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

September 13, 2010

RE: Kipling Forbes v. Duquesne Light Company
Docket No. C-2010-2181728

Dear Secretary Chiavetta:

Enclosed is a Motion and Certificate of Service pertaining to a request for documents, as part of discovery, in the matter referenced above. A copy of this Motion and Certificate has been served upon Respondent Duquesne Light Company, in accordance with Commission regulations.

Thank you for your assistance in this matter.

Sincerely,

Kipling D. Forbes, Ph.D.
(Clinical Psychologist; Academic Philosopher)

cc: Krysia Kubiak
Assistant General Counsel, Duquesne Light Company

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Kipling D. Forbes	>	
	>	
Complainant	>	
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	>	
vs.	>	**Docket No. C-2010-2181728**
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	>	
Duquesne Light Company	>	
	>	
Respondent	>	
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MOTION TO REQUIRE PRODUCTION OF RECORDINGS
(Of Telephone Contacts Between Complainant
And
Duquesne Light Company Representatives)

In order to prepare for hearing before the Pennsylvania Public Utility Commission in the above captioned matter, Complainant brings this Motion to compel production of recordings of telephone contacts between himself and the Duquesne Light Company surrounding the June 15, 2010 interruption of electric service to his residence.

Complainant has discussed this request, in writing and in a telephone conversation, directly and indirectly (i.e. indirectly, through conversation with a Duquesne Light Company law clerk) with Duquesne Light Company's Assistant General Counsel and attorney of record, and was denied access to such recordings.

In a letter dated August 27, 2010, the Company's attorney of record reiterated and confirmed this denial of access on grounds that "...the audio recordings which [Complainant] requested are not available as hard copies that can be distributed outside of the Duquesne Light Company network." And that, "... Additionally, Commission Regulations do not address discovery of audio recordings." Duquesne Light Company's Assistant General Counsel and attorney of record concluded by saying: "We are unable to provide you with audio copies of your conversations with Duquesne Light Company representatives."

However, Complainant believes that because Defendant Duquesne Light Company did not inform him that his LIHEAP grant would not be applied to his CAP arrears, the requirement that he pay those CAP arrears in addition to amounts directed to his Company customer account through LIHEAP grant-making mechanisms constitutes an arbitrary and individualized rate increase, without the required minimum 60 day notice of same, as well as a rate increase for all other persons similarly surprised through inadequate notice and advisement of the fiscal and billing-format policies involved in this allocation (and likely more accurately characterized, re-allocation) of LIHEAP grant monies; such allocation, or, more seriously, such re-allocation, being possibly outside State guidelines for LIHEAP funding. Complainant believes that the requested recordings hold evidence of his surprise at this billing arrangement.

Alternatively, if there is no unauthorized reallocation of public grant-making funds when LIHEAP and/or other publicly funded grants are channeled to a customer's Company ratepayer account, but are deemed to have been properly kept separate from that person's CAP arrears and other CAP financial obligations, then CAP represents a new and completely separate [*electric utility?*] service agreement between the customer and Duquesne Light Company, the nature, separateness, and intricacy of which agreement is not readily communicated to even the most sophisticated individual ratepayer, thereby immediately throwing into doubt any possibility of informed consent to such an agreement (i.e., the informed nature of which must thus be deemed moot). Again, Complainant believes that the requested recordings hold evidence of his surprise at this billing arrangement.

Similarly, the fact that customer signatures appertaining to such separate CAP agreements are not routinely kept on file by the Company or made available to the individual ratepayer throws into high relief the questionable legality, and perhaps the inherent injustice, of Duquesne Light Company actions taken on the basis of these uninformed, and therefore legally unenforceable, CAP agreements.

However, if CAP agreements are completely separate from the individual ratepayer's Duquesne Light Company customer account for electric service, and if there is therefore no misallocation of public grant-making funds when LIHEAP and similar grants are not applied to CAP arrears and other CAP financial obligations, then why are CAP monthly payments calculated according to the individual ratepayer's projected use of electricity? Complainant believes that the requested recordings will show his complete mystification on being told of the separate nature of his CAP agreement with the Duquesne Light Company.

But further, if the CAP agreement is completely separate from and unrelated to the cost to the Company of supplying electricity service to the individual ratepayer, then what costs to the Company do such CAP payments go to defray, and when is the individual ratepayer advised of this particular application of his monthly CAP payments? If the individual ratepayer is never so advised (of the separate application of his CAP payments to costs completely unrelated to his use of electricity provided by Duquesne Light Company), then how is that ratepayer to be held legally responsible for payment on services of an unknown nature, for which he has never knowingly and specifically applied? Complainant believes that the requested recordings will show that he was never advised of, and still does not know, what specific Duquesne Light Company costs his CAP payments were meant to defray and/or reasonably compensate.

And further (though perhaps only parenthetically), if the CAP agreement is completely separate from the provision of electricity service to the individual ratepayer (and if, therefore, there is no misallocation of public grant-making funds when these funds are applied exclusively to his Duquesne Light Company account for electric services provided, and not to his CAP account), then where is the State of Pennsylvania legislative authority by which the Pennsylvania Public Utility Commission fulfills its obligation to regulate the cost of electric service to all members of the Commonwealth of Pennsylvania, including those individual ratepayers who have been enrolled in Duquesne Light Company's Customer Assistance Program (CAP)?

And if there is no legislative authority to govern Duquesne Light Company's CAP payments, then is the individual ratepayer to remain without State of Pennsylvania regulatory protection in this area of public utility services?

But more immediately germane to the substance of this Motion: Because the amount of LIHEAP grants vary from customer to customer, and for the same customer from program year to program year, the extent or amount of such "surprise" rate increases (that is, where notice of the separate, non-CAP application of grant funds has been missing or inadequate) is by definition beyond the capacity of the Commission to regulate (even were the legislative authority to regulate purely

separate CAP issues clear beyond question), because of overwhelming numbers of individual ratepayers involved, and because of a lack of information about these individualized rate increases to the Commission; which is at variance with the State requirement to regulate public utility rates for all users of a utility, including individual ratepayers who are recipients of LIHEAP and/or other State and federal energy assistance grants.

Complainant believes that access to the requested audio recordings will not only show him to have been inadequately noticed by Duquesne Light Company of the just mentioned separate and non-grant applicable nature of his CAP account, but that these recordings will also show that this information continued to be inadequately communicated to him by Duquesne Light Company representatives even after he began to specifically inquire into the matter.

Even if the Duquesne Light Company should argue that because Complainant's CAP rate was set at a low level his LIHEAP grant plus the monthly required CAP payments would not exceed the allowable rate for individual ratepayers, said Company would also be required to show that Complainant's actual metered usage in any given month did not fall below a level equivalent to an averaged amount for his LIHEAP grant plus the monthly required CAP payments, thus leaving the Company with an excess of compensation for the specific month examined; and a possibly unreasonable excess of compensation in that specific month for electric service to an individual ratepayer, according to the standards for profitability previously set by Commission regulation of rates for the Company.

It should also be noted that because LIHEAP sometimes makes its grants in several parts, the last grant for a program year may come long after that program year ends, as was the case for Complainant when LIHEAP made him a final and fourth grant (of $100.00) toward his Duquesne Light Company bill and sent him a letter advising of this dated August 14, 2010. Thus, if only early partial grants are averaged, or even only grants made prior to the end of the LIHEAP program year are so averaged, a misleading picture may emerge, whereby greater than reasonable or customary profits (resulting from impromptu rate increases effected through inadequate notice to the ratepayer of the separateness of CAP accounts and of the inapplicability of LIHEAP and other grants to same) accrue to the Company when these grants are combined with the ratepayer's monthly CAP payments; such greater than customary profits being obscured however, because of the staggered, partial and extended nature of the LIHEAP or other grant-making process.

And, of course, it is in order to fully point up these and other dangers that Complainant requests access to Company recordings of his contacts with its representative, so that he may adequately prepare for hearing before the Commission.

But even if Complainant's actual metered usage was above a level equivalent to his LIHEAP grant plus his monthly required CAP payment (which is very doubtful), the "impromptu" rate increase would still be suspect, and should thus be disallowed, since individual and all ratepayers are entitled to be billed according to a known, fixed rate, unless fluctuations in rate are explicitly made dependent on level of usage, or time of day and general level of demand for electric service among all the Company's customers, in the context of a changing availability or supply of electrical energy.

However, whether or not such impromptu individual ratepayer increases are permissible, since Commission regulations state at § 5.361(b) that in rate increase proceedings discovery is not limited simply because respondent does not ordinarily compile data in the format requested, a respondent to such discovery requests (in this case the Duquesne Light Company) is not excused from producing the requested data (in this case, hard copies or computer data files of recordings requested by Complainant documenting his telephone contacts with Company representatives) "... if the study or analysis cannot reasonably be conducted [or the records created or reconstructed] by the party making the request." (ibid.)

And further, because Duquesne Light Company relied, in constructing its response to Complainant's Formal Complaint and Amended Formal Complaint, on those Company recordings of Complainant's contacts with its representatives (at least in, but not limited to, its erroneous assertion that a clear, specific and duly noticed 10-day hold had expired when it interrupted Complainant's electric service on June 15, 2010, and that it was thus in compliance with Commission regulations in taking this action),[1] Complainant is justified in seeking, by this Motion, an order directing Duquesne Light to produce, in a usable and reasonable form to be agreed, those Company recordings upon which it relied (as well as all other similar and related Company recordings) in the aforementioned response to Complainant's Formal Complaint and Amended Formal Complaint.

Or, again, the fact that Duquesne Light Company does not ordinarily maintain hard copies of recordings of telephone contacts between individual ratepayers and its representatives is not sufficient reason to deny Complainant's request for such recordings, since they exist in other easily copied digital form, and since by having relied on at least some of these recordings, and having actively reviewed all of them, the Duquesne Light Company has already demonstrated that its review of same does not impose an unreasonable burden.

Further, Complainant believes it not to be in the interest of justice, and to be explicitly inconsistent with requirements of due process that Defendant Duquesne Light Company should be able to base any part of its response to his Formal Complaint and Amended Formal Complaint on audio recordings hard copies, or digital computer data files, of which remain permanently, and by their very electronic nature, unavailable to him or to other Complainants, who are necessarily without access to the "Duquesne Light Company network" (of presumably electronic communications), as that network was identified in the aforementioned letter to Complainant on this discovery request, sent by Duquesne Light Company's Assistant General Counsel and attorney of record, dated August 27, 2010.

THEREFORE, COMPLAINANT MOVES:

1. That an Order be granted directing the Duquesne Light Company to produce, in a usable form to be agreed, those documents in the form of audio recordings discussed above.

2. That because the Duquesne Light Company has relied on Company audio recordings of his telephone contacts with its representatives, and because it has relied on these recordings to construct its answer to his Formal Complaint and Amended Formal Complaint, using these recordings to deny some of the averments in his Formal Complaint and Amended Formal Complaint, the Company should be required to produce these recordings for examination by the Commission at hearing (or before) free of charge, and that, similarly, it should be required to allow Complainant access to these same recordings in the discovery phase of these proceedings.

3. Further, Complainant believes that because by enrollment in Duquesne Light's Company Assistance Program, he already has been certified as a low income customer and the Commission has general authority to consider the appropriateness of fees with regard to discovery requests (for instance, at § 5.324 subsection (a)(3), relating to discovery of expert testimony), fees for production of these audio documents should not be charged to Complainant, especially since no added cost will accrue to the Company if it is required to produce these same documents for the Commission and since, if in the alternative the Commission does not require production of these documents for itself, cost of producing them for complainant alone will be minimal.

9/13/10
Date

Kipling D. Forbes, Ph.D., pro se
(Clinical Psychologist: Academic Philosopher)

ENDNOTES

[i] The Duquesne Light Company has stated in its response to Complainant's Amended Complaint that Complainant was dissatisfied at the end of his June 4th telephone call to Duquesne Light, and that because of this expressed dissatisfaction he was placed on a 10-day hold in order to give him time to file a Formal Complaint, following which hold his electric service was interrupted on June 15. Thus, the Company admits to knowing, prior to its interruption of his electric service, that Complainant intended to file a Formal€ Complaint.

However, Complainant believes that the requested documents in the form of Company recordings will show, as matters of fact, that he was not told of a 10-day hold on this occasion, but that, instead, the Duquesne Light Company representative told him that a definite and specific length of time for the hold which would follow that conversation could not be given, but assured him several times that as soon as his Formal Complaint was filed the Company would be notified by the Commission, that such speedy (almost immediate) notification was routine, and that there would be enough time within the mentioned hold on service interruption for that action to be forestalled by the filing of a Formal Complaint, with its resulting notice to the Company.

That information was incorrect, since the Company representative was apparently operating from his knowledge surrounding the filing of Informal Complaints (when notice to the Company may be given electronically and, hence, almost immediately) and did not inform Complainant that a delay would routinely occur between the filing of his Formal Complaint and notice to the Company of same; within which time of delay services might still be interrupted.

Because Complainant was assured by the US Post Office (through Delivery Confirmation--Receipt previously filed with Commission) that his Formal Complaint had been timely delivered to the Secretary of the Commission, and because he repeatedly had been assured by a company representative that the Company would be notified forthwith following receipt of his Formal Complaint by the Commission, Complainant did not take additional follow-up steps which might have averted interruption of service within the time of notification delay mentioned above, and interruption of his electric service was carried out by Duquesne Light Company on June 15, 2010.

However, Defendant apparently believes that merely because it carried out interruption of service 11 days following this June 4th telephone conversation, its responsibility to observe a 10-day hold on such action was fully met, and believes this without considering that fulfillment of this obligation also depends on adequate notice to Complainant of its intended action, not to mention accurate information to Complainant regarding the nature and length of any such hold on service interruption. Instead, Complainant was misinformed about the length of the hold in a way which prevented actions he might have taken in his own interest (to prevent service interruption), and was also misinformed about the possible need for such action on his part (i.e. he was misinformed about the possible routine delay in Commission notice to the Company that a Formal Complaint had been filed by Complainant).

Therefore, given the effects of such misinformation, and since Defendant could have become aware of this misinformation by reviewing these Company recordings prior to interrupting Complainant's electric service on June 15, and since, further, the Company had been notified that Complainant intended to file a Formal Complaint, and admits to having this information prior to its service interruption action, a mere passage of calendar days was not enough to assure compliance with Commission regulations. Rather, the Company had a duty to ascertain whether adequate notice had been given Complainant in the form of correct information prior to taking action to interrupt his electric service on June 15, 2010. Complainant therefore believes that Duquesne Light Company was not in compliance with Commission regulations when it carried out said action.

By way of further information, Complainant also believes that though this is not his only source of evidence, his averment in his Amended Complaint that a 10-day termination notice arrived in the mail on May 27, 2010, and that this possibility was implicitly admitted by the Company representative with whom he spoke on that day (May, 27) will be corroborated by contents of the requested documents in the form of Company recordings of that telephone conversation.

Before the
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Duquesne Light Company	>	
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Respondent	>	
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of a "**MOTION TO REQUIRE PRODUCTION OF RECORDINGS (Of Telephone Contacts Between Complainant And Duquesne Light Company Representatives),**" upon the participant listed below; submitted for ruling as part of discovery in the above captioned matter, in accordance with 52 PA. Code, Paragraph 1.54 (relating to service by a participant).

Krysia Kubiak
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue
Mail Drop 16-1
Pittsburgh, PA 15219

Date 9/13/10

Kipling D. Forbes, Ph.D.
(Clinical Psychologist; Academic Philosopher)

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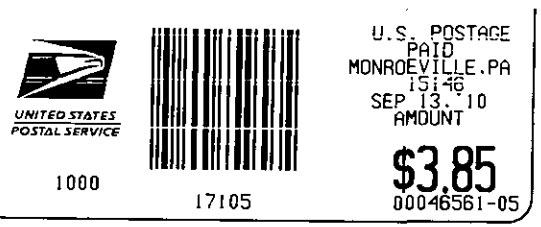

FIRST CLASS

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