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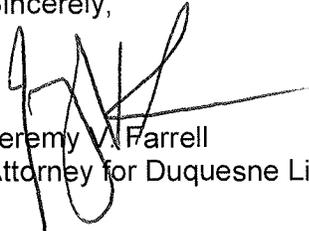
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Melvin D. Williams v. Duquesne Light Company
Docket No. C-2014-2446701

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,



Jeremy V. Farrell
Attorney for Duquesne Light Company

JVF/sls
Enclosures

cc: Melvin D. Williams (with enclosure)
Office of Special Assistants (OSA), via email (with enclosure)

LIT:590125-1 014657-158498

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I. INTRODUCTION

A. Procedural Background

Complainant Melvin Williams (“Complainant” or “Mr. Williams”) filed this Formal Complaint alleging that Respondent Duquesne Light Company (“Duquesne Light” or “Company”) damaged portions of the sidewalk outside his property that it failed to repair. (Initial Decision, p. 1.)¹ Duquesne Light filed an Answer admitting that it replaced a utility pole near Complainant’s property, but stating that it had already completed all repairs necessitated by the pole replacement. (Initial Decision, p. 2.) Duquesne Light denied it caused the damage Complainant wanted to be repaired, which it noted appeared to be the result of natural deterioration. (Initial Decision, p. 2.)

An initial hearing was conducted by Administrative Law Judge Conrad Johnson. Complainant appeared, but did not offer any exhibits or present the testimony of any other witnesses. (Initial Decision, p. 2.) Duquesne Light offered the testimony of two witnesses, Kevin Barrett (Supervisor of Construction and Maintenance) and Margaret Mueller (Regulatory Consumer Relations Specialist), along with three exhibits which were entered into the record without objection. (Initial Decision, p. 2; Tr., p. 99.)²

ALJ Johnson issued an Initial Decision, which required Duquesne Light to pay a civil penalty of \$5,000.00 and repair a cement slab outside Complainant’s residence adjacent to a larger cement slab previously replaced by Duquesne Light. (Initial Decision, pp. 20-21.)³ Duquesne Light now files these exceptions to the Initial Decision of ALJ Johnson.

¹ A copy of the Initial Decision, the pages of the Hearing Transcript cited in these Exceptions, and the Hearing Exhibits are collected in the attached Appendix.

² Exhibit 1 is a copy of Duquesne Light’s electronic records showing its initial investigation in response to Mr. Williams’s complaint. Exhibits 3 and 4 are photographs taken of the sidewalk by Mr. Barrett during his investigation.

³ This slab that Mr. Williams wants Duquesne Light to replace can be seen on the photographs admitted into the record at Exhibits 3 and 4. Looking specifically at page 2 of Exhibit 3, the slab Complainant wants to be replaced is rectangular in shape and sits to the left of the new concrete installed by Duquesne Light and extends to the red brick building, just above the handicap ramp and below the metal grate. (Tr., pp. 23-26.)

B. Statement of Facts

On Friday, May 9, 2014, Duquesne Light made repairs to the sidewalk surrounding a utility pole it replaced at an intersection in front of Complainant's property. (Tr., pp. 57-58.) These repairs included pouring new concrete around a large portion of the sidewalk surrounding the new utility pole. (Exhibits 3 and 4.)

On Monday, May 12, 2014, Complainant contacted Duquesne Light alleging that the Company caused damage to the sidewalk slab near where Duquesne Light poured the new concrete. (Tr., pp. 35-36; Exhibit 1.) It is undisputed that Duquesne Light sent a crew to inspect and investigate Complainant's allegations *that same day*.⁴ (Tr., pp. 36-37; Exhibit 1.) Duquesne Light's crew determined that the Company had already repaired all of the damage caused by the pole replacement process and that the damage described by Complainant was not the result of Duquesne Light's work. (Exhibit 1.) It is also undisputed that a Duquesne Light customer representative communicated those findings to Mr. Williams on May 14, 2014; merely two days after he initially contacted the Company. (Exhibit 1.) In response, Mr. Williams indicated that he disagreed with Duquesne Light's position and requested the phone number to the Pennsylvania Public Utility Commission ("Commission"). (Exhibit 1.) Mr. Williams filed an informal complaint with the Bureau of Consumer Services ("BCS") that same day. (Tr., pp. 37, 48-49; Exhibit 1.)⁵

Mr. Williams admitted that he did not actually see Duquesne Light's crew perform work near the utility pole. (Tr., 28.) The sole evidence relied upon to conclude that Duquesne Light caused the spalling/cracking near the metal grate and the $\frac{3}{4}$ inch lift of that slab (*i.e.* the repairs

⁴ Duquesne Light's witness, Margaret Mueller, introduced records from the Company's electronic system showing that this call took place on May 12, 2014. (Tr., p. 36; Exhibit 1.) These records were properly authenticated and admitted into the record (without objection) under the business records exception to the hearsay rule. (Tr., pp. 35-36, 99.)

⁵ The third entry from the top on Exhibit 1, p.1 reflects an entry by T. Buccilli that Mr. Williams filed Complaint No. 3238238 on May 14, 2014. The informal complaint was closed on September 10, 2014, and this formal complaint was filed on September 29, 2014. (Tr., p. 45; Initial Decision, p.1)

Complainant wanted Duquesne Light to make) was Complainant's bare assertion that the sidewalk was not in that condition prior to the replacement of the pole. (Tr., pp. 24, 96.) Complainant offered no photographs of his property, or witnesses to corroborate his testimony regarding condition of his property prior to Duquesne Light's work. (Initial Decision, p. 2.)

Nonetheless, Mr. Williams claims that several imperfections in the sidewalk outside his property were caused by Duquesne Light. Complainant believes that the equipment used by Duquesne Light's crews (that he did not witness) during the pole replacement caused the adjoining cement slab to spall and/or crack and lift $\frac{3}{4}$ inch off the ground (which Complainant feels poses a safety hazard to pedestrians). (Tr., pp. 13-14.) Complainant was also unhappy with the saw-cut Duquesne Light made to set the edge of border where it poured the new concrete, contending that the Company overextended its saw-cut by 5 inches. (Tr., p. 13-14.)⁶ Complainant offered no evidence suggesting that he has any expertise in concrete repair/replacement that would render his position about Duquesne Light's work credible.

Duquesne Light Exhibits 3 and 4 are photographs that depict the spalling/cracking described by Complainant. (See footnote 2 describing the location of the concrete slab that Complainant wants to be replaced.) It is important to note the spalling exists *only* around the metal grate set into the sidewalk. (Exhibits 3 and 4.) It is not present at any point along the border of the new concrete poured by Duquesne Light. (Exhibits 3 and 4.)⁷

⁶ The saw-cut was made to give Duquesne Light a perimeter for the installation of the new concrete and gave the border a clean edge. (Tr., p. 61.)

⁷ Duquesne Light made the saw-cut before a hammer was used to break up the sidewalk, such that the cut joint separates the area of the concrete to be removed and replaced from the other parts of the sidewalk. (Tr., p. 71.)

The fact that there is no spalling/cracking on the areas of cement closest to the work performed by Duquesne Light was not addressed by Complainant or by the Initial Decision.⁸

As noted above, Duquesne Light promptly inspected Complainant's concerns, but determined that it was not the cause of the damage that Complainant wanted to be repaired. Duquesne Light inspected the sidewalk the day of Mr. Williams's initial complaint and relayed their findings shortly thereafter. (Exhibit 1.) Mr. Williams then filed an informal complaint the day that Duquesne Light informed him of its findings. (Exhibit 1, p. 1.) As required by Commission regulations, the Company responded to Mr. Williams's complaint by filing a report outlining its position with the BCS, which was handled by Duquesne Light's witness Margaret Mueller. (Tr., p. 45.)

In addition to its initial inspection, Duquesne Light's Supervisor of Construction and Maintenance, Kevin Barrett, went to the site of the pole replacement on three separate occasions in direct response to Complainant's concerns. (Tr., pp. 54, 59.)⁹ These visits took place on August 14, 2014, October 13, 2014, and on October 14 or 15, 2014. (Tr., pp. 59, 61, 63.) Mr. Barrett testified, based on his observation, training, and experience, that Duquesne Light's work did not create the spalling near the metal grate or cause the sidewalk slab to lift up $\frac{3}{4}$ inch off the ground. (Tr., p. 64.) Mr. Barrett testified that the spalling appeared to be the

⁸ When describing the spalling in the Initial Decision, ALJ Johnson (erroneously referencing Exhibit 1, which, as noted above, is not a photograph of the damage, but a copy of Duquesne Light's electronic records) noted that spalling can only be seen on this adjacent slab. (Initial Decision, p. 12.) That conclusion not only ignores Kevin Barrett's testimony that the spalling is evident on the far side of the metal grate, (Tr., p. 82), but also does not address the fact that photographs themselves show that the spalling does not abut the area actually repaired by Duquesne Light. (Exhibits 3 and 4.) It should also be noted that the record contains an unclear exchange involving ALJ Johnson, Mr. Williams, and Mr. Barrett relating to this subject on pp. 90-91 of the Transcript, in which Mr. Barrett states that the area directly around the new concrete was broken up by a pneumatic hammer. (Tr., pp. 90-91.) As clearly shown in Exhibits 3 and 4, the area referenced by Mr. Barrett was not broken up at all. Moreover, Mr. Barrett testified clearly at other points in his testimony that the spalling on the slab near the metal grate was not caused by Duquesne Light. (Tr., pp. 63-64, 82.) Mr. Barrett also testified that he did not believe the hammer caused the lift or cracks in the sidewalk described by Mr. Williams. (Tr., pp. 91-92.)

⁹ The Construction and Maintenance department is responsible for repairing sidewalks after the replacement of utility poles. (Tr., pp. 55-56, 84.) Mr. Barrett is experienced in such repairs and his department deals with many of these jobs during the course of their work. (Tr., p. 57.)

result of normal wear and tear and the use of salt over the years. (Tr., p. 82.) When questioned by ALJ Johnson about his conclusion, Mr. Barrett noted that spalling was also evident on a part of the sidewalk just above the metal grate (*that Complainant does not contend was caused by Duquesne Light*). (Tr., p. 82.) Mr. Barrett also testified that, based on his visual observation, there are no safety concerns posed by *Duquesne Light's* repair work and that *Duquesne Light's* work did not compromise the structural integrity of the surrounding sidewalk. (Tr., pp. 59, 68.)

Even though Mr. Barrett determined that Duquesne Light properly made the repairs, he returned to the site to meet with Mr. Williams to discuss his concerns about the sidewalk on October 13, 2014. (Tr., p. 61.) During that conversation, Complainant told Mr. Barrett that he was concerned that water would seep into the joint made by the saw-cut that bordered the area where Duquesne Light poured new concrete. (Tr., p. 62.) In an effort to resolve the Complainant's concerns, Duquesne Light agreed to pour Sikaflex, a self-leveling sealant, into the cut to seal the joint and allow for expansion of the concrete. (Tr., p. 62.) As depicted in Exhibit 4, the Sikaflex was installed, less than two days after Mr. Barrett met with Complainant, along the entire border of the concrete installed by Duquesne Light and also into a nearby crack. (Tr., pp. 63, 67-68; Exhibit 4.) Mr. Barrett went back to the property to confirm to make sure that the Sikaflex had been properly installed. (Tr., p. 65.) It is important to note that Mr. Barrett clearly testified that pouring the Sikaflex was not a necessary repair, but that it was made as a courtesy to Complainant. (Tr., pp. 73-74.)

ALJ Johnson rendered his Initial Decision finding that Duquesne Light provided unreasonable service by: (1) failing to physically meet with Mr. Williams about his damage claim until after he filed his Formal Complaint; (2) failing to install the Sikaflex until after Mr. Williams filed this Complaint; (3) failing to repair the cement slab adjacent to the new concrete poured by Duquesne Light around the utility pole; and (4) failing to conduct a full investigation of Mr. Williams's complaint and not issuing a written report detailing the results of its investigation.

(Initial Decision, p. 16.) Duquesne Light respectfully submits that the Initial Decision is erroneous in several respects and, therefore, files these Exceptions.

II. EXCEPTIONS

A. **Mr. Williams' Uncorroborated Statements Are Wholly Insufficient to Meet His Burden of Proof.**

1. *The ALJ erred in concluding that Duquesne Light damaged a portion of Complainant's sidewalk that it did not repair. (Initial Decision, pp. 7, 12-13, 16.)*

A recurrent error throughout the Initial Decision is ALJ Johnson's finding and conclusion that Duquesne Light damaged a portion of the sidewalk that it did not repair – specifically, the spalling on the concrete slab near the metal grate and the ¾ inch lift in the sidewalk. (Initial Decision, pp. 1, 7, 12-13.) That finding is set forth at Finding of Fact # 36, which reads: "The work performed by Duquesne Light's crew during the installation of a utility pole caused damage to Mr. Williams [sic] cement sidewalk that Duquesne Light did not repair." (Initial Decision, p. 7.) That determination is repeated throughout the Initial Decision. (Initial Decision, pp. 12-13, 16.)

The only evidence supporting that determination, however, is the uncorroborated testimony of Complainant who admitted that he did not witness the work done by Duquesne Light. (Tr., pp. 24, 96.) Furthermore, Complainant is the owner of the property, yet offered no documentary evidence (such as photographs) to substantiate his assertion that the sidewalk was not in its present condition before the work performed by Duquesne Light.

Squarely contradicting Complainant's position, moreover, and improperly excluded from ALJ Johnson's analysis (as noted in Exceptions 3 - 5, which are incorporated by reference), is the testimony of Kevin Barrett. Mr. Barrett testified based on his observation, training, and experience that the subject damage was not caused by Duquesne Light. (Tr., pp. 64, 82.) The absence of any spalling/cracking in the concrete closest to the area of Duquesne Light's is further corroboration of Mr. Barrett's testimony. (Exhibits 3 and 4.) Under these facts, Complainant simply has not carried his burden of proof.

It is well-established that, as the proponent of a rule or order, Complainant bears the burden of proof pursuant to 66 Pa. C.S. § 332(a). John Snow v. Equitable Gas Co., LLC, Docket No. 2012-2315572, 2013 WL 3787541 at *4 (Pa. P.U.C. July 16, 2013). To satisfy the burden of proof, Complainant must show that *Duquesne Light* is responsible for the problem described in the Complaint. Id. Such a showing must be made by a preponderance of the evidence, which is evidence that is more convincing than the evidence presented by Duquesne Light. Id. Moreover, the Commission's decision must be supported by substantial evidence of record. Id. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Id.

Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with evidence to rebut the evidence of the customer shifts to Duquesne Light. Id. If the evidence presented by Duquesne Light is of co-equal value or weight, then the burden of proof has not been satisfied. Id. Complainant must then provide some additional evidence to rebut that of Duquesne Light. Id. While the burden of going forward may shift back and forth during a proceeding, the burden of proof never shifts and always remains on the party seeking affirmative relief from the Commission -- here, Complainant. Id.

In light of the evidence of record, it is clear that Complainant did not carry his burden of proof and that ALJ Johnson's Initial Decision is not supported by substantial evidence. As mentioned above, the only evidence that Duquesne Light caused the spalling or $\frac{3}{4}$ inch lift in the sidewalk was the testimony of Complainant (who did not even witness the work) that the sidewalk was not in that condition before the utility pole was replaced. (Tr., pp. 24, 96.) Complainant's testimony, however, was explicitly contradicted by the testimony of Kevin Barrett and undermined by the photographs Duquesne Light entered into evidence.

Mr. Barrett, who went to subject location three separate times and whose job it is to repair sidewalks after the installation of utility poles, testified that Duquesne Light's crews did

not cause the damage that Complainant wants to be repaired. (Tr., p. 64.) Mr. Barrett's testimony is substantiated by Exhibits 3 and 4, which clearly illustrate that the spalling did not occur in the cemented areas immediately next to where Duquesne Light performed its work. (Exhibits 3 and 4.) Such evidence contradicts Complainant's unsubstantiated testimony relating to work that he did not witness. Neither Complainant nor the Initial Decision offered any explanation as to how Duquesne Light could have caused the spalling that Complainant wanted repaired without also damaging the concrete that was closer to the work complete by Duquesne Light.

Under these circumstances, Complainant has not carried his burden of proof and the Initial Decision is not supported by substantial evidence. Therefore, Duquesne Light asks that the Initial Decision's findings and conclusions that Duquesne Light caused the spalling and $\frac{3}{4}$ inch on the subject concrete slab be modified to correspond to the evidence of record.¹⁰

2. *ALJ Johnson committed an error of law by relying on the adverse inference doctrine in concluding that Duquesne Light caused the spalling and $\frac{3}{4}$ inch lift in the sidewalk. (Initial Decision, pp. 9-10, 12-13.)*

Implicit proof that the record lacks evidence through which Complainant can carry his burden of proof can be seen in the Initial Decision's reliance on the adverse inference doctrine, which ALJ Johnson used to support his determination that Duquesne Light's work caused the spalling near the metal grate and the $\frac{3}{4}$ inch lift. (Initial Decision, p. 13.) Specifically, ALJ Johnson stated that "Duquesne Light's failure to call members of the excavation/installation crew as witnesses gives rise to the presumption that had the witnesses testified, their testimony would have been adverse to the Company." (Initial Decision, p. 13.) ALJ Johnson's determination constitutes an error of law as the adverse inference doctrine cannot be used to

¹⁰ Moreover, since there insufficient evidence to determine that *Duquesne Light* damaged a portion of the sidewalk that it did not repair, *Duquesne Light* cannot be held responsible for any alleged safety hazard that Complainant feels is presented by the condition of the sidewalk. Even assuming the chipped sidewalk and $\frac{3}{4}$ inch lift did pose a hazard to pedestrians, that hazard cannot be attributed to Duquesne Light. As such, Finding of Fact # 22 also is improper and should be modified to conform to the evidence of record and that Initial Decision modified accordingly. (Initial Decision, p. 5.)

carry Complainant's burden of proof that *Duquesne Light* caused the damage to the sidewalk that Complainant wants to be replaced. See, John Snow, supra at *8-9 (reversing, in part, an initial decision that relied on the adverse inference doctrine to find that the complainant carried his burden of proof regarding causation of property damage).

In John Snow, supra, the complainant alleged that the respondent's gas meter was faulty and caused an explosion at his residence. Id. at *1. The respondent denied that its meter was faulty and that it caused the fire. Id. at *2. The ALJ relied on the adverse inference doctrine in concluding that respondent's meter was faulty and was the cause of the fire. The Commission disagreed and found that the complainant's evidence merely showed that the fire happened in the area of the meter, but not necessarily that the meter itself caused the fire. Id. at 7.

The Commission rejected the ALJ's reliance on the adverse inference doctrine under those circumstances, stating:

Finally, and critically, the ALJ determined that Respondent's failure to submit the meter -- or the results of any testing or analysis of the meter into evidence establish proof, through a negative inference, to support the Complainant's allegations of the cause of the explosions and fire. In the first and second Exceptions, the Respondent argues the ALJ's decision to draw such a negative inference was an error of law.

The Commonwealth Court addressed the well-established rule that a party's failure to testify could serve to corroborate the evidence produced by the opposing party. **The court concluded that a party cannot support its burden of proof solely through reliance on a defendant's failure to testify. The reason that an adverse inference cannot serve as substantial evidence to support a finding of fact is because an adverse inference does not constitute evidence, period.**

Here, the ALJ found the Respondent's failure to conduct an analysis of the meter and to submit it into evidence constituted proof, through a negative inference, that the Complainant's contention -- that the meter exploded and caused the fire - - was correct. However, such an inference cannot be used to sustain the Complainant's burden of proof. Upon review of the evidence presented by the Complainant and the Respondent, we do not believe that Complainant has

sustained his burden of proof as to causation. Accordingly, Mr. Snow cannot alternatively satisfy his burden of proof through a negative inference.

Id. at *8-9 (internal citations and quotations omitted) (emphasis added).

The Initial Decision's reliance on the adverse inference doctrine is similarly flawed. The fact that the spalling and ¾ inch lift are near the area where Duquesne Light installed the utility pole is not proof that Duquesne Light caused the spalling or the lift. In fact, Complainant admitted that he did not see the repair work and offered no evidence beyond his conclusory testimony that Duquesne Light caused the damage. Complainant also offered no evidence to contradict the testimony of Kevin Barrett or to explain absence of spalling in the areas immediately next to the new concrete, as shown in Exhibits 3 and 4.

By relying on the adverse inference doctrine, the ALJ failed to hold Complainant to his burden of proof as evidenced by ALJ Johnson's statement that "it is reasonable under the circumstances to infer that the work performed by Duquesne Light's excavation/installation crew in some manner contributed to damaging Mr. Williams's concrete slab." (Initial Decision, p. 13.) The negative inference drawn by ALJ Johnson, however, is insufficient to carry Complainant's burden of proof or create substantial evidence to support the Initial Decision See, John Snow, 2013 WL 3787541 at *4 (noting that "[m]ore is required [to constitute substantial evidence] than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.").

Moreover, the fundamental premise underlying the adverse inference doctrine -- that access to evidence lies exclusively in the possession of one party -- does not apply in this case. Duquesne Light is not equally suited to Complainant to testify about the condition of the sidewalk prior to the installation of the utility pole. This property belongs to Complainant, as does the burden of proof. Yet Complainant failed to offer any evidence corroborating his conclusory testimony that the sidewalk was in a better condition prior to Duquesne Light's work. Therefore, the adverse inference doctrine cannot be used to justify ALJ Johnson's conclusions

in the Initial Decision and Duquesne Light requests that the conclusions be stricken and the decision modified accordingly.

B. The Initial Decision contains Multiple Erroneous Findings of Fact and Conclusions of Law.

3. *The ALJ erred in determining that Kevin Barrett lacked personal knowledge concerning the damaged cement slab (Initial Decision, p. 12.)*

ALJ Johnson erroneously ruled that Kevin Barrett lacked personal knowledge regarding the damaged cement slab. (Initial Decision, p. 12.) Kevin Barrett is Duquesne Light's Supervisor of Construction and Maintenance, and, in that capacity, is responsible for overseeing the repair of sidewalks after the replacement of a utility pole. (Tr. pp. 54-55.) He is the supervisor of the crew who performed the repair work and personally made three visits to inspect the damage to the sidewalk outside Mr. Williams's residence as part of his investigation. (Tr., pp. 57-59, 87-88.) Mr. Barrett personally met and spoke with Mr. Williams regarding the latter's concerns about the sidewalk. (Tr., pp. 61-62.) Furthermore, Mr. Barrett took all of the pictures discussed during the hearing (which were entered into evidence without objection). (Tr., p. 65.) Under these facts, ALJ Johnson's determination that Mr. Barrett lacked personal knowledge regarding the damaged cement slab is clear error.

The Pennsylvania Rules of Evidence provide a witness may testify to a matter if the evidence introduced is sufficient to support a finding that the witness has personal knowledge of the matter. Pa.R.E. 602.¹¹ Clearly, Mr. Barrett has personal knowledge regarding the damage to the cement slab he was charged to investigate, personally inspected three times, and

¹¹ The Notes of Advisory Committee on Proposed Rules relating to F.R.E. 602, which is identical to Pa.R.E. 602, make clear that Mr. Barrett's personal observation of the cement slab is precisely what is envisioned by the personal knowledge requirement. *See* Comment to Pa.R.E. 602 (noting that the "rule is identical to F.R.E. 602."). In pertinent part, the Notes state: "The rule requiring that a witness who testifies to a fact which can be perceived by the senses must have had an opportunity to observe and must have actually observed the fact is a most pervasive manifestation of the common law insistence upon the most reliable sources of information. These foundation requirements may, of course, be furnished by the testimony of the witness himself; hence personal knowledge is not an absolute but it may consist of what the witness thinks he knows from personal perception." *Id.* (internal citations and quotations omitted).

personally discussed with Complainant. That he was not part of the pole replacement itself does not erase Mr. Barrett's personal knowledge obtained from his investigation, multiple site visits, and conversation with Mr. Williams. ALJ Johnson reached this incorrect conclusion based on a statement by Mr. Williams -- during his closing statement -- that Mr. Barrett was not present for the break-up of the concrete during the pole replacement process. While that may be true, that does not warrant a determination that Mr. Barrett lacked personal knowledge regarding "the damaged cement slab" as a whole. (Initial Decision, p. 12.) In fact, since Mr. Williams testified that he did not witness Duquesne Light's work, if it is determined that Mr. Barrett lacks personal knowledge, then by that same logic, so does Mr. Williams. Therefore, ALJ Johnson's conclusion should be stricken and the decision modified accordingly to give due weight and consideration to the testimony of Mr. Barrett.

4. *The ALJ erred in determining that Duquesne Light's witness, Margaret Mueller, was required to have personal knowledge of the events surrounding Mr. Williams's Complaint in order to authenticate and testify about the Company's business records. (Initial Decision, p. 5.)*

ALJ Johnson's determination set forth in Finding of Fact # 22 is legally flawed and based on a misunderstanding of the business records exception to the hearsay rule. As an initial matter, Ms. Mueller testified that she was familiar with the Complaint of Mr. Williams as she was involved in reporting the Company's position to the BCS as part of the informal complaint process initiated by Complainant. (Tr., pp. 34-35, 44-45.) In making Finding of Fact # 22, ALJ Johnson ignored that testimony and instead relied on Ms. Mueller's answer to a single question posed by the Judge following a line of cross-examination that went beyond Ms. Mueller's narrow testimony on direct examination (which was limited to authenticating and explaining the business records set forth in Exhibit 1). (See Tr., pp. 34-53.) In fact, ALJ Johnson acknowledged that Ms. Mueller had personal knowledge of Exhibit 1 during his questioning of Ms. Mueller during the hearing. (Tr., p. 53.) Ms. Mueller was perfectly competent to testify about the information contained in the business records she authenticated.

The “law does not require that a witness qualifying business records [to] have a personal knowledge of the facts reported in the business records.” Margaret Anthony v. PECO Energy Company, Docket No. C-2014-2408057, 2014 WL 4374226 at *5 (Pa. P.U.C. July 30, 2014). The witness only must “provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness.” Id. While Ms. Mueller may not have been involved in the investigation or discussions with Mr. Williams referenced in the business records, she was nevertheless qualified to authenticate the records, as evidenced by the fact that the records were admitted into the record without objection. (Tr., p. 99.) That Ms. Mueller was not personally involved in the matters discussed in the records or the inspection by Kevin Barrett, who Duquesne Light also offered as a witness, does not render her testimony unworthy of consideration.

As such, Ms. Mueller’s testimony regarding the business records she successfully authenticated -- as well as the records themselves -- must be considered. Importantly, Mr. Williams neither disputed Ms. Mueller’s testimony regarding when he contacted Duquesne Light nor that he was advised that Duquesne Light denied that it damaged the part of his sidewalk that he wanted to be replaced. Accordingly, Finding of Fact # 22 should be modified to correspond to the evidence of record and the decision modified to give due weight and consideration to the testimony of Ms. Mueller and Exhibit 1, which she authenticated.

5. *The ALJ erred in determining that the testimony of Duquesne Light’s witnesses was hearsay. (Initial Decision, p. 12.)*

ALJ Johnson determined that the testimony of Duquesne Light’s witnesses was hearsay in a single conclusory statement. (Initial Decision, p. 12.) His reasoning was based on a comment made by Complainant, during his closing statement, which suggested that Duquesne Light’s witnesses lacked personal knowledge regarding the issues in dispute because they were not personally involved in the pole replacement process. (Initial Decision, p. 12.) The ALJ improperly conflated Duquesne Light’s witnesses’ alleged lack of personal knowledge - which,

as discussed in Exceptions 3 and 4, was itself an erroneous conclusion - with the concept of hearsay. Simply put, the ALJ committed an error of law because neither Mr. Barrett's nor Ms. Mueller's testimony was hearsay.

Hearsay is an out-of-court statement ordered to prove the truth of the matter asserted in the statement. Pa.R.E. 801. Mr. Barrett's testimony regarding the condition of and repairs to the sidewalk was based on of his personal observations of Complainant's property and his training and experience with Duquesne Light. (Tr., pp. 54-59.) Significantly, the Initial Decision fails to identify any portion of Mr. Barrett's testimony that qualifies as hearsay.

Moreover, Ms. Mueller's testimony was based on records that qualify for the business records exception to the hearsay rule. Under Pennsylvania law, a business record is not considered hearsay if: (1) the record was made at or near the time information was transmitted by someone with knowledge; (2) the record was kept in the ordinary course of business; (3) making the record was regular practice; (4) the qualifications are shown by a qualified witness; and (5) neither the source of information nor any other circumstances indicate a lack of trustworthiness. Pa.R.E. 803(6); 42 Pa.C.S. § 6108. Under these rules, the individual who made the entries or the company's formal custodian of the record is not required to testify as to the business records. Margaret Anthony, 2014 WL 4374226 at *5. Furthermore, "the law does not require that a witness qualifying business records even have a personal knowledge of the facts reported in the business records." Id. The witness only must "provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness." Id.

Additionally, the Pennsylvania Public Utility Commission has recognized the following:

Quite often different individuals have personal knowledge of the various phases of a transaction so that no one individual has knowledge of the entire transaction. In addition, the frequent turnover of personnel often makes it impossible to identify the employee -- if it were only one -- who took part in the transaction. Under these circumstances, to require an entrant to have personal knowledge of the event recorded, and to require proof of the

identity of the recorder, would exclude almost all evidence concerning the activities of large business organizations -- a result diametrically opposed to the purpose and the spirit of the Uniform Business Records as Evidence Act.

Robert P. Gasparro v. PECO Energy Company, Docket No. C-00015482, 2002 WL 34560343 at *4 (Pa. P.U.C. Mar. 28, 2002).

In Gasparro, the respondent had an employee, whose title was a regulatory assessor, offer exhibits into evidence as business records. Id. at * 3. The records were computer generated records and made in the normal course of business, like the records set forth in Exhibit 1 in this case. The ALJ in Gasparro excluded the exhibits in that because they were not offered by a records custodian, but the Commission reversed that determination after PECO filed exceptions, stating: "Where it can be shown that the entries were made with sufficient contemporaneousness to assure accuracy and that they were made pursuant to the business practices and not influenced by the litigation in which they are being introduced, a sufficient indicia of reliability is provided to overcome their hearsay nature." Id.

A similar result is required here. The ALJ's failure to consider the testimony of Ms. Mueller and Exhibit 1 violates both Rule 803(6) of the Pennsylvania Rules of Evidence as well as the Uniform Business Records as Evidence Act. Ms. Mueller satisfied all requirements of those rules through her testimony that the entries in Exhibit 1 are made contemporaneously with the events being described, that they were input by an individual with knowledge of the information being placed into the system, that it is the regular practice of Duquesne Light to make records of the information shown in Exhibit 1, and that Exhibit 1 was maintained in the ordinary course of Duquesne Light's business. (Tr., pp. 35, 36.)

The testimony of Mr. Barrett and Ms. Mueller is simply not hearsay under Pennsylvania law. ALJ Johnson's conclusion is legally erroneous and cannot stand. It should be stricken and the decision modified accordingly to give due weight and consideration to the testimony of Mr. Barrett and Ms. Mueller as well as the evidence presented by Duquesne Light.

6. *The ALJ erred in concluding that Duquesne Light violated 52 Pa. Code § 56.151 by failing to prepare a written report regarding Mr. Williams's Complaint because that code provision does not apply to property damage cases. (Initial Decision, p. 14.)*

The ALJ concluded that Duquesne Light violated 52 Pa. Code § 56.151 because the company did not issue a written report of its investigation to Mr. Williams. (Initial Decision, p. 14.) This conclusion constitutes an error of law, however, because Section 56.151 does not apply to the complaint made by Mr. Williams and, therefore, did not require Duquesne Light to prepare a written report.

Specifically, Section 56.151 only applies to a “dispute covered by this section,” *i.e.* Chapter 56. That Chapter, titled Standards and Billing Practices for Residential Utility Services, applies only to the following types of disputes:

Dispute-- A grievance of an applicant, customer or occupant about a public utility's application of a provision *covered by this chapter*, including, but not limited to, subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. If, at the conclusion of an initial contact or, when applicable, a follow-up response, the applicant, customer or occupant indicates satisfaction with the resulting resolution or explanation of the subject of the grievance, the contact will not be considered a dispute.

52 Pa. Code § 56.2 (emphasis added). By its plain terms, Chapter 56, including Section 56.151, applies to billing and related issues. Not instances of alleged property damage.¹²

In fact, ALJ Johnson entirely mischaracterizes the nature of Mr. Williams's complaint in his Initial Decision: “After a residential customer has initiated a *billing dispute, as in the present case*, the utility company is required to investigate the matter.” (Initial Decision, p. 10.) (emphasis added). Not only is the ALJ's mischaracterization of the nature of Mr. Williams's complaint clear error, but the Initial Decision cites no authority for its conclusion that Section

¹² Moreover, it was not unreasonable for Duquesne Light not to physically meet with Mr. Williams or provide him a written utility report when he filed his informal complaint the same day that Duquesne Light informed him of the Company's position via telephone. (Exhibit 1.) In fact, Section 56.151(2) explicitly notes that telephone conferences are a reasonable means of investigation and Section 56.151(5)(i) only requires a utility report to be sent if a customer requested it or if the Company deemed it necessary. Since Duquesne Light informed Mr. Williams of its position via telephone, and Mr. Williams then immediately filed an informal complaint with the BCS without requesting a report, it was neither necessary nor unreasonable not to issue a written report to Mr. Williams.

56.151 applies to the complaint presented by Mr. Williams. Since Section 56.151 does not apply to this case, ALJ Johnson's conclusion that Duquesne Light violated that provision by failing to write a report cannot stand. Therefore, Duquesne Light requests that ALJ Johnson's conclusion be stricken and the decision modified accordingly.

7. *The ALJ erred in determining that Duquesne Light violated 52 Pa. Code § 57.12 and failed to conduct a full and prompt investigation of Mr. Williams's Complaint. (Initial Decision, p. 13.)*

By failing to properly consider the testimony of and evidence presented by Duquesne Light's witnesses, ALJ Johnson improperly determined that Duquesne Light did not conduct a full and prompt investigation of the Mr. Williams's complaint in violation of 52 Pa. Code § 57.12. Section 57.12(a) states that "[a] public utility shall make a full and prompt investigation of complaints made by its customers, either directly to it or through the Commission."

As previously noted, Mr. Williams first reported his concerns to Duquesne Light on May 12, 2014, and Duquesne Light immediately responded by sending a crew to inspect the sidewalk *that same day*. (Tr., p. 35-36; Exhibit 1.) Duquesne Light reported its findings to Mr. a mere two days later, at which point Mr. Williams immediately filed an informal complaint with the BCS. (Exhibit 1.) Moreover, and more importantly, Kevin Barrett, Duquesne Light's Supervisor of Construction and Maintenance, whose department is responsible for making repairs to sidewalks after the replacement of utility poles, made three separate visits to the property to inspect the alleged damage to the sidewalk. (Tr., pp. 54-59.) Mr. Barrett personally met with Mr. Williams to discuss his concerns and agreed to place a sealant in the joint made by Duquesne Light's concrete saw to address Mr. Williams's concern about water seeping into the joint. (Tr., p. 62.) The ALJ failed to address any of those facts in his analysis of Duquesne Light's investigation. (Initial Decision, pp. 13-14.)

These facts, which were not considered by ALJ Johnson, demonstrate that Duquesne Light met its obligations under Section 57.12(a) to reasonably respond to and investigate Mr. Williams's Complaint. See, Sean and Linda Pearson v. Duquesne Light Company, Docket No.

C-2015-2465168, 2015 WL 3763781 (Order dated May 8, 2015) (noting that Section 57.12 obligates a public utility to fully and fairly investigate a claim and to make a reasonable offer to settle). In Pearson, the ALJ found that Duquesne Light met its obligations under Section 57.12 when it investigated the complainants' allegations of damage to a gazebo allegedly sustained during the replacement of a utility pole and made a settlement offer that corresponded to the amount of damage Duquesne Light's investigation revealed that it caused. The ALJ determined that Duquesne Light could reasonably conclude that it did not cause damage to an extent that would require the entire gazebo to be replaced.

This case presents similar facts. A damage claim was reported to Duquesne Light and was promptly investigated by the Company. Duquesne Light agreed to install Sikaflex in direct response to Mr. Williams's concerns and reasonably believed based on its investigation that it did not cause the additional damage that Mr. Williams wanted to be replaced. The facts demonstrate that Duquesne Light immediately investigated Mr. Williams's concerns and then followed up on that investigation by sending its Supervisor of Construction and Maintenance to the property three times to investigate Mr. Williams's claims. That the record does not show that Duquesne Light spoke with a member of the excavation crew or that Duquesne Light disagreed with Mr. Williams regarding the cause of the sidewalk damage does not render Duquesne Light's investigation unreasonable as a whole. Therefore, Duquesne Light requests that ALJ Johnson's conclusion be stricken and the decision modified accordingly.

The ALJ also erroneously determined that Duquesne Light provided unreasonable service because its representatives did not physically meet with Mr. Williams until after he filed his complaint. (Initial Decision, p. 16.) Notwithstanding the fact that there was minimal opportunity to meet with Complainant given the how quickly he filed his informal and formal complaints, the ALJ's analysis in this regard completely ignored the investigation completed by Duquesne Light. As noted above, Duquesne Light investigated Mr. Williams's concerns *the same day he made them*, which was before he filed an informal complaint. (Exhibit 1.) On

August 14, 2014, while the informal complaint process was pending, Duquesne Light sent Kevin Barrett to the property to inspect Mr. Williams's concerns. (Exhibit 1; Tr., pp. 45, 59.) Mr. Barrett then returned to the property again to meet with Mr. Williams. (Tr., p. 61.) The evidence of record makes clear that Duquesne Light's response to Mr. Williams's complaints was reasonable and in compliance with Section 57.12. As such, ALJ Johnson's conclusion should be stricken and the Initial Decision modified accordingly.

8. *The ALJ erred in determining that Duquesne Light's delay in repairing the saw-cut and failure to repair the spalling and 3/4 inch lift constituted unreasonable service. (Initial Decision, p. 16.)*

Separate and apart from ALJ Johnson's error in determining that Duquesne Light caused damage to the Mr. Williams's sidewalk that it did not repair, the ALJ's conclusion that Duquesne Light provided unreasonable service based on a delay in making those repairs is based on a flawed assumption that the Sikaflex that Duquesne Light installed was a necessary repair and that Duquesne Light was not permitted to deny responsibility for a claim made by a customer. With respect to the former issue, Duquesne Light installed the Sikaflex as a courtesy to Mr. Williams after he expressed concern about water getting in the joints where the saw cut was made. (Tr. pp. 62, 73-74.)¹³ With respect to the latter, Duquesne Light inspected Mr. Williams's sidewalk on four separate occasions and Duquesne Light denied, in good faith, that it was responsible for the damage. The failure to make repairs, when liability for the damage was disputed in good faith, does not constitute unreasonable service. Duquesne Light cannot be held responsible for a delay in making repairs that it contested its responsibility to make after thorough investigation. Therefore, Duquesne Light requests that ALJ Johnson's erroneous conclusions be stricken and the decision modified accordingly.

¹³ Though it is not expressly stated in the Initial Decision, it appears that ALJ Johnson determined that the Sikaflex was a necessary repair simply because of the fact Duquesne Light poured the sealant into the cut-joint. Any attempt by ALJ Johnson to assign liability to Duquesne Light on those grounds constitutes improper use of subsequent remedial measures evidence, which, pursuant to Pa.R.E. 407, may not be used against a party to prove culpable conduct.

9. *The record lacks evidence that Duquesne Light violated the Public Utility Code or any associated regulations; therefore, the ALJ erred by assessing civil penalties against Duquesne Light and ordering Duquesne Light to repair the sidewalk slab. (Initial Decision, pp. 14-20.)*

As noted in Duquesne Light's preceding Exceptions, which are incorporated by reference, ALJ Johnson erred in determining that Duquesne Light violated the Public Utility Code or any associated regulation. Specifically, there is a lack of evidence in the record that Duquesne Light caused the damage complained about by Mr. Williams or that it failed to conduct the requisite investigation into Mr. Williams's claims. Accordingly, ALJ Johnson erred in assessing a civil penalty against Duquesne Light and ordering Duquesne Light to replace a cement slab that it did not damage. See, 66 Pa. C.S. § 3301(a).

10. *The ALJ erred in applying the facts of record to 52 Pa. Code § 69.1201 and imposing a \$5,000 penalty against Duquesne Light. (Initial Decision, pp. 14-20.)*

Even if this Commission determines that Duquesne Light violated the Public Utility Code or an associated regulation in some way, a civil penalty in the amount of \$5,000.00 is simply not warranted under the facts of this case. As set forth above, the evidence shows that Duquesne Light made repairs to the sidewalk surrounding the new utility pole it installed, investigated Complainant's concerns the day they were made, followed up with Complainant after their investigation, and sent the Supervisor of Construction and Maintenance to the site of the replacement three separate occasions (including once to meet with Mr. Williams) to continue the company's inspection of the sidewalk and Duquesne Light's repairs. Mr. Barrett determined in good faith, based on his experience and observation, that Duquesne Light did not cause the damage described by Complainant. Duquesne Light even agreed to pour a sealant into its saw-cut as a courtesy to Mr. Williams to address his concern that water could seep into the cut's joint. These facts do not support a fine in the amount of \$5,000.00.

Among the 10 factors under 52 Pa. Code § 69.1201(c) that 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).

ALJ Johnson found that Duquesne Light's conduct was serious in nature because: (1) it did not repair the cement slab; (2) the slab posed a safety hazard to pedestrians; (3) the company did not place the sealant into the cut joint immediately after the repairs were made;¹⁴ and (4) the company did not fully investigate Mr. Williams's Complaint. As set forth in the Exceptions above, however, the ALJ's findings with respect to these subjects were erroneous.

Duquesne Light expressly incorporates the Exceptions set forth above, but offers the following to demonstrate that the amount of the penalty imposed by Duquesne Light was not warranted. As an initial matter, the Initial Decision fails to take account of the fact that Duquesne Light repaired the sidewalk surrounding the utility pole, which included pouring new concrete in a larger area than that at issue in this Complaint. (Exhibits 3 and 4.) Moreover, even assuming that the ALJ's conclusions that Duquesne Light's work caused the spalling near the metal grate and the ¾ inch lift are affirmed, the record reflects an honest disagreement between utility and customer regarding the scope of the former's repair obligations after the utility made four separate visits to the property to inspect the damage. This is not a case where Duquesne Light ignored the concerns of its customer. Nor do the facts of this case bespeak serious misconduct on the part of Duquesne Light.

¹⁴ Also, ALJ Johnson erred in making Finding of Fact # 11 – that the un-filled saw cut allowed water to collect in the cut-space of the sidewalk. There is no evidence in the record that water actually collected in the sidewalk as a result of the saw-cut made by Duquesne Light. The only evidence is that it was a concern of Mr. Williams. (Tr., p. 62.) There is no testimony that it actually happened. Nor did Mr. Williams testify as to education/experience in concrete repair work that would entitle his uncorroborated testimony to greater weight. Based on the foregoing, the ALJ erred in failing to consider the evidence of record that established that Complainant was indeed responsible for the tampering. Accordingly, it is requested that Finding of Fact # 11 be stricken and/or modified to conform to the testimony and evidence at the hearing.

Another factor to be analyzed in considering the appropriate penalty is set forth in 52 Pa. Code. § 69.1201(c)(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.

Id.

ALJ Johnson determined that Duquesne Light's conduct was intentional, finding that the company "acted intentionally by not filling in the saw-cut case [sic] until several months after the new utility pole was installed and only after Mr. Williams filed his complaint with the Commission." (Initial Decision, p. 17.) The ALJ's finding is flawed in two regards. First, it fails to account for that fact that Mr. Williams immediately filed an informal complaint with the BCS after Duquesne Light initially reported its findings on May 14, 2014, and that Mr. Williams promptly filed a Formal Complaint on September 29, 2014, shortly after the informal complaint was dismissed on September 10, 2014. (Exhibit 1; Initial Decision, p. 1.) Duquesne Light responded to Mr. Williams before the informal complaint was filed, and Mr. Barrett's first site visit took place on August 14, 2014, which was during the informal complaint process and before the Formal Complaint was filed. (Exhibit 1; Tr., p. 59.) Moreover, information would have been exchanged between the parties during the informal complaint process; thus, the record does not support ALJ Johnson's implicit finding that Duquesne Light did not promptly act on Mr. Williams's concerns.

Moreover, and more importantly, ALJ Johnson's reasoning rests on the unsubstantiated assumption that pouring Sikaflex in the saw-cut was a necessary repair. It was not, as made clear by the testimony of Kevin Barrett. (Tr., pp. 73-74.) It was done as a courtesy to Mr. Williams and completed promptly after the request was made to Kevin Barrett. (Tr., pp. 63, 67-68.) The failure to perform a repair that was not necessary in the first place cannot be considered intentional misconduct.

ALJ Johnson also increased the penalties against by \$3,000.00 in penalties due to the duration of the alleged violation because Duquesne Light did not fill in the saw-cut for several months and because the challenged cement slab has not yet been repaired. (Initial Decision, p. 18.) With respect to the saw-cut, ALJ Johnson's decision again fails to account for the fact that the Sikaflex was not a necessary repair; it was done as a courtesy to Mr. Williams and done almost immediately after Mr. Williams relayed his concerns to Kevin Barrett. (Tr., pp. 63, 67-68, 73-74.) The Initial Decision also improperly punishes Duquesne Light for failing to install new cement in an area that it determined, based on an investigation that involved four separate site visits, including three by the Supervisor of Construction and Maintenance, which found that Duquesne Light did not cause that damage. The practical effect of the Initial decision, therefore, is to increase the penalty against Duquesne Light for failing to make repairs to damage it did not believe, as a result of its investigation, it caused.

Finally, the ALJ relied on two prior cases involving Duquesne Light that were used to support the penalty assessed against Duquesne Light in the instant matter. See, Barbara R. Lolly v. Duquesne Light Company, Docket No. C-2010-2167824, 2011 WL 2113407 (Order entered April 14, 2011), and Rebecca Coger v. Duquesne Light Company, Docket No. C-2013-2346953 (Final Order entered January 8, 2014). The Lolly case, in which Duquesne Light was fined \$250 for the failure to provide reasonable customer service during the investigation of a property damage claim, however, is inapposite because, in that case, there was a lack of evidence that Duquesne Light considered information provided by the complainant in investigating the property damage complaint. That is not the case here, where Duquesne Light undisputedly spoke with Mr. Williams regarding his concerns and later sent the Supervisor of its Construction and Maintenance Department to meet with Complainant, who agreed to fill-in a saw cut with sealant in direct response to Mr. Williams' concerns. Moreover, the Coger decision

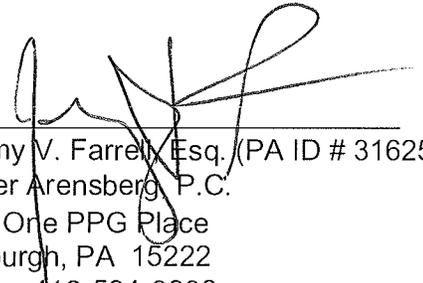
also cannot apply to this case in light of its reliance on the adverse inference doctrine,¹⁵ which, as noted above, and by the Commission in John Snow, supra, is unavailable to sustain Complainant's burden of proof in this matter. Thus, since the adverse inference doctrine cannot be used to determine that Duquesne Light caused the subject damage, the rationale of Coger is inapplicable.

Accordingly, it is respectfully suggested that ALJ Johnson's conclusions set forth above, and his consideration of those conclusions in the analysis of an appropriate penalty, should be stricken and/or accordingly modified.

III. CONCLUSION

For the reasons set forth above, Duquesne Light respectfully submits that the penalties assessed against it were done in error. Therefore, Duquesne Light respectfully requests that the Initial Decision be appropriately revised, that the penalty assessed against Duquesne Light be appropriately withdrawn or reduced, and that the order requiring Duquesne Light to repair Complainant's sidewalk be overturned.

Respectfully submitted,



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Attorney for Duquesne Light Company

¹⁵ Duquesne Light did not file Exceptions to the Coger decision, which was also authored by ALJ Johnson.

APPENDIX

INITIAL DECISION



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

June 29, 2015

C-2014-2446701

Melvin D. Williams
v.
Duquesne Light Company

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) **filed** with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of record, **within twenty (20) days** of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

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

If using Overnight or Hand Delivery Service:

Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will **not** be accepted for filing.

In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

Replies to Exceptions, if any, must be **filed** with the Secretary of the Commission and **served** on each party of record and the Commission's OSA, in the manner described above. **They are due within ten (10) days of the date when Exceptions are due.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge could become final without further Commission action. You will receive written notification if this occurs. However, even if no exceptions are received, the Commission may review and change the decision pursuant to Section 332(h) of the Public Utility Code, 66 Pa. C.S. § 332(h).

Very truly yours,

Rosemary Chiavetta
Secretary

JF
Enclosures
Certified Mail
Receipt Requested

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melvin D. Williams	:	
	:	
v.	:	C-2014-2446701
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision sustains Complainant Melvin D. Williams’s complaint against Respondent Duquesne Light Company because of (1) Respondent’s unreasonable service during the installation of a utility pole thereby damaging Complainant’s cement sidewalk and (2) Respondent’s violation of the Commission’s regulations concerning the investigation of a customer’s complaint. This decision also assesses civil penalties and orders Respondent to repair a small section (approximately 4-feet by 6-feet) of Complainant’s sidewalk.

HISTORY OF THE PROCEEDING

On September 29, 2014, Complainant Melvin D. Williams (Complainant or Mr. Williams) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Duquesne Light or Company). Mr. Williams alleged Duquesne Light damaged his sidewalk, left debris from the installation of a new utility pole near his home and refused to meet with him about the matter.¹ As relief, he wanted the Company to repair the damage and remove the debris.

¹ Mr. Williams’s complaint seeks review of the decision of the Commission’s Bureau of Consumer Services (BCS) finding that his informal complaint at BCS No. 3238238 remained unsatisfied.

On October 27, 2014, Duquesne Light filed an answer to the complaint, admitting replacing a utility pole near the service address and denying having caused the damage and debris as alleged by Mr. Williams. Duquesne Light alleged it had already repaired the sidewalk and any other sidewalk damage appeared to have been caused by natural deterioration. The Company also denied that it refused to meet with Complainant and alleged its foreman met with Complainant on October 13, 2014 to discuss Complainant's concerns. As relief, Respondent requested dismissal of the complaint with prejudice.

On November 10, 2014, Mr. Williams filed a response to the answer. He alleged, "Duquesne Light only met after repeated refusals and after a formal complaint was issued by the PUC."

On February 3, 2015, the Commission notified the parties that this case was assigned to me for a telephonic hearing on March 10, 2015, at 10:00 a.m. A Prehearing Order outlining the applicable procedural rules was served upon the parties on February 6, 2015.

The telephonic hearing convened as scheduled. Hearing participants included Complainant, Respondent's witnesses (Margaret Mueller and Kevin Barrett) and attorney, Jeremy V. Farrell, Esquire. Testimony was received from both parties on the issue of reasonableness of service. Complainant did not sponsor any exhibits. Respondent offered pre-marked Exhibits 1, 3 and 4, which were admitted into the record. The hearing generated 103 pages of transcribed testimony. The hearing transcript was received by the undersigned in Pittsburgh on March 30, 2015. The record was closed by Interim Order dated March 31, 2015. This case is procedurally ripe for ruling.

FINDINGS OF FACT

1. Complainant Melvin D. Williams receives electric service from Respondent at his home, 1119 North Lang Avenue, Pittsburgh, PA 15208 (service address). (Tr. 7, 12, 22.)

2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.

3. The service address is located at the corner of Fletcher Way and North Lang Avenue in the City of Pittsburgh. (Tr. 21.)

4. On May 9, 2014, Duquesne Light installed a new utility pole at the corner of the service address. (Tr. 58.)

5. Duquesne Light's installation of the new utility pole required excavation of the cement sidewalk to remove the old utility pole. Mr. Williams did not observe the removal of the old pole, nor the installation. (Tr. 28).

6. Mr. Williams's sidewalk in the front of his house extends approximately 110 feet from his property line to the corner where Duquesne Light's utility pole is located. (Tr. 21; Exhibit 3.)

7. Prior to Duquesne Light excavating the corner of Mr. Williams's sidewalk there was no damage to his sidewalk. (Tr. 27, 96).

8. After the new utility pole was installed on May 9, 2014, Duquesne Light's crew applied new cement around the utility pole. (Tr. 58; Exhibit 4.)

9. After the utility pole was installed and new cement was applied, Complainant's sidewalk was in the following condition:

(a) A four-foot by six-foot area of sidewalk (cement slab) extending from the front of Mr. Williams's house to the newly cemented area had spallation, i.e., a chipped cement and stone surface covering approximately half of the cement slab;

(b) There was a three-quarters inch lift in the cement slab where the edge of the cement slab meets the newly cemented area; and

(c) There was 15-inch long crack and 5-inch long saw-cut in the shape of an "L" (L-shaped saw-cut) in the sidewalk that remained unfilled.

(Tr. 14, 23, 27; Exhibits 3 and 4.)

10. The chipped surface and uplifted edge of the cement slab posed a safety hazard to pedestrians. (Tr. 23.)

11. The unfilled L-shaped saw-cut allowed water to collect into the cut space of the sidewalk. (Tr. 73.)

12. On May 12, 2014, Mr. Williams contacted Duquesne Light and complained about the damage and condition of his sidewalk. (Tr. 35, 38.)

13. Mr. Williams's damage complaint was referred to an unidentified crew foreman for investigation. Tr. 39-40; Exhibit 1. Kevin Barrett, a supervisor of construction and maintenance (Supervisor Barrett) supervises the unidentified crew foreman. (Tr. 56.)

14. Mr. Williams did not have any contact with Duquesne Light's unidentified crew foreman. (Tr. 28.)

15. Based upon the information of an unidentified crew foreman, DLC's technical service representative, Eugene Brown (Mr. Brown), on May 12, 2014, electronically noted in DLC's complaint record for Mr. Williams the following: "Crews checked area of pole replacement DLCO have repaired all DLCO damage and other concrete damage is not a result of DLCO work." (Tr. 37, 52; Exhibit 1.)

16. On May 14, 2014, DLC's customer service representative, L. Sipe, telephoned Mr. Williams, and advised him of Mr. Brown's electronic notes "that Duquesne Light repaired all Duquesne Light damage. And other concrete damage is not a result of Duquesne Light's work." (Tr. 37, 48-49; Exhibit 1.)

17. On May 14, 2014, Mr. Williams disagreed with Duquesne Light's position that the Company had made all repairs to his damaged sidewalk. (Exhibit 1.)

18. Duquesne Light did not have any record of a written report from the unidentified crew foreman of his investigation of Mr. Williams's damage complaint. (Tr. 48.)

19. Duquesne Light did not call its unidentified crew foreman as a witness in this proceeding.

20. Duquesne Light did not call its technical service representative, Mr. Brown, as a witness in this proceeding; Mr. Brown is still employed by Duquesne Light. (Tr. 51.)

21. Duquesne Light did not call customer service representative, L. Sipe, as a witness in this proceeding.

22. Duquesne Light's witness, Margaret Mueller, a regulatory consumer relations specialist, did not have any personal knowledge of the events surrounding Mr. Williams's complaint. (Tr. 34, 53.)

23. Duquesne Light's witness, Kevin Barrett, a supervisor of construction and maintenance (Supervisor Barrett), as part of his duties, supervises the repair of sidewalk damage resulting from the replacement of a utility pole. (Tr. 55.)

24. Supervisor Barrett's department does not supervise the actual excavation of the old utility pole and replacement of the new utility pole. (Tr. 55.)

25. Duquesne Light did not call as a witness the person or persons who actually excavated the cement sidewalk, removed the old utility pole and installed the new utility pole.

26. According to Supervisor Barrett, Mr. Brown informed him that Mr. Williams was dissatisfied with the work performed by Duquesne Light. So Supervisor Barrett conducted a site visit of the service address on August 14, 2014. (Tr. 59-60.)

27. During his August 14, 2014 visit to the service address, Supervisor Barrett concluded that repairs to Mr. Williams's sidewalk had been properly made, without making any contact with Mr. Williams. (Tr. 69.)

28. Duquesne Light closed Mr. Williams's damage complaint on September 10, 2014. (Tr. 44, 45.)

29. Duquesne Light did not issue any written report to Mr. Williams concerning his damage complaint. (Tr. 44-45.)

30. When Duquesne Light receives a property damage complaint from a customer the complaint is referred to the Company's Claim Department for processing. (Tr. 46.)

31. Duquesne Light's Customer Service Department did not refer Mr. Williams's property damage complaint to its Claim Department. (Tr. 50-51.)

32. Duquesne Light did not inform Mr. Williams that he could file a property damage complaint with its Claim Department. (Tr. 50-51.)

33. Between May 14, 2014 and September 28, 2014, Mr. Williams repeatedly complained to Duquesne Light about his damaged sidewalk. (Tr. 28.) During this time period no one from Duquesne Light met with Mr. Williams concerning his sidewalk damage.

34. The area of the cement slab that Mr. Williams was requesting Duquesne Light to repair was smaller than the area that Duquesne Light re-cemented around the new utility pole. (Tr. 25.)

35. Mr. Williams filed a formal complaint with the Commission on September 28, 2014, after which Supervisor Barrett met with Mr. Williams on October 13, 2014 and discussed his complaint concerning his damages to his sidewalk. (Tr. 28, 61.)

36. The work performed by Duquesne Light's crew during the installation of a utility pole caused damage to Mr. Williams cement sidewalk that Duquesne Light did not repair.

DISCUSSION

Burden of Proof

Complainant as the party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). Mr. Williams must establish that Duquesne Light has in some manner violated the provisions of the Public Utility Code (Code) or the regulations of the Commission in the course of providing her electric service. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a).

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (October 6, 1976). The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether Complainant has satisfied her burden of proof. If the review indicates the burden has been satisfied, one must then determine whether Respondent has submitted evidence of co-equal value or weight to refute Complainant's evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *affirmed*, 501 Pa. 443, 461 A.2d 1234 (1983).

Furthermore, one must exercise care to ensure the decision of the Commission is supported by substantial evidence in the record. *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704; *Yellow Cab Company v. Pa. Pub. Util. Comm'n*, 524 A.2d 1069 (Pa.Cmwlt. 1987). The Pennsylvania appellate courts have defined the term “substantial evidence” to mean such relevant evidence that a reasonable mind may 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. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation. Board of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlt. 1984). The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint. *Feinstein, supra*.

Applicable Legal Principles

(a) Reasonable Service Requirement

Public utility companies are required to provide reasonable service to their customers. In *Jerry Prosser v. Columbia Gas of Pennsylvania*, Docket No. C-20066376, (Opinion and Order entered October 30, 2006), the Commission explained the reasonable service requirement as follows.²

The Public Utility Code imposes a duty on every public utility to furnish and maintain adequate, efficient and reasonable service to the public. 66 Pa. C.S. § 1501. The statutory definition of “service” is to be broadly construed. *County Place Waste Treatment Company, Inc. v. Pennsylvania Public Utility Commission*, 654 A.2d 72 (Pa.Cmwlt. 1995).

² In *Prosser* the presiding officer dismissed the complaint on preliminary objections for lack of jurisdiction over complainant’s negligence claim. The Commission reversed and remanded for consideration of the reasonableness of service issue.

66 Pa. Code § 102 states, in pertinent part:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them...

Furthermore, service is confined not only to the distribution of the primary service, but includes any and all acts related to that function, including the maintenance practices the public utility undertakes with its facilities in a right-of-way. *West Penn Power Company v. Pennsylvania Public Utility Commission*, 578 A.2d 75 (Pa. Cmwlth. 1990).

We find that the controversy before us concerns the reasonableness of a public utility's service to the public and lies within the authority delegated to the Commission by the Legislature in the Public Utility Code. Whether Columbia damaged the Complainant's driveway and sidewalk when it repaired or replaced a gas line in front of his residence, and whether Columbia repaired the alleged damage in a timely and satisfactory manner are issues properly before this Commission.

The Complainant should have the opportunity to prove that Columbia has violated a statute, regulation or order of this Commission. The burden of proof rests on the Complainant. 66 Pa. C.S. § 332(a). Additionally, it is noted that the Commission lacks the authority to award damages.³ *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

Thus a utility company's practice of removing an old utility pole and installing a new pole must be reasonable, adequate and sufficient.

(b) Adverse Inference

The general rule in Pennsylvania is that "if a party fails to call a witness or other evidence within his or her control, the fact finder may be permitted to draw an adverse inference."

...

³ In the Formal Complaint, the Complainant did not seek damages, but requested that the Commission order Columbia to repair the damage to his property.

Generally, when a potential witness is available to only one of the parties to a trial, and it appears this witness has special information material to the issue, and this person's testimony would not be merely cumulative, then if such party does not produce the testimony of this witness, the jury may draw an inference it would have been unfavorable.

Kovach v. Solomon, 732 A.2d 1, 8-9, (Pa.Super. 1999).

(c) Full Investigation Requirement

The Commission's regulations require utilities to make a full and prompt investigation of customer complaints as follows:

§ 57.12 Complaints.

(a) *Investigations.* A public utility shall make a full and prompt investigation of complaints made by its customers, either directly to it or through the Commission.

52 Pa.Code § 57.12(a).

Title 52 of the Pennsylvania Code, Chapter 56, 52 Pa.Code § 56.1 et seq., prescribes standards for utility companies in billing residential customers. Under Section 56.1, 52 Pa.Code § 56.1, the provisions Chapter 56 are to be liberally construed. After a residential customer has initiated a billing dispute, as in the present case, the utility company is required to investigate the matter. Section 56.151 specifically states:

Upon initiation of a dispute covered by this section, the utility shall:

...

(2) Investigate the matter using methods reasonable under the circumstances, which may include telephone or personal conferences, or both with the ratepayer or occupant.

...

(5) Within 30 days of the initiation of the dispute, issue its report to the complaining party. The public utility shall inform the complaining party that the report is available upon request.

(i) If the complainant is not satisfied with the dispute resolution, the utility company report must be in writing and conform to § 56.152 (relating to contents of the public utility company report). Further, in these instances the written report shall be sent to the complaining party if requested or if the public utility deems it necessary.

Analysis

Mr. Williams maintains that Duquesne Light Company damaged his cement sidewalk during the installation of a new utility pole and refused to meet with him about the damage until after he had filed his complaint with the Commission. Duquesne Light admits replacing a utility pole at the corner of Mr. Williams's property, but contends repairs were made to the sidewalk. Any other sidewalk damage was the result of natural deterioration, according to Duquesne Light. Further Duquesne Light asserts its supervisor did meet with Mr. Williams concerning his damage complaint.

The circumstances of this case raise several issues:

- (1) Did the Company damage Complainant's sidewalk while replacing the utility pole?
- (2) Did the Company respond to Complainant's damage complaint in accordance with the Commission's regulations?
- (3) If the Company violated the Commission's regulations are penalties warranted?

Each issue is separately addressed below.

The Damage Claim

Mr. Williams presented credible testimony that before Duquesne Light installed the new utility pole his sidewalk was not damaged. After the pole was installed there was spallation to a cement slab; the cement slab was lifted up three-quarters of an inch; and there was a six-inch saw cut in the sidewalk. The Company's Exhibit 1 lends support to Mr. Williams's testimony that Duquesne Light caused the damage to the cement slab. Exhibit 1 depicts 110 feet of the sidewalk. The only place where there is damage to the sidewalk is the cement slab. The cement slab is adjacent to the newly cemented portion of the sidewalk that Duquesne Light admitted repairing on May 9, 2014. Mr. Williams was the only credible witness to present testimony as to the condition of the cement slab before and after the installation of the pole.

Duquesne Light did not present any credible testimony to rebut the testimony of Mr. Williams. Rather the Company relied upon the report of a crew that had no firsthand knowledge of the condition of the sidewalk prior to the removal of the old utility pole and installation of the new one. The report is uncorroborated hearsay which cannot form the basis for a finding of fact. *Walker v. Unemployment Compensation Board of Review*, 27 Pa. Commonwealth Ct. 522, 367 A.2d 366 (1976). Supervisor Barrett did not observe the removal and installation of the utility pole. He testified that a pneumatic hammer (jack hammer) was used to cut the existing cement sidewalk. According to Supervisor Barrett, the hammer could have caused spallation to the cement slab; however, he opined, "I don't believe it did." (Tr. 91.) Notably, Mr. Williams argued, "None of the people at this hearing have any knowledge of the breakup of the sidewalk. They're not valid witnesses to testify about any of the break up. They have no idea what this caused, what it was caused by and the extent of its reach." (Tr. 101.) In effect, Mr. Williams objected that the Company's witnesses lacked personal knowledge concerning the damaged cement slab. Thus, their testimony was hearsay.

Missing from this case are the facts as to what actually happened during the excavation of the old utility pole and installation of the new one. Mr. Williams did not observe the work performed by the Company's crew. Only Duquesne Light's crew could have provided the missing information. However, Duquesne Light elected not to call its excavation/installation

crew to testify. There is nothing in the record as to who were the members of the crew. Instead Duquesne Light offered the testimony of Supervisor Barrett and a customer service representative, Ms. Mueller. Neither one could provide the missing information. (Tr. 55, 53).

Duquesne Light's failure to call members of the excavation/installation crew as witnesses gives rise to the presumption that had the witnesses testified, their testimony would have been adverse to the Company. *Kovach v. Solomon*, cited above. Duquesne Light did not offer any evidence to rebut this adverse presumption or inference. Therefore, it is reasonable to infer that the work performed by Duquesne Light's excavation/installation crew in some manner contributed to damaging Mr. Williams's cement slab. Simply put, there was no damage to Mr. Williams's cement slab before Duquesne removed the old utility pole, but after the new utility pole was installed the surface of the cement slab had spallation and a three-quarter inch lift.

Additionally, there is the matter of the six inch saw-cut into the sidewalk, which Mr. Williams had repeatedly asked Duquesne Light to repair. Supervisor Barrett admitted that the saw-cut was made by the Company's crew in May 2014. However the saw-cut was not filled in by Duquesne Light until September, 2014. Duquesne Light's delay of more than three months to repair the saw-cut, coupled with failing to repair the cement slab's spallation and lift, all constitute unreasonable service under the Code. 66 Pa.C. S. 1501.

The Company's Response to the Damage Complaint

Upon receipt of a customer complaint, the Commission requires the utility to conduct a *full* and prompt investigation. 52 Pa.Code § 57.12(a). Here, the Company did not conduct a full investigation because there is no evidence that anyone from the Company ever questioned the removal/installation crew as to whether or not they caused any damage to Complainant's sidewalk. The Company did not meet with Mr. Williams, as he had requested, until after he had filed his complaint with the Commission. Also the Company violated its own internal procedures in failing to refer Mr. Williams's complaint to its damage claim department for investigation.

Furthermore, Section 56.151 of the Code, 52 Pa.Code § 56.151, requires a utility company to issue, within 30 days of the initiation of the dispute, a written report addressing the complaining party's dispute. The Company admits receiving Mr. Williams's complaint about his sidewalk on May 12, 2014 and closed the complaint on September 10, 2014. However, there is no evidence that Duquesne Light ever issued a written report of its investigation to Mr. Williams. Duquesne Light's failure to issue a written report to Mr. Williams about his damage complaint constitutes a violation of the Commission's regulations.

Civil Penalties

Mr. Williams carried his burden of proof in establishing that Duquesne Light violated the Public Utility Code. The Company did not present any evidence rebutting his prima facie case. Therefore, penalties must be addressed. Pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, the Commission may impose a maximum civil penalty of \$1,000 per day for each violation of the Code, its regulations or its orders. However, certain standards apply when imposing a civil penalty. *Joseph A. Rosi v. Bell Atlantic-Pa., Inc.*, 94 PUC 103 (February 10, 2000).

The *Rosi* factors are generic in nature and apply to all violations of the Public Utility Code, as well as Commission regulations and orders, regardless of utility type. *Pa. Pub. Util. Comm'n v. NCIC Operator Services*, Docket No. M-00001440 (Order entered December 21, 2000). The factors and standards first articulated by the Commission in *Rosi* were published as Policy Statements and Guidelines. See 52 Pa.Code § 69.1201. Section 69.1201 applies to both litigated and settled cases involving the calculation of civil penalties. Section 69.201 in part, provides as follows:

- (a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a

violation is reasonable and approval of the settlement agreement is in the public interest.

(b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding.

(c) The factors and standards that will be considered by the Commission include 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.

(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.

(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.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(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.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201.

In the instant case, the evidence demonstrates Respondent failed to provide reasonable service to Complainant as required by Section 1501 of the Code in the following aspects:

- 1) Duquesne Light failed to meet with Mr. Williams about his damage claim until after he had filed his complaint.
- 2) Duquesne Light admitting saw-cutting into Mr. Williams's cement slab and not repairing the saw-cut until several months later.
- 3) Duquesne Light did not take any action to repair the saw-cut until after Mr. Williams had filed his complaint with the Commission.
- 4) Duquesne Light did not repair the cement slab, and its three-quarters inch lift poses a tripping hazard to pedestrians.
- 5) Duquesne Light, as noted above, did not conduct a full investigation of Mr. Williams's complaint and did not issue him a written report as required by the Code. 52 Pa.Code § 56.151.

Considering the above evidence of Duquesne Light's violations, the following determinations are warranted under the *Rosi* factors and standards:

(1) Duquesne Light's conduct in not repairing the cement slab of Mr. Williams's sidewalk was of a serious nature. This failure poses a safety hazard. Therefore a higher penalty is warranted starting at an amount of \$1,000.00.⁴

(2) Duquesne Light's failure to fully investigate Ms. Williams's property damage claim is of a serious nature.

(3) The results of Duquesne Light's conduct are of a serious nature because the unrepaired cement slab poses a safety hazard to the public. Further the delay in repairing the saw-cut allowed water to collect into the cut thereby further deteriorating the sidewalk. Therefore a higher penalty is warranted.

(4) This was a litigated case. The evidence supports a finding that Duquesne Light acted intentionally by not filling in the saw-cut case until several months after the new utility pole was installed and only after Mr. Williams had filed his complaint with the Commission. Therefore a higher penalty is warranted in the amount of \$1,000.00.

(5) There is no evidence that Duquesne Light has made efforts to modify internal practice and procedures to address the conduct at issue and prevent similar conduct in the future. Therefore the civil penalties mentioned above are warranted.

(6) There is no evidence that other customers were affected by Duquesne Light's violation of the Code. As to the duration of the violation, the evidence establishes that

⁴ If the violation is intentional, the Commission should start with the presumption that the penalty will be in the range of \$500.00 to \$1,000.00 per day. If the violation is negligent, the Commission should start with the presumption that the penalty will be in the range of zero dollars to \$500.00 per day. ... [T]he Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis.

See *Rosi*, cited above.

Duquesne Light failed to fill in the saw-cut for several months and the cement slab remains unrepaired since May 2014. Therefore, a civil penalty for the duration of the violation is warranted in the amount of \$3,000.00.

(7) In this case the evidence is silent on Duquesne Light's compliance history.

(8) There is insufficient evidence to rule on the Company's level of cooperation with the Commission's investigation or to find that the Company acted in bad faith.

(9) The civil penalties mentioned above are necessary to deter future violations by Duquesne Light.

(10) The Commission's decision *Barbara R. Lolly v. Duquesne Light Company*, Docket No. C-2010-2167824, (Order entered April 14, 2011) is noted here. In *Lolly*, the Commission sustained the assessment of a \$250.00 civil penalty because the Company denied the customer's damage claim without conducting an investigation. Also in *Rebecca Coger v Duquesne Light Company*, Docket No. C-2013-2346953, (Final Order entered January 8, 2014) a \$5,000.00 civil penalty was assessed against the Company for failing to conduct a full investigation of the complainant's damage claim and failing to provide reasonable service to the customer during the relocation of a utility, thereby damaging the customer's property.

(11) Considering the entire record, the above penalties totaling \$5,000.00 are warranted.

Lastly, while the Commission lacks jurisdiction to award Complainant monetary damages to repair his sidewalk, based upon the decision entered in this case, Mr. Williams may file a complaint with the local district magistrate or the appropriate court of common pleas to recover monetary compensation for the damage to his property. *DiSanto v. Dauphin Consolidated Water Supply Company*, 291 Pa.Super. 440, 436 A. 2d 197 (Pa.Super. 1981). However, he was not asking for monetary damages. Mr. Williams testified, "I'm somewhat embarrassed of such a small request on my part to have a slab replaced smaller than the

[adjacent] one that's already installed [by the Company]. And normally, in my 82 years, when they tear up the sidewalk, they usually replace the slab with the expansion areas around it for freezing and thawing." (Tr. 13-14). Accordingly, in the ordering paragraphs below, Duquesne Light will be ordered to repair the cement slab.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding relating to electric service. 66 Pa.C.S. § 701.

2. Complainant carries the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code (Code) or the regulations of the Commission. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a).

3. Complainant carried the burden of proving Respondent violated the Code and Commission regulations and failed to provide Complainant with reasonable customer service relating to the removal and installation of a utility pole on this property. 66 Pa.C.S. § 1501.

4. A public utility shall make a full and prompt investigation of complaints made by its customers, either directly to it or through the Commission. 52 Pa.Code § 57.12(a).

5. The Commission is authorized to consider and impose civil monetary penalties against a public utility company. 52 Pa.Code § 1201, *et seq.*

6. The violations of the Public Utility Code and the Commission's regulations that are of a serious nature warrant a higher penalty. 52 Pa.Code § 69.1201(c)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Melvin D. Williams against Duquesne Light Company at Docket No. C-2014-2446701 is hereby sustained.
2. That Respondent Duquesne Light Company is hereby assessed a penalty of Five Thousand Dollars (\$5,000.00) because Respondent failed to provide Complainant reasonable service during the removal and installation of a utility pole on Complainant's property and failed to comply with the Commission regulations concerning the investigation of a customer complaint.
3. That Respondent Duquesne Light Company, within thirty (30) days of the entry of the Final Commission Order in this case, shall pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) by sending a certified check or money order payable to the Commonwealth of Pennsylvania addressed to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
4. That Duquesne Light Company shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. § 101, *et seq.*
5. That Duquesne Light Company shall repair Complainant's cement slab and shall remove any debris from Complainant's sidewalk that is generated during the course of repairing the cement slab within thirty days after the entry of the final Commission order in

**REFERENCED
TRANSCRIPT PAGES
& EXHIBITS**

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Melvin D. Williams, |
v. |
Duquesne Light Company |
Initial Hearing

Docket No.: C-2014-2446701

Pages 1 - 103

Public Utility Commission
Piatt Place
301 Fifth Avenue
Pittsburg, PA 15219

Tuesday, March 10, 2015
Commencing at 9:59 a.m.

BEFORE:

CONRAD A. JOHNSON, Administrative Law Judge

APPEARANCES:

MELVIN D. WILLIAMS, Pro Se
For the Complainant
(via telephone)

JEREMY V. FARRELL, Esquire
Tucker Arensberg, PC
1500 One PPG Place
Pittsburgh, PA 15222
For the Respondent
(via telephone)

REPORTER: SARAH HUNT

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1 It was dropped in a mail slot and I received it late.

2 JUDGE:

3 Mr. Williams, what are you talking
4 about? What did they drop and what did you receive
5 late?

6 MR. WILLIAMS:

7 They sent me a copy of the docket and
8 some exhibits. It's dated March the 3rd and it says
9 via hand delivery. That is not true. It was not
10 delivered by hand. It was dropped in the mail slot
11 and I received it late. That's what I'm talking
12 about, Your Honor.

13 JUDGE:

14 When did you receive the exhibits?

15 MR. WILLIAMS:

16 I received the exhibits two days ago.

17 JUDGE:

18 Okay. Go ahead.

19 MR. WILLIAMS:

20 As I said, I'm 82 years old. I've never
21 had this kind of experience. I'm somewhat embarrassed
22 of such a small request on my part to have a slab
23 replaced smaller than the one that's already
24 installed. And normally, in my experience in my 82
25 years, when they tear up the sidewalk, they usually

1 replace the slab with the expansion areas around it
2 for freezing and thawing. They don't cut it up, as
3 they did in my case, with a cement saw and with a
4 jackhammer.

5 When you use a jackhammer and a cement
6 saw, you have to be very careful that you don't
7 overextend the saw, which they did, and you can see
8 that on page two of Exhibit Four. They cut into my
9 slab that was not involved whatsoever on the vertical
10 side. And on the horizontal side, they have broken
11 that slab and patched it to fit the edges.

12 So you have a 15-inch patch of slab they
13 did and you have it sawed five inches into my slab
14 that was not to be affected whatsoever, simply because
15 they could not manage their jackhammer and saw
16 properly. At the top of that --- at the pole you see
17 a star area. That star area indicates that the slab
18 is sticking three quarters of an inch out of the
19 ground, which is very dangerous for any pedestrian
20 coming through there. That was not the case when they
21 came. The jackhammer also disturbed the block even
22 further, and what it did was loosen the cement surface
23 on part of it, but lifted out of the ground on the
24 other part.

25 If you also look at that same page,

1 Commission ---?

2 A. If you look at the same photo you were referring
3 to, Your Honor.

4 JUDGE:

5 Okay.

6 A. You will see on the edge of their installation
7 all that superficial, temporary patching I spoke to
8 you about before. That's not going to be there very
9 long. Also, Your Honor, if you look just at the
10 shadow --- above the shadow of the pole, you'll see
11 that area I'm speaking about that's lifted three-
12 quarters of an inch out of the ground, which they
13 refuse to fix. And that's a very dangerous situation
14 for pedestrians.

15 JUDGE:

16 Okay. I'm looking at the picture, which
17 is Exhibit Three, page two, and the shadow of the pole
18 is going horizontal. Is that what you're referring?

19 A. Yes, it's just above that, right at the edge of
20 their new installation, you'll see a piece of the slab
21 I'm requesting to be replaced is sticking up out of
22 the ground caused by their saw and their jackhammer,
23 three quarters of an inch out of the ground which is
24 dangerous for pedestrians.

25 JUDGE:

1 Okay. Now, is it your testimony that
2 prior to the pole and the cement pad being installed,
3 that this slab was not lifted up by three-quarters of
4 an inch? Is that your testimony?

5 A. Yes, sir. It would be a terrible liability for
6 me to have that in existence.

7 JUDGE:

8 Okay. So it's your testimony before the
9 repair work was done, this slab was flush with the
10 rest of the area? Is that your testimony?

11 A. Yes, sir.

12 JUDGE:

13 Now, if you look between the slab and
14 your residence, the pavement there appears to be
15 broken up. Do you see that area?

16 A. Yes.

17 JUDGE:

18 Now, is it your testimony that Duquesne
19 Light did not damage that? Is that your ---?

20 A. No, that's not my testimony, Your Honor.

21 JUDGE:

22 What's your ---?

23 A My testimony is that that is only the surface
24 area. That slab is in very solid condition, but their
25 jackhammer vibrating not only lifted that slab out of

1 the ground, but in that area that was delicate because
2 of the expansion of that metal, it broke the surface
3 area all across. But the slab is solid, it's just the
4 surface area that has been disassembled.

5 JUDGE:

6 So the surface area crumbled, is that
7 what you're telling me?

8 A. That's correct. With the jackhammer.

9 JUDGE:

10 So are you asking for that area to also
11 be repaired?

12 A. Well, Your Honor. There's only one slab involved
13 all of that. The slab that I'm asking to be replaced
14 would remedy all of that. And it's smaller, as you
15 see, than the slab they've already installed.

16 JUDGE:

17 Okay. Let me understand your testimony.
18 Right above the surface area that is broken, it
19 appears to be a metal covering; is that correct? Is
20 that a metal covering?

21 A. That's adjacent to it.

22 JUDGE:

23 Adjacent to it. So are you asking for
24 the area from where the slab is lifted up all the way
25 to the edge of your building, are you asking for that

1 to be repaired? Is that what you're asking?

2 A. That's what I'm asking. But that doesn't ---
3 it's not as large as it seems.

4 JUDGE:

5 Do you know what the dimensions of that
6 area is?

7 A. No. But you can see the width of it by comparing
8 it to the new slab. It's almost one half of it, and
9 it extends over approximately five feet.

10 JUDGE:

11 My question is you don't know if the
12 area that you're asking of the pavement, of the
13 sidewalk, that you're asking for Duquesne Light to
14 repair, you don't know the dimensions of it; is that
15 correct?

16 A. I haven't measured it, Your Honor.

17 JUDGE:

18 All right. Just so we have a clear
19 record, it's your testimony that when Duquesne Light
20 installed the pole and put in the new cement slab,
21 that the horizontal slab that goes from the edge of
22 the repair work to your residence was damaged. Is
23 that your testimony.

24 A. What's what, Your Honor?

25 JUDGE:

1 JUDGE:

2 Do you remember the month and year?

3 A. No. As I stated, I'm 82 years old. I believe it
4 was in 2014, approximately September.

5 JUDGE:

6 Okay. Now, is this something you
7 observed? Did you observe the repair work being done
8 in front of your residence?

9 A. No, Your Honor, I was not present. I observed it
10 immediately after.

11 JUDGE:

12 Okay. Give me just a moment. Mr.
13 Williams, I'm looking at your Complaint and on page
14 five of your Complaint you state Company refused to
15 meet with me. Could you explain what you meant by
16 that statement?

17 A. I just know that I had called repeatedly to
18 advise them of the problem. They refused to return my
19 calls, and so after I filed with the PUC, then they
20 started to return my calls. I had one meeting with
21 them. That was with Kevin. And that was probably
22 five months ago.

23 JUDGE:

24 Okay. Other than the meeting that you
25 said you had with, let's see, Mr. Kevin Barrett, did

1 JUDGE:

2 Let the record reflect that the
3 witnesses have been duly sworn. Okay. Attorney
4 Farrell, you can question Ms. Mueller.

5 ATTORNEY FARRELL:

6 Thank you, Your Honor.

7 -----
8 MARGARET MUELLER, HAVING BEEN PREVIOUSLY SWORN,
9 TESTIFIED AS FOLLOWS:

10 -----
11 DIRECT EXAMINATION

12 BY ATTORNEY FARRELL:

13 Q. Would you please state your name for the record?

14 A. Margret Mueller.

15 Q. And who do you work for Ms. Mueller?

16 A. Duquesne Light Company.

17 Q. And how long have you worked for Duquesne Light?

18 A. Forty-two (42) years.

19 Q. What is your current job title?

20 A. Regulatory consumer relations specialist.

21 Q. And would you please explain your job
22 responsibilities?

23 A. I investigate and respond to PUC complaints.

24 Q. In the course of performing your
25 responsibilities, have you become familiar with the

1 complaint of Mr. Williams that brings us here today?

2 A. Yes, I have.

3 Q. Have you reviewed any company records relating to
4 the complaints that Mr. Williams had made to Duquesne
5 Light regarding his alleged sidewalk damage?

6 A. Yes, I have.

7 Q. When did Mr. Williams first complain to Duquesne
8 Light about the repair to his sidewalk?

9 A. May 12th, 2014.

10 Q. I'd like to turn your attention, Ms. Mueller, to
11 the document that's been pre-marked for identification
12 purposes as Exhibit One. It is a two-page document.
13 And let me know when you have that in front of you.

14 A. I do.

15 Q. Okay. Do you recognize these records?

16 A. Yes, I do.

17 Q. And what are they?

18 A. This is a screen print of our records from Mr.
19 William's account.

20 Q. Okay. And that's both pages?

21 A. Yes, it is.

22 Q. Okay. How are these records prepared?

23 A. In our system.

24 Q. Okay. Are the entries contained within this
25 exhibit generated at or near the time of the event

1 being described?

2 A Yes, they are.

3 Q. Are they input by an individual with personal
4 knowledge of what is being input into the system?

5 A. Yes, they are.

6 Q. Is it the regular practice of Duquesne Light to
7 make records of the type of information that's
8 contained within the documents that's been marked as
9 Exhibit One?

10 A. Yes, it is.

11 Q. Okay. Does Duquesne Light maintain these types
12 of records in the ordinary course of its business?

13 A. Yes, we do.

14 Q. Now, anywhere on this document does it indicate
15 where Mr. Williams called to complain about the damage
16 to his sidewalk?

17 A. Certainly. On Exhibit One, page two, if you look
18 in the middle of the page it says Camm action
19 information and then the two entries by E. Brown on
20 May 12th, 2014. It states the customer called about
21 some repair work that had been done to his sidewalk.

22 Q. And in response to the concerns that were raised
23 by Mr. Williams, how did Duquesne Light respond?

24 A. We referred that to the foreman on the job to
25 contact facilities to check on the repairs that were

1 made.

2 Q. And when did Duquesne Light do that in response
3 to Mr. Williams' complaint?

4 A. That same day, May 12th.

5 Q. Okay. And did Duquesne Light take any action to
6 inspect the repairs that had been made?

7 A. Crews checking the area of the pole replacement
8 that same day did state that Duquesne Light repaired
9 all Duquesne Light damage. And other concrete damage
10 is not a result of Duquesne Light's work.

11 Q. Okay. What you just stated, is that indicated in
12 the company records marked as Exhibit One?

13 A. Yes, it is.

14 Q. And where is that?

15 A. It starts on page one of Exhibit One, the last
16 entry by E. Brown. And it continues on the next page
17 of Exhibit One.

18 Q. Did Duquesne Light inform Mr. Williams of the
19 result of this investigation?

20 A. Yes, we did two days later on May 14th.

21 Q. And is that indicated in the company records
22 marked for identification purposes as Exhibit One?

23 A. That also is. It's the second entry from the
24 bottom by L. Sipe.

25 Q. Okay. And am I correct that the date that was

1 entered was May 14th of 2014?

2 A. Yes, sir.

3 ATTORNEY FARRELL:

4 Okay. I have no further questions for
5 Ms. Mueller.

6 JUDGE:

7 Mr. Williams, do you have any questions
8 for Ms. Mueller?

9 MR. WILLIAMS:

10 No. I have no knowledge of what she's
11 discussing so I can't have any questions.

12 JUDGE:

13 Okay. Ms. Mueller, I have a few
14 questions for you. It's your testimony that a
15 complaint came into Duquesne Light from Mr. Williams
16 on May 12th, 2014 about a sidewalk damage; is that
17 correct?

18 A. Yes, Your Honor.

19 JUDGE:

20 And who was the complaint referred to?

21 A. Excuse me, Your Honor. I don't understand your
22 question.

23 JUDGE:

24 Once his complaint was called in, who
25 was it referred to for investigation or resolution?

1 A. I'm sorry, sir. It was referred to the crew
2 foreman to check into the --- to investigate the
3 complaint.

4 JUDGE:

5 And what was the crew foreman's name?

6 A. I'm sorry, Your Honor, that's not located here in
7 my records.

8 JUDGE:

9 Okay. So how do you know that the crew
10 --- if you don't know who it was, how do you know that
11 the crew foreman checked it out?

12 A. On the first page on May 12th we note that crews
13 checked the area of pole replacement and he advised
14 our representative Mr. Brown that they checked it and
15 they repaired all the damage to the concrete that we
16 had done.

17 JUDGE:

18 You're saying the crew member who,
19 according to this record, checked it out, you said his
20 name is not in the document anywhere?

21 A. No, sir.

22 JUDGE:

23 And who is Mr. Brown?

24 A. Mr. Brown is a technical service representative
25 for our company.

1 JUDGE:

2 Is he a technical services rep?

3 A. Yes, sir.

4 JUDGE:

5 Is Mr. Brown under your supervision?

6 A. No, Your Honor.

7 JUDGE:

8 Well, if Mr. Williams want to question
9 this crew member, how would he be able to question the
10 crew member if it's nowhere in Duquesne's record as to
11 who this crew member was? How would he do this?

12 A. I'm not sure, Your Honor. We'd have to go back
13 in the records and investigate.

14 JUDGE:

15 So once this record was compiled, was
16 anything further done about Mr. Williams' complaint
17 about his sidewalk being damaged? Did Duquesne Light
18 raise any further investigation?

19 A. Yes, we did, Your Honor.

20 JUDGE:

21 Then when did that occur?

22 ATTORNEY FARRELL:

23 Your Honor, if I could very briefly,
24 that's what Kevin Barrett is here to testify about.
25 He was the one who completed those investigations.

1 JUDGE:

2 No, let me ask Ms. Mueller this
3 question.

4 ATTORNEY FARRELL:

5 Okay.

6 JUDGE:

7 Between May 12th, 2014 and September
8 29th, 2014, that's when --- that date, the September
9 date, is when Mr. Williams' complaint was received.
10 Did Duquesne Light do any other further investigation
11 between those two dates, other than the initial one
12 that is recorded in the complaint?

13 A. Yes, Your Honor. They were performed by Kevin
14 Barrett.

15 JUDGE:

16 And when did that occur?

17 A. August 14th, 2014.

18 JUDGE:

19 Okay. And where is that in the notes?
20 You say it's in --- is it in Exhibit One, Ms. Mueller?

21 A. No, Your Honor, it's not.

22 JUDGE:

23 Where are you getting this information
24 from?

25 A. From Mr. Barrett.

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JUDGE:

This is something he told you?

A. Yes, sir.

JUDGE:

When did he tell you this?

A. During the course of our investigation.

JUDGE:

Excuse me, I didn't hear you.

A. During the course of our investigation.

JUDGE:

Exactly when during the course of your investigation?

A. I can't recall exactly, Your Honor.

JUDGE:

Okay. When did you conclude your investigation, Ms. Mueller?

A. After the formal complaint?

JUDGE:

No, before the formal complaint was filed, when did you conclude --- did you conclude it before or after the formal complaint was filed?

A. He filed an informal complaint and the matter closed with the PUC on September 10th.

JUDGE:

And you concluded your investigation

1 when?

2 A. I'm not sure of the exact date, Your Honor.

3 JUDGE:

4 Where are you getting the September
5 10th, 2014 date from?

6 A. From his prior PUC complaint.

7 JUDGE:

8 You're referring to the informal
9 complaint?

10 A. No, sir.

11 JUDGE:

12 Well, up until that date, September 10th
13 --- let's back up. Is that date, September 10th,
14 2014, is that reflected on Exhibit One somewhere?

15 A. No, Your Honor, it's not.

16 JUDGE:

17 Then where are you getting this
18 information from?

19 A. Excuse me, Your Honor, that is on the top line,
20 2010 --- 2014. That means the case was closed.

21 JUDGE:

22 September ---.

23 A. On Exhibit One, page one.

24 JUDGE:

25 Exhibit One, page one.

1 A. It says LPC Exempt Code changed from D to 1.
2 That's an internal code meaning that the informal
3 complaint had been dismissed.

4 JUDGE:

5 What does LPC stand for?

6 A. Late payment charges.

7 JUDGE:

8 So from this, the LPC exempt code charge
9 from D to 1, what does the D to 1 mean?

10 A. D means dispute.

11 JUDGE:

12 And what does the 1 mean?

13 A. It means the dispute's closed.

14 JUDGE:

15 His complaint was closed on September
16 10th, 2014?

17 A. Yes, Your Honor.

18 JUDGE:

19 Was anything in writing ever sent to Mr.
20 Williams about his complaint?

21 A. I'm not sure, Your Honor.

22 JUDGE:

23 Well explain to me again, Ms. Mueller,
24 what is your position with Duquesne? What do you do
25 with Duquesne Light? Do you investigate the complaint

1 or you just receive the information?

2 A. I investigated the complaint. I sent my
3 complaint (sic) to the PUC. They investigated and
4 their decision on his informal complaint was that Mr.
5 Williams was unsatisfied with our position, and our
6 position at that time was that we had not done any
7 damage to his sidewalk. And then the formal complaint
8 was filed.

9 JUDGE:

10 Okay. So I understand your testimony
11 correctly, on September 10th, 2014 you closed Mr.
12 Williams' complaint; is that correct?

13 A. The company --- PUC dismissed it on September
14 10th.

15 JUDGE:

16 Okay.

17 A. The PUC closed his complaint.

18 JUDGE:

19 If I understand your testimony
20 correctly, between May 14, 2014 when the complaint ---
21 no, May 12, 2014 when the Complaint first came in and
22 September 10th, 2014, was there any letter or document
23 sent to Mr. Williams from Duquesne Light to Mr.
24 Williams, to you knowledge?

25 A. Not to my knowledge, sir.

1 JUDGE:

2 Okay. Give me just a moment. Your
3 experience is that Duquesne Light's normal practice if
4 a damage complaint comes in, that it's not responded
5 to in writing?

6 A. Sir, I don't deal with property damage and I have
7 no records of him filing a formal complaint alleging
8 damage to his property.

9 JUDGE:

10 Could you explain that? I'm looking at
11 Exhibit One and you just testified that you have no
12 record that he filed a complaint about damage. But if
13 you look at the May 12th, 2014 date on Exhibit One, it
14 says the crews checked for damage. So you're saying
15 that he hadn't filed a complaint?

16 A. He filed his complaint with our Claims
17 Department.

18 JUDGE:

19 The Claims Department. Okay.

20 A. Yes, sir.

21 JUDGE:

22 If a complaint comes in over the phone
23 from a customer, how would it get to the Claims
24 Department about a damage claim?

25 A. They're referred to a number that they call to

1 where the customer leaves the information. And then
2 the claims representative investigates the claim.

3 JUDGE:

4 Well, is there anything in Exhibit One
5 that would indicate that Mr. Williams was referred to
6 the Claim's Department?

7 A. No, Your Honor.

8 JUDGE:

9 Do you know what the reason for that
10 might be?

11 A. I'm not aware, Your Honor.

12 JUDGE:

13 Okay. When you closed the case on
14 September 10th, 2014, did you have any other, on your
15 end from your activity on this case?

16 A. No, Your Honor.

17 JUDGE:

18 So as of September 10th, 2014 you were
19 not further involved in this case; is that correct?

20 A. No, Your Honor.

21 JUDGE:

22 Okay. When a crew member submits a
23 report about --- and I'm looking at Exhibit One, about
24 a claim from a customer. Is the report in writing to
25 your knowledge?

1 A. Sir, are you referring to when somebody calls our
2 claims line?

3 JUDGE:

4 No, no. I'm talking about the crew
5 member. It was your testimony that the crew member
6 apparently checked this area out and would he have
7 written a report, he or she, whoever the crew member
8 was?

9 A. I'm not aware, sir.

10 JUDGE:

11 Okay. Give me just a moment. That was
12 all the questions I have. Attorney Farrell, do you
13 have any additional question for Ms. Mueller?

14 ATTORNEY FARRELL:

15 Just very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY ATTORNEY FARRELL:

18 Q. Ms. Mueller, after Mr. Williams called Duquesne
19 Light on May 12th, did Duquesne Light send a crew,
20 according to your review of the company records, to
21 inspect the complaints made by Mr. Williams?

22 A. Yes, we did.

23 Q. And according to the company records, did
24 Duquesne Light contact Mr. Williams to inform him of
25 the results of their investigation?

1 A. Yes, we did.

2 Q. And when did they do that?

3 A. May 14th.

4 Q. Of what year?

5 A. 2014.

6 Q. And is that indicated in the company records
7 shown in Exhibit One?

8 A. Yes, it is.

9 Q. Okay. Can you point out where that is?

10 A. It's the second entry from the bottom that say L.
11 Sipe, advised Mr. Williams of notes from previously
12 representative on 5/12, said that's not true and asked
13 for the PUC phone number.

14 ATTORNEY FARRELL:

15 Thank you, Ms. Mueller, I have no
16 further questions.

17 JUDGE:

18 Mr. Williams, do you have any additional
19 questions for Ms. Mueller?

20 MR. WILLIAMS:

21 Yes, I do.

22 JUDGE:

23 Go ahead.

24 CROSS EXAMINATION

25 BY MR. WILLIAMS:

1 Q. On May 12th ---

2 A. Yes, sir.

3 Q. --- when you sent a crew out, was that the crew
4 that had done the work?

5 A. I'm not aware of the crew that sent. I have no
6 knowledge of that.

7 Q. Is it normal to send out crew members to
8 investigate a complaint who has done or participated
9 in the construction?

10 A. I'm not aware of which crew was sent, sir.

11 Q. Because it seems to me that they had a conflict
12 of interest if they reported back that the damage
13 wasn't the fault of Duquesne Light. Now the other
14 thing is, how did you inform me of the crew's
15 decision?

16 A. When they talked to you on May 14th.

17 Q. Did you inform me by phone?

18 A. Yes, sir. That's what the records indicate we
19 advised you.

20 Q. Do you know who informed me?

21 A. A representative named L. Sipe.

22 Q. And that person indicated to you that he had
23 contacted and talked to me?

24 A. That's what the records indicate, sir.

25 Q. Can you explain to me why I was never referred to

1 the Claims Department of Duquesne Light?

2 A. No, sir, I cannot.

3 MR. WILLIAMS:

4 Thank you. That's all the questions I
5 have.

6 JUDGE:

7 Attorney Farrell, do you have any
8 additional questions for Ms. Mueller?

9 ATTORNEY FARRELL:

10 Not for Ms. Mueller, no.

11 JUDGE:

12 Okay. I have a few questions for you,
13 Ms. Mueller. To the best of your knowledge, do you
14 know whether or not L. Sipe is still employed by
15 Duquesne Light?

16 A. I am not sure, sir.

17 JUDGE:

18 To the best of your knowledge, do you
19 know whether or not E. Brown is still employed by
20 Duquesne Light?

21 A. Yes, he is, sir.

22 JUDGE:

23 Okay. Do you know his first name?

24 A. Excuse me, Your Honor?

25 JUDGE:

1 Excuse me?

2 A. Yes, he is.

3 JUDGE:

4 No, what's his first name? The E, what
5 does it stand for?

6 A. Oh, Eugene.

7 JUDGE:

8 Okay.

9 A. E-U-G-E-N-E.

10 JUDGE:

11 And Mr. Eugene Brown, he is the one who
12 received the report from the crew?

13 A. That's what the records indicate, sir.

14 JUDGE:

15 Okay. Just so we have a clear record,
16 Ms. Mueller ---.

17 BRIEF INTERRUPTION

18 JUDGE:

19 Did someone join the conference? Hello?

20 ATTORNEY FARRELL:

21 Hello, we're still here, Your Honor.

22 MR. WILLIAMS:

23 Okay.

24 JUDGE:

25 Did someone else join the conference?

1 MR. WILLIAMS:

2 No.

3 JUDGE:

4 Okay. Ms. Mueller, so we have a clear
5 record, other than the Exhibit One that you've
6 testified from, you do not have any personal knowledge
7 of the events that Mr. Williams is complaining about;
8 is that correct?

9 A. That's correct, Your Honor.

10 JUDGE:

11 Are there any additional questions for
12 Ms. Mueller? Do you have any additional questions,
13 Attorney Farrell?

14 ATTORNEY FARRELL:

15 No, Your Honor.

16 JUDGE:

17 Mr. Williams, do you have any additional
18 questions, something new?

19 MR. WILLIAMS:

20 No, Your Honor.

21 JUDGE:

22 Would you like to call your next
23 witness, Mr. Farrell?

24 ATTORNEY FARRELL:

25 Yes, Your Honor. Duquesne Light Company

1 calls Kevin Barrett. May I proceed?

2 JUDGE:

3 You may proceed. Mr. Barrett, remember
4 you're still under oath.

5 -----
6 KEVIN BARRETT, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
7 AS FOLLOWS:
8 -----

9 A. Yes, Your Honor.

10 DIRECT EXAMINATION

11 BY ATTORNEY FARRELL:

12 Q. Would you please state your name for the record,
13 please?

14 A. Kevin Barrett.

15 Q. And Mr. Barrett, who do you work for?

16 A. Duquesne Light.

17 Q. And how long have you worked for Duquesne Light?

18 A. It'll be six years this year.

19 Q. And what is your current job title?

20 A. Supervisor of construction and maintenance.

21 Q. And can you briefly explain what sort of duties
22 are handled by the Construction and Maintenance
23 Department?

24 A. The main thing, repair as far as doing remodeling
25 work at service centers. We repair garage doors at

1 our service centers. We repairs pipes at our
2 substations and we do property damages.

3 Q. And repairing the sidewalk with damage resulting
4 in a pole replacement would be the responsibility of
5 you Department?

6 A. Yes.

7 Q. Does your Department do the actual pole
8 replacement themselves?

9 A. Not the pole replacement.

10 JUDGE:

11 I didn't hear you answer. Repeat the
12 question. Sir, we couldn't hear the answer.

13 ATTORNEY FARRELL:

14 Yes, I apologize, Your Honor.

15 BY ATTORNEY FARRELL:

16 Q. My question was whether or not Mr. Barrett's
17 department performs pole replacement themselves?

18 A. No.

19 JUDGE:

20 We still didn't hear you.

21 A. No, sir. No, Your Honor.

22 JUDGE:

23 Thank you.

24 BY ATTORNEY FARRELL:

25 Q. And you indicated that you were the supervisor of

1 construction and maintenance. Would you please
2 describe your job responsibilities in that role?

3 A. I have 16 men that work for me, men and women,
4 and I daily disperse them to do different jobs.

5 Q. We heard Ms. Mueller testify earlier about a site
6 visit on May 12th, 2014. Did you hear that testimony?

7 A. Yes.

8 Q. Was that your crew that would have inspected Mr.
9 Williams' complaint?

10 A. Yes.

11 JUDGE:

12 Did you say no?

13 A. No.

14 JUDGE:

15 Ask the question again because we
16 couldn't hear the answer. Ask the question again,
17 Attorney Farrell.

18 ATTORNEY FARRELL:

19 I apologize, we're as close to the phone
20 as we can be.

21 BY ATTORNEY FARRELL:

22 Q. Was it your Department that investigated the
23 concerns in the Complaint that were raised by Mr.
24 Williams?

25 A. Yes.

1 ATTORNEY FARRELL:

2 Were you able to catch that, Your Honor?

3 JUDGE:

4 Yes, we did.

5 ATTORNEY FARRELL:

6 Okay. I apologize, we're trying to be
7 as clear as we can be.

8 BY ATTORNEY FARRELL:

9 Q. Now, in the course of your time with Duquesne
10 Light, Mr. Barrett, approximately how many repairs has
11 your Department completed relating to sidewalks
12 surrounding utility poles that have been replaced?

13 A. We refer to them as property damages, and
14 actually we deal with a lot of those.

15 Q. Can you describe the physical repair process
16 after a new pole has been installed? What does your
17 Department do?

18 A. We go out with our property damage trucks. We
19 assess the area where the pole --- around the pole
20 that was damaged. We make the saw cut around the
21 area, remove the concrete in place in that area around
22 the pole.

23 Q. Did you personally conduct an investigation to
24 determine whether Duquesne Light repaired the damage
25 to the sidewalk outside of Mr. Williams' residence?

1 A. Yes.

2 Q. Okay. And when were those repairs made?

3 A. The repairs were made on May 9th, 2014.

4 Q. Okay. And since that date have ---?

5 BRIEF INTERRUPTION

6 JUDGE:

7 Hello?

8 ATTORNEY FARRELL:

9 Hello.

10 JUDGE:

11 Mr. Williams, are you still in the
12 conference?

13 MR. WILLIAMS:

14 Yes, I had a brief omission there.

15 JUDGE:

16 I think someone may have joined the
17 conference that was not in it. So you're still there,
18 Attorney Farrell and so is Mr. Williams; is that
19 correct?

20 ATTORNEY FARRELL:

21 Yes, Your Honor.

22 MR. WILLIAMS:

23 Correct.

24 JUDGE:

25 Okay. You can continue, Attorney

1 Farrell.

2 ATTORNEY FARRELL:

3 Okay.

4 BY ATTORNEY FARRELL:

5 Q. And after the sidewalk surrounding the pole had
6 been replaced, did you make any visits to this
7 particular area to inspect whether the repairs had
8 been completed accurately?

9 A. Yes.

10 Q. And what was your determination?

11 A. That we made the proper repairs.

12 Q. And approximately how many visits to this
13 particular place did you make?

14 A. At least three.

15 Q. Are there any safety concerns posed by the
16 repairs made by Duquesne Light?

17 A. No.

18 Q. Okay. You have indicated that you made three
19 visits to the property. When was the first one?

20 A. The first visit I made was on August 14th.

21 Q. Of what year?

22 A. 2014.

23 Q. Okay. And why did you go to the property then?

24 A. Gene Brown from our Penn Hill Service Center
25 called and told me that he had received information

1 day that the repairs made by Duquesne Light were
2 adequate?

3 A. Yeah. The area around the pole itself is --- has
4 been repaired, so the location of the pole is there
5 that we repaired.

6 Q. And you had mentioned earlier that you and your
7 crew had done a saw cut. Can you explain what that
8 is?

9 A. Well, the saw cut is the --- gives us a clean
10 edge to work to. We go out with a concrete saw, make
11 the cut to remove the concrete and replace it.

12 Q. Now, you had indicated that you made three visits
13 to the property. When was the second one?

14 A. The second one was October 13th, 2014.

15 Q. And why did you make a second visit to the
16 property on that date?

17 A. I received a call from Marie Camella (phonetic)
18 asking me --- saying that Mr. Williams was requesting
19 to speak with someone and I had told them I would
20 gladly speak with Mr. Williams.

21 Q. And on October 13th of 2014, did you speak with
22 Mr. Williams?

23 A. Yes, I did.

24 Q. Did he relate his concerns to you?

25 A. He did.

1 Q. And what were those?

2 A. Well, one of his concerns was the saw cut itself.
3 He was concerned with water getting down in the joints
4 where we made the saw cut and freezing and raising the
5 concrete.

6 Q. And in response to Mr. Williams' concerns, did
7 you take any action?

8 A. I did.

9 Q. And what was that?

10 A. We cleaned out the area of the saw cut and poured
11 product that's called Sikaflex. It's a self-leveling
12 sealant that seals the joint and allows for expansion
13 of the concrete.

14 Q. And what was the purpose of installing the
15 Sikaflex?

16 A. Again, Mr. Williams' concern was water getting
17 down in, so that was the ---.

18 JUDGE:

19 Just a moment, Attorney Farrell. Could
20 you go back and ask the question? Because the court
21 reporter didn't get the question and answer. And
22 could Mr. Barrett also spell Sikaflex?

23 A. S-I-K. I believe it's two words, Your Honor.
24 F-L-E-X.

25 JUDGE:

1 Thank you. That's what we needed, the
2 spelling. You can continue, Attorney Farrell.

3 ATTORNEY FARRELL:

4 Okay.

5 BY ATTORNEY FARRELL:

6 Q. Mr. Barrett, what is the purpose of the Sikaflex?

7 A. Well, it serves two purposes. It seals the
8 joints and it also allows for expansion.

9 Q. And what is the benefit of installing it to
10 address Mr. Williams' concerns?

11 A. To prevent water from going down into the joint
12 itself.

13 Q. And when were those repairs completed? When was
14 the Sikaflex added?

15 A. It was either the next day or maybe two days
16 after meeting with Mr. Williams.

17 Q. And when you met with Mr. Williams on October
18 13th of 2014, did he relay any issue or concerns to
19 you?

20 A. He had mentioned about the spalled area of
21 concrete that was caused --- his concern was that our
22 saw caused the spalling in that area.

23 Q. And when you say ---.

24 JUDGE:

25 Just a minute, what are you saying?

1 Spotting, Mr. ---?

2 A. Spalling, Your Honor.

3 JUDGE:

4 Are you talking about ---?

5 A. The loose area by the grating or the metal
6 covering. Spalling.

7 JUDGE:

8 S-P-A-L-L-I-N-G? Okay.

9 A Yes.

10 JUDGE:

11 Is that where the surface cement seemed
12 to have crumbled? Is that what you're referring to?

13 A. Yes, Your Honor.

14 JUDGE:

15 Okay. Go ahead.

16 BY ATTORNEY FARRELL:

17 Q. And based on your inspection, Mr. Barrett, did
18 Duquesne Light cause that spalling damage?

19 A. No.

20 Q. And why not? How do you know that?

21 A. That area there looks like that's been over the
22 years from salt and just normal wear and tear.

23 Q. And you had indicated that you made three visits.
24 When did your third visit to this particular site
25 occur?

1 A. The day after my crew installed the Sikaflex
2 caulking.

3 Q. And what was the purpose of your visit on that
4 day?

5 A. Well, twofold. To make sure that we did the job
6 and did it properly.

7 Q. Did you take any photographs when you went on
8 your third visit?

9 A. Yes, I did.

10 Q. I'd like to turn your attention to the document
11 that's been pre-marked for identification purposes as
12 Exhibit Four. I'll represent for the record this is a
13 two-page exhibit. Mr. Barrett, do you recognize these
14 documents?

15 A. Yes.

16 Q. What are they?

17 A. The pictures that I had taken after the Sikaflex
18 was installed.

19 Q. Are they a fair and accurate representation of
20 the way the Sikaflex appeared in October of 2014?

21 A. Yes.

22 Q. And would you please point out to me on the
23 picture, and you can use the second page if it's
24 better for you, where the Sikaflex was actually
25 installed?

1 A. I'd like to go to page two. The border area was
2 between the new concrete and the existing concrete.
3 That grey sealant is the Sikaflex. It runs lateral
4 and parallel with the new concrete we installed.

5 Q. Okay. And we heard Mr. Williams testify earlier
6 about the light markings around the new sidewalk that
7 was installed. Do you see where I'm referencing?

8 A. Yes.

9 Q. Can you explain what that light marking --- what
10 those light markings are?

11 A. That's the residue from when you run the concrete
12 saw. It's the diamond blade cut. It sprays water on
13 it to keep it cool --- or keep the blade cool to
14 prevent it from warping. So I believe that's the
15 cement from the concrete as it was being cut, the
16 residue.

17 Q. Are there any safety concerns posed by this
18 residue that you've described?

19 A. No.

20 Q. Does it in anyway affect the structural integrity
21 of the sidewalk?

22 A. No.

23 Q. If you'll stay on page two of Exhibit Four, Mr.
24 Williams earlier testified about an L-shaped cut. Did
25 you hear that testimony?

1 A. I did.

2 Q. Okay. And that appears to be an L at the sort of
3 the border where the horizontal and the vertical saw
4 cuts made by Duquesne Light were made. Do you see
5 where I'm at?

6 A. I do.

7 Q. Can you just explain which of those cuts were
8 caused by Duquesne Light?

9 A. The vertical one is the extension of the blade.
10 I mean you have to cut out at least three or four
11 inches of concrete, and that's a complete cut with the
12 blade. It's past the area there.

13 Q. And did Duquesne Light install Sikaflex in what
14 been made?

15 A. Yes.

16 Q. I also see, I guess, a crooked line running
17 horizontally. It also appears to have been filled
18 with Sikaflex. Did Duquesne Light cause that cut?

19 A. No.

20 Q. And how do you know that?

21 A. When I first visited the site there, I could see
22 the damaged crack there. It's not a saw cut. It's a
23 crack in the concrete.

24 Q. Okay. And am I correct that that is Sikaflex
25 that has been filled in there?

1 A. Yes. We just filled that as well. We were there
2 and we had the Sikaflex, so we just filled that crack.

3 Q. In your opinion and based on your investigation,
4 Mr. Barrett, did Duquesne Light cause any of other the
5 damage that has been described by Mr. Williams today?

6 A. No.

7 Q. Is there any safety problems associated with the
8 repairs made by Duquesne Light?

9 A. No.

10 Q. Did the repairs made by Duquesne Light compromise
11 the surrounding structural integrity of the sidewalk?

12 A. No.

13 ATTORNEY FARRELL:

14 Your Honor, I have no further questions
15 for Mr. Barrett.

16 JUDGE:

17 Mr. Williams, do you have any questions
18 for Mr. Barrett?

19 MR. WILLIAMS:

20 Yes.

21 CROSS EXAMINATION

22 BY MR. WILLIAMS:

23 Q. Mr. Barrett, how many times did you meet with me?

24 A. I met with you once, Mr. Williams.

25 Q. How long was that after I complained?

1 A. Oh boy.

2 JUDGE:

3 Are you saying harmatic hammer?

4 A. Pneumatic.

5 JUDGE:

6 A pneumatic hammer, thank you.

7 A. Yeah. I'm sorry, Your Honor.

8 JUDGE:

9 Go ahead.

10 BY MR. WILLIAMS:

11 Q. How much vibration does a pneumatic hammer cause?

12 A. I can't answer that, sir.

13 Q. Have you ever been on site when it was used?

14 A. Yes, sir.

15 Q. Have you seen the vibration it creates?

16 A. Yes, sir.

17 Q. Have you heard the noise it creates?

18 A. Yes, sir.

19 Q. So you have some idea of the vibration it causes?

20 A. Yes. We just, you know, use that in the area
21 that we saw out. There is the joint there that's
22 separating that. We sawed that first.

23 Q. It doesn't matter which you used first. You did
24 use the jackhammer or the hammer you described ---

25 A. The pneumatic ---.

1 it's standard practice for Duquesne Light if they do a
2 saw cut that they repair it. The question is why did
3 it take so long to come in and fill it with this
4 Sikaflex? I think that's the questions Mr. Williams
5 is asking.

6 A. Well, Your Honor, the property was repaired in
7 May. We don't always put that in, do you know what I
8 mean? I can say I put that in there because Mr.
9 Williams being concerned about water getting down in
10 between the saw cut.

11 BY MR. WILLIAMS:

12 Q. Would you normally leave a saw cut in property
13 you're not constructing and just abandon it there?

14 A. The saw cuts there --- it's cut so, you know what
15 mean, its concrete will crack. That would be the
16 ending point of it, do you know what I mean? So it
17 wouldn't necessarily --- I mean, you'll see it in
18 other slabs of concrete. We do not always put the
19 Sikaflex on there.

20 Q. My question is do you cut into people's sidewalks
21 that's not being repaired or reconstructed and leave
22 the cut there?

23 A. No.

24 Q. Then why did you do it on my property?

25 A. Well, we didn't have to cut your property, Mr.

1 Williams.

2 Q. You did what?

3 A. We didn't need to cut saw your sidewalk.

4 JUDGE:

5 No, the question is once you saw cut,
6 why didn't you fill it back in? Is that your
7 question, Mr. Williams?

8 MR. WILLIAMS:

9 Yes, Your Honor.

10 JUDGE:

11 Answer the question.

12 A. We did. We did, Your Honor.

13 JUDGE:

14 No, the question is why didn't you do it
15 right after the saw cut was made and you were complete
16 with your work back in May. I think that's the
17 question he's asking.

18 A. Oh, well, again we don't always do that.

19 JUDGE:

20 All right. That's the answer, Mr.
21 Williams. Any other questions for Mr. Barrett?

22 BY MR. WILLIAMS:

23 Q. Can you give me some idea when you don't do it?

24 ATTORNEY FARRELL:

25 Objection, Your Honor, that's beyond the

1 JUDGE:

2 Okay. I believe it was your testimony
3 that the slab there appears to be spalling. Is it
4 your testimony that it was just normal wear and tear?

5 A. That's correct, Your Honor.

6 JUDGE:

7 Okay. If you look at the Exhibit Three,
8 page two, do you see any spalling anywhere else in
9 that picture?

10 A. Yes, Your Honor.

11 JUDGE:

12 Where do you see it?

13 A. On the other side of what we're calling the metal
14 frame or grating.

15 JUDGE:

16 Okay. That small area. Anywhere else
17 that you see spalling?

18 A. Not in the picture, Your Honor.

19 JUDGE:

20 Okay. Continuing to look at Exhibit Two
21 --- I'm sorry, Exhibit Three page two, the bottom of
22 the photograph. What would you describe that's in the
23 bottom of the photograph? What would you say that is,
24 the very bottom?

25 A. Are you referring to the debris there, Your

1 A. Yes.

2 JUDGE:

3 Did you ask Mr. Williams is that what he
4 was referring to as a bushel of debris, did you ask
5 him about it?

6 A. No, Your Honor.

7 JUDGE:

8 Okay. Just a moment. I believe you
9 gave testimony, Mr. Barrett, that a crew went out to
10 do the initial repair work; is that correct? Before
11 there was any complaint from Mr. Williams, a crew went
12 out to replace the pole and then to put in the cement;
13 is that correct?

14 A. Your Honor, my crew did not remove the pole.

15 JUDGE:

16 Okay. What does your crew do?

17 A. My crew goes out and does the repair work after
18 the pole has been removed.

19 JUDGE:

20 Okay. What crew would have done the
21 initial work to break up the concrete around the old
22 pole, would that be your crew or a different crew?

23 A. I'm sorry, can you repeat that, Your Honor?

24 JUDGE:

25 Would it be your crew that would have

1 JUDGE:

2 Okay. Towards the bottom of that,
3 what's typed there, it says crews checked area of pole
4 replacement. Duquesne Light had repaired all Duquesne
5 Light damage and other concrete damage is not result
6 of Duquesne Light work. Do you know what crew is
7 being referred to there?

8 A. No, Your Honor.

9 JUDGE:

10 Excuse me, I didn't hear you.

11 A. No, Your Honor.

12 JUDGE:

13 Okay. All right. Let me ask the
14 question a different way. The crew that did the
15 repair work, that's the crew that you supervised?

16 A. Yes, Your Honor.

17 JUDGE:

18 But you don't know --- your answer was
19 yes?

20 A. Yes.

21 JUDGE:

22 Okay. Could you move a little bit
23 closer to mic or to the phone receiver? Was it
24 your ---?

25 ATTORNEY FARRELL:

1 Let me disclose that he is standing on
2 top of it, Your Honor.

3 JUDGE:

4 We're just have a hard time hearing.

5 ATTORNEY FARRELL:

6 Okay.

7 JUDGE:

8 Mr. Barrett, the crew that did the
9 repair work, would you have supervised --- are you the
10 supervisor of that crew?

11 A. Yes, Your Honor.

12 JUDGE:

13 So it's your testimony you don't know
14 which crew did it?

15 A. The repair work, yes, Your Honor. I do know the
16 crew who did the concrete repairs. Yes, Your Honor.

17 JUDGE:

18 Well, that was my question to you about
19 Exhibit One where it says crews checked area of the
20 pole replacement. And you said you didn't know who
21 that was referring to.

22 A. Your Honor, I don't know who they're referring to
23 when they checked that specific area. When it says
24 that --- let's see. What does it say? Crews checked
25 area of pole replacement. I do not know who that crew

1 JUDGE:

2 Okay. Does Jeff Hohn still work for
3 Duquesne Light?

4 A. Yes, Your Honor.

5 JUDGE:

6 What's his title or position?

7 A. Well, he's the first class crew member of my
8 crew, Your Honor.

9 JUDGE:

10 And does Chris Borden still work for
11 Duquesne Light?

12 A. I believe he does, Your Honor. He's not on my
13 crew anymore, he transferred to another area in
14 Duquesne Light.

15 JUDGE:

16 So Jeff Hohn and Chris Borden, they're
17 the crew members who actually did the repair work?

18 A. Yes, Your Honor.

19 JUDGE:

20 Okay. Mr. Williams (sic), in your
21 experience is it possible if a jackhammer, or I
22 believe a pneumatic hammer was used to, break up the
23 concrete for that jackhammer or pneumatic hammer to
24 cause spalling in the slab that Mr. Williams is
25 complaining about?

1 MR. WILLIAMS:

2 Yes, Your Honor. That's why I
3 questioned him on ---.

4 JUDGE:

5 Mr. Williams, please do not interrupt.

6 MR. WILLIAMS:

7 Well, I thought ---.

8 JUDGE:

9 No.

10 MR. WILLIAMS:

11 I thought you were finished, Your Honor.

12 JUDGE:

13 No, that question is directed to Mr.
14 Barrett. Do you understand the question, Mr. Barrett?

15 A. Yes, Your Honor.

16 JUDGE:

17 Go ahead.

18 A. The area directly around the new concrete that
19 was broken up as well, was caused by a pneumatic
20 hammer in my opinion.

21 JUDGE:

22 Could the pneumatic hammer have caused
23 the slab to have lifted up while it was being used?

24 A. I don't believe it did, Your Honor.

25 JUDGE:

1 Could the pneumatic hammer have caused
2 the slab to crack?

3 A. Cracking or spalling, Your Honor?

4 JUDGE:

5 Crack.

6 A. It could have, but I don't believe it did, Your
7 Honor.

8 JUDGE:

9 Okay. Give me just a moment. Those are
10 all the questions I have. Attorney Farrell, do you
11 have any additional questions for Mr. Barrett?

12 ATTORNEY FARRELL:

13 No, Your Honor.

14 JUDGE:

15 Mr. Williams, do you have any additional
16 questions for Mr. Barrett?

17 RECROSS EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Mr. Barrett, do you remember us discussing the
20 debris when you visited?

21 A. Mr. Williams, I do remember you mentioning
22 debris, but when I was there, I mean, I didn't observe
23 any, other than ---.

24 Q. On Exhibit Three, page two, do you see the debris
25 at the bottom of the picture there?

1 Attorney Farrell, do you have any
2 additional questions for Mr. Barrett?

3 ATTORNEY FARRELL:

4 No, Your Honor.

5 JUDGE:

6 I have a question for you, Mr. Williams.
7 I want to make sure I understand your testimony
8 correctly. Is it your testimony that before this new
9 pole was installed that there was no spalling on the
10 slab that you previously testified about?

11 MR. WILLIAMS:

12 That's correct, Your Honor. If there
13 had been, I would have resurfaced it. I would not
14 allow the sidewalk to look that way.

15 JUDGE:

16 Let me ask you this, Mr. Williams, is
17 the condition of the sidewalk still the same as
18 depicted in Exhibit Three, pages one and two?

19 MR. WILLIAMS:

20 Exhibit Three, page ---?

21 JUDGE:

22 One and two. Is it still the same? Is
23 there still spalling?

24 MR. WILLIAMS:

25 It's still the same, Your Honor.

1 Four marked for identification.)

2 JUDGE:

3 Mr. Williams, do you have any objections
4 to the admission of Duquesne Light's Exhibits One,
5 Three and Four?

6 MR. WILLIAMS:

7 No, Your Honor.

8 JUDGE:

9 There being no objections, Duquesne
10 Light's Exhibits One, Three and Four are admitted into
11 the record. I don't believe you sent any exhibits in,
12 did you, Mr. Williams? I don't have any exhibits from
13 you.

14 MR. WILLIAMS:

15 No, Your Honor. As I said, this was not
16 hand delivered. I was not aware that exhibits could
17 be used, so I didn't send any.

18 JUDGE:

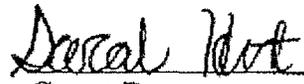
19 Okay. Would either party like to give a
20 closing statement? A closing statement, as I stated
21 earlier, gives each party's position why Mr. Williams
22 feels he should win or Duquesne Light's position why
23 it feels it should prevail in this matter. Attorney
24 Farrell, would you like to give a closing statement?

25 ATTORNEY FARRELL:

1 CERTIFICATE

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I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.



Court Reporter

Sarah Hunt

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Johnstown, PA 15901

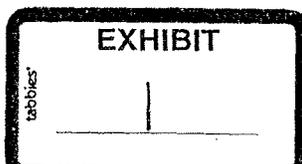
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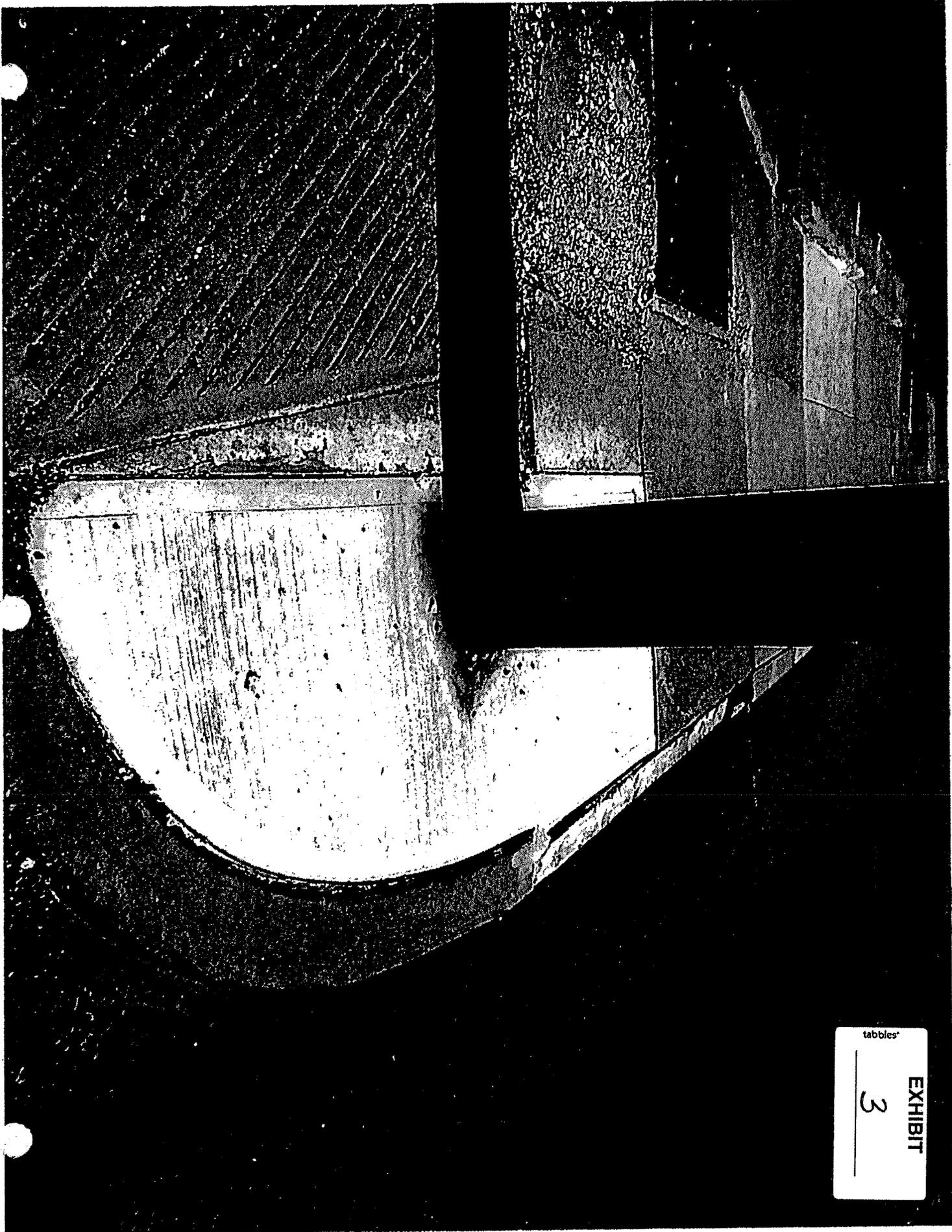
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99 99 99	ADV MR WILLIAMS OF NOTES FROM PREV REP ON	L SIPE	0907	05/14/14	
	5/12...SAID "THATS NOT TRUE" AND ASKED FOR				
	PUC PH#				
99 99 99	CREWS CHECKED AREA OF POLE REPLACEMENT	E BROWN	1456	05/12/14	
	DLCO HAVE REPAIRED ALL DLCO DAMAGE AND OTHER				
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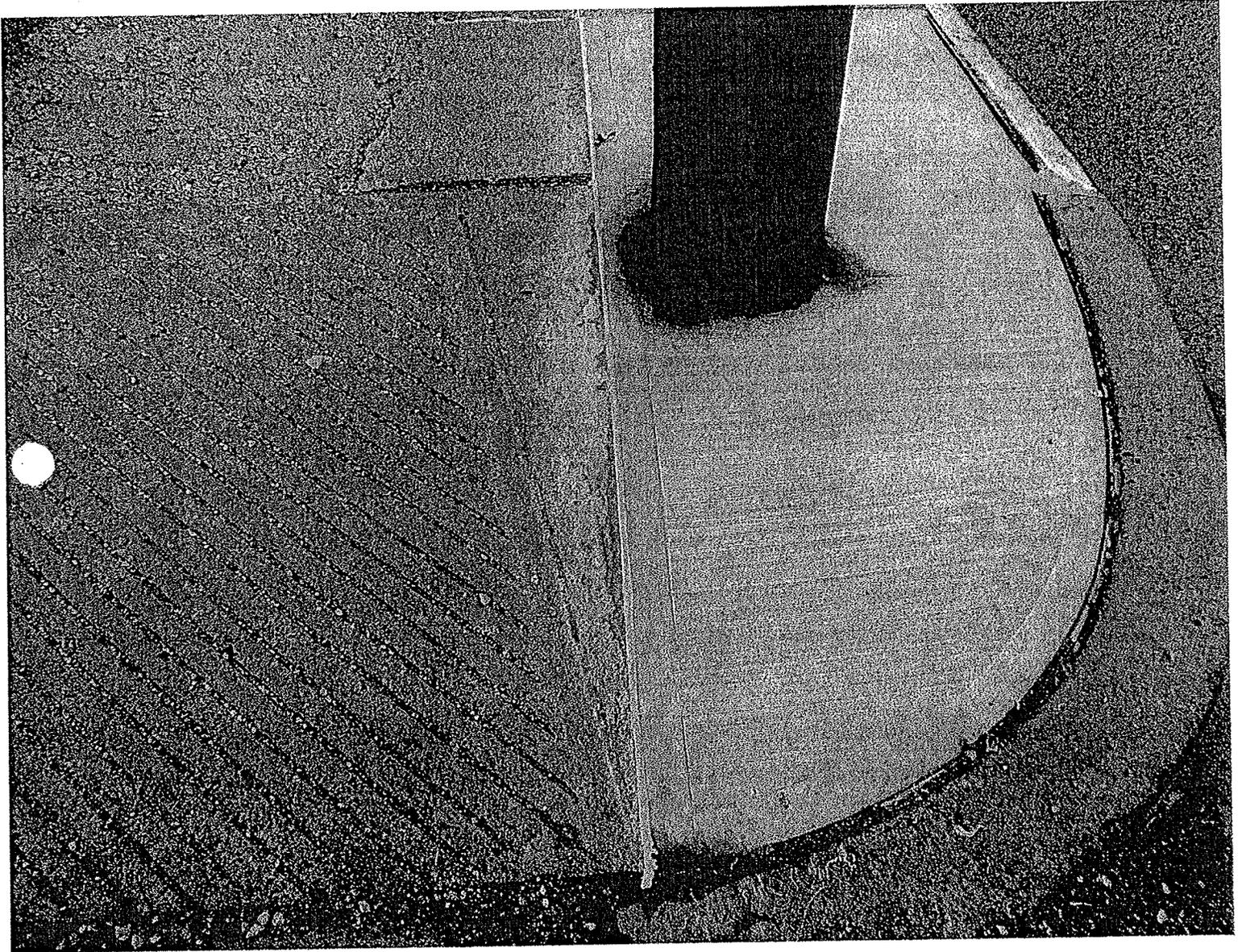
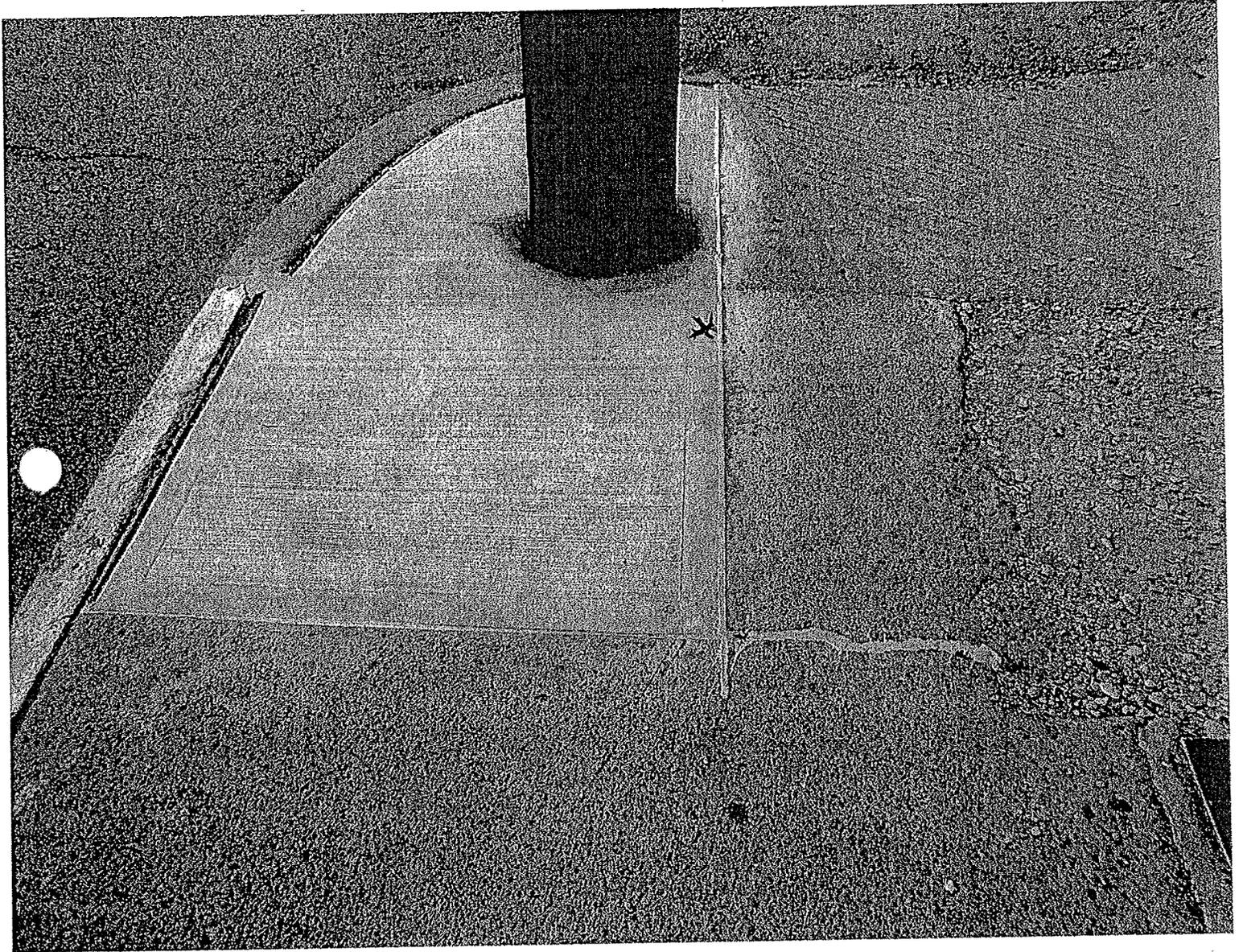


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

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(Via U.S. Mail)

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(Via Electronic Filing)

Pennsylvania Public Utility Commission Office of Special Assistants
(Via email at: ra-OSA@pa.gov)

Dated this 20TH day of July, 2015



Jeremy V. Farrell, Esq.
Counsel for Respondent
Duquesne Light Company