



**Duquesne Light**

*Our Energy... Your Power*

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

Tel 412-393-6851  
Fax 412-393-1418  
jallison@duqlight.com

Jennifer L. Allison  
Attorney

December 15, 2011

*Via Electronic Filing*

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

RE: Dennis Mowrey v. Duquesne Light Company  
Docket No. F-2011-2258471

Dear Secretary Chiavetta:

Duquesne Light Company's Motion to Dismiss is enclosed for filing. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,

Jennifer L. Allison  
Attorney for Duquesne Light Company

Enclosure

cc: Dennis Mowrey (with enclosure)  
Administrative Law Judge Mary D. Long (with enclosure)

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DENNIS MOWREY, )  
 )  
 Complainant, )  
 )  
 v. ) Docket No. F-2011-2258471  
 )  
 DUQUESNE LIGHT COMPANY, )  
 )  
 Respondent. )

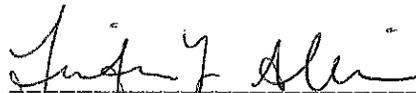
**NOTICE TO PLEAD**

TO DENNIS MOWREY:

TAKE NOTICE THAT COMMISSION REGULATION 5.103 PROVIDES THAT AN ANSWER TO THE MOTION SHALL BE FILED WITHIN 20 DAYS OF THE DATE OF SERVICE OF THE MOTION.

Respectfully submitted,

DUQUESNE LIGHT COMPANY  
By Counsel:



Jennifer L. Allison  
Pa. I.D. # 307945  
Duquesne Light Company  
411 Seventh Avenue  
Mail Drop 16-1  
Pittsburgh, PA 15219  
Telephone: (412) 393-6851  
FAX (412) 393-1418

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DENNIS MOWREY,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. F-2011-2258471
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent.	)	

**RESPONDENT DUQUESNE LIGHT COMPANY'S  
MOTION TO DISMISS**

Respondent Duquesne Light Company (“Duquesne Light”), by and through its attorney Jennifer L. Allison, and files this Motion to Dismiss in accordance with Commission Regulation 5.103, 52 Pa. Code § 5.103:

1. Complainant Dennis Mowrey (“Complainant”) filed a Formal Complaint and an Amended Formal Complaint with the Pennsylvania Public Utility Commission. (See Exhibits 1 and 2.) The Complaint was decided by a Final Order of the Commission. (See Exhibit 3.) Complainant Dennis Mowrey filed the above-captioned Formal Complaint on or about August 19, 2011. (See Exhibit 4.) This Formal Complaint raises issues that have already been litigated and decided.

2. Complainant lacks the capacity to sue Respondent because the doctrine of *res judicata* prevents him from relitigating a matter that was decided by a court of competent jurisdiction.

3. 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.

4. 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. *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). 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. *Id.* 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. *Id.*

5. All of the elements of *res judicata* are present in the above-captioned Formal Complaint. First, both Formal Complaints share an identity of issues. The issues are

information the Complainant alleges he did not receive, whether Complainant's balance should be forgiven or reduced, and whether Complainant should be provided with a payment agreement.

6. In the first Formal Complaint, Complainant avers that he did not receive proper information about an agreement that had been made. Exhibit 2 at 2. Complainant wrote, "They stated that there was an agreement made, but I knew nothing about it at all." *Id.* In his most recent Formal Complaint, Complainant raises the same issue. Exhibit 4 at 2. Complainant wrote, "I was told that there was an agreement already set, but then I was not, then I was again." *Id.*

7. In his first Formal Complaint, Complainant's requested to have his balance forgiven. Exhibit 1 at 2. He wrote, "Have complete balance forgiven as per Duquesne Light's CAP program states for being on after 3 years." *Id.* In his most recent Formal Complaint, Complainant requested a reduction in his account balance and a payment agreement. Exhibit 4 at 2. Complainant wrote, "Balance to be reduced due to mistakes made while on CAP program." *Id.*

8. In his first Formal Complaint, Complainant requested a payment agreement whereby he would pay the budget amount plus \$50. Exhibit 2 at 3. He wrote, "I want the PUC to order the company to give me a payment agreement where I can pay \$50 plus my budget amount until the balance is paid in full." *Id.* Complainant made the same request in his most recent Formal Complaint. He wrote, "Budget + \$50 for repayment and proper notification provided by all parties on agreement." Exhibit 4 at 2.

9. Second, the cause of action is the same in both Formal Complaints. In both Formal Complaints, the cause of action is the reasonableness of Respondent's customer service in the information it provides and in the payment agreements it offers.

10. Third, the parties, Dennis Mowrey and Duquesne Light, are identical parties in both Formal Complaints.

11. Finally, the capacities of both parties (customer and public utility providing electric service) are identical in both Formal Complaints.

12. A decision in the previous Complaint was issued by Administrative Law Judge Long, in an Initial Decision dated October 17, 2011 (see Exhibit 5), and the Initial Decision became final by a Final Order entered December 9, 2011 (see Exhibit 3).

13. Administrative Law Judge Long concluded that “Duquesne Light’s decision to default the Complainant from its CAP program for failure to provide updated income information was reasonable, appropriate, and in accordance with the regulations.” Exhibit 5 at 11.

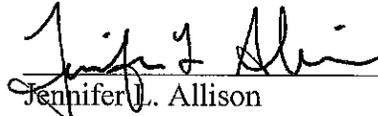
14. Administrative Law Judge Long ordered that Complainant be provided with a one-year payment agreement. Exhibit 5 at 11.

15. Complainant has been using the Pennsylvania Public Utility Commission’s Complaint process as a means to avoid paying his Duquesne Light bills. His last payment was on October 1, 2009. Exhibit 5 at 4. His Duquesne Light account balance is currently \$5,603.41.

16. Beginning with his October 2010 bill, Complainant selected Energy Plus Holdings, LLC as his supplier. This has significantly increased his delinquent balance. Duquesne Light’s price to compare (for supplier charges) is currently 9.33 cents per kilowatt hour. Energy Plus Holdings, LLC’s supplier charges are currently 12.99 cents per kilowatt hour.

WHEREFORE, in view of the foregoing, Duquesne Light respectfully requests that the Commission grant Duquesne Light’s Motion to Dismiss Dennis Mowrey’s above-captioned Complaint and dismiss the Complaint on the grounds that Complainant lacks capacity to sue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer L. Allison", is written over a horizontal line.

Jennifer L. Allison  
Attorney for Respondent  
Duquesne Light Company  
411 7th Avenue (16-1)  
Pittsburgh, PA 15219  
Telephone: (412) 393-6851  
FAX: (412) 393-5897

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

**COPY**

Please print or type.

F-2010-2196812

1. CUSTOMER NAME (COMPLAINANT)

Your name, mailing address, county, telephone number, utility account number and service address:

Name DENNIS MOWREY

Street/P.O. Box 373 KAERCHER Sr. Apt # 1

City PITTSBURGH State PA Zip 15207

County ALLEGHENY

Area Code/HOME Phone 412-224-2662

Area Code/WORK Phone \_\_\_\_\_

Utility Account Number 8001259793003  
(from your bill)

**RECEIVED**

AUG 31 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

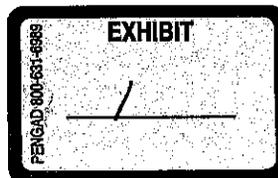
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: DUQUESNE LIGHT

3. TYPE OF UTILITY (check one)

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC                 | <input type="checkbox"/> STEAM HEAT   |
| <input type="checkbox"/> GAS                                 | <input type="checkbox"/> WASTE WATER  |
| <input type="checkbox"/> WATER                               | <input type="checkbox"/> MOTOR CARRIER<br>(taxi, moving company, limousine) |
| <input type="checkbox"/> TELEPHONE<br>(local, long distance) |   |



4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other. CAP AGREEMENT TERMINATED WITHOUT CORRECT (explain) PROCESSING

B. State the facts of your complaint.

Include any specific dates, times or places that are important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

IN OCTOBER 2009, I RECEIVED A LETTER STATING THAT I WAS REMOVED FROM THE COMPANY'S CAP PROGRAM. DUE TO NOT PROVIDING FINANCIAL INFO, I WAS PUT ON THE PROGRAM IN JUNE 2005 AND WAS NEVER ASKED TO VERIFY INCOME. FOR THE WHOLE PERIOD OF TIME ON PROGRAM ALSO, MY BALANCE WAS NOT ERASED AFTER YEARS ON PROGRAM. MY INFORMAL COMPLAINT SAT IN AN OFFICE FROM 11/9/2009 TO EARLY AUGUST 2010 WITH NO CORRESPONDENCE. WITHIN ONE WEEK RELIEF OF PHONE CALL FROM INVESTIGATOR, THE CASE WAS DISMISSED WITHOUT ANY INVESTIGATION

5. What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

HAVE COMPLETE BALANCE FORGIVEN AS PER DOQUESNE LIGHT'S CAP PROGRAM STATES FOR BEING ON AFTER 3 YEARS. INVESTIGATE MR. PAUL MEURON'S SUDDEN DISMISSAL OF COMPLAINT ONE WEEK AFTER HIS PHONE CALL ASKING ABOUT THE COMPLAINT STATUS AND 9 MONTHS OF ACTIVITY (NONE) ON THE COMPLAINT.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

I SPOKE TO A REP FOR THE UTILITY COMPANY BUT I AM NOT SURE IF IT IS THE REP YOU ARE ASKING ABOUT. I DID ASK ABOUT THE COMPLAINT AND THE 2ND SHUT OFF NOTICE.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification: I DENNIS MOWREY, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dennis Mowrey  
(Signature)

8/23/10  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**

**Request for Formal Complaint Forms  
(Notification of Intent to Appeal)**

*Timely*

Notice to Customer:

If you sign and return this form, you are telling the Public Utility Commission that you want to appeal this decision. Do not return this form unless you want to appeal this decision.

If you want to appeal, you must return this form within 20 days of 8/6/2010. The Commission will send you formal complaint forms if you return this form.

You must comply with this decision until the Public Utility Commission completes the formal complaint process. You must make all of the required payments or the utility company may shut off your service.

Sincerely,  
Pennsylvania Public Utility Commission

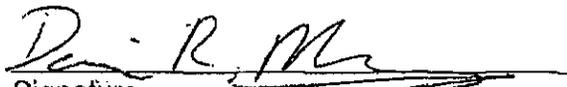
**Yes, I want to appeal this decision. Please send formal complaint forms to me at the following address:**

Customer name and address:  
(Please correct any mistakes.)

DENNIS R MOWREY  
373 KAERCHER STREET  
APT 1  
PITTSBURGH PA 15207

412-224-2062

(Area Code) Telephone Number  
BCS: 2617644  
Company: DUQUESNE LIGHT  
COMPANY

  
Signature  
Date of Mailing: 8/6/2010

Mail this completed form to:

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

RECEIVED  
2010 AUG 16 AM 9:49  
PA.P.U.C.  
SECRETARY'S BUREAU

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

F. 2010-2196812

COPY

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name DENNIS MOWREY

Street/P.O. Box 373 KAERCHER ST. Apt # 1

City PITTSBURGH State PA Zip 15207

County ALLEGHENY

Daytime Telephone Number Where We Can Contact You: (412) 224-2062

E-mail Address (optional): dmowrey@comcast.net

Utility Account Number (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

DUQUESNE LIGHT COMPANY

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[ ] STEAM HEAT

[ ] GAS

[ ] WASTE WATER

[ ] WATER

[ ] MOTOR CARRIER (e.g., taxi, moving company, limousine)

[ ] TELEPHONE (local, long distance)



SECRETARIAT'S BUREAU 2011 JUN 29 AM 9:44 RECEIVED

72718

4. **COMPLAINT** (check one)

A. **In general, what is your complaint?**

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. **State the facts of your complaint.**

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

I RECEIVED A SHUTOFF NOTICE ON 6/14 FROM DUQUESNE LIGHT FOR THE AMOUNT OF \$1 . . . WHEN I CALLED THEM, THEY ACKNOWLEDGED THAT THERE ALREADY WAS A FORMAL COMPLAINT IN THEIR SYSTEM, BUT THE AMOUNT IN QUESTION WAS UNRELATED TO IT. THEY STATED THERE WAS AN AGREEMENT MADE, BUT I KNEW NOTHING ABOUT IT AT ALL. WHEN I CALLED THE PUC, THEY TOLD ME THAT THE FORMAL COMPLAINT WAS STILL IN THEIR OFFICE FROM SEPT. 2010 & DIDN'T KNOW WHY IT WAS. WHEN ASKED WHAT HAPPENED, THEY TRIED TO TELL ME I KNEW EVERYTHING ALREADY, WHICH I KNEW NOTHING TO INCLUDE ANY AGREEMENTS, WHICH THEY STATED THEY SENT. WHEN I ASKED FOR ASSISTANCE, I GOT NOTHING BUT SARCASTIC ANSWERS TO INCLUDE, "THAT'S TOO BAD," "THAT'S WHAT YOU GET..." AND SO ON. WHEN I SPOKE WITH THE SECRETARY'S BUREAU, THEY STATED EVERYTHING THAT SAID WAS VERY UNPROFESSIONAL AND THAT I HAD THE RIGHT TO FILE ANOTHER COMPLAINT. WHEN I DID THAT, I GOT A CALL FROM A REP THAT TRIED TO QUOTE STATE LAWS TO ME AND TRY TO TELL ME THE SAME, BUT IN A NICER WAY.

681739  
Rev. July 2007

I AM BASICALLY TRYING TO ENSURE THAT THE SITUATION IS HANDLED PROPERLY WITH RESPECT INSTEAD OF ALL THE SARCASM & SUCH THAT I HAD TO ENSURE

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

I WANT THE PUC ~~TO~~ TO ORDER THE COMPANY TO GIVE ME A PAYMENT AGREEMENT WHERE I CAN PAY \$50 PLUS MY BUDGET AMOUNT UNTIL THE BALANCE IS PAID IN FULL.

I AM ALSO WANTING REASSURANCE THAT I RECEIVE ALL PAPERWORK INCLUDE THE AGREEMENT AND INCLUDE A FOLLOW-UP TO SEE IF ALL PAPERWORK IS RECEIVED.

I AM ALSO WANTING THE COMPANY TO OFFER ANY ASSISTANCE WITH THEIR PROGRAMS LIKE DOLLAR ENERGY FUND OR ANY OTHER PROGRAMS THEY ARE KNOWLEDGEABLE OF INSTEAD OF IGNORING A CUSTOMER'S NEEDS.

IF POSSIBLE, I WANT A WRITTEN APOLOGY FROM THE PUC REPRESENTATIVES WHO HANDLED BOTH MY CASES AND GAVE ME NOTHING BUT FRUSTRATION CLAIMING THINGS WERE DONE WHEN THEY WERE NOT

F-2010-2196812

**6. PROTECTION FROM ABUSE**

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

**7. PRIOR UTILITY CONTACT**

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

**8. LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I DENNIS MOWROY, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dennis Mowroy (Signature) 6-24-11 (Date)

\_\_\_\_\_  
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Dennis Mowrey

v.

Duquesne Light Company

:  
:  
:  
:  
:

F-2010-2196812

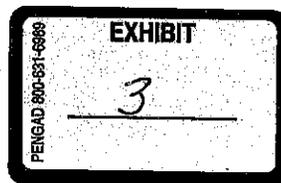
**FINAL ORDER**

In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Mary D. Long dated October 17, 2011, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Dennis Mowrey at Docket No. F-2010-2196812 is dismissed in part and sustained in part.
2. That within 15 days of the date the Commission enters its Order in this case, Duquesne Light Company shall tender a bill to Dennis Mowrey for the net total amount that has accrued for missed consumption payments.
3. That Dennis Mowrey shall pay Duquesne Light on or before the due date for payment of each monthly bill, the monthly budget amount for current consumption, plus 1/12<sup>th</sup> of the non-CAP arrearage owed on his account to be calculated as of the date the Commission enters its Order in this case; these payments shall commence with the first monthly bill received after entry of the Commission's Order in this case and continue thereafter on the due date for the payment of each regular monthly bill, until the arrearage on this account has been paid in full.



4. That, so long as Dennis Mowrey adheres to the terms of this Order, Duquesne Light shall not assess any late payment charges nor shall Duquesne Light terminate service to Dennis Mowrey, except for valid safety and/or emergency reasons.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written in a cursive style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ENTERED: December 9, 2011

timely

COPY

f-2011-2258471

BCS: 2859397  
DUQUESNE LIGHT COMPANY  
Must be returned by August 22, 2011

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

1. CUSTOMER NAME (COMPLAINANT)

Your name, mailing address, county, telephone number, utility account number and service address:

Name DENNIS Mowrey

Street/P.O. Box 373 KAERCHER ST Apt # 1

City PITTSBURGH State PA Zip 15207

County ALLEGHENY

Area Code/HOME Phone 412-224-2062

Area Code/WORK Phone \_\_\_\_\_

Utility Account Number 8001259793003  
(from your bill)

RECEIVED  
2011 AUG 19 PM 1:30  
PA P.U.C.  
SECRETARY'S BUREAU

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

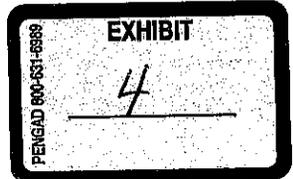
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: DUQUESNE LIGHT

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- TELEPHONE  
(local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER  
(taxi, moving company, limousine)



75709

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

I RECEIVED A NOTICE ON JUNE 11, 2011 FOR SHUTOFF, WHEN I HAD CALLED ON THE 13<sup>TH</sup> AND 14<sup>TH</sup>, I WAS TOLD THAT THERE WAS AN AGREEMENT ALREADY SET, BUT THEN I WAS NOT, THEN I WAS AGAIN. WHEN I TOLD THEM I WAS UNAWARE OF THIS, THEY COULD NOT ASSIST ANY FURTHER. ALSO, WHEN ~~THEY~~ I TRIED TO TALK TO THE PUC, THEY CLAIMED THERE WAS AN AGREEMENT ALREADY MADE, BUT I STATED I NEVER RECEIVED PAPERWORK. ALSO, DUQUESNE LIGHT TRIED TO SEPARATE THE DISPUTED AMOUNTS AGAIN AND TRIED TO SETTLE IT AS ONE BILL WHEN THEY WANTED TO SETTLE IN A RECENT

5. RELIEF

FORMAL COMPLAINT

How do you want your complaint to be resolved? Use additional paper if you need more space.

BALANCE TO BE REDUCED DUE TO MISTAKES MADE WHILE ON CAP PROGRAM. BUDGET + \$50 FOR REPAYMENT AND PROPER NOTIFICATION PROVIDED BY ALL PARTIES ON AGREEMENT.

**6. PROTECTION FROM ABUSE**

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

**7. PRIOR UTILITY CONTACT**

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

**8. LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer **in this matter** you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

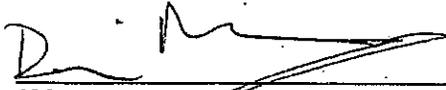
Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:  
I, DENNIS MOWREY, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



(Signature)

8/16/11

(Date)

\_\_\_\_\_  
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dennis Mowrey	:	
	:	
v.	:	F-2010-2196812
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

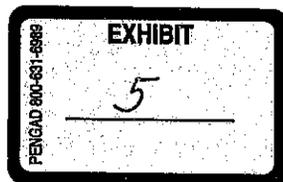
Before  
Mary D. Long  
Administrative Law Judge

This decision grants in part and denies in part a complaint by Dennis Mowrey, who contends that Duquesne Light Company unreasonably defaulted him from its Customer Assistance Program and seeks a payment arrangement for his past due balance.

**HISTORY OF THE PROCEEDING**

The Complainant, Dennis Mowrey, filed a formal complaint against Duquesne Light Company (Duquesne Light) on August 31, 2010, complaining that Duquesne Light had unreasonably defaulted him from Duquesne Light's Customer Assistance Program. The Complainant filed another formal complaint form on June 29, 2011, that was added to the docket as an amended complaint on July 18, 2011. The June 29, 2011 filing requested a payment plan, and assurance that the company would provide him with paperwork and information concerning assistance programs.

Duquesne Light filed an answer to the initial complaint filing on September 22, 2010. By hearing notice dated June 21, 2011 this matter was set for hearing on Tuesday, July 26,



2011. I issued my customary prehearing order outlining procedural guidelines for the conduct of the hearing on June 23, 2011.

The hearing was held by telephone as scheduled. The Complainant appeared on his own behalf. He offered his own testimony, but did not proffer any exhibits for admission into the record. Duquesne Light was represented by Jennifer Allison, Esquire. Duquesne Light offered the testimony of two witnesses, Ms. Marie Tamilya and Mr. Gary Miller. Additionally, four exhibits were admitted into the record. The hearing generated a transcript of 98 pages.

The record was closed by interim order dated August 29, 2011. No briefs were filed.<sup>1</sup> After a full and complete review of the record in this matter, I make the following:

#### FINDINGS OF FACT

1. The Complainant is Dennis Mowrey, who resides at 373 Kaercher Street, Pittsburgh, Pennsylvania (Service Address). He receives electric service from Duquesne Light Company at this address.

2. The Respondent is Duquesne Light Company, a jurisdictional public utility providing electricity service in the Commonwealth of Pennsylvania.

3. The Complainant resides at the Service Address with a roommate. (N.T. 9)

4. In September 2005 the Complainant was enrolled in Duquesne Light's Customer Assistance Program (CAP). (N.T. 8, 23, 69; Ex. 2)

5. The CAP program is for low-income customers. Each month a customer is expected to pay a percentage of the budget amount for their electricity bill. The percentage

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<sup>1</sup> On August 29, 2011, after the close of the record in this case, Duquesne Light filed a motion to consolidate this complaint with an additional formal complaint filed by Mr. Mowrey on August 16, 2011, which was docketed at PUC Docket No. F-2011-2258471. That motion will be resolved by further order.

varies, depending on the household income level. If a customer pays the full CAP amount each month, then 1/36<sup>th</sup> of the account balance that existed at the time they were enrolled in CAP is written off the bill. (N.T. 22, 57-59)

6. Duquesne Light also requires CAP customers to conserve energy. If a customer exceeds a certain kilowatt hour per month limit, they ask the customer to schedule a Smart Comfort visit in which an energy expert performs a usage audit and weatherization measures. (N.T. 58)

7. The final feature of the CAP program is that once per year, the difference between the percentage of the budget amount that is paid by the customer and the actual usage of the customer is written off. (N.T. 61-62)

8. The Complainant was “auto-verified” for continued eligibility in CAP until 2009. In 2009 he was informed that he was required to provide income verification no later than October 1. He failed to provide income information to Duquesne Light’s CAP administrator as directed and was consequently dropped from the program. (N.T. 7-8, 23, 71-72; Duquesne Light Ex. 2)

9. Duquesne Light through its CAP administrator may not ask for income verification every year if, for example, the CAP amount did not exceed the current billed amount, or a customer made at least a minimum number of payments. In this case, the Complainant was auto-verified because he was considered a “good CAP-paying customer.” (N.T. 83)

10. However, since the Complainant had been auto-recertified a number of times, the CAP administrator, in her professional judgment, determined that it was appropriate to update the Complainant’s income information before requalifying him. (N.T. 83-84)

11. The CAP administrator sends a letter to a customer to notify them that they have been defaulted from Duquesne Light's CAP program. (N.T. 73; Duquesne Light Ex. 2)

12. The Complainant claims that he was "unaware" that he needed to provide income information because he had not been required to do so in the past. (N.T. 8, 18)

13. On October 13, 2009, the Complainant contacted Duquesne Light, after his default from the CAP program. Duquesne Light provided him with a payment agreement in the form of a budget amount plus \$40, which was due on November 12, 2009. (Duquesne Light Ex. 5)

14. The Complainant has made no payments to Duquesne Light since October 2009. He says that he did not make payments because he was unaware of what amount he was supposed to be paying. (N.T. 17)

15. As of the date of the hearing, the balance due on the Complainant's account was \$4,708.11. (N.T. 23) Duquesne Light's records indicate that on June 9, 2011 a 10-day notice was mailed for termination on June 23. The undisputed amount at that time was \$1,617.67. (N.T. 35; Duquesne Light Ex. 5)

16. On June 14, 2011, the Complainant received a shut-off notice. He testified that on June 15<sup>th</sup>, he called Duquesne Light and was told "don't worry about it" and "there's an agreement." The Complainant says he told Duquesne Light that he was unaware of any agreement. (N.T. 13)

17. He says that he had another conversation with Duquesne Light on the same day, and he was told that he needed to pay "the whole thing" but the amount was \$300 higher than what he says was written on the notice. He could not recall the exact amount, but he said that it was more than \$1,900, but less than \$2,000. (N.T. 14)

18. The Complainant also testified that in another conversation on June 17<sup>th</sup>, he was told by a customer service representative to pay approximately \$154. That statement is not documented in Duquesne Light's customer service log. (N.T. 43-44, 47, 50, 52)

19. The Complainant also called Duquesne Light's automated system, which provided him with a different account balance than the customer service representative or the shut-off notice provided. (N.T. 44)

20. The termination notice was only for "undisputed dollars" but the automated system would have given him the amount due to catch up on his most recent payment agreement. Thus the customer service representative told him that the "catch-up" amount was \$1,008, and that was derived from the PUC agreement of budget plus \$41. However, the undisputed amount which was the subject of the termination notice was \$1,617.67. The undisputed amount was for electricity service which had accumulated from September 1, 2010 through June 14, 2011. (N.T. 45-46)

21. At the time of the hearing the Complainant's electricity service had not been terminated because he had secured a medical certificate due to the medical condition of his roommate. (N.T. 15)

22. The Complainant is adamant that he never received any information or paperwork about any PUC agreement and that he was unaware of its terms. (N.T. 11)

23. The Complainant is currently working and earns \$2,400 per month. The Complainant's roommate receives social security disability benefits in the amount of \$763 per month. (N.T. 10)

24. Duquesne Light customer service representatives are trained to document every conversation that they have with a customer. (N.T. 42-43, 53-54)

## DISCUSSION

In his initial formal complaint filed on August 31, 2010, the Complainant contends that Duquesne Light terminated him from the CAP program for failing to provide income information, when he was not asked to provide income verification since 2005 when he was first enrolled in the program. As relief he states that his balance should have been forgiven because he had made payments in the CAP program for three years.

In June 2011, he submitted another formal complaint form which was treated as an amendment to his August 2010 complaint. In that complaint he stated that he had received a shut-off notice from Duquesne Light even though he had a formal complaint pending before the Commission. As relief he wants a payment arrangement wherein he can pay \$50 plus his budget amount until the balance is paid in full.

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.<sup>2</sup> A person seeking affirmative relief from the Commission has the burden of proof.<sup>3</sup>

In alleging a service and billing dispute, it is clear that the Complainant is the party seeking affirmative relief from the Commission and, therefore, he has the burden of proof. This means that in order to prevail, he must prove facts that support his claims by a preponderance of the evidence, and must show that the utility is responsible or accountable for the problem described in the complaint.<sup>4</sup>

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<sup>2</sup> 66 Pa. C.S. § 701.

<sup>3</sup> 66 Pa. C.S. § 332(a).

<sup>4</sup> *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976).

First, the Complainant contends that he should not have been terminated from Duquesne Light's CAP because he was "unaware" that he had to provide income verification. However, in reviewing his testimony at the hearing as a whole, taken in conjunction with the characterization in his complaint, it is evident that he was not "unaware," but that he objected because in the past he had been automatically recertified for the CAP program without the necessity of producing updated income information. He objected to the notion that the CAP administrator could exercise judgment and decide whether or not to seek updated income information rather than automatically verifying his continued eligibility for CAP.

Duquesne Light's action in defaulting the Complainant from the CAP program because he failed to provide income verification was proper and in accordance with the Commission's regulations. Customer assistance programs are designed to assist payment-troubled, low-income customers to make at least some payments on their utility bills. CAP programs are funded from a variety of sources, including through the rates that a utility charges non-CAP customers and payments made by enrolled CAP customers. Chapter 14 of the Public Utility Code, known as the Responsible Utility Customer Protection Act, requires customers enrolled in CAP to make timely payments.<sup>5</sup> The Commission's policy regulations permit a utility to default a customer from its CAP program for failure to report a change in income<sup>6</sup> or for failure to annually verify eligibility.<sup>7</sup>

It is true, as the Complainant contends, that Duquesne Light's CAP administrator automatically recertified the Complainant for CAP eligibility in 2006, 2007 and 2008. Therefore, given the passage of time, it was not unreasonable or inappropriate for the administrator to seek updated income information in order to verify the Complainant's continued eligibility for the CAP program. The Complainant's failure to update his income information was sufficient reason for the administrator to default him from the program. Accordingly, this portion of the complaint is dismissed.

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<sup>5</sup> 66 Pa. C.S. § 1405(c).

<sup>6</sup> 52 Pa. Code § 69.265(7)(iv).

<sup>7</sup> 52 Pa. Code § 69.265(7)(vi).

Nor is the Complainant entitled to forgiveness of his balance. While he did make payments while he was on the CAP program, a review of his account record shows that there were periods of time between 2005 and 2009 when he failed to make payments. Therefore he accumulated new arrearages and never made sufficient payments to catch up with the balance.

Next, the Complainant seeks a payment agreement for his unpaid balance. He has not made any payments for utility service since October 2009 because he says that he did not understand what he was supposed to pay.

At the hearing he expressed a high level of frustration and confusion about his communication with Duquesne Light and his obligation to pay for service when he had outstanding complaints pending before the Commission. He testified that he did not understand what amount his “budget payment” should be, and questioned the amount of the total balance on his account. On June 14, 2011, the Complainant received a shut-off notice. He testified that on June 15th, he called Duquesne Light and was told “don’t worry about it” and “there’s an agreement.” The Complainant says he told Duquesne Light that he was unaware of any agreement.<sup>8</sup> He says that he had another conversation with Duquesne Light on the same day, and he was told that he needed to pay “the whole thing” but the amount was \$300 higher than what he says was written on the notice.<sup>9</sup>

Duquesne Light’s records indicate that on June 9, 2011 a 10-day termination notice was mailed for termination on June 23. The undisputed amount at that time was \$1,617.67.<sup>10</sup> The Complainant also called Duquesne Light’s automated system, which provided him with a different account balance than the customer service representative or the shut-off notice provided.<sup>11</sup>

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<sup>8</sup> N.T. 13.

<sup>9</sup> N.T. 14.

<sup>10</sup> N.T. 35; Duquesne Light Ex. 5.

<sup>11</sup> N.T. 44.

Duquesne Light's witness, Ms. Tamilya, explained that the termination notice was only for "undisputed dollars" but the automated system would have given him the amount due to catch up on his most recent payment agreement. Thus the customer service representative told him that the "catch-up" was \$1,008. However, the undisputed amount which was the subject of the termination notice was \$1,617.67, which was for electricity service which had accumulated from the time that the Complainant filed a complaint, from September 1, 2010 through June 14, 2011.<sup>12</sup>

The "disputed balance" of a customer's account is the amount which the customer claims is subject to a grievance including

a utility's application of a provision covered by [Chapter 56 of the Commission's regulations], including subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged.<sup>13</sup>

When a utility customer files a formal complaint with the Commission the "disputed amount" is "frozen" by Duquesne Light.<sup>14</sup> However, a customer remains responsible for paying the current amount due on the account going forward until the dispute is resolved:

Pending the outcome of a complaint filed with the commission, the customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.<sup>15</sup>

Duquesne Light's explanation for the various balance amounts provided to the Complainant are consistent with the regulations. The Complainant did not submit any evidence that these amounts, or any other charges on his account, were incorrect. Duquesne Light's witness testified

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<sup>12</sup> N.T. 45-46.

<sup>13</sup> 52 Pa. Code § 56.2.

<sup>14</sup> N.T. 35.

<sup>15</sup> 66 Pa. C.S. § 1410(2).

that although the calculation of a “budget amount” is not provided explicitly on a customer’s bill, the amount due is shown on the bill. The Complainant did not provide any bills as evidence and did not make any specific showing that the amount due on his bills was incorrect. Nor did he state that he had not received any bills. He simply did not pay them.

Turning to the Complainant’s request for a payment agreement, Chapter 14 provides that in certain circumstances a customer may be permitted to amortize the amount due on a utility account.<sup>16</sup> The Commission is authorized to order one payment agreement per customer.<sup>17</sup> Obviously, the Complainant has a poor payment history because he has made no payments on his account since October 2009. However, while enrolled on the CAP program, his payment history was at least sufficient to satisfy the CAP administrator and maintain his enrollment in the program. The Complainant testified that he currently holds a job and earns \$2,400 per month. His roommate does not work, but receives social security disability payments in the amount of \$763 per month. Accordingly, the monthly household income for the account is \$3,163. This places the Complainant between 250% and 300% of the Federal Poverty Level Guidelines.<sup>18</sup> Section 1405(b)(3) of the Responsible Utility Customer Protection Act, authorizes the Commission to grant the Complainant a repayment term of one year to repay the arrearage on his account.<sup>19</sup> The Complainant is reminded that in addition to making payments on the arrearage of his account, he is also required to make regular, on-time payments for current electricity service as well.<sup>20</sup>

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<sup>16</sup> 66 Pa. C.S. § 1402.

<sup>17</sup> 66 Pa. C.S. § 1405(d).

<sup>18</sup> Federal Register, Vol. 76, No. 13, January 20, 2011.

<sup>19</sup> 66 Pa. C.S. § 1405(b).

<sup>20</sup> *E.g., Scaccia v. West Penn Power Co.*, 55 PUC 637 (1982) (holding that a public utility is entitled to payment for services provided to customers).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding.

2. Duquesne Light's decision to default the Complainant from its CAP program for failure to provide updated income information was reasonable, appropriate and in accordance with the regulations.

3. The Commission is authorized to establish payment agreements between a public utility and customers within the limits established in Chapter 14 of the Public Utility Code.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Dennis Mowrey at Docket No. F-2010-2196812 is dismissed in part and sustained in part.

2. That within 15 days of the date the Commission enters its Order in this case, Duquesne Light Company shall tender a bill to Dennis Mowrey for the net total amount that has accrued for missed consumption payments.

3. That Dennis Mowrey shall pay Duquesne Light on or before the due date for payment of each monthly bill, the monthly budget amount for current consumption, plus 1/12<sup>th</sup> of the non-CAP arrearage owed on his account to be calculated as of the date the Commission enters its Order in this case; these payments shall commence with the first monthly bill received after

entry of the Commission's Order in this case and continue thereafter on the due date for the payment of each regular monthly bill, until the arrearage on this account has been paid in full.

4. That, so long as Dennis Mowrey adheres to the terms of this Order, Duquesne Light shall not assess any late payment charges nor shall Duquesne Light terminate service to Dennis Mowrey, except for valid safety and/or emergency reasons.

Date: October 17, 2011

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Mary D. Long  
Administrative Law Judge

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DENNIS MOWREY, )  
 )  
 Complainant, )  
 )  
 v. ) Docket No. F-2011-2258471  
 )  
 DUQUESNE LIGHT COMPANY, )  
 )  
 Respondent )

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).

Dennis Mowrey  
373 Kaercher Street  
Apt. 1  
Pittsburgh, PA 15207

Dated this 15th day of December 2011.

  
Jennifer L. Allison  
Pa. I.D. # 307945  
Duquesne Light Company  
411 Seventh Avenue  
Mail Drop 16-1  
Pittsburgh, PA 15219  
Telephone: (412) 393-6851  
FAX (412) 393-1418