

September 28, 2015

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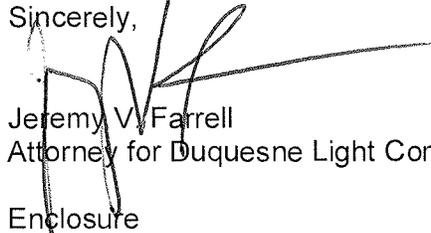
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Famille S. Trust and Lusala Simananga v. Duquesne Light Company
Docket No. C-2014-2440650

Dear Secretary Chiavetta:

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

Sincerely,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

cc: Famille S. Trust (with enclosure)
Lusala Simananga (with enclosure)
Office of Special Assistants (OSA), via email (with enclosure)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FAMILLE S. TRUST and)	
LUSALA SIMANANGA,)	
)	
Complainants,)	
vs.)	Docket No. C-2014-2440650
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

RESPONDENT DUQUESNE LIGHT COMPANY'S REPLIES TO EXCEPTIONS

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., and files the following Replies to Complainant's Exceptions to the Initial Decision of Administrative Law Judge Katrina Dunderdale:

I. INTRODUCTION

The Initial Decision properly dismissed a Formal Complaint filed by an unknown declarant on behalf of an individual, who did not appear for the hearing, and a family trust, which failed to retain an attorney to represent it in this matter in violation of the Commission's regulations and the ALJ's orders. The family trust submitted Exceptions to the Initial Decision that are based primarily on irrelevant extra-record statements and are signed by an unidentified individual purporting to be an attorney. Suspiciously, however, that individual did not provide his or her name, Pennsylvania bar identification number, address, telephone number, or email address anywhere in the Exceptions, let alone enter a formal appearance on behalf of the trust. The Exceptions are all the more curious as they actually *admit* -- twice -- that the trust did not hire an attorney to represent it before the Commission; therefore, the exceptions are invalid and must be stricken in their entirety. Even if the Exceptions were to be considered (which they should not be), they do not challenge or undermine the undisputed, dispositive fact that

Complainants did not prosecute the Complaint as dictated by the Commission's regulations and ALJ Dunderdale's orders.

II. FACTS

The dispositive facts are simple and straightforward. On August 22, 2014, an unknown declarant filed a Formal Complaint on behalf of Lusala Simananga (an individual) and Famille S. Trust (the "Trust"), which is a family trust created in a French-speaking foreign country. Initial Decision, pp. 1, 3.¹ The Complaint challenged Complainants' responsibility for service charges that accrued on an account in the name of Ms. Simananga. Initial Decision, pp. 1-2. Duquesne Light filed an Answer and New Matter that denied the charges were incorrect and stated that the Company had nevertheless removed the disputed charges from Ms. Simananga's account. *Id.* at 2; Tr., pp. 8-9.² Those charges are no longer at issue. In its New Matter, Duquesne Light raised its prior findings of foreign load at the service address and noted that, based on those findings, it had transferred the balances of two accounts at the property into the Trust's name since the Trust owned the property. Initial Decision, p. 2. Duquesne Light also requested that the Trust be required to be represented by a licensed attorney. Initial Decision, p. 2.

On October 7, 2014, the Commission issued a Call-In Telephone Hearing Notice ("Hearing Notice") that scheduled an initial telephonic hearing on November 21, 2014. Initial Decision, p. 2. A Prehearing Order was issued two days later on October 9, 2014, and was served upon the Parties. Both the Hearing Notice and the Prehearing Order stated that a trust must be represented by an attorney licensed to practice law in the state of Pennsylvania. Initial Decision, p. 2. Specifically, the Prehearing Order stated:

Pursuant to 52 Pa. Code §§ 1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. **However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have an attorney**

¹ A copy of the Initial Decision is attached as Exhibit A.

² A copy of the transcript of the Parties' discussion is attached as Exhibit B.

licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else.

Attorneys shall insure that their appearance is entered in accordance with the provisions of 51 Pa. Code. §1.24(b).

Initial Decision, p. 2 (emphasis added).

On November 21, 2014, ALJ Dunderdale attempted to conduct an initial hearing. Initial Decision, p. 3. Duquesne Light was present at the hearing and was represented by counsel. Initial Decision, p. 3. **Ms. Simananga did not appear for the hearing.** Initial Decision, p. 3. An individual named Neneyne Metundu appeared and claimed to be the trustee and/or beneficiary of the Trust. Initial Decision, p. 3; Tr., p. 5. **Mr. Metundu admitted he was not an attorney and that the Trust had not retained legal counsel.** Initial Decision, p. 3; Tr., p. 5. After a brief discussion about Duquesne Light's foreign load investigation and a potential safety concerns, ALJ Dunderdale terminated the hearing because the Trust was not represented by counsel and, as a result, neither of the Complainants was present for the hearing. Initial Decision, p. 3. During the hearing, ALJ Dunderdale informed Mr. Metundu several times that the Trust had to be represented by counsel in order to move forward before the Commission:

- "My problem is this, under Pennsylvania law, when I'm dealing with a trust, I must have an attorney present that represents the trust, because an individual is not permitted to. So although you know -- hold on. Even though you know a lot about the property, and you probably know everything that needs to be known about the problem here, you're not an attorney. So I can't let you represent the trust. Do you understand?" Tr., p. 7.
- "Mr. Metundu, keep in mind, if we have a hearing, you better have an attorney, because I won't let you speak on behalf of the trust. Do you understand me?" Tr., p. 7.

After the termination of the hearing, Duquesne Light filed two motions with the Commission -- the first sought an order requiring that the Trust allow the Company to inspect the foreign load and potential safety issues at the service address and the second sought to dismiss the complaint or, alternatively, to allow Duquesne Light to terminate service at the

property until it confirmed there was no safety concerns present (collectively, the “Motions”).³ Initial Decision, p. 4. Duquesne Light inadvertently neglected to include ALJ Dunderdale on the certificates of service for those Motions. Initial Decision, p. 4. According to the Initial Decision, the ALJ did not become aware of the Motions until May 14, 2015. Initial Decision, p. 4.

On May 5, 2015, ALJ Dunderdale issued a First Interim Order which required Duquesne Light to submit a status report by May 15, 2015, and required the Trust to obtain the services of an attorney on or before May 29, 2015. Initial Decision, p. 5. **The First Interim Order advised Complainants that the Complaint would be dismissed if an attorney did not file a Notice of Appearance on behalf of the Trust by May 29, 2015.** Initial Decision, p. 5. An unidentified individual sent a letter to Judge Dunderdale on May 20, 2015, but the letter gave no indication that the Trust retained an attorney. Initial Decision, p. 5. On June 26, 2015, ALJ Dunderdale issued an Interim Order Closing the Hearing Record. Initial Decision, p. 5. No attorney ever entered an appearance on behalf of the Trust or contacted the Commission to communicate its representation of the Trust. Initial Decision, p. 5.

Since the Trust violated the First Interim Order and the governing regulations by neglecting to hire an attorney to represent it before the Commission, ALJ Dunderdale dismissed the Complaint. The Initial Decision relied upon Ms. Simananga’s failure to appear for the hearing and the Trust’s continued failure to retain counsel. Initial Decision, pp. 1, 11.⁴

The Trust filed Exceptions generally seeking the reversal of the Initial Decision, but failing to challenge any specific Finding of Fact or Conclusion of Law. While the unidentified filer of the Exceptions states the Trust was “zeroing in” on hiring an attorney, the Trust admitted -- twice -- that it did not hire an attorney to represent it before the Commission. Exceptions, pp.

³ Duquesne Light filed the first motion electronically with the the Commission on December 11, 2014, and its cover letter listed ALJ Dunderdale as receiving a copy of the motion. Initial Decision, p. 4. The motion to dismiss was electronically filed on March 31, 2015. Id.

⁴ Specifically, the Initial Decision dismissed the Complaint “for failure of a trust to obtain the services of an attorney to represent it, and for the failure of the individual and trust to appear and prosecute.” Initial Decision, p. 1.

4, 14, 15. The Exceptions are based primarily on irrelevant extra-record statements consisting of Complainant's characterization of discussions of the Parties and Duquesne Light's subsequent inspection of the service address. Notably, the Exceptions do not dispute that Ms. Simananga failed to show up at the hearing or that no attorney ever entered an appearance on behalf of the Trust. Given Complainant's failure to challenge any specific factual finding or legal conclusion set forth in the Initial Decision -- and especially considering that the Trust admitted away the dispositive issue on appeal, *i.e.* that it did not retain an attorney -- it is unclear what error the Trust believes was made by ALJ Dunderdale that would justify reversal of the Initial Decision.

The Exceptions are invalid and should be stricken because they were not filed by an attorney and also to the extent that they rely on extra-record information. While Duquesne Light respectfully submits that the Exceptions should not be considered by the Commission at all in light of the aforementioned issues, even assuming that the Exceptions are considered, they simply do not impact the dispositive conclusions by the ALJ and, therefore, do not disturb the validity of the Initial Decision.

III. LAW AND ARGUMENT

A. The Exceptions must be stricken because they were not filed by an attorney.

The Exceptions are filed only on behalf of the Trust, but, in violation of the Commission's regulations and the ALJ's orders, were not filed by an attorney representing the Trust but instead by an individual who chose not to identify his or herself.⁵ Again, it is significant to point out that there still has been no licensed Pennsylvania attorney to enter its appearance on behalf of the Trust. Critically, that crucial issue is not disputed by the Trust. Exceptions, pp. 4, 15.⁶

⁵ The Exceptions expressly state they belong to Famille S. Trust. Ms. Simananga did not sign the Exceptions.

⁶ Assuming it was Mr. Metundu who filed the Exceptions on behalf of the Trust, he has already admitted that he is not an attorney. Tr., p. 5.

It is well-established law that trusts must be represented by a licensed Pennsylvania attorney in adversarial proceedings before the Commission. 52 Pa. Code. §§ 1.8,⁷ 1.21-1.23. The Code also requires that an attorney retained after the initial pleading file a written notice of appearance with the Commission and serve that notice on all parties to the proceeding. 52 Pa. Code § 1.24(b)(2). ALJ Dunderdale's First Interim Order (and Prehearing Order) imposed the same requirement. No such notice was filed in this case or served on Duquesne Light and the Trust remains unrepresented by counsel in this action.

Exceptions filed on behalf of an entity that must be represented by legal counsel under the Commission's regulations are invalid if they are not filed by an attorney. **The Commission has already ruled that exceptions filed by such an entity's non-attorney representative could not be considered.** Cars R Us c/o Holman Copeland v. Philadelphia Gas Works, No. C-2008-2033437, 2009 WL 6691159 at *4 (Pa. P.U.C. Feb. 4, 2010) ("However, we shall not consider Mr. Copeland's Exceptions or his request to reopen the record because they were not submitted by counsel."). The same result is required here. While the Trust apparently hoped to create the false impression it hired an attorney to file the Exceptions on its behalf, it is abundantly clear that is not the case where: (1) no attorney was identified in the Exceptions; (2) no attorney entered a notice of appearance on behalf of the Trust; and (3) most importantly, the Exceptions acknowledge that the Trust has not retained an attorney in this matter. Exceptions, pp. 4, 15. As a result, the Exceptions cannot be considered and should be stricken in their entirety

B. The Exceptions must be stricken to the extent they rely on extra-record evidence.

The vast majority of the Exceptions constitute an unidentified individual's characterization of discussions and events that are not part of the record in this matter and may not be considered as part of the Exception process. Essentially, the Exceptions contend that

⁷ This proceeding became adversarial once Duquesne Light filed its Answer. 52 Pa. Code § 1.8.

Duquesne Light did not understand the configuration and operation of a solar panel at the service address, criticize Duquesne Light for not conducting an “independent” investigation, and offer its characterization of discussions between the Parties and undersigned counsel regarding an inspection of the service address.⁸ This is nothing more an improper attempt to introduce evidence into the record through the Exception process, which is not allowed under the Commission’s regulations except under very narrow circumstances that do not apply here. Specifically, Section 5.431 of the Commission’s regulations, 52 Pa. Code § 5.431(b), provides that after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. No such motion was made here and the Trust has not attempted to establish good cause for the consideration of this extraneous information.

Simply put, the Trust's extra-record allegations are improper attempts to introduce new, irrelevant evidence and argument after the official close of the record. This Commission has ruled time and again that such evidence may not be considered during the Exception process. See, e.g., Dr. Hubert C. Huh v. PECO Energy Co., F-2013-2386249, 2015 WL 302145 at *6 (Pa. P.U.C. Jan. 15, 2015) (refusing to consider extra-record information in the complainant's exceptions because, after the record was closed, complainant made no request under the regulations to support consideration of the additional material); Mary Jane Hodak v. Pennsylvania Electric Company, C-2011-2274277, 2013 WL 392700 at *5 (Pa. P.U.C. Jan. 24, 2013) (holding that extra-record attachments and information submitted after the record was closed cannot be relied upon unless the conditions in Section 5.431 are met); Amir Williams v. Verizon Pennsylvania, Inc., F-01790520, 2006 WL 6611457 at *3-4 (Pa. P.U.C. July 20, 2006) (ruling that complainant's exceptions should be stricken on the grounds that they are an inappropriate attempt to introduce never evidence through the Exception process). Since this

⁸ The Exceptions also attach various photographs, and reference a video that was not provided to Duquesne Light, in support of its argument. These materials are also not part of the record.

information cannot be considered under the Code and well-established law, the Exceptions should be stricken to the extent they rely on such information.

C. The Exceptions do not challenge any Finding of Fact or Conclusion of Law made by ALJ Dunderdale.

Complainants' Exceptions fail to comply with the procedures for filing exceptions set forth in Section 5.533 because they do not except specific findings of fact or legal conclusions. Under Section 5.533(b), "[e]ach exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision." While the Exceptions generally seek the reversal of the Initial Decision, they do not except to any specific factual finding or legal conclusion upon which that decision is based. Most importantly, they do not contest the two dispositive facts upon which the Initial Decision was based -- that Ms. Simananga did not show up for the hearing and that no attorney entered an appearance on behalf of the trust within the deadline established by ALJ Dunderdale. Thus, the Exceptions do not warrant the reversal of the Initial Decision of ALJ Dunderdale.

D. ALJ Dunderdale properly dismissed the Complaint because the Trust did not retain an attorney to represent its interests before the Commission.

The Public Utility Code requires that trusts be represented by a licensed attorney once a proceeding becomes adversarial. 52 Pa Code. §§ 1.8, 1.21-.23. See also, Gina Burke for J. Cabot Catering, Inc. v. PECO Energy Company, No. C-2012-2329615, 2013 WL 596069 (Jan. 23, 2013) (Guhl, ALJ) ("The Commissions' regulations require . . . trusts . . . to be represented by attorneys in adversarial proceedings before the Commission."). This proceeding became adversarial when Duquesne Light filed its Answer and New Matter. See 52 Pa. Code § 1.8; Cars R Us c/o Holman Copeland v. Philadelphia Gas Works, C-2008-2033437, 2009 WL 6691159 at *4 (Pa. P.U.C. Feb. 4, 2010). Thus, the Trust was required to obtain legal counsel and was directed by ALJ Dunderdale to do so in the Hearing Notice, the Prehearing Order, during the hearing itself, and again in the First Interim Order.

While the Trust states that it looked into getting a lawyer and/or informally retained an attorney, it is undisputed that no attorney entered its appearance on behalf of the Trust. The Trust ignored the ALJ's repeated warnings by that the Complaint would be dismissed unless an attorney entered its appearance on behalf of the trust. After being directed to obtain counsel *on three separate occasions*, ALJ Dunderdale gave Complainant one final opportunity in the First Interim Order to retain the services of an attorney by May 29, 2015. Initial Decision, p. 5. ***The First Interim Order expressly warned the Trust that the Complaint would be dismissed if an attorney did not file a notice of appearance before the May 29 deadline, yet no attorney did so.*** Initial Decision, p. 5. Since it is an undisputed fact that no attorney entered an appearance on behalf of the Trust, the complaint was properly dismissed. Exceptions, pp. 4, 15. See Gina Burke for J. Cabot Catering, Inc. v. PECO Energy Company, No. C-2012-2329615, 2013 WL 596069 (Jan. 23, 2013) (Guhl, ALJ) (dismissing complaint filed on behalf of corporation for failure to comply with an ALJ's prehearing orders requiring that complainant retain an attorney before a date certain) (citing sources).

E. Ms. Simananga failed to appear for the hearing and, therefore, the portion of the Complaint relating to her was properly dismissed.

Even though Ms. Simananga is not a party to this appeal, is clear that ALJ Dunderdale also properly dismissed the complaint of Ms. Simananga because she failed to appear for the hearing. Initial Decision, pp. 1, 6, 9, and 10. See Nola Meachin v. Philadelphia Gas Works, C-2015-2471705, 2015 WL 4464746 at *2 (June 18, 2015) (Vero, ALJ) ("Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. The Complainant waived the opportunity to participate in the hearing by failing to appear."). It is undisputed that Ms. Simananga did not appear for the hearing and did not retain an attorney to appear on her behalf. Initial Decision, p. 9. She, therefore, waived her right to participate in these proceedings any further. Moreover, the Commission has held that when a complainant fails to be present at a scheduled hearing, then

the complaint must be dismissed with prejudice. See, e.g., Michael Schram, Jr. v. Duquesne Light Company, C-2009-2119605, 2010 WL 637090 at *1 (Pa. P.U.C. Jan. 28, 2010); Jefferson v. UGI Utilities, No. Z-00269892, 1995 WL 945812 at *2 (Pa. P.U.C. Dec. 26, 1995). Thus, the Complaint of Ms. Simananga, which had been previously resolved by Duquesne Light anyway, was properly dismissed.

F. The fact that the ALJ was inadvertently omitted from the Motions' certificates of service does not justify a reversal of the Initial Decision.

The Exceptions argue that the Initial Decision should be reversed because Duquesne Light inadvertently neglected to include ALJ Dunderdale on the Motions' certificate of service. Exceptions, p. 5 (citing 52 Pa. Code §§ 1.54 and 1.57). That argument is nothing more than a red herring. The Exceptions cite no legal authority establishing that the inadvertent omission of the ALJ on the certificates of service rendered the Motions invalid. ALJ Dunderdale made no such ruling and, instead, simply pointed out that Duquesne Light should have listed the presiding officer on the certificates of service and that she did not receive notice of the Motions until May 2015. Initial Decision, p. 4. Duquesne Light is unaware of any legal authority that mandates the reversal of the Initial Decision in this case due to the inadvertent failure to include ALJ Dunderdale on the Motions' certificates of service.

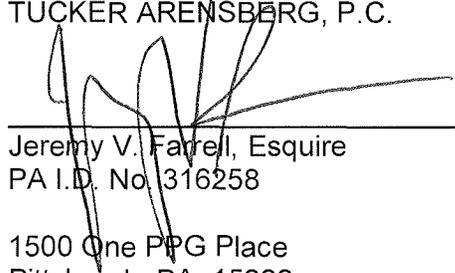
More importantly, even assuming that the Motions were stricken for the failure to include ALJ Dunderdale on the certificates of service, the dismissal of the Complaint would nevertheless stand. The Initial Decision is grounded on two simple facts: (1) that Ms. Simananga did not show up at the hearing; (2) that the Trust refused to obtain an attorney in violation of the ALJ's orders and the Commission's regulations. Initial Decision, pp. 10-11. Striking the Motions does not change either of those facts. The Trust cannot excuse months of ignoring ALJ's orders or the applicable Code provisions on this premise.

IV. CONCLUSION

For the reasons set forth above, Respondent Duquesne Light Company respectfully requests that Complainant's Exceptions be stricken and denied and that the Initial Decision of Administrative Law Judge Dunderdale be affirmed.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FAMILLE S. TRUST and)	
LUSALA SIMANANGA,)	
)	
Complainants,)	
vs.)	Docket No. C-2014-2440650
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DUQUESNE LIGHT COMPANY,)	
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CERTIFICATE OF SERVICE

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

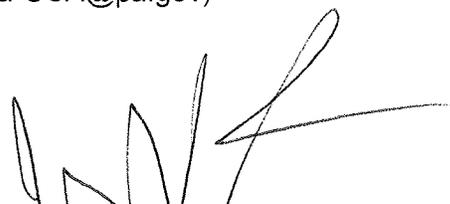
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Pennsylvania Public Utility Commission Office of Special Assistants
(Via email at: ra-OSA@pa.gov)

Dated this 28th day of September 2015:

BY: _____



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