

June 24, 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 Answer to Complainant's Petition for Reconsideration 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: 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 ANSWER TO
JAMES CREEHAN'S PETITION FOR RECONSIDERATION**

AND NOW comes Respondent Duquesne Light Company ("Duquesne Light"), by and through its attorney, Jennifer L. Allison and files the following Answer to James Creehan's Petition for Reconsideration. For the reasons set forth herein, Duquesne Light objects to the Petition.

BACKGROUND:

Petitioner James Creehan filed a Formal Complaint (the "Prior Complaint") against Duquesne Light in 2011 at docket number C-2011-2231294, alleging improper billing and that his meter was malfunctioning. To resolve the Prior Complaint, the parties reached a full and final settlement and Duquesne Light provided a \$300 credit to Petitioner's account to resolve all matters raised by Mr. Creehan. Respondent filed a Certificate of Satisfaction on November 11, 2011. Petitioner was served with a copy of the Certificate of Satisfaction, and was notified of his right to object in writing. Petitioner failed to file any objections to the Certificate of Satisfaction.

Petitioner filed a second Formal Complaint (the "Current Complaint") against Duquesne Light in 2012 at docketed number C-2012-2297124, alleging improper billing and that his meter was malfunctioning. On July 17, 2012, an initial telephonic hearing was held and on September 26, 2012, a further telephonic hearing was held.

On January 11, 2013, an Initial Decision by Administrative Law Judge Mark A. Hoyer was issued. ALJ Hoyer found that Petitioner was attempting to relitigate the same issues that he had raised in the Prior Complaint, and dismissed the Current Complaint. On January 26, 2013, Petitioner filed Exceptions to the Initial Decision, and Respondent filed Reply Exceptions on February 11, 2013.

On May 23, 2013, the Commission issued an Opinion and Order (the "May Order") that denied the Exceptions raised by Mr. Creehan, modified the Initial Decision to the extent consistent with the May Order, and dismissed the Current Complaint. On June 7, 2013, Mr. Creehan filed a Petition for Reconsideration (the "Petition"), seeking reconsideration of the May Order.¹ Pending review of, and consideration on, the merits of the Petition, the Petition was granted by an Order issued on June 13, 2013.

ARGUMENT:

A. *Complainant's petition should be denied as Respondent was not properly served with a copy of the Petition in accordance with 52 Pa. Code §1.54.*

Duquesne Light contends that Complainant failed to properly serve Respondent with a copy of the Petition. Upon review, Respondent has found no indication the Complainant attempted to serve Respondent with a copy of the Petition. Pursuant to 52 Pa. Code §1.54, Complainant was required to serve a copy of the Petition on Respondent. As Complainant did

¹ Complainant failed to serve a copy of the Petition for Reconsideration upon Respondent's counsel. Respondent's counsel became aware of the Petition on June 12, 2013 upon review of the Commission's Public Meeting Agenda for the Public Meeting held on June 13, 2013.

not serve a copy of the Petition upon Duquesne Light, Respondent respectfully requests that the Petition be denied for failure to comply with Section 1.54 of Title 52 of the Pennsylvania Code.

B. Complainant's Petition should be denied as the standard for reopening the proceeding has not been met.

Respondent further contends Complainant's Petition should be denied on its merits. The Petition does not meet the standard for reopening a proceeding.

The Commission has held that in order to reopen a proceeding, Petitions for Reconsideration "must make new or novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the Order under consideration." *Pennsylvania Public Utility Commission v. PECO Energy Co.*, M-00960820, P.U.R. 4th, Slip Opinion, (February 12, 1999) (citing *Duick v. PG & W*, 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982), *Pa. Railroad Co. v. Pa. PSC*, 118 Pa. Superior Ct. 380, 179 A. 850 (1935)).

When considering a Petition for Reconsideration, the Commission has held that because a grant of relief on such petitions may result in the disturbance of a final order, relief should "be granted judiciously and only under appropriate circumstances." *Id.* at 10, (citing *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).)

The issues and arguments raised in the Petition can be summarized as follows: the allegation that Respondent's attorney and Commission staff have behaved improperly, the allegation that Petitioner did not call Marie Tamilia as a witness, and the allegation that the Prior Complaint and the Current Complaint do not concern the same dispute. Each of these allegations has been previously considered by the Commission, and Petitioner has not raised new or novel arguments.

1. *The Commission has previously considered Petitioner's arguments that Respondent's counsel and Commission staff have behaved improperly.*

In the Petition, Petitioner argues that he has been harmed by the actions of Respondent's undersigned counsel, the presiding officer, and staff members at the Commission's Bureau of Consumer Services. These allegations have been put forth in the Prior and Current Complaints, Petitioner's testimony in the Current Complaint, and Petitioner's Exceptions in the Current Complaint and they have been reviewed by the Commission. Although the Commission has not specifically considered Complainant's allegations that the conduct of Commission staff at the Bureau of Consumer Services was improper, the Commissioners stated, "we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion." May Order at 5. In the May Order, the Commissioners stated, "Our review of the record in this proceeding fails to show any support whatsoever for these comments [regarding allegations that Respondent's counsel was 'unethical' or that the presiding officer was 'unfair'] with regard to either Respondent's counsel or the ALJ." May Order at 6. As the Commission has already reviewed the record in response to Petitioner's prior allegations, and no new or novel argument has been raised with respect to the alleged improper conduct of Respondent's counsel, the presiding officer and Commission staff, Respondent respectfully submits that the allegations of misconduct made in the Petition are not sufficient to justify the reopening of the proceeding.

2. *The Commission has previously considered Petitioner's argument that he did not call Marie Tamilya as his witness.*

In the Petition, Petitioner argues, "If the record shows that I called Marie Tamilya, it is erroneous." Petition at 1. This argument has already been raised in Petitioner's Exceptions. In his Exceptions, Petitioner argued that he did not call Marie Tamilya as his witness and that the

Initial Decision erred when it stated that he did call Ms. Tamilya as a witness. Exceptions at 1. In the May Order, the Commissioners stated, "The transcript in this proceeding does indicate that Complainant called Marie Tamilya as a witness. Tr. 44-46." The Commissioners ruled that the ALJ did not err in his statement that Ms. Tamilya was called as Petitioner's witness and denied Petitioner's second Exception regarding Ms. Tamilya's testimony. May Order at 7. As this argument has already been considered by the Commission, Respondent respectfully submits that the argument in the Petition is not sufficient to justify the reopening of the proceeding.

3. *The Commission has previously considered Petitioner's argument that the Prior Complaint and the Current Complaint do not concern the same dispute.*

In the Petition, Petitioner argues that, "Respondent claims my second formal complaint concerns the same dispute as the first, the only connection the second has with the first, is the malfunctioning meter." Petition at 1. Petitioner previously raised this argument in his Exceptions, stating, "I did not admit that the same issues were involved in the instant case except as a reference to the malfunctioning meter." Exceptions at 1. In the May Order, the Commissioners stated,

In our view, the comparison of the allegations in the Prior Complaint to the allegations in the current Complaint, together with the above quoted testimony [Tr. 40-42], clearly reveals that the Complainant is attempting to relitigate the same issues here that he raised in the Prior Complaint. When questioned by the Respondent as to any new issues brought forth in this Complaint, the Complainant could provide none, other than to state that he was dissatisfied with the prior settlement and resolution. The time for the Complainant to object to that resolution was within the ten-day period set forth in the Certificate of Satisfaction filed in that prior proceeding. The Complainant cannot accept the prior settlement credit, fail to object and then file a second complaint to pursue the same claims. *Lorrie Reynolds v. PPL Electric Utilities Corp.*, Docket No. C-2011-2255268 (Order entered January 5, 2012.) May Order at 11.

The Commission has already reviewed Petitioner's argument that the Prior Complaint and Current Complaint do not concern the same dispute. A thorough consideration of this claim in

the Current Complaint by both ALJ Hoyer and the Commission found that Petitioner's dispute was the same claim that was raised in the Prior Complaint. The Petition has not introduced any new or novel arguments with regard to whether the Current Complaint concerns a different dispute. Instead, Petitioner has restated arguments that he previously made in his Exceptions to ALJ Hoyer's decision that were considered by the Commission in the May Order. Therefore, Respondent respectfully submits that the allegation that the Formal Complaints concern separate disputes is not sufficient to justify the reopening of the proceeding.²

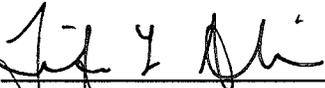
In order for the Commission to reopen a proceeding, the Petitioner must raise new or novel arguments not previously considered by the Commission. In this case, the arguments in the Petition regarding the conduct of Respondent's counsel, the presiding officer, and Commission staff, Ms. Tamilia's testimony, and whether the Prior Complaint and the Current Complaint concern the same dispute have all been previously raised in Petitioner's prior Formal Complaints, testimony, and Exceptions. The Commission has already considered the issues and arguments that are raised in the Petition.

WHEREFORE, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission deny James Creehan's Petition for reconsideration.

² Section 2, Paragraph 5 of the Petition alleges that the Current Complaint includes disputed billings from 2012. These bills have not been disputed in prior pleadings. The Current Complaint alleges that Petitioner's meter was malfunctioning "during a period in late December of 2010 and Jan. Feb. & Mar of 2011." Complaint at 7. Respondent respectfully submits that a Petition for Reconsideration is not an appropriate pleading in which to raise new allegations. Complainant is not making legal arguments, but rather introducing new allegations after the record has already closed in this proceeding.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

BY:  _____

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAMES CREEHAN,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

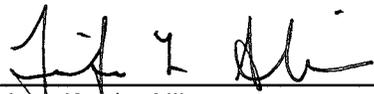
Respondent.

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Docket No. C-2012-2297124

VERIFICATION

I, Jennifer L. Allison, hereby declare that I am an attorney representing Duquesne Light Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Answer to Petition for Reconsideration are true to the best of my knowledge, information, and belief, and that I make this verification subject to the penalties of 10 Pa. C.S. §4904 pertaining to false statements to authorities.



Jennifer L. Allison

Date: June 24, 2013

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAMES CREEHAN,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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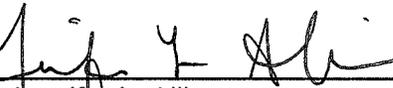
CERTIFICATE OF SERVICE

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 24th day of June, 2013

BY:



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