



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

July 12, 2011

Via Electronic Filing

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

RE: Robert Wagner v. Duquesne Light Company
Docket No. C-2011-2247887

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Answer and Preliminary Objections. A copy of each of these documents has been served upon Complainant in accordance with Commission regulations.

Sincerely,

Krycia Kubiak
Assistant General Counsel
Duquesne Light Company

encs

cc: Robert Wagner (w/enclosure)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERT WAGNER,)
)
 Complainant,)
)
 v.)
)
 DUQUESNE LIGHT COMPANY,)
)
 Respondent.)

Docket No. C-2011-2247887

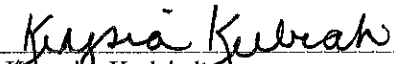
NOTICE TO PLEAD

TO Robert Wagner:

TAKE NOTICE THAT COMMISSION REGULATION 5.101 PROVIDES THAT AN ANSWER TO THE OBJECTIONS SHALL BE FILED WITHIN 10 DAYS OF THE DATE OF SERVICE OF THE OBJECTIONS.

Respectfully submitted,

DUQUESNE LIGHT COMPANY
By Counsel:



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

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|-------------------------|---|---------------------------|
| ROBERT WAGNER, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Docket No. C-2011-2247887 |
| |) | |
| DUQUESNE LIGHT COMPANY, |) | |
| |) | |
| Respondent. |) | |

**RESPONDENT’S DUQUESNE LIGHT COMPANY’S
PRELIMINARY OBJECTIONS**

Respondent Duquesne Light Company (“Duquesne Light”), by and through its attorney Krysia Kubiak, and pursuant to 52 Pa. Code §5.101 hereby makes the following preliminary objections:

1. Duquesne Light hereby incorporates those averments set forth in its Answer contemporaneously filed in the above-captioned Complaint as if more fully set forth herein at length.

Facts

2. On or about June 1, 2011, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (“the Commission”), which requested that the Commission prevent Respondent from collecting past-due charges, and which further requested that the Commission forgive Complainant’s past-due balance.

3. 1706 Marmaduke St. is a rental property whose apartments are not individually metered. Therefore, under 66 Pa. C.S. §1529.1(b), these apartments are required to be in the name of the landlord. Electric service was established in the name of the landlord, Complainant Robert Wagner, in October of 1972.
4. The most recent payment that Complainant made for electric service at 1706 Marmaduke St. was on July 24, 2006.
5. Complainant did not call to end service to the property. Complainant received monthly bills which showed an increasing arrearage.
6. Before service can be terminated to a landlord ratepayer's account, a utility must follow extensive steps to offer tenants opportunities to continue to receive uninterrupted service. 66 Pa. C.S. §1521 *et seq.*
7. Respondent did not terminate the service in Complainant's name at 1706 Marmaduke St. out of concern for the tenants who resided there.
8. As a result of Respondent's decision to continue to provide electric service at 1706 Marmaduke St., the tenants' service was not interrupted through termination.

Preliminary Objections

9. The Pennsylvania Code permits the filing of preliminary objections based on "lack of capacity to sue." 52 Pa. Code §5.101(a)(5).
10. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Gas Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

12. The property that is the subject of the above-captioned Complaint, 1706 Marmaduke St., Pittsburgh, PA 15116, ("1706 Marmaduke St.") has already been the subject of a Petition to Appoint Receiver to Recover Utility Costs, in the Court of Common Pleas of Allegheny County, Pennsylvania. (See Exhibit 1.) That Petition was filed on January 21, 2011.
13. The Petition was made subject to 66 Pa. C.S.A. §1533(a), which states,

“when a landlord ratepayer is two or more months in arrears in his utility payments, the affected utility shall have the right to petition the court of common pleas of the county wherein the leased premises are located to appoint a receiver to collect rent payments otherwise due the landlord ratepayer directly from the tenants and to pay all overdue and subsequent utility bills therefrom.”
14. In an Order dated June 9, 2011, Judge Christine Ward, of the Allegheny County Court of Common Pleas, has appointed a receiver for 1706 Marmaduke St. Pittsburgh, PA 15116. (See Exhibit 2.)
15. The appointment of a receiver keeps utility service on for the tenants.
16. In a letter dated June 14, 2011, Complainant stated that it was his intention to pay the full arrearages, after late fees had been removed. (See Exhibit 3.)
17. Under *res judicata*, when a court of competent jurisdiction enters a final judgment on the merits of a cause of action, the parties to that case and their privies are thereafter bound “not only as to every matter which was offered and received but also as to any other admissible matter which might have been offered.” *Commission v. Sunnen*, 333 U.S. 591, 68 S. Ct. 715, 719 (1948); *Jones v. Costlow*, 354 Pa. 245, 47 A.2d 259 (1946); *Jane A. Suprick and Ransom Township v. Commonwealth Telephone Co.*, 1995 Pa. PUC LEXIS 15, Docket Nos. C-00903161 and C-00903197.

A. Suprick and Ransom Township v. Commonwealth Telephone Co., 1995 Pa. PUC LEXIS 15, Docket Nos. C-00903161 and C-00903197.

18. The doctrine of *res judicata* reflects the refusal of the law to tolerate the relitigation of a matter decided by a court of competent jurisdiction. Final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on the same cause of action. For the doctrine to prevail, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Superior Ct. 225, 464 A.2d 1313, 1316, 1317 (1983); *Thomas P. O'Toole v. The Bell telephone Company of Pennsylvania*, 1992 Pa. PUC LEXIS 83, 16-18 (Pa. PUC 1992). *Saundra Adams v. West Penn Power Company*, 2009 Pa. PUC LEXIS 151, (Pa. PUC 2009).
19. All of the elements of *res judicata* are present in the above-captioned formal Complaint. First, the issue continues to be whether Complainant should be held responsible for electric service that he placed in his name. Second, the cause of action is the reasonableness of Respondent's Petition to Appoint Receiver to Cover Utility Costs, which was the cause of action that Complainant raised in his defense before the Court of Common Pleas. Third, the parties to this action, Robert Wagner and Duquesne Light Company, are the identical parties to the prior action. Finally, a final judgment was issued by Judge Ward on June 11, 2011, in the form of an Order of Court, in the matter of *Duquesne Light Company v. Robert J. Wagner*, Civil Division Docket Number GD 11-001410.

20. Similar to the doctrine of *res judicata* is the doctrine of collateral estoppel; however, it is a broader concept. Collateral estoppel is a doctrine of issue preclusion that seeks to prevent the relitigation of a finally litigated issue in a subsequent proceeding between same parties. *Baker v. Pa. Human Relations Comm.*, 75 Pa. Commonwealth Ct. 296, 307, 462 A.2d 881 (1983); *Thomas P. O'Toole*, supra. *Saundra Adams*, supra.
21. Collateral estoppel operates to prevent a question of law or an issue of fact that has been once litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit. The four requirements for a plea of collateral estoppel to prevail are: (1) the issue decided in the prior adjudication is identical with the one presented in the later action, (2) there was a final judgment on the merits, (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication, and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issue in question in the prior action. *Day*, 464 A.2d at 1318, 1319. *Saundra Adams*, supra.
22. All of the elements of collateral estoppel are present in the above-captioned formal Complaint. First, the issue that was previously decided and the issue currently presented are identical: whether Robert Wagner should be held responsible for the electric service that he place in his name. Second, Judge Ward's Order was a final judgment on the merits. Third, this plea is asserted against Complainant Robert Wagner, who was a party to the prior adjudication. Finally, Mr. Wagner has had a full and fair opportunity to litigate the issue in the prior action, at a hearing on May 31, 2011 in the Court of Common Pleas of Allegheny County.

23. As of July 12, 2011, Complainant has not appealed Judge Ward's Order. Instead he filed the above-captioned formal Complaint in an attempt to prevent her Order from being enacted.

WHEREFORE, in view of the foregoing, Duquesne Light respectfully requests that the Commission grant Duquesne Light's Preliminary Objections to Robert Wagner's Complaint and dismiss the Complaint on the grounds that Complainant lacks capacity to sue.

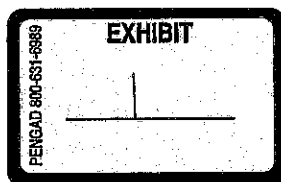
Respectfully submitted,



Krysia Kubiak
Attorney for Respondent
Duquesne Light Company
411 7th Avenue (16-1)
Pittsburgh, PA 15219
Telephone: (412) 393-6505
FAX: (412) 393-5897

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

| | |
|---|--|
| <p>DUQUESNE LIGHT COMPANY,</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>ROBERT J. WAGNER,</p> <p style="text-align: center;">Defendant</p> | <p>CIVIL DIVISION</p> <p>No.</p> <p>ISSUE NO.</p> <p>TYPE OF PLEADING: Petition to Appoint Receiver</p> <p>CODE:</p> <p>FILED ON BEHALF OF: Plaintiff Duquesne Light Company.</p> <p>COUNSEL OF RECORD FOR THIS PARTY:</p> <p>Kirk B. Burkley Pa. I.D. #89511</p> <p>BERNSTEIN LAW FIRM, P.C. Firm No. 718 Suite 2200, Gulf Tower 707 Grant Street Pittsburgh, PA 15219 (412) 456-8101 Fax: (412) 456-8135</p> |
|---|--|



6. As of the date of the filing of this Petition, the Defendant is in arrears on its electric utility bill in the amount of \$11,398.27. A true and correct copy of the most recent bill sent to the Defendant is attached hereto.

7. Defendant is more than two months in arrears on electric utility payments to Duquesne Light. A true and correct copy of a payment history dating back to November 20, 2008 for account number *****7001 is attached hereto as Exhibit A.

8. 66 Pa.C.S.A. § 1533(a) states:

(a) Appointment of a Receiver. Notwithstanding the foregoing sections of this chapter, when a landlord ratepayer is two or more months in arrears in his utility payments, the affected utility shall have the right to petition the court of common pleas of the county wherein the leased premises are located to appoint a receiver to collect rent payments otherwise due the landlord ratepayer directly from the tenants and to pay all overdue and subsequent utility bills therefrom. The provisions of this section shall not be construed to supersede any tenant rights or defenses under law regarding the payment of rent. This right may be exercised only in those situations that involve units which are not individually metered by the utility. Upon appointment, the receiver shall notify the tenants of his powers and their rights under law regarding payment of rent and continued utility service by first class mail, certified mail, personal service or posting notice in each unit in the lease premises.

9. Defendant is responsible for paying for the electric utility service at the Property and is not the sole occupant at the Property. Therefore, Defendant qualifies as the Landlord Ratepayer for the Property as defined in 66 Pa.C.S.A. § 1521.

10. Although Duquesne Light has made repeated demands upon Defendant for payment of the past due balance, Defendant has failed or refused to pay as required.

11. Duquesne Light proposes to appoint Wayne Reck (the "Receiver") as the receiver to collect rents from the Tenants. Mr. Reck is experienced in real estate and property management. A copy of Mr. Reck's curriculum vitae is attached hereto as Exhibit B.

12. Upon appointment, the Receiver shall notify the Tenants of the Receiver's powers and their rights under law regarding payment of rent and continued utility service.

13. The appointment of a receiver will allow Duquesne Light to recoup the utility arrears and receive payment for provision of future utility service.

WHEREFORE, Duquesne Light respectfully requests that this Honorable Court enter the attached Order of Court which authorizes the appointment of a receiver pursuant to 66 Pa.C.S.A. § 1533 to collect rents at 1706 Marmaduke Street, Pittsburgh, PA 15212-1750 and to use some or all of the collected funds to pay for utility usage at the Property.

Respectfully submitted,

BERNSTEIN LAW FIRM, P.C.

By: 

Kirk B. Burkley, Esq.

PA I.D. #89511

Suite 2200, Gulf Tower

Pittsburgh, PA 15219

(412) 456-8107

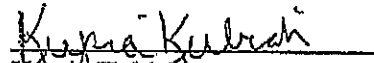
Fax: (412) 456-8255

Counsel for Plaintiff,
Duquesne Light Company

Dated: January 21, 2011

VERIFICATION

KRYSIA KUBIAK, a duly authorized representative of DUQUESNE LIGHT COMPANY, deposes and says subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities that the facts set forth in the foregoing Complaint in Civil Action are true and correct to her information and belief.



Krysta Kubiak

7000851386002 CC 017 LST-BL 12 RD CYC 45 BL CYC 45 SERV START 11/03/03
 WAGNER ROBERT STATUS ACTIVE DS FNA LAST-TRAN 12/22/10
 1706 MARMADUKE ST FLR 1 RT/RDR 010 000 DISPUTE EXP
 PITTSBURGH PA 15212-1750 412 487 4280 C&C RNTFRP NO

***** 01-22 STATEMENT OF ACCOUNT ***** 01/10/11 *** 1235 **

| TRANS | TRANSACTION | SEQ NO | EMT DATE | ACCOUNT | | | |
|----------|-------------|--------|----------|---------|----------|--------|----------|
| DATE | DESCRIPTION | AGENCY | BATCH | DAYS | DUE DATE | AMOUNT | BALANCE |
| 06/23/10 | LATE PAY CH | | | | 07/14/10 | 56.24 | 5,815.25 |
| 06/23/10 | UTILITY BIL | | | 32 | 07/14/10 | 146.10 | 5,961.35 |
| 07/23/10 | LATE PAY CH | | | | 08/16/10 | 58.06 | 6,019.41 |
| 07/23/10 | UTILITY BIL | | | 30 | 08/16/10 | 160.07 | 6,179.48 |
| 08/23/10 | LATE PAY CH | | | | 09/13/10 | 60.06 | 6,239.54 |
| 08/23/10 | UTILITY BIL | | | 29 | 09/13/10 | 152.74 | 6,392.28 |
| 09/22/10 | LATE PAY CH | | | | 10/13/10 | 61.97 | 6,454.25 |
| 09/22/10 | UTILITY BIL | | | 32 | 10/13/10 | 85.73 | 6,539.98 |
| 10/21/10 | LATE PAY CH | | | | 11/12/10 | 63.04 | 6,603.02 |
| 10/21/10 | UTILITY BIL | | | 29 | 11/12/10 | 91.51 | 6,694.53 |
| 11/19/10 | LATE PAY CH | | | | 12/13/10 | 64.19 | 6,758.72 |
| 11/19/10 | UTILITY BIL | | | 29 | 12/13/10 | 316.53 | 7,075.25 |
| 12/22/10 | LATE PAY CH | | | | 01/12/11 | 68.14 | 7,143.39 |
| 12/22/10 | UTILITY BIL | | | 33 | 01/12/11 | 252.03 | 7,395.42 |

* * * ARE THERE MORE RECORDS YES * * *

DSPLY 23 KEY TO NEW SS DSPLY KEY

1000351387001 CC 012 LST-BL 11 RD CYC 45 BL CYC 45 SERV START 10/18/72
 WAGNER ROBERT STATUS ACTIVE DS FNA LAST-TRAN 11/19/10

1706 MARMADUKE ST FLR 2 RT/RDR 010 000 DISPUTE EXP
 PITTSBURGH PA 15212-1750 412 487 4280 C&C RNTPROP NO

***** 01-22 STATEMENT OF ACCOUNT ***** 11/30/10 *** 0926 **

| TRANS DATE | TRANSACTION DESCRIPTION | AGENCY | BATCH | SEQ NO | PMT DATE | DUE DATE | AMOUNT | ACCOUNT BALANCE |
|------------|-------------------------|--------|-------|--------|----------|----------|--------|-----------------|
| 05/24/10 | LATE PAY CH | | | | 06/14/10 | | 96.20 | 9,900.94 |
| 05/24/10 | UTILITY BIL | | | 29 | 06/14/10 | | 120.76 | 10,021.70 |
| 06/23/10 | LATE PAY CH | | | | 07/14/10 | | 97.71 | 10,119.41 |
| 06/23/10 | UTILITY BIL | | | 32 | 07/14/10 | | 130.17 | 10,249.58 |
| 07/23/10 | LATE PAY CH | | | | 08/16/10 | | 99.34 | 10,348.92 |
| 07/23/10 | UTILITY BIL | | | 30 | 08/16/10 | | 145.35 | 10,494.27 |
| 08/23/10 | LATE PAY CH | | | | 09/13/10 | | 101.15 | 10,595.42 |
| 08/23/10 | UTILITY BIL | | | 29 | 09/13/10 | | 137.53 | 10,732.95 |
| 09/22/10 | LATE PAY CH | | | | 10/13/10 | | 102.87 | 10,835.82 |
| 09/22/10 | UTILITY BIL | | | 32 | 10/13/10 | | 194.79 | 11,030.61 |
| 10/21/10 | LATE PAY CH | | | | 11/12/10 | | 105.31 | 11,135.92 |
| 10/21/10 | UTILITY BIL | | | 29 | 11/12/10 | | 107.53 | 11,243.45 |
| 11/19/10 | LATE PAY CH | | | | 12/13/10 | | 106.65 | 11,350.10 |
| 11/19/10 | UTILITY BIL | | | 29 | 12/13/10 | | 48.17 | 11,398.27 |

*** ARE THERE MORE RECORDS YES ***
 DSPY 23 KEY TO NEW SS DSPY KEY

1000351387001 CC 012 LST-BL 11 RD CYC 45 BL CYC 45 SERV START 10/18/72
 WAGNER ROBERT STATUS ACTIVE DS FNA LAST-TRAN 11/19/10
 1706 MARMADUKE ST FLR 2 RT/RDR 010 000 DISPUTE EXP
 PITTSBURGH PA 15212-1750 412 487 4280 C&C RNTEROP NO
 ***** 01-22 STATEMENT OF ACCOUNT ***** 11/30/10 *** 0927 **

| TRANS DATE | TRANSACTION DESCRIPTION | AGENCY | BATCH | SEQ NO | PMT DATE | DUE DATE | AMOUNT | ACCOUNT BALANCE |
|------------|-------------------------|--------|-------|--------|----------|----------|--------|-----------------|
| 10/22/09 | LATE PAY CH | | | | | 11/12/09 | 68.65 | 7,101.52 |
| 10/22/09 | UTILITY BIL | | | 29 | | 11/12/09 | 208.63 | 7,310.15 |
| 11/20/09 | LATE PAY CH | | | | | 12/14/09 | 71.26 | 7,381.41 |
| 11/20/09 | UTILITY BIL | | | 29 | | 12/14/09 | 233.18 | 7,614.59 |
| 12/23/09 | LATE PAY CH | | | | | 01/13/10 | 74.17 | 7,688.76 |
| 12/23/09 | UTILITY BIL | | | 33 | | 01/13/10 | 487.59 | 8,176.35 |
| 01/25/10 | LATE PAY CH | | | | | 02/16/10 | 80.26 | 8,256.61 |
| 01/25/10 | UTILITY BIL | | | 31 | | 02/16/10 | 510.77 | 8,767.38 |
| 02/23/10 | LATE PAY CH | | | | | 03/16/10 | 86.65 | 8,854.03 |
| 02/23/10 | UTILITY BIL | | | 31 | | 03/16/10 | 430.89 | 9,284.92 |
| 03/24/10 | LATE PAY CH | | | | | 04/14/10 | 92.04 | 9,376.96 |
| 03/24/10 | UTILITY BIL | | | 29 | | 04/14/10 | 200.79 | 9,577.75 |
| 04/23/10 | LATE PAY CH | | | | | 05/17/10 | 94.55 | 9,672.30 |
| 04/23/10 | UTILITY BIL | | | 30 | | 05/17/10 | 132.44 | 9,804.74 |

*** ARE THERE MORE RECORDS YES ***
 DSPY 23 KEY TO NEW SS DSPY KEY

1000351387001 CC 012 LST-BL 11 RD CYC 45 BL CYC 45 SERV START 10/18/72
 WAGNER ROBERT STATUS ACTIVE DS FNA LAST-TRAN 11/19/10

1706 MARMADUKE ST FLR 2 RT/RDR 010 000 DISPUTE EXP
 PITTSBURGH PA 15212-1750 412 487 4280 C&C RNTPROP NO

***** 01-22 STATEMENT OF ACCOUNT ***** 11/30/10 *** 0927 **

| TRANS | TRANSACTION | SEQ NO | PMT DATE | ACCOUNT | | | |
|----------|-------------|--------|----------|---------|----------|--------|----------|
| DATE | DESCRIPTION | AGNCY | BATCH | DAYS | DUE DATE | AMOUNT | BALANCE |
| 03/24/09 | LATE PAY CH | | | | 04/14/09 | 59.95 | 5,952.11 |
| 03/24/09 | UTILITY BIL | | | 31 | 04/14/09 | 45.02 | 5,997.13 |
| 04/23/09 | LATE PAY CH | | | | 05/14/09 | 60.51 | 6,057.64 |
| 04/23/09 | UTILITY BIL | | | 30 | 05/14/09 | 139.74 | 6,197.38 |
| 05/22/09 | LATE PAY CH | | | | 06/15/09 | 62.26 | 6,259.64 |
| 05/22/09 | UTILITY BIL | | | 29 | 06/15/09 | 100.55 | 6,360.19 |
| 06/23/09 | LATE PAY CH | | | | 07/14/09 | 63.51 | 6,423.70 |
| 06/23/09 | UTILITY BIL | | | 32 | 07/14/09 | 108.79 | 6,532.49 |
| 07/23/09 | LATE PAY CH | | | | 08/13/09 | 64.87 | 6,597.36 |
| 07/23/09 | UTILITY BIL | | | 30 | 08/13/09 | 103.91 | 6,701.27 |
| 08/24/09 | LATE PAY CH | | | | 09/14/09 | 66.17 | 6,767.44 |
| 08/24/09 | UTILITY BIL | | | 30 | 09/14/09 | 99.01 | 6,866.45 |
| 09/23/09 | LATE PAY CH | | | | 10/14/09 | 67.41 | 6,933.86 |
| 09/23/09 | UTILITY BIL | | | 32 | 10/14/09 | 99.01 | 7,032.87 |

*** ARE THERE MORE RECORDS YES ***
 DSNLY 23 KEY TO NEW SS DSNLY KEY

1000351387001 CC 012 LST-BL 11 RD CYC 45 BL CYC 45 SERV START 10/18/72
 WAGNER ROBERT STATUS ACTIVE DS FNA LAST-TRAN 11/19/10
 1706 MARMADUKE ST FLR 2 RT/RDR 010 000 DISPUTE EXP
 PITTSBURGH PA 15212-1750 412 487 4280 C&C RNTROP NO
 ***** 01-22 STATEMENT OF ACCOUNT ***** 11/30/10 *** 0928 **

| TRANS | TRANSACTION | AGENCY | BATCH | SEQ NO | PMT DATE | AMOUNT | ACCOUNT BALANCE |
|-----------------|-------------|--------|-------|--------|----------|--------|-----------------|
| 11/20/08 | UTILITY BIL | | | 29 | 12/11/08 | 41.90 | 5,541.76 |
| 12/23/08 | LATE PAY CH | | | | 01/13/09 | 57.76 | 5,599.52 |
| 12/23/08 | UTILITY BIL | | | 33 | 01/13/09 | 68.16 | 5,667.68 |
| 01/23/09 | LATE PAY CH | | | | 02/17/09 | 58.62 | 5,726.30 |
| 01/23/09 | UTILITY BIL | | | 31 | 02/17/09 | 63.06 | 5,789.36 |
| 02/23/09 | LATE PAY CH | | | | 03/16/09 | 59.40 | 5,848.76 |
| 02/23/09 | UTILITY BIL | | | 29 | 03/16/09 | 43.40 | 5,892.16 |
| ACCOUNT BALANCE | | | | | | | 11,398.27 |

* * * ARE THERE MORE RECORDS NO * * *
 DSNLY 23 KEY TO NEW SS DSNLY KEY

Wayne M. Reck, CRB/CRS/CRP/ABR
RE/MAX CSI
1720 Washington Road
at Norman Centre
Pittsburgh, PA 15241

Direct Line (412) 851-2520
Residence (412)563-6007
Fax (412) 833-7999
email: wreck@remax.net

Qualifications Brief

- Professional Designations:
- Pennsylvania Licensed Realtor January 1988
 - Pennsylvania Licensed Associate Broker April 6, 2000
License Number AB0627366
 - Pennsylvania Licensed Certified Residential Appraiser
License Number RL139491
 - Graduate Realtor Institute – GRI
 - Certified Residential Specialist – CRS
 - Certified Residential Broker – CRB
 - Certified Relocation Professional – CRP
 - Accredited Buyer Representative – ABR
 - Certified Distressed Property Expert - CDPE
 - Seniors Real Estate Specialist – SRES
 - NAR'S Green Designation

Professional
Memberships:

- Realtors Association of Metropolitan Pittsburgh (RAMP)
- Pennsylvania Association of Realtors (PAR)
- National Association of Realtors (NAR)
- Western Pennsylvania Multi-List
- Andron Epiphanon Fraternity
- Employee Relocation Council Member
- RE/MAX Presidents Club
- Board Member, Realtors Association of Metropolitan
Pittsburgh (RAMP)
- Member, Professional Standards and Arbitration Committee
(RAMP)
- Chairman, Technology Committee (RAMP)
- Member, Budget Finance Committee (RAMP)

Skills:

- Expert in Residential Marketing and Promotion
- High Energy and Enthusiasm
- Problem Solving
- Exceptional Negotiator
- Detail Oriented and Organized
- Knowledgeable in all aspects of Real Estate Sales
- Property Management

Education and Training:

- Real Estate Fundamentals (1987)
- Real Estate Management – Realtors Educational Institute – 1991
- Real Estate Appraisal – Realtors Educational Institute – 1991
- Real Estate Law – Realtors Educational Institute – 1990
- Dale Carnegie Graduate – 1983
- Graduate Residential Sales Council – 1993
- Graduate Realtors Institute – 1992
- Graduate Real Estate Brokerage Managers Council – 1993
- Graduate Real Estate Buyer's Agent Council (REBAC) – 1995
- Completed several Buyer Brokerage courses from 1992-95

Experience:

- 23 years in the Real Estate profession
- Multi-Million Dollar Producer
- 22 years as Co-owner/Manager of RE/MAX CSI
- Employed in the Real Estate Profession for over 25 years

Objectives:

- To obtain the best possible price for my clients
- To give nothing less than 150%
- To maintain a high degree of professionalism, ethics and integrity to all with whom I come in contact

by letter of the monthly rent charged to each of the Tenants and the date each month that the monthly rent is due from each Tenant. Landlord shall also provide Receiver with a copy of any written lease in force for any Tenant.

6. Within ten days of the date of this Order, the Receiver shall notify the Tenants of the Receiver's powers and their rights under law regarding payment of rent and continued utility service. The Receiver shall notify the Tenants by first class or certified mail.

Alternatively, the Receiver may personally serve the notice or post the notice in each unit in the lease premises. In the event Landlord fails to comply with Paragraphs 4 and 5 of this Order, the Receiver may take any action reasonably necessary to discover the information that should have been provided by Landlord and shall be entitled to reimbursement from Landlord for his/her costs and expenses, including reasonable attorneys' fees for discovering said information.

7. Upon entry of this Order, Duquesne Light shall pay Receiver a flat fee of \$350.00, which amount Duquesne Light shall be entitled to add to Landlord's account balance.

8. From the date of this Order, the Tenants shall pay all rents directly to the Receiver. The Landlord is enjoined from collecting any rents due from the Tenants while the receivership remains in place. The Landlord is enjoined from interfering with the Receiver, directly or indirectly, in the collection of rents. If the Landlord receives any rent payments from Tenants after the date of this Order, the Landlord shall immediately forward the rental payment to the Receiver at the following address:

Wayne Reck
c/o Remax
1720 Washington Road, Suite 202
At Norman Center

Pittsburgh, PA 15241

9. The Receiver shall apply the rents received as follows:
 - (a) The Receiver shall first pay the amount due to Duquesne Light for the most recent utility bill with a payment due date prior to the entry of this Order and then shall pay each subsequent bill as they become due and funds are available;
 - (b) Next to the Receiver's administrative fee of 2% of the funds received by the Receiver from the Landlord or Tenants, then to the reasonable costs of notification to the Landlord and Tenants, then to Receiver's reasonable costs, expenses and attorneys' fees of performing Receiver's duties under this Order;
 - (c) Then the Receiver shall reimburse Duquesne Light the Receiver's Fee of \$350.00 (under paragraph 7, above), then \$750.00 plus costs and expenses related to the preparation and prosecution of this Petition;
 - (d) After payment of the amounts in paragraphs 9(a), (b) & (c), any additional funds collected shall be applied to the past due balance owed by Landlord to Duquesne Light until fully paid;
 - (e) The Receiver shall return the remainder to the Landlord.
10. The Receiver shall make a distribution to Duquesne Light on or before the 10th day of each month that the receivership is in place and shall distribute the remaining sums, if any, to the Landlord on or before the 15th day of each month that the receivership is in place.
11. The Receiver shall have the right to open and utilize bank accounts for

receivership funds.

12. The Receiver shall have the right to present for payment any checks, money orders or other forms of payment made payable to the Landlord relating to the tenants of the Property, endorse same and collect the proceeds thereof, to be used and maintained as elsewhere provided herein.

13. The Receiver shall prepare monthly reports reflecting the income received and disbursements made during the immediately preceding month and deliver such reports to Duquesne Light and the Landlord. The Receiver shall also make the reports available to the Court upon request of the Court.

14. The Receiver shall inform the Landlord of any Tenant's failure to pay rent when due. Receiver shall have the power and right to take all necessary steps, including commencing eviction proceedings and other legal action, to compel the Tenants to pay rent. Receiver shall be entitled to reimbursement from said Tenants of costs and expenses of compelling them to pay rent, including reasonable attorneys' fees. At Receiver's sole discretion and direction, the Receiver may permit Landlord to take any and all necessary steps, including commencing legal action, to compel the Tenant to pay the past due rent and/or eviction.

15. The Receiver shall have the authority to enter any and all units on the Property (at reasonable times and upon reasonable notice to Tenants in any units) to effectuate the purpose of this Order, including for the purpose of inspection and valuation of the unit and/or Property, using any means necessary. Receiver shall be entitled to reimbursement from Tenants' rent due of costs and expenses of entry, notwithstanding the manner of entry.

16. The Landlord shall remain responsible for all aspects of the legal relationship between the Landlord and the Tenants except for collecting and processing rent payments. Receiver shall have no liability or responsibility to Tenants or Landlord for any actions or inactions related to the Property other than processing rent and remittance to Duquesne Light.

17. The Landlord shall retain the rights and responsibilities associated with the movement of tenants into and out of the Property, except that, as stated above, the Receiver may seek to evict Tenants based upon non-payment of rent. The Landlord may continue to lease units in the Property to new tenants, but must inform the Receiver of the departure of current Tenants and the arrival of new Tenants, including their names, addresses and the rent for the unit.

18. Except as otherwise provided in this Order, Receiver is granted the right and power to take any action reasonably necessary to carry out the intent of 66 Pa.C.S.A. § 1533 and the provisions of this Order, including but not limited to in the event of default, petitioning the Court for authority to sell the Property and/or informing Plaintiff it may discontinue utility service where Tenants' payment of rent from the month prior to the Tenants receiving notice of the appointment of the Receiver and all future bills have remained unpaid within sixty (60) days from the date of notice of appointment of the Receiver was mailed or delivered.

19. Upon the request of the Receiver, Landlord shall promptly supply Receiver with the Landlord's books, records, correspondence, ledgers, accounts and business records relating to the Property and the tenants of the Property.

20. Receiver shall be entitled to defend and/or enforce any and all rights and/or

powers granted Receiver herein. In the event of a challenge to Receiver's rights and/or powers by any party, Duquesne Light shall provide Receiver with legal representation. In the event Duquesne Light refuses or is for any reason unable to provide Receiver with legal representation; Receiver shall be entitled to hire his/her own counsel. In either instance, and subject to Court approval, Receiver shall be entitled to reimbursement from Landlord and/or rents collected for reasonable costs and attorneys' fees related to the enforcement and/or defense of any and all rights and/or powers granted to Receiver herein.

21. Termination. The Receiver shall continue to collect the rents and make disbursements in the manner provided in subsection (c) until the second rental period ends after all of the following conditions have been met:

- (a) The Landlord deposits \$941.66 in escrow with Duquesne Light, which represents the Property utility charges for the two highest monthly periods in the preceding 12 months.
- (b) The Landlord demonstrates to the satisfaction of the court of common pleas that he has the financial resources necessary to resume his obligations to Duquesne Light, other creditors and the Tenants.
- (c) The Landlord or Receiver pays the undisputed amount of all outstanding amounts owed to Duquesne Light.

22. Any party in interest may request that the Court terminate the receivership, whereby the Court will schedule a hearing to assess and determine if the conditions set forth in Paragraph 21 of this Order have been satisfied and/or other compelling circumstances justify said termination.

23. Once this Court has ordered the termination of the receivership, the Tenants shall resume making rental payments to the Landlord. Notice of this change shall be made to the Tenants by the Receiver by means of first class mail, certified mail, personal service or posting notice in each unit in the leased premises, the costs of notice to be paid by the Landlord.

24. The escrow fund established under Paragraph 17(a) shall not be considered a prepayment of utility costs and shall be held by Duquesne Light as security for future defaults and/or delinquency.

BY THE COURT:

_____ J.

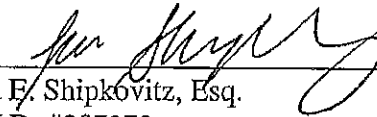
IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

| | |
|--|---------------------------|
| DUQUESNE LIGHT COMPANY, Plaintiff v. ROBERT J. WAGNER, Defendant | CIVIL DIVISION NO: |
|--|---------------------------|

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PETITION TO APPOINT RECEIVER was served upon the Defendant via regular U.S. Mail, postage prepaid, this _____ day of January, 2011, addressed as follows:

Robert J. Wagner
1490 Wood Avenue 10
Glenshaw, PA 15116-2440

By: 
Lara E. Shipkovitz, Esq.
PA I.D. #307272
Suite 2200 Gulf Tower
Pittsburgh, PA 15219
(412) 456-8132
Fax: (412) 456-8255

Counsel for Plaintiff,
Duquesne Light Company

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DUQUENSE LIGHT COMPANY,

Plaintiff,

v.

ROBERT J. WAGNER,

Defendant.

CIVIL DIVISION

No. GD 11-001410

Hon. Christine A. Ward

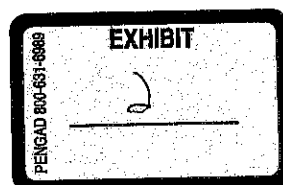
ORDER OF COURT

Copies Sent To:

Kirk B. Burkley, Esq.
BERNSTEIN LAW FIRM, P.C.
Suite 2200, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

Robert J. Wagner
1490 Wood Avenue 10
Glenshaw, PA 15116-2440

FILED
11 JUN 10 AM 9:59
DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY, PA



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

| | |
|--|-------------------------------------|
| DUQUESNE LIGHT COMPANY, Plaintiff v. ROBERT J. WAGNER, Defendant | CIVIL DIVISION NO: 11-001410 |
|--|-------------------------------------|

ORDER OF COURT APPOINTING RECEIVER TO RECOVER UTILITY COSTS
PURSUANT TO 66 PA C.S.A. § 1533

AND NOW, upon consideration of the Petition to Appoint Receiver to Recover Utility Costs, it is hereby ORDERED, ADJUDGED and DECREED that:

1. As of the date of this Order, Robert J. Wagner (the "Landlord" or "Defendant") account with Duquesne Light Company ("Duquesne Light" or "Plaintiff") is in arrears ~~\$11,393.27~~* for the provision of utility service to 1706 Marmaduke, PA 15212-1750 (the "Property").
2. All provisions of this Order applying to the Landlord shall also apply to anyone acting under the direction or control of the Landlord, including, but not limited to, employees, partners, officers, agents, affiliates, representatives, family members and independent contractors.
3. Pursuant to 66 Pa.C.S.A. § 1533, Wayne Reck (the "Receiver") is appointed as the receiver for the Property, to serve without Bond.
4. Landlord shall within five days from the date of this Order provide the Receiver with the contact information for each and every tenant at the Property (the "Tenants").
5. The Landlord shall within five days of the date of this Order inform the Receiver

* See Paragraph 25.

by letter of the monthly rent charged to each of the Tenants and the date each month that the monthly rent is due from each Tenant. Landlord shall also provide Receiver with a copy of any written lease in force for any Tenant.

6. Within ten days of the date of this Order, the Receiver shall notify the Tenants of the Receiver's powers and their rights under law regarding payment of rent and continued utility service. The Receiver shall notify the Tenants by first class or certified mail. Alternatively, the Receiver may personally serve the notice or post the notice in each unit in the lease premises. In the event Landlord fails to comply with Paragraphs 4 and 5 of this Order, the Receiver may take any action reasonably necessary to discover the information that should have been provided by Landlord and shall be entitled to reimbursement from Landlord for his/her costs and expenses, including reasonable attorneys' fees for discovering said information.

7. Upon entry of this Order, Duquesne Light shall pay Receiver a flat fee of \$350.00, ~~which amount Duquesne Light shall be entitled to add to Landlord's account balance.~~

8. From the date of this Order, the Tenants shall pay all rents directly to the Receiver. The Landlord is enjoined from collecting any rents due from the Tenants while the receivership remains in place. The Landlord is enjoined from interfering with the Receiver, directly or indirectly, in the collection of rents. If the Landlord receives any rent payments from Tenants after the date of this Order, the Landlord shall immediately forward the rental payment to the Receiver at the following address:

Wayne Reck
c/o Remax
1720 Washington Road, Suite 202
At Norman Center

Pittsburgh, PA 15241

9. The Receiver shall apply the rents received as follows:
 - (a) The Receiver shall first pay the amount due to Duquesne Light for the most recent utility bill with a payment due date prior to the entry of this Order and then shall pay each subsequent bill as they become due and funds are available;
 - ~~(b) Next to the Receiver's administrative fee of 2% of the funds received by the Receiver from the Landlord or Tenants, then to the reasonable costs of notification to the Landlord and Tenants, then to Receiver's reasonable costs, expenses and attorneys' fees of performing Receiver's duties under this Order,~~
 - ~~(c) Then the Receiver shall reimburse Duquesne Light the Receiver's fee of \$350.00 (under paragraph 7, above), then \$750.00 plus costs and expenses related to the preparation and prosecution of this Petition;~~
 - (d) After payment of the amounts in paragraphs 9(a), (b) & (c), any additional funds collected shall be applied to the past due balance owed by Landlord to Duquesne Light until fully paid;
 - (e) The Receiver shall return the remainder to the Landlord.
10. The Receiver shall make a distribution to Duquesne Light on or before the 10th day of each month that the receivership is in place and shall distribute the remaining sums, if any, to the Landlord on or before the 15th day of each month that the receivership is in place.
11. The Receiver shall have the right to open and utilize bank accounts for

receivership funds.

12. The Receiver shall have the right to present for payment any checks, money orders or other forms of payment made payable to the Landlord relating to the tenants of the Property, endorse same and collect the proceeds thereof, to be used and maintained as elsewhere provided herein.

13. The Receiver shall prepare monthly reports reflecting the income received and disbursements made during the immediately preceding month and deliver such reports to Duquesne Light and the Landlord. The Receiver shall also make the reports available to the Court upon request of the Court.

14. The Receiver shall inform the Landlord of any Tenant's failure to pay rent when due. Receiver shall have the power and right to take all necessary steps, including commencing eviction proceedings and other legal action, to compel the Tenants to pay rent. Receiver shall be entitled to reimbursement from said Tenants of costs and expenses of compelling them to pay rent, including reasonable attorneys' fees. At Receiver's sole discretion and direction, the Receiver may permit Landlord to take any and all necessary steps, including commencing legal action, to compel the Tenant to pay the past due rent and/or eviction.

15. The Receiver shall have the authority to enter any and all units on the Property (at reasonable times and upon reasonable notice to Tenants in any units) to effectuate the purpose of this Order, including for the purpose of inspection and valuation of the unit and/or Property, using any means necessary. Receiver shall be entitled to reimbursement from Tenants' rent due of costs and expenses of entry, notwithstanding the manner of entry.

16. The Landlord shall remain responsible for all aspects of the legal relationship between the Landlord and the Tenants except for collecting and processing rent payments. Receiver shall have no liability or responsibility to Tenants or Landlord for any actions or inactions related to the Property other than processing rent and remittance to Duquesne Light.

17. The Landlord shall retain the rights and responsibilities associated with the movement of tenants into and out of the Property, except that, as stated above, the Receiver may seek to evict Tenants based upon non-payment of rent. The Landlord may continue to lease units in the Property to new tenants, but must inform the Receiver of the departure of current Tenants and the arrival of new Tenants, including their names, addresses and the rent for the unit.

18. Except as otherwise provided in this Order, Receiver is granted the right and power to take any action reasonably necessary to carry out the intent of 66 Pa.C.S.A. § 1533 and the provisions of this Order, including but not limited to in the event of default, petitioning the Court for authority to sell the Property and/or informing Plaintiff it may discontinue utility service where Tenants' payment of rent from the month prior to the Tenants receiving notice of the appointment of the Receiver and all future bills have remained unpaid within sixty (60) days from the date of notice of appointment of the Receiver was mailed or delivered.

19. Upon the request of the Receiver, Landlord shall promptly supply Receiver with the Landlord's books, records, correspondence, ledgers, accounts and business records relating to the Property and the tenants of the Property.

20. Receiver shall be entitled to defend and/or enforce any and all rights and/or

powers granted Receiver herein. In the event of a challenge to Receiver's rights and/or powers by any party, Duquesne Light shall provide Receiver with legal representation. In the event Duquesne Light refuses or is for any reason unable to provide Receiver with legal representation; Receiver shall be entitled to hire his/her own counsel. In either instance, and subject to Court approval, Receiver shall be entitled to reimbursement from Landlord and/or rents collected for reasonable costs and attorneys' fees related to the enforcement and/or defense of any and all rights and/or powers granted to Receiver herein.

21. Termination. The Receiver shall continue to collect the rents and make disbursements in the manner provided in subsection (c) until the second rental period ends after all of the following conditions have been met:

- (a) The Landlord deposits ~~\$241,66~~ ^{# 500, -} in escrow with Duquesne Light, which represents the Property utility charges for the two highest monthly periods in the preceding 12 months.
- (b) The Landlord demonstrates to the satisfaction of the court of common pleas that he has the financial resources necessary to resume his obligations to Duquesne Light, other creditors and the Tenants.
- (c) The Landlord or Receiver pays the ~~undisputed amount of all~~ outstanding amounts owed to Duquesne Light. *as recalculated as per*

22. Any party in interest may request that the Court terminate the receivership, whereby the Court will schedule a hearing to assess and determine if the conditions set forth in Paragraph 21 of this Order have been satisfied and/or other compelling circumstances justify said termination.

paragraph 25.

23. Once this Court has ordered the termination of the receivership, the Tenants shall resume making rental payments to the Landlord. Notice of this change shall be made to the Tenants by the Receiver by means of first class mail, certified mail, personal service or posting notice in each unit in the leased premises, the costs of notice to be paid by the Landlord.

24. The escrow fund established under Paragraph 17(a) shall not be considered a prepayment of utility costs and shall be held by Duquesne Light as security for future defaults and/or delinquency. until one (1) year after termination

BY THE COURT:

of receivership.

June 9, 2011

Christine Ward, J.

25. Duquesne Light shall recalculate the amount of arrearages herein removing all late fees and/or penalties of any type.

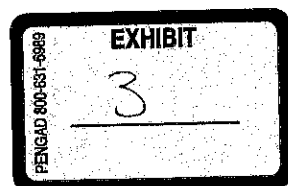
BERNSTEIN LAW FIRM
MR. KIRK BURKLEY,

48668-020 US
JUNE 14th 2011

GD-11-001410

ENCLOSED IS A COPY OF MY LETTER
TO MR WAYNE RECK WHO IS YOUR
DESIGNATED RECEIVER NAMED IN MY
CASE WITH DUQUESNE LIGHT COMPANY.
AS PER MY UNANSWERED PHONE
MESSAGES I AM PATIENTLY WAITING
FOR THE RECALCULATED ARREARAGES
WITH ALL LATE FEES AND/OR PENALTIES
OF ANY TYPE REMOVED BY DUQUESNE
LIGHT COMPANY AS ORDERED BY
JUDGE WARD. (SEE PARAGRAPH #25)
WE INTEND TO PAY THE CORRECTED
AMOUNT WITHIN 5 DAYS WHILE
WE ARE WAITING TO HEAR FROM
THE PUBLIC UTILITY COMMISSION RE-
GARDING OUR FORMAL COMPLAINT
AGAINST THE DUQUESNE LIGHT COMPANY.

RESPECTFULLY,
Robert J Wagner
ROBERT J. WAGNER
PHONE # 412-407-4280



JUNE 14th 2011

MR. WAYNE RECK,

DUQUESNE LIGHT CO. VS. ROBERT J. WAGNER

GD -11-001410

AS PER JUDGE WARD'S INSTRUCTIONS DUQUESNE LIGHT COMPANY HAS BEEN ORDERED TO RECALCULATE THE AMOUNT OF ARREARAGES INVOLVED AND TO REMOVE ALL LATE FEES AND/OR PENALTIES OF ANY TYPE. (SEE PARAGRAPH #25). MY LETTER TODAY IS TO INFORM YOU THAT YOUR SERVICES WILL NOT BE NEEDED BECAUSE WE INTEND TO PAY DUQUESNE LIGHT COMPANY IN FULL WITHIN FIVE DAYS AS SOON AS WE RECEIVE THE TRUE AND CORRECTED AMOUNT AS SUBMITTED BY DUQUESNE LIGHT COMPANY.

RESPECTFULLY,

Robert J. Wagner

ROBERT J. WAGNER

PHONE # 412-487-4280

