

Kipling

Forbes, Ph.D.

M.A. Clinical
Psychology

M.A. Continental
Philosophy

Educational Consultant
Counselor

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OCT 26 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

October 26, 2010

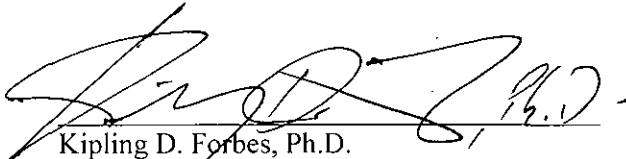
RE: Kipling Forbes v. Duquesne Light Company
Docket No. C-2010-2181728

Dear Secretary Chiavetta:

Enclosed is a Rebuttal and Certificate of Service pertaining to Duquesne Light Company's Responsive Motion; previously submitted as answer to my request for documents, a part of discovery in the matter referenced above. A copy of this Rebuttal 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

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Kipling D. Forbes

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Complainant

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vs.

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Docket No. C-2010-2181728

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Duquesne Light Company

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Respondent

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REBUTTAL TO DUQUESNE LIGHT'S RESPONSIVE MOTION

TO THE HONORABLE COMMISSION:

NOW comes Complainant Kipling Forbes, pro se, and files this Rebuttal to Duquesne Light's Responsive Motion to his request for an Order to require "...Production of Recordings...."

1. Admitted.

2. Admitted.

3. Partly admitted and partly denied. 52 Pa. Code § 5.349(a)(1) does describe the documents available in the discovery process. However, the sources of information enumerated there was not intended to be exhaustive in the particular, dealing mainly as it does with *categories* of information. Thus, the Duquesne Light Company's assertion that "...the Code does not provide for the requests for copies of audio records themselves" is simply mistaken. Audio recordings of telephone contacts between companies and their clients or customers are a common tool of quality control. Duquesne Light Company itself uses such recordings for quality control purposes, and has relied on these recordings in this case.

a) It would be inconsistent with requirements of due process for the Commission to allow the Company's present claim that such recordings are not covered by the Pennsylvania Code, and that transcripts of these audio recordings are their equivalent; especially since audio recordings contain much more linguistic and paralinguistic information than do transcripts of the same material, and since one of the issues in question concerns whether Complainant had been previously informed of how his Low-Income Home Energy Assistance Program (LIHEAP) grants would be applied under the Company's Customer Assistance Program (CAP), something which might become indisputably clear from listening to audio recordings of Complainant's telephone conversations with representatives of Duquesne Light Company.

b) Moreover, the creation of written transcripts of such recordings could be prohibitively expensive for people on fixed incomes, or who have no incomes whatever, making it impossible

for them to bring evidence from such telephone contacts where Duquesne Light has relied on these to explicitly contradict assertions made by those same complainants (such as has been made by Complainant in this case, to the effect that Duquesne Light Company denied him specific information regarding the length of a hold put in place to allow Complainant time to file a Formal Complaint; this denial of specific information making it impossible for him to act in his own interest to assure that the Company had been informed that he had filed a Formal Complaint, thus to avoid the interruption of electric utility service which ensued).

4. Complainant did make an August 3, 2010 request for transcripts of his telephone contact with Duquesne Light Company representatives. However, in response to this request the Company's attorney of record stated in a letter dated August 27, 2010 that such transcripts would be at Complainant's expense, that a \$100.00 fee would be required before transcripts could be made, and that: "If the creation of the transcripts involves an expense of more than \$100, [Complainant] will be billed for any further expenses after the transcripts are made." Complainant believes that such open-ended financial requirements made of a low-income customer constitute a nearly insurmountable and an unnecessary obstacle to due process.

5. Admitted. In an August 27, 2010 letter Respondent denied Complainant's request for audio recordings.

6. Admitted. However, Complainant has already said that the financial requirements imposed by the Company for production of transcripts were antithetical to the requirements of due process; especially since the Company had already introduced these audio recordings indirectly by relying on them to deny essential elements in Complainant's Formal Complaint and Amended Formal Complaint.

7. Partly admitted and partly denied. Respondent did enclose print-outs of computer records of notes made by Duquesne Light Customer Service representatives during his telephone contacts with them. However, these notes were originally made for internal management purposes only, were highly cryptic, brief, and did not contain the kind of information being sought by Complainant, and which had been used by Respondent to construct its response to the Formal Complaint and Amended Formal Complaint.

8. Complainant has no information concerning when Respondent received his "Motion to Require Production of Recordings...."

9. Admitted. 52 Pa. Code § 5.361(b) contains the material cited.

10. Complainant does not agree that he has requested that the "scope" of discovery be "expanded" under 52 Pa Code § 5.361(b). It is precisely because the scope of discovery as described by the statute already includes the requested documents (in this case, audio recordings) that Complainant seeks an Order requiring them to be produced. It is Complainant's position that the Company's billing practices for CAP customers, with respect to LIHEAP and other grants, constitute a taking which, in an unknown number of cases, is also a de facto rate increase, and as such should be subject to those statutory provisions governing discovery in rate proceedings.

a) Further, even prior to invoking provisions found under 52 Pa Code § 5.361(b) Complainant contends that the Company is obligated to say why material on which it relied to produce its answer to Complainant's Formal Complaint and Amended Formal Complaint should not be available to Complainant *and the Commission* in its original form, or prior to the creation of any transcript (from which linguistic and paralinguistic data are necessarily missing).

11. Complainant doesn't have enough information to say when Duquesne Light Company proposed its most recent rate increases to the Commission. However, Complainant contends that

the Company effected de facto unregulated rate increases when it became involved in a taking of grants made to Complainant without applying these to arrearages under its Customer Assistance Program (CAP), and without regard for excessive and unregulated profit making which might have occurred in any given monthly billing cycle when these grants were added to Complainant's scheduled payments under CAP.

12. Admitted in part, denied in part. Complainant has cited 52 Pa Code § 5.324(a)(3) in order to say that the Commission has broad authority to waive fees connected with discovery. But complainant's assertion of the Commission's power to waive fees in discovery does not only concern the discovery of expert testimony. Rather, Complainant maintains that because the Company has relied on the requested recordings to construct its response to his Formal Complaint and Amended Formal Complaint, due process requires the production of these documents without cost to him since he is acknowledged by the Company's own policies and procedures to be a low-income customer. To deny Complainant's request for these recordings and transcripts based solely on his inability to pay associated fees is to deny him due process.

13. Admitted. 52 Pa Code § 5.324(a)(3) contains the material quoted by Respondent.

14. Under provisions of 52 Pa Code § 5.324(a)(3) the Commission has wide discretion concerning the waiving of fees. However, Complainant *also* denies what the Company here asserts; namely, that the recordings and transcripts of recordings he seeks "are unrelated to expert testimony."

a) On the contrary, Complainant is a clinical psychologist who has worked in forensic psychology in Ohio, and who has given expert testimony in courts, of varying jurisdictions, in Pennsylvania. Since he seeks to establish and demonstrate (among other things, and by the recordings being sought) the state of his understanding with respect to his obligations under the Company's Customer Assistance Program (CAP), and since this request does not involve any imposition of fees but rather the waiving of fees, Complainant believes the request to be fully justified as a general requirement of justice in this case, but also specifically under provisions of that portion of the Code cited and with regard to the acquisition of expert testimony.

b) Complainant also disputes the Company's assertion that the audio recordings being sought are exclusively part of a training system for customer service representatives, since the Company's own legal department and its customer service representatives have implicitly and explicitly cited these recordings as permanent documentation of the content of telephone contacts between the Company and its customers, and since the Company has relied on these recordings in constructing its answer to Complainant's Formal Complaint and Amended Formal Complaint. The Company's profession of technological inability to copy the audio files in a way useful to those not owning its software *simply rings hollow, and further, as already stated, is at variance with ordinary requirements of due process.*

15. Complainant denies that the other issues raised in his Motion to Require Production of Recordings do not relate to the discovery process and, therefore, need not be answered in the Company's Responsive Motion.

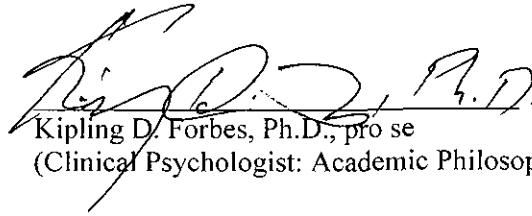
WHEREFORE, Complainant requests that the Commission:

(a) Grant Complainant's Motion to Require Production of Recordings, and grant Complainant's request for Respondent to produce the requested audio recordings.

(b) Grant Complainant's request for Respondent to produce the cited audio recordings at hearing

(c) Waive all fees to Complainant if transcripts of the cited audio recordings are taken

10/26/10
Date


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

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PA PUBLIC UTILITY COMMISSION
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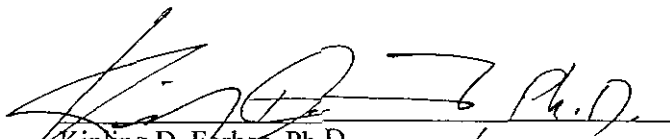
Docket No. C-2010-2181728

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of a "REBUTTAL TO DUQUESNE LIGHT'S RESPONSIVE MOTION" 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).

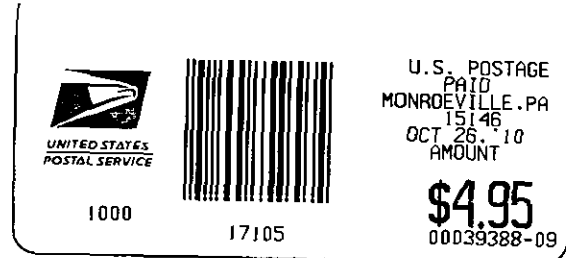
Krysia Kubiak
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue
Mail Drop 16-1
Pittsburgh, PA 15219

Date 10/26/10



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

A. FORBES
1115 FOX HILL DR #1-14
MONROEVILLE, PA 15146



RETURN RECEIPT
e- REQUESTED

Ms. ROSEMARY CHIAVETTA, Secretary
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. Box 3265
HARRISBURG, PA 17105-3265