petition

¹⁴ See *Stoner v. PPL Elec. Utils. Corp.*, Docket No. C-2013-2385588, p. 3 (Nov. 14, 2013) (order sustaining preliminary objections). 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).

¹⁵ See *Alkhatib v. PECO Energy Co.*, Docket No. C-2011-2242125, 2012 Pa. PUC LEXIS, at *13-14 (Jan. 12, 2012) *citing* 66 Pa. C.S. § 701.

¹⁶ *Feingold v. Bell*, at 794.

¹⁷ 52 Pa. Code § 5.101(a)(1).

proceeding, the claims which are immaterial to the claims before the Commission regarding, are inappropriately raised, and have no bearing on the subject action. Accordingly, the portions of the Amended Complaint related to the ongoing Chapter 7 Petition proceeding will be stricken as impertinent pursuant to Section 5.101(a)(2) of the Commission's regulations.¹⁸

Finally, the portion of the Amended Complaint requesting damages will be dismissed as it is well-settled so that the Commission cannot award damages.¹⁹

Under the circumstances, the following Interim Order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Duquesne Light Company to the Amended Complaint filed in this proceeding at Docket No. C-2025-3054190 are hereby granted.

¹⁸ 52 Pa. Code § 5.101(a)(2).

¹⁹ 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).

C-2024-3049627 - TODD ELLIOTT KOGER SR AND ELLIOTT-TODD KOGER v. DUQUESNE LIGHT COMPANY

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