

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

One Ten Associates, LLC	:	
	:	
v.	:	C-2015-2507068
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

This initial decision dismisses a formal complaint filed by a customer against its electric distribution company due to the Complainant’s failure to prove, by a preponderance of the evidence, that the Respondent violated any applicable statutes, regulations, Commission orders or the company’s tariff.

HISTORY OF THE PROCEEDING

On September 29, 2015, a formal complaint was filed against Duquesne Light Company (Duquesne or Respondent) wherein the “Customer (Complainant)” was identified as John Lee, UtiliSave, LLC (UtiliSave). The service on the account and the service address were identified as One Ten Associates, 435 7th Avenue, Pittsburgh, PA 15219. The complaint was signed by John Lee, Business Analyst Auditor. In the complaint, it was noted that Draxxhall Management Corporation retained UtiliSave to audit its utility bills. The complaint alleged that Duquesne is incorrectly calculating the customer’s electric bills, based on a misapplication of applicable provisions of Duquesne’s tariff. By way of relief, Complainant requested that

Duquesne be required to recalculate the customer's bills and, if the recalculation reveals overbilling, refund the overpayments directly to its consultant, UtiliSave.

On October 25, 2015, Duquesne filed an answer, new matter and preliminary objections (POs) to the complaint. In its answer, Duquesne denied the material allegations in the complaint. It further argued that the individual who signed the complaint, John Lee, lacked standing to bring this complaint, since neither he nor UtiliSave are customers of Duquesne, nor is Mr. Lee an attorney licensed to practice in Pennsylvania. Duquesne made similar averments about standing and representation in its new matter and requested that the complaint be dismissed unless an attorney licensed to practice in Pennsylvania entered an appearance on behalf of the customer prior to the hearing. In its POs, Duquesne sought dismissal of the complaint on similar grounds.

On November 11, 2015, a letter purporting to be a Notice of Entry of Appearance was filed by John G. Harris, Esquire, on behalf of "the claimant" in this matter. Attached to the Notice of Appearance was a document authorizing UtiliSave and attorney Harris to represent One Ten (among other entities) in proceedings involving complaints submitted to the Pennsylvania Public Utility Commission.

Subsequently, on November 12, 2015, Attorney Harris submitted an amended complaint against Duquesne in which he identified the customer (Complainant) as, "John G. Harris, Esquire (UtiliSave, LLC) on behalf of One Ten Associates (Draxxhall Management)." The amended complaint listed the service address at issue as 435 7th Avenue, Pittsburgh, PA 15219, and One Ten as the name on the service. A copy of the document authorizing UtiliSave and attorney Harris to represent One Ten in complaints before the Commission was attached to the amended complaint. The allegations and requests for relief in the amended complaint are identical to those contained in the original complaint.

On December 1, 2015, Duquesne filed an answer, new matter and POs to the amended complaint. In its answer and new matter, Duquesne again challenged the standing of either Attorney Harris or UtiliSave to represent One Ten in this proceeding. It argued that the

amended complaint was filed by Attorney Harris on behalf of UtiliSave, rather than One Ten, and that since UtiliSave is not a customer of Duquesne, it does not have standing to represent One Ten. It then denied the allegations about incorrect billing set forth in the amended complaint. In its POs, Duquesne argued that the amended complaint should be dismissed because UtiliSave does not have standing to represent One Ten.

By order dated January 21, 2016, I denied Duquesne's POs and directed that a hearing be scheduled on the billing issues. I noted that attorney Harris entered his appearance on behalf of One Ten and that the authorization attached to the amended complaint authorized him to represent One Ten in this proceeding. I determined that the amended complaint and authorization form sufficiently identified the Customer/Complainant as One Ten Associates and its attorney as John G. Harris, a licensed Pennsylvania attorney, to overcome Duquesne's POs on the basis of lack of standing and improper representation. The caption of the case was changed to reflect the identity of the true Complainant in this proceeding.

By Telephone Hearing Notice dated February 10, 2016, an initial telephonic hearing was scheduled for Monday, April 11, 2016. The initial hearing was held as scheduled. John G. Harris, Esquire, appeared on behalf of the Complainant and presented the testimony of two witnesses. Three exhibits were offered by the Complainant and admitted into the record. Jeremy V. Farrell, Esquire, appeared on behalf of Duquesne and presented the testimony of three witnesses. Thirteen exhibits were offered by the Respondent and admitted into the record. The parties filed main and reply briefs. The record in this proceeding closed on June 23, 2016, upon my receipt of the reply briefs. The record consists of a transcript of 172 pages and sixteen exhibits.

FINDINGS OF FACT

1. The Complainant in this proceeding is One Ten Associates.
2. The Respondent in this proceeding is Duquesne Light Company.

3. The building that is the subject of the dispute, where the charges in question were incurred, is 435 Seventh Avenue, Pittsburgh, PA. (Tr. 12, 55).

4. This building is commonly known as, and will hereinafter be referred to as, the Gulf Tower. (Tr. 54-55).

5. UtiliSave is an energy consulting company that reviews utility data for its clients to determine if they have been paying more for energy than they should or have been using more energy than they need. (Tr. 11).

6. UtiliSave was engaged by One Ten to conduct energy audits of properties owned by One Ten, including the Gulf Tower. (Tr. 12).

7. Michael Steifman is the CEO of UtiliSave and testified on behalf of One Ten. (Tr. 10).

8. Adam Boese is a mechanical engineer and testified on behalf of One Ten. (Tr. 43).

9. One Ten's witnesses sponsored One Ten Exhibits A, B and C, each of which was admitted into the record.

10. One Ten Ex. A is a depiction of two buildings, each having three meters, with building one having three meters of the same voltage and building two having two meters of the same voltage and the third meter with a different voltage. (Tr. 16; One Ten Ex. A).

11. One Ten Ex. B is a depiction showing various meter readings of the three meters in building two, and the corresponding demand totals if measured under both non-coincident peak demand and coincident peak demand scenarios. (Tr. 17; One Ten Ex. B).

12. One Ten Ex. C is a chart using actual billing data from the Gulf Tower for a six month period to show the difference in charges under non-coincident demand and coincident demand billing scenarios. (Tr. 18; One Ten Ex. C).

13. Chris Kovach has worked for Duquesne for eight years and is currently the supervisor of Duquesne's distribution planning group. (Tr. 53).

14. William Pfrommer has worked for Duquesne for thirty four years and is currently a Senior Manager of Rates and Tariff Services. (Tr. 101).

15. Adam Goldbach has worked for Duquesne since 2005 and is currently a Major Account Representative with the company. (Tr. 128).

16. Duquesne's witnesses sponsored Duquesne Exhibits A, B, C, F, G, H, I, J, K, L, N, P and Q, each of which was admitted into the record.

17. Duquesne Ex. A contains company tariff pages showing the rate schedule for Duquesne's Rate N – General Service in effect in 1969 and 1971, including a description of the determination of demand calculation. (Tr. 112; Duquesne Ex. A).

18. Duquesne Ex. B contains company tariff pages showing the rate schedule for Duquesne's Rate GL – General Service Large in effect in 2014, including a description of the determination of demand calculation. (Tr. 105; Duquesne Ex. B).

19. Duquesne's Rate GL – General Service Large, shown in Duquesne Ex. B, is the rate schedule applicable to the Gulf Tower. (Tr. 29).

20. Duquesne Ex. C is the electrical equipment layout drawing for the 277/480 volt service at the Gulf Tower. (Tr. 57; Duquesne Ex. C).

21. Duquesne Ex. F is the electrical equipment plan for the 120/208 volt service at the Gulf Tower. (Tr. 59; Duquesne Ex. F).

22. Duquesne Ex. G are copies of the engineering project file for the Gulf Tower, which shows a 120/208 volt service and a 460 volt service at the building. (Tr. 67; Duquesne Ex. G).

23. Duquesne Ex. H is a copy of the electric service contract between Duquesne and 110 Associates, dated October 13, 2015, showing a 277/480 volt service and a 120/208 volt service at the Gulf Tower. (Tr. 68-69; Duquesne Ex. H).

24. Duquesne Ex. I is a copy of a cover letter and an unsigned electric service contract for the Gulf Tower from 1996, which shows a 120/208 volt service and a 460 volt service at the building. (Tr. 91; Duquesne Ex. I).

25. Duquesne Ex. J is a copy of the electric service contract between Duquesne and One Ten Associates, dated April 23, 1986, showing a 277/480 volt service and a 120/208 volt service at the Gulf Tower. (Duquesne Ex. J).

26. Duquesne Ex. K is a page from the company's records showing certain billing and credit information for One Ten Associates associated with the Gulf Tower. (Duquesne Ex. K).

27. Duquesne Ex. L is a copy of a letter from John Lee, an employee of UtilSave, and Adam Goldbach, dated July 31, 2015, wherein the billing dispute at issue in this proceeding is addressed by Mr. Lee. (Tr. 33-35; Duquesne Ex. L).

28. Duquesne Ex. N are copies of e-mail messages, dated July 30-31, 2015, between Mr. Goldbach and Mr. Lee in which the billing dispute at issue in this proceeding is addressed. (Duquesne Ex. N).

29. Duquesne Ex. P is a chart showing how Duquesne would calculate billing demand for the 120/208 volt service and the 277/480 volt service at the Gulf Tower during three different demand periods using non-coincident billing. (Tr. 108-109; Duquesne Ex. P).

30. Duquesne Ex. Q is a copy of a page from Duquesne's tariff containing what is commonly referred to as Rule 10, which addresses the issue of the number of services provided under a particular contract and allowable variations to the general rule where concerns about fluctuations and unbalances are present. (Duquesne Ex. Q).

31. One Ten has been the ratepayer of record for the Gulf Tower since 1986. (Tr. 137-138).

32. Service from Duquesne is provided to the Gulf Tower through two separate meters, one provides 120/208 volt service and the second provides 277/480 volt service. (Tr. 15, 67; Duquesne Ex. H).

33. The 277/480 volt service was installed after the 120/208 service was installed. (Tr. 130-132).

34. Typically, 120/208 volt service feeds light loads, such as for lighting, and 277/480 volt service feeds heavier, commercial loads, such as larger motors, chillers or large power equipment. (Tr. 56)

35. The 277/480 volt service at the Gulf Tower was installed in order to service a central HVAC system in the building. (Tr. 132).

36. The two services are connected to different sets of transformers and network protectors. (Tr. 57, 59-62; Duquesne Exs. C, F).

37. The two services are connected to separate circuits and are fed by separate substations and cables. (Tr. 59-63, 133; Duquesne Exs. C, F).

38. The two services provided to the Gulf Tower are separate, independent services. (Tr. 64, 110-111; Duquesne Exs. C, F).

39. Duquesne's Rate GL – General Service Large is the rate schedule applicable to the service provided to One Ten. (Tr. 29; Duquesne Ex. B).

40. With respect to the determination of demand for customers served under Duquesne's Rate GL – General Service Large rate schedule, the tariff provides, in relevant part, “[i]ndividual demand . . . will be determined by measurement of the average kilowatts during the fifteen-minute period of greatest kilowatt-hour use during the billing period The billing demand will be the sum of the individual demands of each metered service (Duquesne Ex. B).

41. Duquesne calculates One Ten's billing demand on a non-coincidental peak demand basis. (Tr. 109).

42. In calculating demand on a non-coincidental basis, Duquesne takes the peak demand from each of the two meters in a given billing period and adds the two figures together for billing purposes. (Tr. 13, 108; Duquesne Ex. P).

43. There is no technical reason why the two meters at the Gulf Tower could not be billed on a coincidental demand basis. (Tr. 49, 77).

44. Duquesne's tariff provides for non-coincidental demand billing for customers taking service under the company's Rate GL – General Service Large rate class. (Tr. 106-107; Duquesne Ex. B).

45. Duquesne uses non-coincidental demand billing because the company is obligated to have available enough capacity to be able to meet the peak demand of One Ten for both services at all times during a billing period. (Tr. 69, 111).

46. The current service contract between One Ten and Duquesne identifies two services being provided to the Gulf Tower, one at 120/208 volts, with a peak demand capacity of 700 kw, and the other at 277/480 volts, with a peak demand capacity of 800 kw. (Tr. 68-69, 74; Duquesne Ex. H).

47. The general rule under Duquesne's Rule 10 tariff provision provides that only one service of each type, with respect to voltage and phase, will be provided to a customer under one service contract. (Tr. 113-114; Duquesne Ex. Q).

48. Rule 10 allows for an exception to the general rule, under Rule 17 (Fluctuations and Unbalances), where, in the judgment of the company, fluctuations and unbalances may be most economically addressed by establishing a separate service connection for a portion of the customer's load, notwithstanding similarity as to voltage and phase. (Tr. 86-91, 113-114; Duquesne Ex. Q).

49. There was no concern about fluctuations or unbalances associated with the provision of the second service (the 277/480 volt service) by Duquesne to the Gulf Tower. (Tr. 132).

50. Duquesne's provision of two separate services under its service contract with One Ten is consistent with Rule 10 in that the two services provided under the contract have different voltages. (Tr. 113-115, 125; Duquesne Ex. H).

DISCUSSION

The Complainant claims that Duquesne should be calculating and billing the demand from the two meters through which service to the Gulf Tower is provided on a coincidental basis, whereby demand from the two meters during the same time period within a billing cycle would be added together for billing purposes. Duquesne, on the other hand, argues that its tariff provides for non-coincidental billing, whereby the highest demand for any fifteen minute time period during a billing cycle from meter 1 is added to the highest demand for any

fifteen minute time period during the same billing cycle from meter 2. Non-coincidental billing may result in higher bills than coincidental billing.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc, denied*, 602 A.2d 863 (1992). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. The Commission may order a public utility to refund rates collected by it that are found to have been unlawful, unjust or unreasonable, or in excess of the rates authorized in the utility's tariff. 66 Pa. Code § 1312.

As the Complainant in this proceeding, One Ten bears the burden of proof and must prove its case by a preponderance of the evidence.

One Ten takes service from Duquesne under the company's Rate GL – General Service Large rate schedule. (Tr. 29). The Duquesne tariff provision at issue in this proceeding provides, in relevant part, as follows:

DETERMINATION OF DEMAND FOR DISTRIBUTION

Individual demand, except in unusual cases, will be determined by measurement of the average kilowatts during the fifteen-minute period of greatest kilowatt-hour use during the billing period.

. . .

The Billing Demand will be the sum of the individual demands of each metered service

(Duquesne Ex. B).

Pursuant to this tariff provision, Duquesne calculates One Ten's demand for billing purposes by adding the highest demand amount for any fifteen minute time period during a billing cycle from meter 1 to the highest demand amount for any fifteen minute time period during the same billing cycle from meter 2. It is Duquesne's position that the two meters through which service to the Gulf Tower is provided constitute two separate services and, accordingly, billing on a non-coincidental basis under its tariff is appropriate.

One Ten, on the other hand, argues that Duquesne is misapplying its tariff and that demand for billing purposes should be calculated on a coincidental basis, whereby the demand from the two meters during the same fifteen minute time period within a billing cycle would be added together for billing purposes. One Ten argues that the two meters at the Gulf Tower should be considered as part of one service being provided to the building and, as a result, coincidental billing is appropriate.

I will first review the evidence presented by the parties on the issue of the number of services being provided to the Gulf Tower.

Duquesne presented substantial testimony and documentary evidence in support of its position that it is providing two separate services to the Gulf Tower. Duquesne witness Chris Kovach discussed the facilities through which service to the Gulf Tower is provided. He testified that there are currently two meters in the building, one for a 120/208 volt service and the other for a 277/480 volt service. (Tr. 56). Mr. Kovach indicated that 120/208 volt service is typically used for lighter loads, such as lighting, while 277/408 volt service is typically used for heavier commercial load service, such as large chillers and large power equipment. (Tr. 56). Duquesne witness Adam Goldbach testified that the 277/480 volt service was installed after the 122/208 volt service and powers a central HVAC system in the Gulf Tower building. (Tr. 130-132).

Mr. Kovach testified about the various electrical equipment and facilities associated with the two meters and services in the building. He explained that each of the two meters is served by different and independent equipment. Each has separate transformers and network protectors. (Tr. 62). He testified that the meters are served by different primary cables. (Tr. 63). Mr. Kovach stated that the two meters, with their respective related equipment, constitute two separate services. (Tr. 64). He stated, “[t]hey are different service voltages. Though, the equipment feeding each service could not be combined to feed one service, they operate independently of one another and they require separate equipment and separate installations to provide.” (Tr. 64).

Mr. Kovach discussed Duquesne Exs. C and F. Exhibit C is a schematic diagram showing the locations and electrical equipment associated with the 277/480 volt service, and Exhibit F is the schematic diagram showing the locations and electrical equipment associated with the 120/208 volt service. Mr. Kovach explained the various pieces of equipment for each of the two meters and stated that the meters are served by completely separate and independent equipment. (Tr. 62, 64). He also discussed Duquesne Ex. G, which is the engineering project file for the Gulf Tower. The third page of Duquesne Ex. G identifies the 120/208 service as light service and the 277/480 service as power service and shows that the peak demand estimate for the two meters is different.

It is One Ten's position, on the other hand, that the two meters in the Gulf Tower should be considered to constitute one service, rather than two. One Ten witness Adam Boese testified that the fact that the two meters are of different voltages does not mean that they constitute two separate services. (Tr. 46-47). He testified that there are no technical reasons why two meters of different voltages cannot be coincidentally billed. (Tr. 47).

One Ten also argues that the electric service contract shown in Duquesne Ex. H supports its position that only one service is provided to the Gulf Tower. It attempted to make this point through its cross examination of Mr. Kovach. One Ten's counsel questioned Mr. Kovach about the wording of the current electric service contract in arguing that only one service is provided to the Gulf Tower. The following exchange occurred:

Q. And I understand you to testify on direct that it's your view that Exhibit H, the electric service contract with One Ten Associates, provides for more than one service. Is that accurate to say? Do I understand your testimony correctly?

A. That is correct.

Q. I direct your attention towards the top of the page. Toward the left margin, you'll see the words "the company's electric service." Do you see that?

A. Yes, I do.

Q. And you'll agree with me, won't you, that the word service appears there in the singular form rather than the plural; is that right?

A. Yes.

Q. And doesn't that suggest that this contract, Duquesne's contract, provides for a single service?

A. No.

Q. So is it your view that the term Electric service, which appears in the single usage, is a typo or a scribe's [sic] error?

A. No. I believe it's qualified by the language below where it lists the two separate service voltages. (Tr. 74; Duquesne Ex. H).

Duquesne has presented much more convincing evidence on the issue of the number of services being provided to the Gulf Tower than One Ten. Duquesne's witnesses testified at length about the facilities and equipment that make up the two services in the building. There are two meters through which services of different voltages are provided. Each meter is connected to and served by completely separate electrical equipment, including transformers, network protectors, substations and cables. (Tr. 57-63, 133; Duquesne Exs. C, F). In addition, the voltages being provided to the two meters are intended for different purposes, with the 120/208 volt service used for lighter loads, such as lighting, and the 277/480 volt service intended for heavier, commercial loads, such as chillers and large power equipment. (Tr. 56). In fact, the 277/480 volt service at the Gulf Tower powers the building's HVAC system. (Tr. 132).

I do not find One Ten's argument that the use of the singular form of the word "service" in the electric service contract convincing on this issue. The word is contained in an introductory paragraph at the beginning of the contract. I am more convinced by the fact that the two services are listed separately in the contract, which shows the two having different voltages and on peak and off peak demand estimates. (Duquesne Ex. H). I agree with Duquesne (Main Brief, p. 13) that the specific language identifying the two services is controlling over the general language contained in the introductory passages of the contract. *A.G.Cullen Construction, Inc. v. State System of Higher Education*, 898 A.2d 1145 (Pa.Cmwlth. 2006). I believe the record evidence supports a conclusion that Duquesne is providing two separate services to the Gulf Tower.

Having concluded that two separate services are being provided, I will now review Duquesne's billing procedures for the service provided to One Ten at the Gulf Tower, as well as the applicable Duquesne tariff provision, to determine whether Duquesne is complying with its tariff.

As noted above, Duquesne bills One Ten on a non-coincidental basis. (Tr. 109). Under this method, Duquesne takes the peak demand from each of the two meters during a given billing cycle and adds the two figures together for billing purposes. (Tr. 13, 108; Duquesne Ex. P).

The parties are in agreement that the applicable tariff provision for determining demand at the Gulf Tower is Duquesne's Rate GL – General Service Large. (Tr. 29; Duquesne Ex. B). As noted above, this provision provides, in relevant part:

DETERMINATION OF DEMAND FOR DISTRIBUTION

Individual demand, except in unusual cases, will be determined by measurement of the average kilowatts during the fifteen-minute period of greatest kilowatt-hour use during the billing period.

. . .

The Billing Demand will be the sum of the individual demands of each metered service

(Duquesne Ex. B).

Duquesne's non-coincidental billing procedure fully complies with this tariff provision. There is no dispute in this proceeding that Duquesne calculates demand for each meter by taking the average kilowatts during the fifteen-minute period of greatest kilowatt hour use during the billing cycle. The tariff then provides that "[t]he Billing Demand will be the sum of the individual demands of each metered service" As discussed above, Duquesne provides two separate services to the Gulf Tower. Accordingly, under its tariff, the billing demand will be the sum of the peak individual demands of each metered service. This is precisely how Duquesne calculates demand for billing purposes. It takes the demand during the fifteen-minute period of greatest kilowatt hour use during a billing cycle for each of the two meters and adds these amounts together to determine billing demand for that billing cycle. (Tr. 13, 108; Duquesne Ex. P).

One Ten argues that the tariff language is unclear. Michael Steifman testified that the language is ambiguous and it is not clear if the provision refers to an individual meter or to the building total. (Tr. 23). He testified that if the provision were meant to mean per meter, the company should have more clearly so stated. (Tr. 23). He believes the tariff language could be read to envision either coincidental or non-coincidental billing. (Tr. 39).

I disagree that there is any ambiguity in this tariff provision. The tariff provides that, once the peak demand for each metered service is determined, those amounts are added together to determine total billing demand. Having concluded that Duquesne provides two metered services to the Gulf Tower, the company is correct to add the two amounts together, on a non-coincidental basis, to determine total billing demand.

One Ten has argued that demand at the Gulf Tower could be calculated on a coincidental basis. Both One Ten's and Duquesne's witnesses acknowledged that the demand from the two meters could be calculated on a coincidental basis. (Tr. 47, 77). The fact that it is possible to calculate demand on a coincidental basis, however, does not in any way support One Ten's position that Duquesne is calculating demand in violation of its tariff. As discussed above, the tariff provides for determining demand on a non-coincidental basis. Accordingly, Duquesne is calculating demand at the Gulf Tower in full compliance with its tariff.

For all of the reasons set forth above, I find that the Complainant has failed to prove by a preponderance of the evidence that Duquesne is violating its tariff in billing One Ten for the service provided to the Gulf Tower on a non-coincidental basis. Accordingly, One Ten is not entitled to any refunds from Duquesne.

CONCLUSIONS OF LAW

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

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc, denied*, 602 A.2d 863 (1992).

5. A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

6. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

7. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

8. The offense complained of must be a violation of the Public Utility Code, the Commission's regulations, an outstanding order of the Commission or an applicable tariff provision. 66 Pa.C.S. § 701.

9. The Commission may order a public utility to refund rates collected that are found to have been unlawful, unjust or unreasonable, or in excess of the rates contained in the utility's tariff. 66 Pa. Code § 1312.

10. Because Duquesne's method of calculating demand at the Gulf Tower is in compliance with its tariff, the Complainant is not entitled to a refund of amounts paid by it to Duquesne. 66 Pa. Code § 1312.

11. Where specific terms in a contract appear to conflict with general terms, the specific terms are more likely to express the meaning of the parties and are controlling. *A.G.Cullen Construction, Inc. v. State System of Higher Education*, 898 A.2d 1145 (Pa.Cmwlth. 2006).

12. As the proponent of a Commission order, Complainant has the burden of proof in this case. 66 Pa.C.S.A. § 332(a).

13. The Complainant failed to prove, by a preponderance of the evidence, that either Duquesne violated any applicable statutes, regulations, orders or tariff provisions over which the Commission has jurisdiction.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by One Ten Associates against Duquesne Light Company at Docket No. C-2015-2507068 is dismissed.
2. That the Secretary mark this docket closed.

Dated: September 12, 2016

/s/
Steven K. Haas
Administrative Law Judge