



Duquesne Light

Our Energy...Your Power

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

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

Krysiia Kubiak
Assistant General Counsel

April 26, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Bernard Wanninger v. Duquesne Light Company
Docket No. C-2008-2057952

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Reply to Complainant's Exceptions to Initial Decision. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,

Krysiia Kubiak
Assistant General Counsel
Duquesne Light Company

encs

cc: Bernard Wanninger (w/enclosure)
Administrative Law Judge Katrina L. Dunderdale (wenclosure)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BERNARD WANNINGER,)	
)	
Complainant,)	
)	
v.)	Docket No. C-2008-2057952
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

**RESPONDENT’S REPLY TO COMPLAINANT’S EXCEPTIONS
TO INITIAL DECISION**

AND NOW comes Respondent Duquesne Light Company, by and through its attorney, Krysia Kubiak, and files the following Reply to Complainant’s Exceptions to the Initial Decision:

History of the Proceeding

Complainant Bernard Wanninger (“Complainant” or “Effort”) filed this Formal Complaint on August 20, 2008, complaining about surges. The Commission scheduled a hearing for January 21, 2009, before Administrative Law Judge Katrina Dunderdale (“Judge Dunderdale”). The parties spoke prior to the hearing and reached a resolution. Respondent completed the work that had been agreed upon, but Complainant insisted on holding another hearing

The Commission scheduled a second hearing for October 29, 2009. An Initial Decision dismissing this Complaint was issued on March 30, 2010.

Reply To Exceptions

Preliminary Matters Concerning Sequence of Numbers and Repetitive Assertions:

Commission Regulation 5.533(b), 52 Pa. Code §5.533(b), requires that exceptions be numbered. In practice, this regulation is generally taken to mean that exceptions are to be consecutively numbered beginning with "1." Complainant's Exceptions, however, include unnumbered exceptions. Instead, Complainant has written a letter in which he states he objects to Finding of Fact #12 and Conclusion of Law #3 and 4. Those will be addressed specifically.

Exception to Finding of Fact #12:

Respondent through its witness, Patrick Conti, testified that to the substance of Finding of Fact #12, which states:

12. On January 9, 2008, voltage that was approximately three times the normal voltage came into Complainant's house after the tree fell into the 23,000 volt line. (Tr. 47).

Although Complainant testified that he believed the surge occurred when the power was restored, Complainant has no special knowledge or training in electricity or electrical wiring. Although it is common for lay people to assume that the damage was done when the power was restored, it is difficult to identify the damage while electrical service is off to the house. Judge Dunderdale rightfully weigh the testimony of the two witnesses, and in her position as finder of fact, determined that Mr. Conti's testimony was more reliable and accurate.

Conclusion of Law #3 and 4:

Conclusion of Law #3 and 4 states:

3. Respondent provided Complainant with reasonable and adequate customer service in its provision of electrical services.
4. Complainant failed to meet the burden of proving Respondent did not provide reasonable and adequate service when the tree outside Respondent's right of way fell onto Respondent's electric wires on January 9, 2008 and caused a power surge in Complainant's home.

Complainant states that Respondent was negligent in allowing excess voltage to come into his house. However, as stated by Judge Dunderdale, Complainant has been unable to show that the surge resulted from a failure of Respondent to provide reasonable and appropriate service.

As the party seeking affirmative relief, the Complainant bears the burden of proof. 66 Pa. C.S.A. §332(a). 'Burden of proof' imports the duty of finally establishing the existence of a certain fact or set of facts by evidence which preponderates to a legally required extent. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pennsylvania PUC*, 578 A.2d 600, 602, (Pa. Cmwlth. 1990).

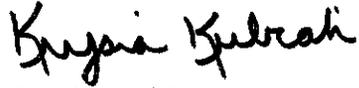
Since Complainant offers no applicable PUC law or admitted facts in support of this Exception, it should be dismissed.

Conclusion

Complainant's Exceptions have failed to establish that Judge Dunderdale made any errors in law. Although he may disagree with the weight she gave certain testimony in this case, his arguments are comprised of unsupported suspicions.

WHEREFORE, Respondent respectfully requests that the Commission deny Complainant's Exceptions and enter an Order consistent with the Initial Decision.

Respectfully submitted,

A handwritten signature in black ink that reads "Krysia Kubiak". The signature is written in a cursive, slightly slanted style.

Krysia Kubiak, Attorney for Respondent
Duquesne Light Company
411 7th Avenue
16-1
Pittsburgh, PA 15219

Telephone: (412) 393-6505
FAX: (412) 393-5897

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BERNARD WANNINGER,)
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 Complainant,)
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 v.)
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DUQUESNE LIGHT COMPANY,)
)
 Respondent.)

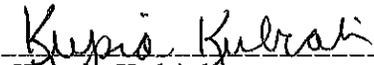
Docket No. C-2008-2057952

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).

Bernard Wanninger
1023 Willow Drive
Pittsburgh, PA 15237

Dated this 26th day of April, 2010.



Krysta Kubiak
Pa. I.D. # 90619
Duquesne Light Company
411 Seventh Avenue
Mail Drop 16-1
Pittsburgh, PA 15219
Telephone: (412) 393-6505
FAX (412) 393-1418