

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Bocsy	:	
	:	
v.	:	F-2025-3055088
	:	
Duquesne Light Company	:	

INTERIM ORDER

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Interim Order denies the Preliminary Objections of Duquesne Light Company concerning a Formal Complaint filed on May 1, 2025, in which James Bocsy alleged incorrect charges for electric service on Respondent’s billing statements, high bills and Respondent’s decision to remit \$1,500 in Low Income Heating Assistance Program (LIHEAP) credits back to the Department of Health and Human Services (DHHS). This Interim Order refers the proceeding to the Scheduling Unit of the Office of Administrative Law Judge to schedule an initial hearing.

HISTORY OF THE PROCEEDING

On May 1, 2025, James Bocsy (Complainant or Mr. Bocsy) filed a Formal Complaint (Complaint) against Duquesne Light Company (Respondent or DLC) with the Pennsylvania Public Utility Commission (Commission). Complainant alleged he was billed incorrectly, his bills were too high and LIHEAP credits totaling \$1,500 were returned in error to DHHS by Respondent. Mr. Bocsy asked the Commission to require DLC to return \$1,500 in

LIHEAP credits to his account and provide a credit on his account corresponding to the amount he was overcharged. In his Complaint, Complainant requested he receive all documents, to be served, by First Class Mail at the mailing address provided in the Complaint.

On June 2, 2025, Respondent filed and served its Answer, in which it acknowledged it provides electric service to Complainant at the service address. DLC admitted it returned \$1,428.48 to DHHS in LIHEAP credits from Complainant's service account but denied it returned those funds in violation of the Public Utility Code, the Commission's regulations or order, or DLC's Commission-approved tariff. In all other regards, Respondent generally denied the allegations in the Complaint. DLC averred it correctly billed Complainant for service provided.

Also, on June 2, 2025, Respondent filed its Preliminary Objections and requested portions of the Complaint should be dismissed. Respondent specifically alleged the portion of the Complaint alleging DLC improperly removed unused LIHEAP grants from his electric service account should be dismissed because the Commission lacked subject matter jurisdiction over vendor requirements imposed by DHHS. DLC contends it is party to a vendor agreement between DHHS and itself, based on federal provisions applicable to LIHEAP grants, and the Commission lacks jurisdiction to determine if DLC was required to return those LIHEAP credits, pursuant to the vendor agreement. DLC contends only DHHS is authorized to indicate if the LIHEAP credits should have been returned.

By Motion Judge Assignment Notice dated July 14, 2025, the Commission's Office of Administrative Law Judge (OALJ) assigned the case to the undersigned presiding officer for purposes of ruling on Respondent's Preliminary Objections.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Motions.¹ Commission preliminary motion practice is similar to

¹ 52 Pa. Code § 5.101 and § 5.103.

Pennsylvania civil practice respecting the filing of preliminary objections.² Commission regulations permit the filing of a preliminary motion questioning the jurisdiction of the Commission.³ In ruling on a motion to dismiss, the Commission must assume, for decisional purposes only, that the factual allegations of the formal complaint are true.⁴ The motion may be granted only if the moving party prevails as a matter of law.⁵

Preliminary Objections

Preliminary objections, under the Commission's regulations, are available to parties and allow for objections to be filed in response to any pleading except a motion or prior preliminary objections. A party filing preliminary objections must include a notice to plead, must state specifically the legal and factual grounds relied upon and limit the objections 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 Chapter 5, Title 52 of the Pennsylvania Code, or include 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).

² *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (1994).

³ 52 Pa. Code § 5.101 and § 5.103.

⁴ *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988).

⁵ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

The party against whom preliminary objections are filed may file an answer to the preliminary objections but the answer must be filed within ten days of the date when the preliminary objections are served. 52 Pa.Code § 5.101(f)(1). Then the presiding officer will decide the preliminary objections within thirty days of the date the preliminary objection is assigned to the presiding officer. 52 Pa.Code § 5.101(g).

DLC, as the moving party, may not rely on its own factual assertions, but must accept, for the purposes of disposition of the preliminary objections, all well-pleaded, material facts of Mr. Bocsy, as well as every inference fairly deducible from those facts.⁶ Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that Mr. Bocsy's factual allegations in his Complaint are true.⁷ Accordingly, DLC's preliminary objections would be granted only if DLC prevails as a matter of law,⁸ but any doubt must be resolved in favor of Mr. Bocsy by refusing to sustain the preliminary objections.⁹

The Commission has the discretion to "dismiss any complaint without hearing if, in its opinion, a hearing is not necessary in the public interest."¹⁰ A hearing is necessary only to resolve disputed questions of fact and, when the question presented is solely one of law, the Commission need not hold a hearing.¹¹ The public interest does not require a hearing in a case which would be a fruitless exercise and, therefore, not necessary or in the public interest.¹²

Disposition

This Interim Order denies the Preliminary Objections of DLC because DLC incorrectly presumed there is no question as to law or fact concerning its actions to return monies to DHHS. DLC assumes it is obvious from the face of the Complaint, taking the allegations and

⁶ *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985).

⁷ *Id.*

⁸ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

⁹ *Dept. of Auditor General, et al. v. State Employees' Retirement Sys., et al.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing, *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

¹⁰ 66 Pa.C.S.A. § 703(b). See also 52 Pa.Code § 5.21(d).

¹¹ *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989). See also *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

¹² *Musisko v. Pennsylvania American Water Co.*, Docket No. C-2008-2061663 (Final Order entered May 13, 2009).

assertions specified within the Complaint in the light most favorable to Mr. Bocsy, that the LIHEAP funds were unused and must be returned. While DLC is correct that DHHS is responsible for enforcing vendor agreements about LIHEAP, the Commission has responsibility for determining customer service and how billing issues are handled.

According to details alleged by Complainant in the Complaint, Complainant is a customer of DLC who receives electric service at his residence located at 3719 Botsford Street, Apartment 1, Munhall, Pennsylvania (service address). He received LIHEAP benefits which are no longer available to him for use on his electric service account. DLC removed the LIHEAP benefits from Mr. Bocsy's service account. Complainant contended his billing statements are higher than they should be.

As stated above, the regulations permit DLC to file preliminary objections to dismiss a pleading for lack of jurisdiction if DLC would prevail on its claims as a matter of law,¹³ assuming all of the well-pleaded facts in Complainant's formal complaint are true. However, any doubt must be resolved in favor of Mr. Bocsy, after accepting all well-pleaded facts in the Complaint.¹⁴

In his Complaint, Mr. Bocsy alleges excessive incorrect charges on his bills for electric service. Mr. Bocsy also contends DLC was wrong to remove \$1,500 in LIHEAP credits from his electric service account. In response, DLC asserts it billed Complainant correctly based on actual consumption and Complainant cannot question DLC's handling of LIHEAP pursuant to its vendor agreement with DHHS because the Commission lacks jurisdiction over LIHEAP handling and issues handled by DHHS.

As a creature of the legislature, this Commission only has those duties, powers, responsibilities, and jurisdiction specifically granted to it. *Rogoff v. Buncher Co.*, 151 A.2d 162 (Pa. 1985). Jurisdiction may not be conferred by the parties where none exists.¹⁵ The

¹³ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

¹⁴ *See* 52 Pa.Code § 5.101(a)(1).

¹⁵ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

Commission has initial jurisdiction only over “matters involving the reasonableness, adequacy or sufficiency of a public utility’s service, facilities or rates.”¹⁶ Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy and without it, the Commission cannot proceed to adjudicate a dispute.¹⁷

DLC is correct – the Commission cannot proceed to conduct a hearing and adjudicate Mr. Bocsy’s Complaint unless the Legislature specifically conferred authority on the Commission. Further, DLC is correct that the Commission lacks the authority to determine how DHHS interprets its responsibilities conferred upon it concerning the LIHEAP program or how a vendor agreement should be interpreted and applied concerning the LIHEAP program.

DLC is incorrect, however, to assert the Commission lacks authority over how a public utility bills ratepayers and how it applies credits and payments to a service account. From its face, this Complaint alleges DLC failed to handle LIHEAP credits correctly and specifically argues LIHEAP should have been applied to his balance, instead of returning the sum of \$1,428.48 back to DHHS. It is possible DLC can show it was correct to return \$1,428.48, to DHHS. Further, DLC retains the opportunity to present evidence which proves its decision to return the LIHEAP credits is a matter outside the Commission’s jurisdiction. However, accepting as true Complainant’s allegation DLC mishandled his LIHEAP credits on his billing statements, Mr. Bocsy should be given the opportunity to prove his allegations, if possible.

Accordingly, the proceeding cannot be dismissed because there is a factual dispute herein as to the facts about an issue over which the Commission does have jurisdiction, namely, DLC’s customer service and how it created its billing statements. Accepting as true all well-pleaded facts in the Complaint, I find Complainant alleges sufficient facts that, if proven, would justify the issuance of an Initial Decision which finds DLC failed to provide adequate and reasonable customer service, pursuant to 66 Pa.C.S. § 1501, and/or failed to comply in some way with the Commission’s regulations, rules or orders when it returned

¹⁶ *DeFrancesco et al. v. Western Pennsylvania Water Company*, 435 A.2d 614, 616 (Pa. Super. 1981) vacated and remanded on other grounds, 453 A.2d 595 (Pa. 1982).

¹⁷ *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

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