



Duquesne Light

Our Energy...Your Power

Legal Department
411 Seventh Avenue, 16-1
Pittsburgh, PA 15219

Tel 412-393-6505
Fax 412-393-1418
kkubiak@duqlight.com

Krycia Kubiak
Assistant General Counsel

June 12, 2009

Via Electronic Filing

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Commercial Utility Consultants v. Duquesne Light Company
Docket No. C-2008-2079429

Dear Secretary McNulty:

Enclosed please find the one electronic copy of Duquesne Light Company's Brief. A copy of this document has been served upon Complainant's counsel in accordance with Commission regulations.

Sincerely,

Krycia Kubiak
Assistant General Counsel
Duquesne Light Company

encs

cc: Charles V. Curley, Esquire (w/enc.)(Via FAX & U.S. Mail)
Admin. Law Judge Cynthia Williams Fordham (w/enc.)(Via
FAX & U.S. Mail)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COMMERCIAL UTILITY)	
CONSULTANTS, INC.,)	
)	
Complainant,)	
)	
v.)	Docket No. C-2008-2079429
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

**BRIEF OF RESPONDENT
DUQUESNE LIGHT COMPANY**

AND NOW comes Respondent Duquesne Light Company (hereinafter “Duquesne Light”), by and through its attorney Krysia Kubiak and files its Brief as a closing argument for the hearing on April 1, 2009:

Statement of the Case

Complainant Commercial Utility Consultants filed the above-captioned Formal Complaint against Duquesne Light.

A hearing was held on April 1, 2009. Respondent attended by phone.

Statement of the Issue Involved

Duquesne Light’s policy with regards to payment for historical billing data does not violate any regulations and lowers costs for their customers.

Argument

Commercial Utility Consultants is not a customer of Duquesne Light. Instead, Commercial Utility Consultants' business model is based on the assertion that their review of a customer's utility bills will ensure savings to the customer, or the customer will not pay for their services. Commercial Utility Consultants is objecting to the requirement that Commercial Utility Consultants has to pay \$30 for historical billing data from Duquesne Light for its large and medium sized commercial customers.

As the party seeking affirmative relief from the Commission, Commercial Utility Consultants bears the burden of proof. 66 Pa. C.S. § 332(a). To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 PA. PUC 196 (1990). This must be shown by a preponderance of the evidence; that is by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm., 578 A.2d 600 (Pa. Commw. 1990), alloc. den. 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Marquilies, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based on substantial evidence. Mill v. Pa. Public Utility Comm., 447 A.2d 110 (Pa. Commw. 1982); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993); 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. v. Pa. Public Utility Comm., 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review, 166

A.2d 96 (Pa. Super. 1960); Murphy v. Dep't of Public Welfare, White Haven Center, 480 A.2d 283 (Pa. Commw. 1984).

Duquesne Light's policy is based on its tariff and on PUC regulations. Duquesne Light provides historical data for \$30. If the customer is a residential or small business customer, this information is provided free once a year upon request. Commercial Utility Consultants asserts that the \$30 fee should be waived for medium and large commercial customers as well.

In order to prevail on a complaint, an interested person must demonstrate, according to statutory law and case precedent, that the respondent utility violated a law which the Commission has jurisdiction to administer or violated a regulation or order of the Commission. 66 Pa. C.S. § 701; 52 Pa. Code § 5.22(a)(4); Joseph Barron v. PG Energy, Docket No. C-20028189 (Order entered February 24, 2003). Here, Commercial Utility Consultants failed to provide any competent evidence to support their claims that Duquesne Light has violated any regulation. Without evidentiary support, Commercial Utility Consultant's claims amount to baseless assertions. "Mere bald assertions, personal opinions or perceptions do not constitute evidence." Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

Duquesne Light's policy is based on the regulation promulgated from the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2807.

The purpose of this subchapter is to require that electricity providers enable customers to make informed choices regarding the purchase of electricity services offered by providing adequate and accurate customer information. Information shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis. 52 Pa. Code § 54.1 (a).

The regulation continues by outlining which information should be available to all customers. The issue at hand concerns historical billing data, and whether or not medium and large commercial customers should have to pay for the reports.

Section 54.6, Request for information about generation supply, details the information that should be given to customers. With regards to historical billing data, the regulation reads:

Residential and small business customers are entitled to receive at no charge and at least once a year, historical billing data from whomever reads the meter for billing purposes. 52 Pa. Code § 54.6 (g).

Commercial Utility Consultants concedes that this information available to all customers, although the larger commercial customers have to pay for it.

The next question of the inquiry is whether the customers of Commercial Utility Consultants are small business customers. Their witness acknowledged that all of their customers use over 25 kW. A small business customer is defined in the regulations as “a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification and whose maximum registered peak load was less than 25 kW within the last 12 months.” 52 Pa. Code § 54.2. Therefore, all of Commercial Utility Consultants’ customers are not small business customers and therefore, do not qualify for free historical data. This data is still available to large commercial customers, either by reviewing their past monthly bills or by paying the reasonable \$30 fee.

This regulation was made final after the Commission submitted a copy of the final rulemaking and served it on the Independent Regulatory Review Commission and the Chairpersons of the House Committee Consumer Affairs and the Senate Committee on

Consumer Protection and Professional Licensure for review and comment. PA Bulletin, Doc. No. 98-1272, Page 1 of Exhibit 2. In commenting on the final-form regulations, the Commission stated that they clarified that some portions of the regulations pertained to all customers, including large commercial and industrial customers; the remaining regulation only applies to residential and small business customers. *Id* at Page 5.

The intention is and the plain language of the regulation states that only small business customers are entitled to this information for free. Duquesne Light's tariff states that it will provide the information in conformity with the regulation. Therefore, the large and medium sized commercial customers of Commercial Utility Consultants are not entitled to free historical data.

Conclusion

Commercial Utility Consultants produced no evidence that Duquesne Light violated any regulation. In fact, Duquesne Light's policy is in keeping with the intention and the rulemaking as set forth by the Pennsylvania Public Utility Commission in the regulations. Therefore, Duquesne Light requests that this case be dismissed.

Respectfully submitted



Krysia Kubiak
Attorney for Respondent
Duquesne Light Company

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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CONSULTANTS, INC.,)
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Respondent.)

Docket No. C-2009-2079429


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant).

Charles V. Curley, Esquire
Halberstadt Curley LLC
1100 E. Hector Street Suite 425
Conshohocken, PA 19428

Admin. Law Judge Cynthia Williams Fordham
Pennsylvania Public Utility Commission
1302 State Office Building
1400 W. Spring Garden Street
Philadelphia, PA 19130

Dated this 12th day of June, 2009.



Krysia Kubiak
Pa. I.D. # 90619
Duquesne Light Company
411 Seventh Avenue
Mail Drop 16-1
Pittsburgh, PA 15219
Telephone: (412) 393-6505