**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Loretta A. Warren :

 :

1. : C-2014-2445857

:

Duquesne Light Company :

**INITIAL DECISION**

Before

Katrina L. Dunderdale

Administrative Law Judge

 This Initial Decision dismisses the formal complaint filed with the Pennsylvania Public Utility Commission (Commission) by Loretta A. Warren (Complainant or Ms. Warren) against Duquesne Light Company (Duquesne Light or Respondent), at Docket No. C-2014-2445857 for failure to meet the burden of proof.

HISTORY OF THE PROCEEDING

 Ms. Warren filed her complaint against Duquesne Light on September 25, 2014, alleging Duquesne Light wrongly terminated service to her rental property and now wrongly accuses her of tampering with the electric meter at the service address when no one resided there. As relief, she requests an on-site inspection by Duquesne Light and a finding Duquesne Light wrongly accused her of tampering with the meter at the service address.

 On October 22, 2014, Duquesne Light filed an answer and requested the relief sought by Complainant be denied and the complaint be dismissed.

On December 9, 2014, the Office of Administrative Law Judge (OALJ) mailed a Call-In Telephone Hearing Notice to the parties scheduling a telephonic hearing for Monday, January 26, 2015 at 10:00 a.m. On December 15, 2014, the Administrative Law Judge (ALJ) issued a Prehearing Order.

The ALJ conducted the initial hearing as scheduled at which Ms. Warren appeared *pro se* and testified on her own behalf. She did not present any additional witnesses or offer any exhibits. Jeremy V. Farrell, Esquire, appeared on behalf of Duquesne Light and presented two witnesses at the hearing: John Petro and Candace Mercer. In addition, Duquesne Light offered eight exhibits that were marked and admitted as Duquesne Light Exhibits 1, 2, 4, 5, 8, 9, 13 and 17. No briefs were filed. The record consists of a 84-page transcript of the testimony from the January 26, 2015 hearing and the aforementioned eight exhibits offered by Duquesne Light. The record was closed by Interim Order dated March 12, 2015.

FINDINGS OF FACT

 1. Complainant, Loretta A. Warren, resides at 54 Overbrook Road, Pittsburgh, Allegheny County, Pennsylvania 15235 (Tr. 9).

 2. Complainant owns a three-story structure located at 809 Penn Avenue, Pittsburgh, Allegheny County, Pennsylvania 15221 (service address) which she bought in 2003 and which contains three separate units. The building contains two residential units on the top two floors and a third unit on the ground floor used for storage. (Tr. 9-11, 14-17).

 3. Duquesne Light provided commercial electric service at the service address from September 26, 2008 until August 14, 2014, at which time Ms. Warren was the sole ratepayer of record. (Tr. 12-14, 34, 35).

 4. From January 18, 1994, when the ratepayer of record had been Ms. Warren, until September 26, 2008, there was no active account at the service address with Respondent. (Tr. 35).

 5. For the past fifteen years, Complainant has owned other rental properties and she stores supplies and equipment related to those rentals on the first floor at the service address. (Tr. 14, 17, 27).

 6. The top two floors of the building have been unoccupied since 2007 when a residential tenant set the third floor unit on fire. In 2008, the neighboring building fell into the service address, tearing off a deck in the back yard. (Tr. 19, 25).

 7. Respondent terminated electric service at the street pole for the service address on August 14, 2014 due to theft of electric service. Respondent has not resumed electric service since that date. (Tr. 32, 35, 42, 44).

 8. On August 14, 2014, two separate, un-insulated wires were attached at the weatherhead for the service address, which two wires diverted electric service before the meter could record the consumption of electricity at the service address. (Tr. 39, 41; Duquesne Light Exhibits 5 & 13).

 9. The weatherhead is a steel rod attached to the side of the service address and which carries Duquesne Light’s service line from the street pole down to the top of the meter where consumption can be recorded. (Tr. 39, 40; Duquesne Light Exhibit 5).

 10. The two separate wires carried electricity into the service address through two locations above the second floor: a hole drilled into the side of the structure, and one wire inserted between boards in an opening in the siding. (Tr. 40; Duquesne Light Exhibit 5).

 11. Respondent’s Tariff Section 34 permits Duquesne Light to terminate electric service and remove the utility’s equipment if there has been interference or tampering with either the service wires, meters, or switch-boxes at the service address. (Tr. 44; Duquesne Light Exhibit 9).

 12. On August 14, 2014, Complainant called Respondent within one hour of when Duquesne Light terminated electric service and adamantly denied there was any tampering or theft of service. (Tr. 14, 17, 46).

 13. After terminating electric service, Respondent investigated to determine the total amount of electricity consumed at the service address. (Tr. 46).

 14. Due to a prior investigation into alleged theft of services in 2008 concerning the same service address, Respondent had installed a new pole meter (with no prior recorded consumption) on October 8, 2008. The pole meter measured the amount of electricity which traveled from the street pole over to the weatherhead at the service address. (Tr. 46, 47).

 15. The amount of electricity recorded on a pole meter should be the same as the amount of electricity recorded on the meter connected with the service address. (Tr. 46-49).

 16. The pole meter for 809 Penn Avenue recorded only the consumption used at the service address and did not record consumption for any neighboring property. (Tr. 47-49).

 17. On August 14, 2014, the pole meter for the service address recorded 4045, which translates into 40,450 kilowatt hours of electricity consumption since October 8, 2008. (Tr. 47).

 18. From October 8, 2008 to August 14, 2014, Complainant was the only named account holder for the service address. (Tr. 48).

 19. Under Respondent’s Tariff Section 5a, Complainant must pay for the unbilled electricity consumed from October 8, 2008 to August 14, 2014 before electric service can resume at the service address. Complainant also would have to obtain wire approval from a certified electrical inspector or third-party agency certifying Respondent can safely re-energize the electric wires to the service address. (Tr. 50-52; Duquesne Light Exhibit 1).

 20. Duquesne Light referred the results of its investigation to the local police but criminal charges were not filed against Complainant. (Tr. 45).

 21. Respondent used the recorded consumption (4045 kWh) from the pole meter over the 2,137 day time period (from October 8, 2008 to August 14, 2014) to calculate the amount of unbilled commodity charges which Complainant should have paid based upon the applicable approved distribution rates in effect at the times of consumption, assuming the consumption was evenly distributed over the 2,137 day time period. (Tr. 61-66; Duquesne Light Exhibit 17).

 22. After subtracting the amounts paid by Complainant and subtracting out the customer education and smart meter charges, Respondent determined Complainant owed $5,239.04 in unbilled consumption charges. (Tr. 66; Duquesne Light Exhibit 17).

 23. Respondent’s Tariff Section 40 permits Duquesne Light to collect all costs, including the cost for protective equipment, incurred for an investigation and inspection into alleged tampering if electric service is eventually terminated due to tampering or theft of services. (Tr. 53, 54; Duquesne Light Exhibit 2).

 24. Respondent incurred $800.00 in investigative costs and fees associated with the back wire, front wire and meter at the service address. (Tr. 66, 67; Duquesne Light Exhibit 17).

DISCUSSION

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. Ms. Warren is the party seeking affirmative relief from the Commission, and, therefore, has the burden of proof. Ms. Warren has the duty to establish a fact by a preponderance of the evidence, and must show that the utility is responsible or accountable for the problem described in the complaint.[[1]](#footnote-1) Additionally, care must be exercised to ensure the Commission’s decision is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[[2]](#footnote-2)

In her complaint, Ms. Warren alleges Duquesne Light wrongly terminated service to the service address and now wrongly accuses her of tampering with the electric meter at the service address when no one resided there. As relief, she requests an on-site inspection by Duquesne Light and a finding Duquesne Light wrongly accused her of tampering with the meter at the service address.

Ms. Warren testified she had no knowledge of any tampering with her electric service, and no one had rented the service address for the previous six years. Ms. Warren testified she uses the first floor to store equipment and supplies from her other rental properties but no one else has used the property since 2008. Complainant also testified she has not accessed the back yard at the service address for many years since installing a wooden fence along the back property line after a portion of the neighboring property fell into the back yard. She disagrees with Respondent’s characterization that she tampered with the electric service and its contention that there has been a theft of services.

Respondent’s witness, John Petro (Mr. Petro), testified credibly the service line had been tampered with between the point where the service line attached to the house at the roofline and the point where the service line runs down to the meter. Mr. Petro testified credibly how his investigation at the service address led him to conclude that over 4000 kWh of electricity had been carried through Duquesne Light’s wires from the pole to the service connection with the service address and down to the meter, however, only minimal amounts of electricity were recorded as consumption on the meter. Mr. Petro also testified credibly that no signs were present to indicate another property or individual had tampered with and accessed the electricity in the service line other than Complainant.

 Complainant failed to prove Respondent violated the Public Utility Code (the Code), 66 Pa.C.S.A. § 101 *et seq*., the Commission’s regulations or any Commission Order. A public utility may terminate service immediately when it discovers evidence of meter tampering by a customer.[[3]](#footnote-3) Complainant’s testimony was not accepted as credible. Complainant has experienced similar disputes with Respondent prior to August 2014, yet Complainant claimed she did not understand Respondent’s charges. Complainant also claimed not to notice the two un-insulated lines seen clearly in pictures taken from the alley behind the service address in 2008 and again in 2014.

Duquesne Light discovered clear signs of meter tampering at the service address and acted in accordance with the applicable law.[[4]](#footnote-4) Even to an untrained eye, wires clearly were visible at the back of the structure which split off from the service line before the meter and could be seen traveling into the structure through neat holes or gaps in the siding. In addition, over the course of more than 70 months (from October 2008 to August 2014), Complainant only paid $504.52 (see Duquesne Light Exhibit 17) which averages out to approximately $7.20 per month in total monthly charges for electricity. Such a low amount should have led Complainant to question if a problem existed with her electric service. Lastly, whether she knew there was tampering, Complainant was the ratepayer of record from October 2008 to August 2014 and is responsible for the electricity consumed at the service address.[[5]](#footnote-5) Respondent’s evidence shows clearly that over 4000 kWh were consumed but not billed. As the ratepayer since 2008, Complainant is the individual responsible to pay for the unbilled service, regardless of how the unbilled consumption occurred.

Complainant has not met her burden of proof as concerns her argument that Duquesne Light should not have turned off her electric service without notice. Respondent’s applicable tariff provision, Tariff Electric Pa. P.U.C. Supplement 72, No. 34, provides that Duquesne Light “may terminate electric service and remove its equipment from the premises in case the Company’s property on the premises has been interfered with, or in case evidence is found that the service wires, meters, switch-box or other appurtenances on the premises have been tampered with.” The pictures submitted by Respondent credibly show that, on August 14, 2014, there was evidence found that someone had tampered with the service wires, resulting in a free-flow of unbilled electric service which benefitted the service address only. Complainant was the sole occupant/user of electricity at the service address in addition to being the ratepayer of record at that time. Complainant is the only individual who benefitted from the unbilled electric service.

Complainant owes Respondent for the unbilled electric consumption from October 8, 2008 to August 14, 2014, and before electric service can resume at the service address, Complainant must pay for the unbilled service ($5,239.04) plus the investigative costs ($800.00). Respondent acted consistent with the regulations and its Tariff provisions when it terminated service without notice on August 14, 2014 and requiring Complainant to pay a total of $6,039.04 to it before electric service can resume.

Accordingly, the formal complaint is dismissed in the ordering paragraphs to follow for failure to meet the burden of proof.

CONCLUSIONS OF LAW

 1. The parties to and subject matter of this complaint proceeding are properly before the Commission. 66 Pa.C.S.A. § 701.

 2. Ms. Warren, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S.A. § 332(a).

 3. Ms. Warren failed to prove she did not tamper with her electric service.

 4. Duquesne Light Company was correct to terminate electric service on August 14, 2014 without prior notice. 66 Pa.C.S.A. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Loretta A. Warren against Duquesne Electric

Company at Docket No. C-2014-2445857, is dismissed.

1. That the Docket in this proceeding, Docket No. C-2014-2445857, be marked closed.

Date: May 21, 2015 /s/

 Katrina L. Dunderdale Administrative Law Judge

1. Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); Feinstein v. Philadelphia Suburban Water Compan*y*, 50 Pa. PUC 300 (1976). [↑](#footnote-ref-1)
2. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa. C.S.A. § 704; Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth 1984). [↑](#footnote-ref-2)
3. “A public utility may immediately terminate service for … (3) [t]ampering with meters or other public utility’s equipment. (4) [v]iolating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the public utility’s delivery system.” 52 Pa.Code § 56.98(3) & (4). [↑](#footnote-ref-3)
4. See 52 Pa.Code § 56.98. [↑](#footnote-ref-4)
5. See Duquesne Light Company Tariff Electric Pa. P.U.C. Supplement 72, No. 24: “Where evidence is found that the service wires, meters, switch box or other appurtenances on the customer’s premises have been tampered with, the customer shall be required to bear all costs incurred by the Company for investigations and inspections, and for such protective equipment as, in the judgment of the Company, may be necessary (including the relocation of inside metering equipment to an accessible outside location); and in addition, where the tampering has resulted in improper measurement of the electricity delivered, the customer shall be required to pay for such electric delivery service, and any Company supplied electricity, including interest at the Late Payment Charge rate, as the Company may estimate, from available information to have been used but not registered by the Company’s meters.” [↑](#footnote-ref-5)