**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Rezzetano :

 :

1. : C-2015-2462441

:

Duquesne Light Company :

**INITIAL DECISION**

Before

Katrina L. Dunderdale

Administrative Law Judge

 This Initial Decision denies a complaint filed by Frank Rezzetano against Duquesne Light Company for the failure to satisfy the burden of proof as it relates to his claim Duquesne Light failed to provide reasonable customer service in how it applied and credited funds to his various accounts in February 2014 and April 2014, and in how Duquesne Light Company billed him for electric service.

HISTORY OF THE PROCEEDING

 On January 7, 2015, Frank Rezzetano (Complainant or Mr. Rezzetano) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light, DLC or Respondent) alleging DLC threatened to terminate or had already terminated electric service to a rental property, and there were incorrect charges on his billing statements. Mr. Rezzetano claimed DLC was discriminatory when it refused to turn on electric service in his apartments. On February 3, 2015, Duquesne Light filed an answer generally denying the complaint.

By Call-In Telephone Hearing Notice dated March 11, 2015, the Office of Administrative Law Judge notified the parties an initial hearing in this case was scheduled for Monday, May 4, 2015 at 10:00 a.m. On March 16, 2015, the presiding officer issued a Prehearing Order setting forth various procedural matters, including how parties may request a continuance.

On April 29, 2015, Complainant sent a facsimile transmission requesting a continuance due to a current medical condition. Complainant requested the presiding officer reschedule the hearing to be held in person, not telephonically, and to reschedule the initial hearing in July 2015. On April 30, 2015, the presiding officer issued the First Interim Order granting Complainant’s request.

By Hearing Notice dated May 1, 2015, the Office of Administrative Law Judge notified the parties an initial in person hearing in this case was scheduled in person for Tuesday, July 7, 2015 at 10:00 a.m. in the Commission’s hearing room in Pittsburgh, Pennsylvania.

 The presiding officer conducted the initial hearing as scheduled on July 7, 2015. Mr. Rezzetano, who appeared *pro se*, testified in support of his complaint. Mr. Rezzetano presented four exhibits including a written statement, all of which were admitted into the hearing record. Duquesne Light, represented by Jeremy V. Farrell, Esquire, presented the testimony of one witness, Tom Figore, and submitted five exhibits, all of which were admitted into the hearing record.

Due to time limitations, the proceeding on July 7, 2015 was continued until July 20, 2015 at 1:00 p.m., at which time Mr. Rezzetano and Respondent were present. Duquesne Light presented the testimonies of two witnesses (Margaret Mueller and Reenay Rodgers) and submitted nine exhibits, all of which admitted into the hearing record. No briefs were filed but the parties made oral statements on the record.

Having received the transcripts from the proceedings conducted on July 7, 2015 and July 20, 2015 in which the parties made final statements in lieu of briefs, the presiding officer closed the hearing record on August 26, 2015 by issuance of the Interim Order Closing the Record. The record included two transcripts: (1) a 96-page hearing transcript (7/7/15 Tr.) and nine exhibits from the proceeding on July 7, 2015; and (2) a 91-page hearing transcript (7/20/15 Tr.) and nine exhibits from the proceeding on July 20, 2015.

FINDINGS OF FACT

 1. Frank Rezzetano (Complainant) owns two rental properties in Pittsburgh, Pennsylvania, which receive electric service from Duquesne Light Company (Respondent). (7/7/15 Tr. 9, 10).

 2. Complainant owns a multi-unit rental property located at 4625 Liberty Avenue, Second Floor Front Apartment, Pittsburgh, Pennsylvania, 15224 (4625 Liberty) which he has owned for approximately 34 years. (7/7/15 Tr. 10).

 3. Complainant owns a multi-unit rental property located at 457 Sapphire Way, Second Floor Apartment, Pittsburgh, Pennsylvania 15224 (457 Sapphire) which he has owned for approximately 15 years. (7/7/15 Tr. 10).

 4. On February 7, 2014, Complainant mailed a check (Check 5067) for $500 to Respondent and on the back of Check 5067 indicated by account number that $150 should be credited towards the account for 457 Sapphire Second Floor, and $350 should be credited towards the account for the 2nd Floor Front Apartment at 4625 Liberty. (7/7/15 Tr. 25-29, 37; Complainant Exhibit 1 and Respondent Exhibit 1).

 5. When Complainant mailed in Check 5067 on February 7, 2014, he included two payment stubs or coupons from his billing statements, (for 4625 Liberty and 457 Sapphire) but did not fill in the boxes which indicate how to allocate Check 5067. (7/7/15 Tr. 29; 7/20/15 Tr. 52; Complainant Exhibit C-1 and Respondent Exhibit 1).

6. On February 13, 2014, DLC applied Check 5067 to pay $436.72 towards the account for 457 Sapphire. (7/7/15 Tr. 31, 75-78; Respondent Exhibits 1, 3 and 4).

7. On February 13, 2014, DLC applied Check 5067 to pay $63.28 towards the account for 4625 Liberty. (7/7/15 Tr. 31, 75-79; Respondent Exhibits 1, 3 and 4).

 8. After Complainant complained on March 19, 2014 about how DLC credited Check 5067, Respondent reapplied the payment to reflect Complainant paid $150 towards the account balance for 457 Sapphire and paid $350 towards the account balance for 4625 Liberty. (7/7/15 Tr. 32, 78-82; Respondent Exhibit 12).

 9. On April 8, 2014, Complainant mailed in Check 5096 totaling $830.72 and on the back of Check 5096 Complainant indicated eight account numbers with varying amounts to credit separately. (7/7/15 Tr. 40, 58, 83-88).

10. On the back of Check 5096, Complainant indicated he wanted $434.16 paid on the balance for 4625 Liberty Avenue, 2nd Floor Front and $20.35 paid on the balance for 457 Sapphire Second Floor. (7/7/15 Tr. 39, 40, 58; Complainant Exhibit 2 and Respondent Exhibit 1).

11. When mailing in Check 5096, Complainant forwarded the eight payment stubs and filled in the box for each showing how to credit the various accounts. (7/7/15 Tr. 41; Respondent Exhibit 2).

12. After Complainant complained about how DLC credited Check 5096, Respondent changed its records on April 15, 2014 to reflect Complainant paid $20.35 towards the account balance for 457 Sapphire and paid $434.16 towards the account balance for 4625 Liberty. (7/7/15 Tr. 43, 85, 87; Complainant Exhibit 2 and Respondent Exhibits 3 and 4).

13. DLC utilizes a fully automated payment system for payments made by check in which an employee personally extracts the payment stub and check from the envelope, lays the items down on the machine which then scans the payment stub and check. The machine “reads” the front side of the payment stub and check only, noting for the computerized system important identifying information and the amount of payment made. (7/7/15 Tr. 62-66, 89-93).

14. When DLC’s automated system received Check 5067 and Check 5096, the system did not scan or “read” the back side of the checks. (7/7/15 Tr. 67-76, 89-93; Respondent Exhibit 1).

 15. Duquesne Light terminated electric service in Complainant’s name at 4625 Liberty at a new tenant’s request on April 25, 2014; and terminated electric service to 457 Sapphire due to non-payment on May 2, 2014. (7/7/15 Tr. 11; Respondent Exhibits 3 and 4).

 16. Since 2014, Duquesne Light has refused to re-establish electric service accounts at any of Complainant’s other rental properties because of the unpaid balances on 4625 Liberty and 457 Sapphire. (7/7/15 Tr. 50; 7/20/15 Tr. 13-15, 23; Respondent Exhibits 15 and 16).

 17. Duquesne Light’s tariff permits DLC to require an applicant for new electric service to pay any outstanding balance owed as a pre-condition to supplying new service. (Respondent Exhibit 17).

 18. On July 31, 2015, DLC charged off the unpaid balances for 4625 Liberty and 457 Sapphire, and sent those unpaid accounts to a collection agency for collection purposes. (7/20/15 Tr. 25, 28, 50-57; Respondent Exhibit 19).

4625 Liberty

 19. In 2014, the structure at 4625 Liberty was a fully-rented, combination commercial/residential three-story building. There is a commercial unit and an apartment on the first floor. Both the second and third floors have two separate apartments on each floor. (7/7/15 Tr. 37).

 20. Starting in October 2013 and while the ratepayer of record, Complainant rented out the 2nd Floor Front Apartment to two men who later stopped paying rent, causing Complainant to incur electric charges, until the men were evicted by Complainant in June 2014. (7/7/15 Tr. 12, 38, 42; Respondent Exhibit 3).

 21. DLC terminated electric service in Complainant’s name on April 25, 2014 when a new tenant moved into the service address. (7/20/15 Tr. 9, 57; Respondent Exhibit 3).

 22. On May 1, 2014, DLC sent Complainant a final bill for $46.69 which remains outstanding. (7/7/15 Tr. 34; 7/20/15 Tr. 9; Respondent Exhibit 3).

457 Sapphire

 23. The structure at 457 Sapphire is a three-story building with one apartment on each floor and separate utilities for each apartment. (7/7/15 Tr. 17, 35).

 24. Starting on September 30, 2013, Complainant winterized the Second Floor Apartment and had electric service shut off on the house side of the meter after the last tenant left in September 2013. (7/7/15 Tr. 13-16, 54, 55; 7/20/15 Tr. 29).

 25. After winterizing the apartment, Complainant did not call Respondent to terminate electric service because Complainant wanted to avoid Respondent’s charges to terminate electric service. (7/7/15 Tr. 17, 54, 55; 7/20/15 Tr. 29).

 26. On December 5, 2013, Respondent sent Complainant a billing statement totaling $170.80 for electric service. (7/7/15 Tr. 14; Respondent Exhibit 4).

 27. After receiving the billing statement in December 2013, Complainant called Respondent to complain about the bill for the vacant apartment. DLC told him he had to pay because the billing statement was in his name. (7/7/15 Tr. 17-20, 33, 55-57).

 28. On March 19, 2014, DLC re-applied the payment from Check 5067 by removing $286.72 from the 457 Sapphire account and applying the same amount ($286.72) to the 4625 Liberty account, leaving an account balance totaling $307.07 on the 457 Sapphire account. (Respondent Exhibits 3 and 4).

 29. On April 4, 2014, Respondent sent Complainant a billing statement totaling $7.46. (Respondent Exhibit 4).

 30. On April 15, 2014, Complainant paid $20.35, leaving an account balance totaling $297.95 on the 457 Sapphire account. (Respondent Exhibit 4).

 31. On April 16, 2014, DLC initiated termination procedures. (7/20/15 Tr. 58-65; Respondent Exhibits 23 and 24).

 32. On May 2, 2014, Respondent terminated electric service due to nonpayment. (7/7/15 Tr. 15; 7/20/15 Tr. 29, 57, 58; Respondent Exhibit 4).

 33. On May 9, 2014, DLC sent Complainant a final bill for $310.25 and the remaining balance totals $310.25 as of the date of the July 20, 2015 hearing. (7/20/15 Tr. 11; Respondent Exhibit 4).

DISCUSSION

Complainant’s Position

 In his formal complaint, Complainant claimed Duquesne Light terminated electric service and there were incorrect charges on his billing statements.[[1]](#footnote-1) Complainant alleged Respondent was playing with his credit. For the first time, at the initial hearing, Complainant claimed his formal complaint concerned two issues: (1) Duquesne Light’s billing statement for a vacant apartment was incorrect because it was too high; and (2) Duquesne Light misapplied the disbursement of funds when he paid multiple accounts using one check. Complainant asks the Commission to order Respondent to remove all negative remarks with the three credit bureaus and show that the account balances are zero for both 457 Sapphire and 4625 Liberty.

 Mr. Rezzetano argued he told DLC to visit 457 Sapphire when he received a large bill after he turned off electricity on the house-side of the meter. Complainant contends DLC did not visit the service address to investigate the high consumption, as he requested. Complainant further avers DLC did nothing more than repeatedly tell Complainant he was the listed ratepayer and, therefore, responsible to pay the bill. Complainant contends the apartment was vacant with the electricity turned off on the inside of the meter, and the Commission should order DLC to zero-out the balance.

 Further, Complainant argues DLC failed to provide him with reasonable and adequate customer service because it misapplied funds, sending payment to his rental accounts contrary to what he wanted. Complainant contends he clearly wrote on the back of his checks how he wanted Respondent to apply the funds and DLC failed to do it twice. Complainant contends the account balances for both accounts should be zeroed-out.

Respondent’s Position

 Respondent avers the two checks at issue were handled and applied correctly by DLC. Respondent points out that Mr. Rezzetano did not use the payment stubs to indicate (in the box provided by the utility company) how he wanted the monies to be allocated in February 2014. As a result, Respondent simply applied the money paid to first pay off the account listed on the payment stub, and then apply any remaining balance to any other payment stubs included. However, DLC points out that when Mr. Rezzetano called to complain about how the funds were applied, DLC immediately changed how the funds were applied in order to be in compliance with Complainant’s stated wishes. Respondent did not explain why the same mistake occurred when Complainant did indicate on the payment stubs how to allocate the payment in April 2014.

 Respondent also contends its records and billing statements correctly list the electricity consumed at 457 Sapphire and the utility company appropriately attributed to Complainant the electricity recorded through the meter.

Applicable Legal Provisions

Section 701 of the Public Utility Code (Code), 66 Pa.C.S.A. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof.

 Section 1501 of the Public Utility Code (Code), 66 Pa.C.S.A. § 1501, requires all public utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make all repairs, changes, improvements, etc., to its service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public.

The Commission has no authority to require any action by Respondent, absent proof by a preponderance of the evidence that Respondent violated the provisions of 66 Pa.C.S.A. § 1501.[[2]](#footnote-2) What the Commission requires is adequate, efficient, safe, and reasonable service and facilities.[[3]](#footnote-3)

“Service” is defined, in pertinent part, as: “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…in the performance of their duties under this part to their patrons, employees, other public utilities, and the public….”[[4]](#footnote-4)

Burden of Proof

In alleging incorrect charges on his billing statements and mishandling of his payments by DLC, Mr. Rezzetano is the party seeking affirmative relief from the Commission. Accordingly, he has the burden of proof. This burden means Mr. Rezzetano has the duty to establish a fact by a preponderance of the evidence, and must show the utility is responsible or accountable for the problem described in the complaint. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Additionally, care must be exercised to ensure the Commission’s decision is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa.C.S.A. § 704; Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

If Mr. Rezzetano presents sufficient evidence to initially satisfy the burden of proof, the burden of persuasion shifts to the Respondent. If the evidence presented by the Respondent to contradict Complainant’s evidence is of co-equal value or “weight”, the burden of production by Mr. Rezzetano has not been satisfied unless Complainant provides additional evidence to rebut the contrary evidence brought by the Respondent.[[5]](#footnote-5) While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.[[6]](#footnote-6)

Complaint concerning how payments applied

This complaint results from two incidents wherein DLC did not credit payments as Complainant wanted on two of the many accounts DLC has with Complainant. The evidence clearly showed in February 2014 Complainant failed to provide clear direction of how money should be distributed amongst various accounts when he wrote account numbers and dollar amounts on the back side of his check, but did not indicate on the payment stubs how the funds should be applied. However, the evidence also clearly showed in April 2014 Complainant clearly made the required designations on the payment stubs when paying on eight different accounts with one check.

DLC has a fully automated procedure for how it handles checks mailed into its processing center. Such a procedure benefits both Mr. Rezzetano and Duquesne Light, as well as all of DLC’s other customers, due to the speed and efficiency of using the automated system when receiving checks in the mail. It is not reasonable for Mr. Rezzetano to insist the system be altered and his payments must be handled manually when DLC has provided him with payment stubs on which he can clearly indicate how he wants his payment applied across multiple accounts.

DLC was correct in how it handled the payment with Check 5067 because Mr. Rezzetano did not indicate clearly on the payment stubs how he wanted the funds distributed. Also, it should be noted DLC immediately corrected how the funds were applied once Complainant called to complain.

Given the evidence of record, Mr. Rezzetano is correct that Duquesne Light failed to apply and credit the funds as he directed with Check 5096 because Mr. Rezzetano filled out the payment stubs correctly. However, Duquesne Light immediately corrected the problem once Complainant called to complain. Therefore, I cannot find that Respondent failed to provide reasonable and adequate customer service in how it handled application of funds from one check into eight different accounts.

Complaint concerning incorrect billing statements for 457 Sapphire

 Complainant contended he called Respondent in early 2014 to complain that he received a billing statement for electric service in an apartment which had the electric service turned off by Complainant at the electric panel. Respondent contended the meter continued to record consumption and Complainant never indicated his belief there was a need for a high bill investigation. DLC averred Complainant should have notified them to come terminate service when he winterized the apartment. However, Complainant objected to paying the cost of having Respondent terminate service when his sole intent was to winterize the apartment and leave it vacant all winter.[[7]](#footnote-7)

 In fact, Complainant never put DLC on notice to conduct a high bill investigation until the day of the initial hearing. Complainant may have made an off-handed remark to Respondent’s customer service personnel that the apartment was vacant but the crux of his calls involved complaints about how DLC handled his payments on various accounts.

 Complainant did not prove Respondent should have conducted an investigation or even was notified by Mr. Rezzetano that DLC had to conduct a high bill investigation until the day of the initial hearing. He established the pattern of usage had decreased drastically because the apartment was vacant. If he had communicated that information to DLC, that information alone should have been sufficient to prompt Respondent to pull the meter for testing. However, DLC cannot be blamed for failing to conduct an investigation into Complainant’s high bill dispute. Complainant clearly stated initially and in his conversations with DLC that the billing statements were incorrect because of the problem with crediting payments to his various accounts. Complainant never made it clear the reason he thought the bills were incorrect was because they were too high, given the circumstances in the apartment until the day of the hearing.

Therefore, I cannot find Respondent failed to provide reasonable and adequate customer service in failing to conduct a high bill investigation at 457 Sapphire.

Conclusion

Based on the evidence in the record of this case and the applicable legal principles, Mr. Rezzetano’s complaint must be denied for the failure to satisfy the burden of proof as it relates to his claim Duquesne Light failed to provide reasonable customer service in how it applied and credited funds to his various accounts, and in sending incorrect billing statements.

CONCLUSIONS OF LAW

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

2. Complainant failed to meet the burden of proving that Respondent violated the Public Utility Code, a Commission regulation or a Commission order in how Respondent handled applying funds amongst various service accounts with one check in February 2014 and April 2014, or in sending out incorrect billing statements. 66 Pa.C.S.A. § 332(a) and § 1501.

ORDER

 THEREFORE,

 IT IS ORDERED:

 1. That the complaint of Frank P. Rezzetano, Jr., against Duquesne Light Company, at Docket No. C-2015-2462441, is denied for the failure to satisfy the burden of proof.

 2. That the Secretary shall mark this case closed and discontinued.

Date: November 13, 2015 /s/

 Katrina L. Dunderdale

 Administrative Law Judge

1. No allegation of high billing was cited by Complainant in the formal complaint. [↑](#footnote-ref-1)
2. See West Penn Power Co. v. Pa. Pub. Util. Comm’n, 478 A.2d 947 (Pa.Cmwlth. 1984). [↑](#footnote-ref-2)
3. See Manuel A. Biason v. Metropolitan Edison Company, PUC Docket No. C-00004450 (Opinion and Order entered December 19, 2001). [↑](#footnote-ref-3)
4. See 66 Pa.C.S.A. § 102. [↑](#footnote-ref-4)
5. Morrissey v. PA Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967), and Burleson v. Pa. Pub. Util. Comm’n, 66 Pa.Cmwlth. Ct. 282, 443 A.2d 1373 (1982), aff’d. 501 Pa. 443, 461 A.2d 1234. [↑](#footnote-ref-5)
6. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001);Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980), and Replogle v. Philadelphia Electric Company, 54 Pa. PUC 528 (1980). [↑](#footnote-ref-6)
7. In fact, Complainant re-leased the apartment at the end of April 2014. [↑](#footnote-ref-7)