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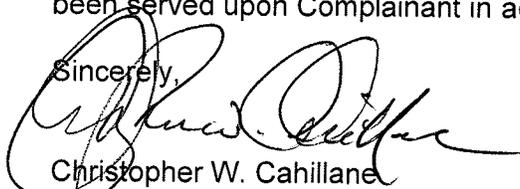
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Gary Lindner v. Duquesne Light Company
Docket No. C-2012-2337274

Dear Secretary Chiavetta:

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

Sincerely,



Christopher W. Cahillane
Attorney for Duquesne Light Company

Enclosure

cc: A. Michael Gianantonio, Esq. (with enclosure)
Office of Special Assistants (OSA), via email (with enclosure)

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GARY LINDNER,)	
)	
Complainant,)	
)	
vs.)	Docket No. C-2012-2337274
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

PROCEDURAL HISTORY

On April 12, 2011, Gary Lindner (“Complainant”) filed a formal complaint at docket number C-2011-2237595 against Duquesne Light Company (“Respondent”), alleging that negative Duquesne Light credit information was improperly appearing on his credit profile. On October 25, 2011 a hearing was held, with Administrative Law Judge Katrina Dunderdale (“ALJ Dunderdale”) presiding. A transcript of the hearing was created (“2011 Transcript”). ALJ Dunderdale issued an Initial Decision and on March 16, 2012, the Commission issued a Final Order.

On November 28, 2012, Complainant filed the instant formal complaint against Respondent, alleging that his credit profile continued to have erroneous information reported by Respondent. A hearing was held on April 16, 2013, and ALJ Dunderdale presided. A transcript of the hearing was created (“Tr.”). On August 9, 2013, an Initial Decision was issued.

INTRODUCTION

Respondent files these Exceptions to the Initial Decision of ALJ Dunderdale issued August 9, 2013, which assessed a \$10,000.00 penalty against Respondent. This matter arises out of the discovery by Complainant, a former customer of Respondent, of an erroneous report of a delinquent account by Respondent in his credit report maintained by Equifax.

By way of additional background, Complainant first discovered that an erroneous credit report had been submitted to a credit bureau when a line of credit with Citizens Bank maintained by his business, Atlantis Pets, Inc., was terminated in March 24, 2011. (Finding of Fact 7). Complainant ultimately learned that erroneous report was made by Respondent. In response, he filed an initial Formal Complaint at docket number C-2011-2237595. ALJ Dunderdale held a telephonic hearing on October 25, 2011.

At the hearing, while acknowledging the report was made in error, Respondent presented uncontroverted evidence that it had sought to have its outside collections vendor, National Recovery Agency (“NRA”), remove the erroneous report in April 2011 immediately after learning of it. (See, e.g., 2011 Transcript Hearing at 54). Respondent does not report credit information directly to credit reporting agencies. See Tr. at 25. Respondent engages outside collections vendors to collect unpaid debts. See Tr. at 24-25. Those vendors have the relationship with the reporting agencies and only they report credit information. See Tr. at 28.

Since Respondent does not directly report to the credit reporting agencies, Respondent contacted its vendor to have its report removed. See Tr. at 26. Respondent also does not have unfettered access to credit profiles. Respondent could not check Complainant’s credit report itself. It also does not request copies of credit profiles to verify that information has been added

or removed from the reports because that could have an adverse impact on a customer's credit score. See Tr. at 29-30. ALJ Dunderdale's Initial Decision was issued on February 1, 2012.¹

Unfortunately, for some unknown reason, the erroneous report was not removed from Complainant's credit profile despite Respondent's request to its vendor to do so. Respondent was unaware that the erroneous report had not been removed. During the hearing on October 25, 2011, Complainant did not present any credit reports.² On October 25, 2012, Complainant obtained a copy of his credit report from Equifax and learned that the erroneous report had not been removed. (Finding of Fact 13). Based on the record, it appears that that was the first time since the initial complaint that Complainant asked for a copy of his credit report.

Shortly after Complainant obtained a copy of his credit report, he notified Respondent. This was the first notice that Respondent had that the erroneous report had not been removed. Respondent quickly reached out to its vendor a second time to make sure the erroneous report was removed. See Tr. at 30. Subsequently, Complainant filed a second Formal Complaint at this docket number asserting that Respondent had failed to remove the erroneous report. A hearing was held on April 16, 2013.

At the hearing, Respondent presented evidence that NRA had - at Respondent's specific insistence - originally sought to remove the erroneous report on April 18, 2011 (well in advance of the October 25, 2011 hearing). See Tr. at 59-61. Unknown to Respondent, the report was not removed. See Tr. at 65. On November 5, 2012, eleven (11) days after Complainant discovered that the erroneous report had yet to be removed, Respondent had NRA again request its removal.

¹ Between the hearing in C-2011-2237595 on October 25, 2011 and the issuance of the Initial Decision on February 1, 2012, Complainant commenced a civil action against Duquesne Light Company in the Court of Common Pleas of Allegheny County. That civil action is still pending before that court.

² During the 2011 hearing, Complainant's attorney stated that he did not have any copies of the Complainant's credit report. He stated, when asked by the judge about credit reports, "Trust me, I'd like to see the credit report as well." (2011 Transcript, page 40 line 4-5)

See Tr. at 68. At the hearing, Complainant admitted that the erroneous Duquesne Light report was, in fact, no longer appearing on his credit profile.

ALJ Dunderdale issued her Initial Decision on July 22, 2013. Respondent respectfully requests that the following Exceptions be granted and the Initial Decision be reversed as described more fully below.

ARGUMENT

Exception 1: *The ALJ erred in making Finding of Fact 8: “Complainant’s line of credit with Citizens Bank was an unsecured line of credit which the bank no longer offered in March 2011 and which Complainant retained as a ‘grandfathered’ account. After terminating the line of credit account in March 2011, Citizens Bank refused to reinstate it after learning about the incorrectly listed Duquesne Light filings. Citizens Bank insisted Complainant had to reapply for the credit line but Citizens Bank was unable to offer the grandfathered-type of account to its customers.” (Initial Decision, p. 5).*

Finding of Fact 8 is contradicted by uncontroverted evidence in the record. Contrary to the factual finding of ALJ Dunderdale, the record establishes that although Complainant successfully resolved the incorrect negative reporting on his credit report, the line of credit was terminated due to Complainant’s failure to comply with his obligations under the Business Loan and Security Agreement (the “Credit Agreement”) dated July 13, 2005 which was signed by Complainant at the time. See Respondent’s Exhibit 10.

The Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S.A §332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. Patterson v. The Bell Telephone Company of Pennsylvania, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. Ct. 1990), alloc. denied, 602 A.2d 863 (Pa. 1992). The Complainant's evidence therefore must be more convincing, by even the

smallest amount, than that presented by the Respondent. Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence in the record. See e.g., 2 Pa.C.S.A §704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. Ct. 1961); Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Commw. Ct. 1984).

Per page 6 at Section 4, Subsection c. of the Credit Agreement, as Lender, Citizens Bank had the right to request copies of Complainant's financial statements and Complainant was contractually obligated to provide the requested information. On May 6, 2011, Citizens Bank requested that Complainant provide them with a personal financial statement. See Respondent's Exhibit 10. Citizens Bank did not request that Complainant reapply. Complainant did not comply with Citizens Bank's request and therefore was in breach of a term under the Credit Agreement. See Tr. at 44 and Respondent's Exhibit 10. Due to this breach, Citizens Bank elected to terminate the line of credit under the Credit Agreement. Citizens Bank further clarified that the line of credit was terminated as a result of this breach, "not as a result of incorrect negative reporting as Mr. Lindner contends." See Respondent's Exhibit 10.

Respectfully, the ALJ erred in making Finding of Fact No. 8 and holding that Citizens Bank refused to reinstate the line of credit after learning about the incorrectly listed Duquesne Light filings. The record establishes that Complainant failed to provide Citizens Bank with a personal financial statement which constituted a material breach of the Credit Agreement. Citizens Bank was unable to continue to offer the line of credit under the Credit Agreement as a

result of this breach and not as a result of any incorrect negative reporting on Complainant's credit report. Accordingly, it is requested that Finding of Fact 8 be stricken and/or modified to conform to the testimony and evidence at the hearing.

Exception 2: The ALJ erred in making Findings of Fact 6, 9 and 12 because the record shows that there was only one erroneously listed delinquent account, not two.

Findings of Fact 6, 9 and 12 are contradicted by uncontroverted evidence in the record. The Respondent stated that on April 26, 2011, two accounts from Duquesne Light were deleted from Complainant's credit file. See 2011 Transcript at 47. However, contrary to the factual finding of ALJ Dunderdale that two erroneously listed delinquent accounts were removed, Respondent averred that one erroneously listed delinquent account was removed and one properly reported delinquent account was removed on April 26, 2011 and Findings of Fact 6, 9 and 12 should accordingly be stricken or modified.

Respondent presented the testimony of Lynda Pekarsky ("Pekarsky"), the manager of the credit and collections and universal services department at Duquesne light, who testified that of the two accounts involving the Complainant, one account was improperly reported to the credit agency as a result of a clerical error but the other account was properly reported as it had a delinquent balance. See 2011 Transcript at 52-53. Further explaining the properly reported account and why the account was removed from Complainant's credit file, Pekarsky stated:

Q. Was that account reported to the credit reporting agencies?

A. It was.

Q. Was that done in error?

A. No, it was not.

- Q. It appears that on April 26th of 2011 that that account was also deleted from his Equifax file, from that Exhibit F --- no, I'm sorry, Exhibit E? Can you tell us why that account was deleted?
- A. The account was deleted because it looks like Mr. Lindner made four payments in August, I guess in September and December, and then in April, April 11th, 2011, he made the account current and paid off the \$496 balance.

See 2011 Transcript at 55.

The testimony, in addition to the record, makes it clear that Respondent averred that two delinquent accounts were removed from Complainant's credit report on April 26, 2011, however, of the two delinquent accounts, only one of the accounts was erroneously listed. Accordingly, it is respectfully suggested that ALJ Dunderdale's Findings of Fact 6, 9 and 12 be stricken and/or modified to conform to the testimony and evidence at the hearing.

Exception 3: The ALJ erred in making Finding of Fact 15: "*Respondent's witness did not know when Respondent told its placement agency to remove it.*" (Initial Decision, p. 6).

ALJ Dunderdale cites this finding of fact as an important basis for her decision to impose a fine of \$10,000.00 upon Respondent. She states in her Initial Decision:

The evidence Duquesne Light provided through the testimony of its own witness was disturbing because of the lack of information and verifying documentation which Duquesne Light failed to provide. This failure is all the more striking given the fact that this matter involves a ratepayer who fully litigated the whole issue of erroneous credit reporting by Duquesne Light through a previous Commission proceeding less than a year earlier. Even so, Respondent came to the hearing without any documents or testimony which would show when Duquesne Light asked NRA to correct the credit report, when the correction was made or attempted by NRA and/or how NRA documented for Duquesne Light when or how the corrections were made. (See Transcript at 38).

See Initial Decision at 11. However, Finding of Fact 15 is contradicted by ample and uncontroverted evidence in the record as to when Respondent requested that the report be removed from Complainant's credit profile - both in the initial instance and in the second instance when it was discovered that the first request (for some unknown reason) failed.

Here, the record establishes that Complainant discovered on October 25, 2012, that the erroneous report had not been removed from his Equifax credit profile. See, e.g., Complainant's Exhibit D (dated 10/25/13). It further establishes that within eleven (11) days of that discovery - on November 5, 2012 - Respondent's collections vendor, National Recovery Agency ("NRA"), had sent in a request to Equifax to once again have the erroneous report removed. See Tr. at 68. Thus, it stands to reason that at some point in that brief time period between those two dates, Respondent again requested that NRA remove the erroneous report.

This was confirmed by the testimony of Patricia Moritz ("Moritz") of NRA who testified as follows:

- Q. Now, at some point you're aware, are you not, that that information was not deleted?
- A. Yes.
- Q. Tell us how you became aware of that?
- A. I was copied in some e-mails. I was also part of a conversation that Duquesne Light made to National Recovery regarding the account still showing an open collection account.
- Q. Do you recall when that conversation occurred?
- A. Late October 2012, early November. I think it was later October, mid to late October.
- Q. Did NRA receive any instructions with respect to that account from Duquesne Light Company?

A. We did.

Q. What were those instructions?

A. We were instructed to report this to delete again because it was still showing as an open credit.

See Tr. at 65-66. She further testified that NRA made the specific request to delete that report from Complainant's credit profile on November 5, 2012. See Tr. at 68. In terms of the time frame for acting upon the request to delete the information, Moritz testified:

Q. Okay. Now you heard Mr. Lindner testify earlier with respect to his Exhibit B, which was a credit report that he obtained that credit report on October 25th, 2012?

A. Yes.

Q. How long did it take before NRA had sent this document requesting, again, the deletion of that information?

A. It was just days from the original request.

See Tr. at 68-69.

The record makes clear that eleven (11) days elapsed between the discovery of the undeleted report by Complainant on October 25, 2012 and NRA's renewed request to remove the report on November 5, 2012. The record is further clear that at some point in that time period Respondent requested that NRA - again - remove the erroneous report. Given this uncontroverted evidence in the record, Complainant respectfully requests that Finding of Fact 15 be stricken and/or modified to conform to the testimony and evidence at the hearing.

Exception 4: The ALJ erred in making Finding of Fact 26: *"In fact, on April 18, 2011, NRA reported to the credit reporting agencies that the Duquesne Light account mistakenly placed in Complainant's name for \$183.00 was unpaid and delinquent."* (Initial Decision, p. 7).

Finding of Fact 26 is similarly contradicted by uncontroverted evidence in the record. Contrary to the factual finding of ALJ Dunderdale, the record establishes that on April 18, 2011, Respondent's collections vendor, NRA, expressly requested that Equifax remove the erroneous report on Complainant's Equifax report. It was not the date that it was reported, and Finding of Fact 26 should accordingly be stricken or modified.

Here, there is simply no evidence in the record supporting Finding of Fact 26. On the contrary, Respondent presented the testimony of Patricia Moritz ("Moritz"), a representative of NRA, who testified that NRA - per Respondent's express directions - requested that the erroneous report be removed on April 18, 2011. Moritz also presented documentary evidence supporting the removal request on April 18, 2011. For example, Moritz testified regarding documents provided from NRA's records demonstrating its request to remove the erroneous report. Describing Respondent's Exhibit "A," she stated:

Q. Tell us what that represents in connection with Mr. Lindner account.

A. The date of this file is 4/18/2011 and this was the record that was reporting to delete this account from the credit system.

Q. Okay. So tell us where on here --- you indicated April 18, 2011 was the date of this delete request?

A. Correct.
* * *

Q. Okay. So just so we're clear it's your testimony that on April 18, 2011 NRA made a request on behalf of Duquesne Light Company to have this account deleted from Mr. Lindner's credit profile to the credit bureau?

A. Yes.

Q. To who is that request sent?

A. It is sent to the three credit bureaus that we participate with, Transunion, Experion, and Equifax

* * *

Q. And as you look at these records [Respondent's Exhibit A] do you have any doubt the request was made to the credit bureaus to remove this account?

A. I have no doubt.

See Tr. at 59-61 and Respondent's Exhibit "A" (underlined added). Moritz echoed this testimony when describing similar NRA records which has been marked as Respondent's Exhibit "B." She testified:

Q. Can you point to us where in Exhibit it indicates that a request was made to delete this information?

A. If you look at the first line under the header, all the way over to the right hand side you'll see the file name NRACBR041811. That indicates the date of the request, date of the file.

Q. And again, that's April 18, 2011?

A. Yes.

* * *

Q. Ms. Moritz...in Exhibit B and based upon these codes --- and once again you testified that it's your belief that on April 18, 2011 a request was made by NRA to delete the information relating to this Duquesne Light Account?

A. Yes.

See Tr. at 64-65 and Respondent's Exhibit B (underline added). Complainant presented no evidence to contradict this testimony that NRA requested that the erroneous report be removed on April 18, 2011.

Moreover, several other Findings of Fact by ALJ Dunderdale directly contradict Finding of Fact No. 26. For instance, Findings of Fact Nos. 24 and 25 state the following:

24. On October 11, 2010, NRA reported \$183.00 on a delinquent Duquesne Light account against Complainant with the credit reporting agencies. (Tr. 58, 59; Respondent's Exhibit A).

25. On April 18, 2011, NRA notified the credit reporting agencies to delete the delinquent Duquesne Light account (Tr. 59-61).

These two Findings of Fact are directly at odds and, in fact, simply irreconcilable with Finding of Fact No. 26.

Respectfully, the ALJ erred in making Finding of Fact No. 26, and holding that Respondent - through its vendor NRA - did anything but request the outright deletion of the erroneous report on April 18, 2011. Finding of Fact 26 (as presently written) implies that Respondent continued to report erroneous information to credit bureaus even after knowing it was false when, in fact, the record demonstrates that Respondent expressly requested that the information be deleted. Accordingly, it is requested that Finding of Fact 26 be stricken and/or modified to conform to the testimony and evidence at the hearing.

Exception 5: During the ALJ's discussion of the issuance of a fine under 52 Pa. Code §69.1201(c)(1), the ALJ states reasons that are not supported by substantial evidence. (Initial Decision, p. 15).

Among the ten (10) factors under 52 Pa. Code §69.1201(c) which the Commission may consider in assessing penalties in a litigated case is the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty. 52 Pa. Code §69.1201(c)(1).

In this matter, ALJ Dunderdale found that Respondent's actions were "serious in nature" because it "did nothing to correct the problem or ensure it was corrected other than make a telephone call

to its agent, NRA.” See Initial Decision at 15. Moritz testified that on April 18, 2011, Respondent’s vendor, NRA made a request on Respondent’s behalf to have the erroneous report deleted from Complainant’s credit profile to the credit bureau. See Tr. at 60-61. After the request was made, in order to follow up, Respondent would have had to request a copy of Complainant’s credit report, which could have reduced Complainant’s credit score. See Tr. at 29-30.

The second factor which the Commission may consider in assessing penalties is the following:

- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

52 Pa. Code §69.1201(c)(2). In applying this factor, ALJ Dunderdale stated, “Complainant has sustained prolonged damage to his property interests in that he has been precluded from obtaining a new residence due to Respondent’s error.” See Initial Decision at 15. This conclusion is not supported by the record.

The sole testimony in the record of any harm suffered by Complainant is the following:

Q. When did you find out that Duquesne Light did not remove the information?

A. When I was attempting to rent a condominium.

* * *

Q. Mr. Lindner, when did you get this [credit] report?

A. I got this report when I could not rent the condominium. So I therefore looked at my credit report again and requested it.

See Tr. at 9, 13. There is no testimony that the Complainant “has been precluded from obtaining a new residence” or “sustained prolonged damage to his property interests.” Nor is there any

testimony on the record which even links the credit report to the failure of Complainant to obtain his new condominium. On the contrary, Complainant's address has changed between the time of his first Formal Complaint (C-2011-2237595) in Bethel Park, Pennsylvania, to the time of his second Formal Complaint in Wexford, Pennsylvania.

The third factor which the Commission may consider in assessing penalties is the following:

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

52 Pa. Code §69.1201(c)(3). In evaluating this factor, ALJ Dunderdale stated the following:

Duquesne Light's conduct here was negligent at best but with an obvious and complete disregard for correcting and ameliorating the damage done to Complainant in the previous proceeding. Thus I conclude the conduct, while merely negligent, warrants a higher penalty.

See Initial Decision at 15 (underline added). ALJ Dunderdale's findings contradict the express directives of the third factor which state that conduct "deemed intentional" may result in a higher penalty. Here, she expressly states that DLC's conduct was merely negligent, but nevertheless holds that it warrants a higher penalty. This application of the third factor by ALJ Dunderdale is erroneous.

The sixth factor which the Commission may consider in assessing penalties is the following:

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

52 Pa. Code §69.1201(c)(6). With respect to this factor, while acknowledging that there is no evidence in the record that Respondent has a poor compliance record, ALJ Dunderdale stated:

[T]he fact that Complainant had to file a second complaint before Duquesne Light corrected the problem Duquesne Light erroneously created eighteen months earlier is evidence that Duquesne Light treated the Commission's requirements and its decision in C-2011-2237595 in a cavalier manner. Therefore, I conclude a higher penalty is warranted.

See Initial Decision at 16. The assertion, however, is factually erroneous and not supported by the record.

As noted in the Initial Decision, Complainant filed his Formal Complaint on November 28, 2012. See Initial Decision at 1. The record also establishes that Respondent, through its vendor NRA, took steps to have the report removed from Complainant's credit profile on November 5, 2012 - over three (3) weeks before the Complaint was filed. Thus, the record is clear that Respondent believed that it had corrected the problem and did correct the problem prior to the filing of the second complaint. ALJ Dunderdale's application of the facts of record to the sixth factor is therefore in error.

In her discussion of the ten factors 52 Pa. Code §69.1201(c), ALJ Dunderdale stated that "Duquesne Light's inaction was an intentional act that resulted from Duquesne Light's office operations." See Initial Decision at 17. Simply stated, there is no evidence in the record that Respondent in any way acted intentionally in the events which gave rise to this Complaint. While Respondent acknowledges that there is room for improvement in these areas, the mistakes made were not intentional ones. Moreover, this statement directly contradicts ALJ Dunderdale's conclusion several pages prior in the Initial Decision in which states that "Duquesne Light's conduct was negligent at best." See Initial Decision at 15.

Furthermore, the record does not support the idea that Duquesne Light was inactive. When Duquesne Light found out about the original error, Duquesne Light reached out to its vendor, who is the one who placed the report with the credit agencies, to have it removed. Duquesne Light was not aware that the error had not been corrected until October 2012, which appears to be the first time the Complainant checked on the status of the error. At that time, Duquesne Light reached out to its vendor again and the report was removed within 11 days of the discovery. ALJ Dunderdale's conclusion that Respondent's "inaction was an intentional act" should accordingly be stricken given the absence of any support in the record.

In her discussion of the ten factors 52 Pa. Code §69.1201(c), ALJ Dunderdale stated the following:

In the 2011 Complainant proceeding, Duquesne Light misled the Commission into believing that it communicated to the credit reporting agency about the need to remove the inaccurate information within a few weeks of when Complainant filed his original 2011 complaint. No mention was made that Duquesne Light used a contractor to request the correction. The misleading character of this information may not have been knowingly and intentionally done by Duquesne Light's employees but the information was reported by Duquesne Light with such confidence and assurance that it brooked no question from either the presiding officer or Complainant.

See Initial Decision at 17-18. Simply stated, there is no evidence in the record that Respondent misled the Commission - purposefully, unknowingly, or otherwise - regarding its request to have the erroneous information removed from Complainant's credit profile.

On the contrary, the record from the 2011 proceedings clearly indicates that Respondent utilized third-party vendors to report the information, and also requested that the same vendors remove the information. For instance, at the 2011 hearing, Respondent presented testimony from Lynda Pekarsky, its then Manager of Credit and Collections, who stated:

Q. Once that investigation was started internally, what did Duquesne Light do with the information once they realized that there was a mistake between those two accounts?

A. We did review it and I understand that we removed the -- we checked with our -- both agencies, CBCS and NRA, and looked at the history of the collection action that was taken.

Q. And is it true that you told the credit agency to remove the Zara Street account from his credit reporting agency [sic]?

A. Yes we did.

See 2011 Transcript at 54 (underline added). In addition, ALJ Dunderdale questioned the witness herself regarding the involvement of Respondent's third-party vendors:

Judge: All right, when did Duquesne Light do whatever --- oh, maybe I should ask. Did Duquesne Light ever do anything to remove the account information concerning Zara?

A. Yes.

Judge: And when was that?

A. After I know Mr. Lindner ---after the investigation had started. I do not have the exact date.

* * *

Judge: What makes you believe then that Duquesne Light did it?

A. We had several conversations with my supervisor at the time with NRA.

Judge: And how do you know that? Were you there?

A. No I was not.

Judge: Okay. So how do you know that conversations were had with NRA? And by the way, NRA would be National Recovery?

A. Correct. It would be based on what I was told.

See 2011 Transcript at 66-67.

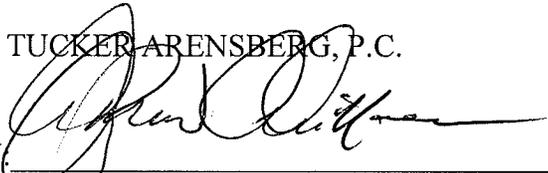
Certainly, the record makes clear that there was no attempt on the part of Respondent to obscure the fact that a third-party vendor was involved in the attempted removal of the information from Complainant's credit profile. On the contrary, the involvement of NRA was specifically identified by Respondent's own witness through questioning from both counsel and ALJ Dunderdale herself. This testimony, along with the record as a whole, makes it clear that Respondent in no way attempted to "mislead" or deceive the commission. Accordingly, it is respectfully suggested that ALJ Dunderdale's conclusions set forth above, and her consideration of those conclusions in the analysis of an appropriate penalty, should be stricken and/or accordingly modified.

CONCLUSION

Duquesne Light respectfully submits the Exceptions enumerated above. For these reasons, Duquesne Light respectfully submits that the penalties against Respondent were assessed in error. Respondent respectfully requests that the Findings of Fact in the Initial Decision be appropriately revised and/or stricken.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

BY: 

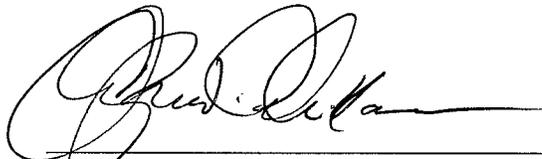
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Exceptions of Duquesne Light Company has been served upon the following counsel of record by First Class Mail on the 29th day of August 2013:

A. Michael Gianantonio, Esquire
2901 Grant Building
310 Grant Street
Pittsburgh PA 15219

A handwritten signature in black ink, appearing to read "Chris Cahillane", written over a horizontal line.

Christopher W. Cahillane, Esquire