

February 11, 2013

*Via Electronic Filing*

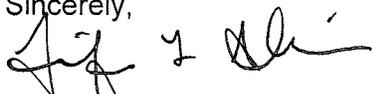
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: James Creehan v. Duquesne Light Company  
Docket No. C-2012-2297124

Dear Secretary Chiavetta:

Duquesne Light Company's Reply Exceptions are 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: James Creehan (with enclosure)  
Office of Special Assistants (OSA), via email (with enclosure)

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAMES CREEHAN,	)	
	)	
Complainant,	)	
vs.	)	Docket No. C-2012-2297124
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent.	)	

**RESPONDENT DUQUESNE LIGHT COMPANY'S REPLY EXCEPTIONS**

AND NOW comes Respondent Duquesne Light Company, by and through its attorney, Jennifer L. Allison and files the following Replies to Complainant's Exceptions to the Initial Decision:

1. *The record reflects that the instant complaint was filed on March 22, 2012, and an answer was filed on April 25, 2012.*

Complainant verified and dated the complaint at docket number C-2012-2297124 on March 22, 2012, and it was served on Respondent on April 5, 2012. (Complaint at 10 and 1.) Respondent filed its answer on April 25, 2012. (Answer at 7.) Complainant filed a previous formal complaint on this subject in 2011 which may be the source of Complainant confusion on this matter. It should be noted that the 2011 formal complaint (Docket C-2011-2231294) was settled on November 11, 2011. (Respondent's Ex. 9.)

2A. *Complainant was not prejudiced by a continuance to the July 17, 2012 hearing.*

An initial telephonic hearing was held on July 17, 2012, and Administrative Law Judge Mark A. Hoyer continued the hearing and held a further telephonic hearing on September 26, 2012. Complainant has not alleged that he was prejudiced by a continuance to the hearing on

July 17, 2012. The continuance did not prevent Complainant from participating in the later hearing and presenting his case. Respondent respectfully submits that Complainant was not prejudiced by the continuance and that it did not affect Complainant's ability to present his case or have any effect on the outcome of the complaint.

2B. *The record reflects that Complainant called Marie Tamilia as a witness.*

Complainant called Marie Tamilia to testify as part of his case. (Tr. at 44-46.)  
Thereafter, she was called as a witness for Respondent. (Tr. at 48-67.)

3. *Complainant's first formal complaint concerning the dispute was sent, received by the Commission, and served upon Respondent in March of 2011.*

Complainant has filed two formal complaints concerning the same dispute. The record reflects that the first formal complaint, at docket C-2011-2331294, was verified and dated by Complainant on March 14, 2011, received by the Commission's Secretary's Bureau on March 17, 2011, and served upon Respondent on March 22, 2011. (Respondent's Ex. 8.)

4. *Respondent's Certificate of Satisfaction for the first formal complaint was a final settlement of the dispute.*

Respondent filed a Certificate of Satisfaction on November 11, 2011 for the formal complaint at docket C-2011-2331294. Complainant was served with a copy of the Certificate and he was notified of his right to object in writing. (Respondent's Ex. 9.) Complainant did not file any objections to the Certificate of Satisfaction. (Tr. at 64-68.)

5. *The instant formal complaint avers that Complainant's bills in December 2010 through March of 2011 were incorrect as a result of a meter malfunction.*

In the instant formal complaint, Complainant averred, "The electric meter, during a period in late December of 2010 and Jan. Feb & Mar of 2011, was by all accounts, malfunctioning...." (Complaint at 7.) Respondent agrees with Complainant that the averment was made in the first formal complaint. The issue was raised in both complaints, as were issues concerning Complainant's dispute with the Bureau of Consumer Services and the fee that Respondent's third party vendor charged for processing customer payments made over the telephone. (Complaint and Respondent's Ex. 8.) Because Complainant raised these issues previously and the matter was settled without objections, Complainant is precluded from re-litigating the same dispute in a subsequent complaint.

6. *The record reflects that Complainant testified that the instant formal complaint and the formal complaint at docket C-2011-2331294 concern the same issues.*

Complainant was asked whether the two formal complaints concerned the same issue. He testified, "Naturally. The genesis of the complaint, the over-billing by Duquesne Light over a certain period...." (Tr. at 41.)

7. *Judge Hoyer properly determined that Complainant failed to meet the burden of proof.*

Complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. §332(a). The record reflects that the instant complaint raises the same claims before the Commission that a previous formal complaint raised. (Tr. at 40-42.) When that matter was resolved and Respondent filed a Certificate of Satisfaction, Complainant was notified that he had the right to object to Respondent's Certificate of Satisfaction. (Respondent's Ex. 9.) The record further reflects that Complainant did not object to the Certificate of Satisfaction that Respondent filed. (Tr. 64-68.) Thus, in the current proceeding Judge Hoyer properly determined that Complainant failed to meet his burden of proof because Complainant did not establish that he was entitled to raise the same claims a second time.

In the context of Preliminary Objections, the Commission has held that a formal complaint may be dismissed when the complainant was provided with an opportunity to be heard in a prior proceeding involving the same facts. Lorrie Reynolds v. PPL Electric Utilities Corp., Docket No. C-2011-2255268 (Opinion and Order entered January 5, 2012). In this dispute, Complainant was provided with the opportunity for the Commission to make a judgment on the merits of his case when he filed the first complaint. Instead, he made the choice to accept Respondent's settlement offer and he benefited from a credit of \$300 that was applied to his account with Respondent. (Tr. at 64.) After a hearing, the record does not indicate that there is any reason why Complainant should be allowed to re-litigate this dispute after a full and final resolution was reached.

8. *The record does not reflect that the presiding officer, Commission employees, or Respondent's representative behaved improperly or unethically.*

Complainant's allegations are wholly unsupported by the record. There is no evidence that Judge Hoyer failed to conduct the proceedings in a careful and evenhanded manner. There is no evidence that Commission employees who were involved in this dispute behaved improperly and should be reprimanded or furloughed. There is no evidence that Respondent engaged in ex-parte communications with the court or that Respondent's attorney committed perjury or behaved unethically.

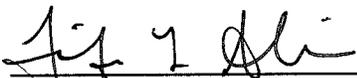
9. *A new hearing is not warranted as there has already been a final settlement of the dispute.*

Respondent submits that Complainant's letter to Chairman Powelson does not identify any reasons why the Commission should grant Complainant a further hearing. The record reflects that Complainant has already had the opportunity to be heard before the Commission. Because Complainant raised these issues in a previous complaint and the matter was settled

without objections, Complainant is precluded from raising the same dispute in a subsequent complaint and is not entitled to a further hearing.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

BY: 

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Complainant, )  
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DUQUESNE LIGHT COMPANY, )  
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**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).

James Creehan  
500 Hoodridge Dr., Apt. 805  
Pittsburgh, PA 15234

Dated this 11<sup>th</sup> day of February, 2013

BY:



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