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October 21, 2016

Via Electronic Filing and E-Mail

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

RE: One Ten Associates (Draxxhall Management Corp.) v. Duquesne Light Company
Docket No. C-2015-2507068

Dear Secretary Chiavetta:

Duquesne Light Company's Reply to Complainant's Exceptions in the above-captioned matter is 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: John G. Harris, Esq. (with enclosure)
Office of Special Assistants, via email (with enclosure)

LIT:596801-1 014657-158498

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ONE TEN ASSOCIATES (DRAXHALL MANAGEMENT CORP.)	)	
Complainant,	)	
vs.	)	Docket No. C-2015-2507068
DUQUESNE LIGHT COMPANY,	)	
Respondent.	)	

REPLY TO COMPLAINANT'S EXCEPTIONS

Respondent Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., files the following Reply to Complainant's Exceptions to the Initial Decision of Administrative Law Judge Steven Haas:

I. INTRODUCTION

The crux of this case is whether Duquesne Light calculates Complainant's billing demand in accordance with its Tariff. Since the record evidence clearly demonstrates that the Company's methodology for determining billing demand adheres to its Tariff, the Initial Decision properly dismissed the Formal Complaint.

Duquesne Light's Tariff sets forth the following formula for the calculation of Complainant's billing demand: "The Billing Demand will be the sum of the individual demands of each metered service. . . ." (emphasis added). Thus, to properly calculate billing demand, Duquesne Light must: (1) determine how many metered services exist at the service address; (2) determine the individual demand of each of those metered services; and (3) add those figures together. Duquesne Light provides two metered services to Complainant -- a 120/208V Lighting Service and a 277/480V Power Service -- and the Company's Tariff defines "individual demand" as the "measurement of the average kilowatts during the fifteen-minute period of greatest kilowatt-hour use during the billing period." (emphasis added).

Therefore, to reach Complainant's billing demand, as illustrated by the chart below,[1] Duquesne Light takes the greatest demand on the 120/208V Lighting Service and the greatest demand on the 277/480V Power Service and then adds those two numbers together:

	120/208V Meter (measured in kilowatts)	277/480V Meter (measured in kilowatts)	**Sum**
Demand in Period 1	500	0	500
Demand in Period 2	1000	200	1200
Demand in Period 3	1500	0	1500

How Duquesne Light Calculates Billing Demand (Non-Coincidental Demand Calculation)

Per the formula established by its Tariff, Duquesne Light would calculate the billing demand in this example as the sum of the greatest demand on the 120/208V Lighting Service plus the greatest demand on the 277/480V Power Service, or: 1500 + 200 = 1700.

How Complainant Wants Duquesne Light to Calculate Billing Demand (Coincidental Demand Calculation)

Complainant believes that billing demand should be calculated by combining (or totalizing) the 120/208V Lighting Service and the 277/480V Power Service (so that they are treated as a single service even though they are not) and taking the highest simultaneous combined demand; here, 1500.

The core dispute between the Parties is whether Complainant's billing demand is to be calculated by: (1) taking the greatest demands on each separate service and then adding those two figures together (non-coincidental billing); or (2) combining the two services and taking the highest combined simultaneous demand (coincidental billing). Since the Tariff explicitly provides that billing demand is the sum of the individual (*i.e.* greatest) demands of "each

[1] The first column in the chart illustrates three time periods of demand measurements in a given billing period. The second and third columns represent the metered services that Duquesne Light provides. The numbers set forth in the second and third columns represent the demand read by the subject meter during the particular demand period. The fourth column represents the sum of columns two and three. Tr. at 108.

metered service," it is clear that the Tariff requires non-coincidental billing. There is simply no support in the Tariff for combining Complainant's two separate services for the purposes of determining billing demand. Since Duquesne Light's method of calculating Complainant's billing demand is reasonable and complies with its Tariff, ALJ Haas was correct to dismiss the Formal Complaint.[2] Complainant's Exceptions must be rejected.

II. BACKGROUND

A. Procedural History

This action was initially commenced by John Lee and Utilisave, LLC ("Utilisave"), neither of whom are Duquesne Light's customers, but rather are third party vendors retained to perform a utility audit for one of Duquesne Light's customers – 110 Associates, L.P ("110 Associates" or "Complainant"). The Formal Complaint asked the Commission to order Duquesne Light to change its method of calculating Complainant's billing demand and issue a refund for the difference to Utilisave. After two rounds of preliminary objections based on Utilisave's lack of standing and other procedural issues, a Second Amended Complaint was filed, finally listing Duquesne Light's customer as the complainant.

This matter proceeded to an initial telephonic hearing on April 11, 2016. Complainant, through counsel, presented the testimony of two witnesses, Michael Steifman (the CEO of Utilisave) and Adam Boese. Notably, neither are employed by 110 Associates or even claimed to have seen the equipment Duquesne Light utilizes to provide the Lighting Service and Power Service to Complainant. Moreover, Mr. Steifman admitted that Utilisave (his company) has a direct financial interest in the outcome of this matter because it will receive a portion of any award that the Commission might award to Complainant. Tr. at 28-29.[3] Also of note is that Complainant did not offer the testimony of John Lee (who is also employed by Utilisave and was

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[2] A copy of the Initial Decision and all other documents referenced throughout Duquesne Light's Reply to Complainant's Exceptions are included in the attached Appendix.

present for the hearing) even though it was Mr. Lee who initiated this case, was chief liaison between Duquesne Light and the customer on this subject before the complaint was filed, and authored an important letter (Respondent's Exhibit L) that essentially acknowledged that Duquesne Light's Tariff envisions non-coincidental billing.[4]

Duquesne Light offered the testimony of three witnesses and sponsored 13 exhibits into the record. Duquesne Light's witnesses were Chris Kovach, PE, Supervisor of Distribution and Planning, William Pfrommer, Duquesne Light's Senior Manager of Rates and Tariff Services whose job responsibility it is to ensure that customer's bills are in accordance with the Tariff, and Adam Goldbach, Duquesne Light's Major Account Representative for the service address.

B. Facts

This Formal Complaint relates to the electric service account at 435 Seventh Avenue, Pittsburgh, Pennsylvania 15219 (the "Gulf Tower"). Given the nature of the Complaint, a brief overview of how Duquesne Light determines the bill amount for its industrial/commercial customers like Complainant is necessary. Demand is one of the two main components[5] in calculating a commercial/industrial customer's bills. Tr. at 103. Demand, which is measured in kilowatts (kW), measures how fast energy is used and represents the average rate of energy

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[3] Citations to the April 11, 2016 Hearing Transcript will be in the form "Tr. at 28," where 28 designates the page number of the subject testimony.

[4] On July 31, 2015, John Lee wrote a letter to Duquesne Light to try to convince the Company that its Tariff mandated coincidental billing, in which he stated that "[i]If the intent was to bill on a non-coincident demand basis for each metered service, the tariff should have stated 'The Billing Demand will be the sum of the **maximum** peak individual demands of **each metered service**. . . ." RXL p. 1 (emphasis in original). The only change Mr. Lee made to the language of Duquesne Light's Tariff, which he acknowledged would clearly demonstrate an intent to bill on a non-coincident demand basis for each metered service, was to add the words "maximum peak" to qualify the phrase "individual demand." Id. That concession is critical because the Tariff defines "individual demand" as "the measurement of the average kilowatts during the fifteen-minute period of **greatest** kilowatt-hour use during the billing period." RXB p. 2 (emphasis added). Since "greatest" and "maximum" mean the same thing, Utilisave has effectively admitted that Duquesne Light's Tariff mandates non-coincidental billing. RXL p. 1. Complainant should not be permitted to evade or disavow the significance of Utilisave's admission simply by not calling Mr. Lee as a witness.

consumption over a 15-minute period. Tr. at 103.[6] Pursuant to its Tariff, Duquesne Light bases its commercial/industrial customers' bill on the greatest 15-minute demand recorded during a particular billing cycle. Tr. at 103-04; RXB p. 2.[7] This is sometimes referred to as "peak" or "maximum" demand. Tr. at 104.

The wrinkle in this case is that Duquesne Light provides Complainant with more than just one metered service at the Gulf Tower. See, e.g., RXG-J; Tr. at 63-64, 67, 68. The central question posed by the Formal Complaint is how Duquesne Light must calculate the billing demand for a commercial/industrial customer that has more than one metered service inside a single building. Duquesne Light's Tariff answers that question. The Tariff states that "Billing Demand will be the sum of the individual demands of each metered service." RXB p. 2 (emphasis added). Thus, to properly calculate Complainant's billing demand, Duquesne Light must: (1) determine how many metered services exist at the service address; (2) determine the individual demand of each of those metered services; and (3) add those figures together.

The evidence is clear that there are two separate metered services at the Gulf Tower: (1) a 120/208V Lighting Service; and (2) a 277/480V Power Service. Tr. at 63-64, 67, 68; RXC, F, G-J.[8] These two services utilize different equipment, operate completely independently of

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[5] The other major component is the amount of energy consumption, which is measured in kilowatt-hours (kWh).

[6] Duquesne Light's meters measure the demand of a particular service in 15-minute intervals, meaning that the Company takes 2,880 readings per month. Tr. at 103-04.

[7] Respondent's hearing exhibits will be identified in the form "RXB," where R stands for Respondent, X stands for Exhibit, and B identifies the subject exhibit.

[8] 120/208 volt services typically feed lighting type loads, whereas 277/480 volt services feed larger motor type loads, such as commercial chillers and large commercial power equipment. Tr. at 56. Adam Goldbach, Duquesne Light's major account representative testified that William Bauldauff, Complainant's President, informed him that the Gulf Tower's 277/480V Power Service was installed at the customer's request primarily to service a central HVAC system. Tr. at 130-132; RXH. Since Mr. Bauldauff is Complainant's President, his statements are admissible under Pa.R.E. 803(25). Mr. Bauldauff's statements that the 277/480V Power Service was installed at the customer's request is corroborated by Duquesne Light's policy that the Company would not typically install a second service at a property absent customer request. Tr. at 89,151.

one another, and cannot be tied together. Tr. at 63, 89, 132-133; RXC, F, G p. 3, 5, 6. The 120/208V Lighting Service is comprised of two 120/208V meters (though only one is currently in use)[9] and its own set equipment, including transformers, network protectors, and primary circuit feeds. Tr. at 61-63; RXF. The 277/480V Power Service is comprised of one 277/480V meter and its own set of transformers, network protectors, and primary circuit feeds. Tr. at 59-61; RXC. None of the equipment that Duquesne Light uses to provide the 120/208V Lighting Service is used to provide the 277/480V Power Service (and vice versa). Tr. at 62-63; RXC, F. The Gulf Tower's Lighting Service and Power Service were installed at different times, are different voltages and could not be combined to feed one service, and are fed from different substations on different circuits of different voltages.[10] Tr. at 63-64, 130, 132-133; RXC, F. And, as established by the contract between 110 Associates and Duquesne Light, the Lighting Service and the Power Service have different peak demand requirements. RXH.[11]

Since there are two separate services at the Gulf Tower, Duquesne Light's Tariff, which states that "Billing Demand will be the sum of the individual demands of each metered service," creates the following formula for calculating Complainant's billing demand:

Billing Demand	=	Individual Demand of 120/208V Lighting Service	+	Individual Demand of 277/480V Power Service

Thus, the next step in calculating Complainant's billing demand is to determine what is the "individual demand" of each metered service during a particular billing cycle. Duquesne Light's Tariff defines "individual demand," in same the section that sets forth the formula for

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9 Adam Goldbach explained that both meters were tied into the same service. Tr. at 141-42.

10 The two services also have different primary voltages, as the Lighting Service is fed from an 11kV circuit whereas the Power Service is fed by a 23kV circuit. Tr. at 63.

11 Duquesne Light's Supervisor of Distribution Planning explained that peak demand is important from an engineering perspective because the Company must ensure that its system maintains the capacity to meet that peak demand. Duquesne Light is required to make the peak demand on the 120/208V Lighting Service and the 277/480V Power Service available to Complainant whenever Complainant wants and whether the peak demands occur simultaneously or not. Tr. at 69.

calculating billing demand, as follows: "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**." RXB p. 2 (emphasis added). In other words, the Tariff defines "individual demand" as synonymous with "peak" or "maximum" demand. Tr. at 104.

Thus, under Duquesne Light's Tariff, Complainant's billing demand must be calculated as the sum of the Lighting Service's greatest demand and the Power Service's greatest demand during the billing cycle. As illustrated by the following example, that is exactly how Duquesne Light calculates 110 Associates' billing demand:

	120/208V Meter	277/480V Meter	**Sum**
Demand in Period 1	500	0	500
Demand in Period 2	1000	200	1200
Demand in Period 3	1500	0	1500

RXP.

In the example, the "individual [*i.e.* greatest] demand" recorded by the 120/208V meter[12] was 1500. The "individual [*i.e.* greatest] demand" recorded by the 277/480V meter was 200. The sum of those two figures would be Complainant's billing demand. Tr. at 108-09; RXB p. 2. In other words, 1500 + 200 = 1700, which is the figure that Duquesne Light would utilize (in this example) as Complainant's billing demand. Tr.at 108-09.

Not only does Duquesne Light's method of calculating Complainant's billing demand strictly adhere to the formula established by its Tariff, which has been filed with and approved by the Commission, but it also is a fair and equitable way to calculate Complainant's billing demand. Duquesne Light has an obligation to provide enough capacity to meet the peak

[12] While the meter actually records consumption and demand, it is only one component of a metered service (along with the transformers, network protectors, or primary circuit feeds, etc.).

demands for Complainant's Lighting Service and Power Service so that the capacity is available when Complainant needs it or chooses to use it; otherwise, Duquesne Light cannot guarantee reliable service. Tr. at 69, 110-11; RXH. When and how Complainant chooses to use the electricity provided by Duquesne Light is up to its discretion, but Duquesne Light is required to give Complainant the capacity to use its peak demand on each separate service whenever they choose to use it. Tr. at 111; RXH.

By utilizing two different services, Complainant is essentially using the equipment, and demanding the capacity, of two separate customers. Tr. at 111. Utilizing the example above, if these two services were in separate buildings next door to one another, the total amount of billing demand Duquesne Light would charge would be 1700. Tr. at 109. Merely placing two separate services under a single roof or bill does not in any way alter or minimize Duquesne Light's regulatory or electric delivery obligations. Tr. at 111. The Lighting Service and the Power Service are still two separate services that place their own distinct demand on Duquesne Light's system. Duquesne Light must provide the capacity to meet those demands.

Non-coincidental billing helps Duquesne Light to more accurately and fairly recover the costs it incurs in providing service to Complainant. Tr. at 111-12. Duquesne Light must have extra meters, transformers, and other equipment to operate each of the services. Tr. at 111; RXC, F. That means that there are extra maintenance, labor, and other costs Duquesne Light must incur to keep all that equipment operable.[13] Non-coincidental demand billing is also fair to Duquesne Light's other customers, because it is consistent with how Duquesne Light bills those customers when it comes to demand. Tr. at 111.

III. LAW AND ARGUMENT

A. Duquesne Light provides two separate metered services to the Gulf Tower. (Response to Complainant's Exception No. 1.)

ALJ Haas correctly determined that there are two metered services at the Gulf Tower. Initial Decision, pp. 7-8, 14. The Lighting Service and Power Service are separate and distinct because they operate completely independently of one another (just as if they were housed in different buildings). Tr. at 63, 89, 132-133; RXC, F, G p. 3, 5, 6. They are fed from different substations on different circuits of different voltages. Tr. at 63-64,132-133; RXC, F. None of the equipment used to provide the Lighting Service is used to provide the Power Service. Tr. at 62-63; RXC, F. Based on these facts, ALJ Haas correctly determined that Duquesne Light provides two services to the Gulf Tower.[14]

Significantly, Complainant *does not dispute any of those facts*[15] and did not offer any evidence suggesting that the 120/208V Lighting Service and the 277/480V Power Service are somehow tied together into a single service. Instead, Complainant argues that there is only one

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[13] Duquesne Light utilizes a customer's peak demand as their billing demand. Tr. at 103-04. Non-coincidental demand billing simply means that the customer's billing demand is determined by sum of the peak demands of each of its services.

[14] Complainant incorrectly suggests that ALJ Haas's determination that Duquesne Light provides two separate services to the Gulf Tower hinged on the Parties' contract. Exceptions, p. 4 (noting that the "recommended dismissal of the Complaint rests heavily on the ALJ's interpretation of the applicable service contract"). While ALJ Haas addressed -- and correctly rejected -- Complainant's strained interpretation of the Parties' contract, his analysis focused primarily on the undisputed facts offered into evidence by Duquesne Light. Specifically, ALJ Haas stated: "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. In addition, the voltages being provided to the two meters are intended for different purposes, with the 120/208 volt service being used for lighter loads, such as lighting, and the 277/480 volt service intended for heaver, commercial loads, such as chillers and large power equipment. In fact, the 277/480 volt service at the Gulf Tower powers the building's HVAC system." Initial Decision, p. 14 (internal citations omitted).

[15] See Complainant's Exceptions, p. 5 (noting that "the meters are fed by separate and independent equipment"). Separate and apart from that explicit concession, Complainant offered no evidence at the hearing contradicting those facts.

service at the Gulf Tower because: (1) the Parties' contract says "service" (and not "services") in its general introductory paragraph; and (2) "different voltages do not constitute different services." Exceptions, pp. 4-5. As set forth below, those arguments are meritless and ALJ Haas properly rejected them.

Even a cursory review of the Parties' contract defeats Complainant's argument that it represents a single service contract because the word "service" is not written in a vacuum, but rather is part of a general, introductory clause that makes clear that the "service" Duquesne Light provides to Complainant is defined later in the contract. RXH. Specifically, the contract provides: "Subject to the Rules, Regulations and Tariffs of the Company on file with the Pa. Public Utility Commission at present or hereafter in effect the Customer agrees to use at 435 7th Avenue, Pittsburgh, PA 15219, the Company's electric ***service described below*** . . . ." RXH. The contract then expressly defines that service as follows:

277/480 volt base	3 phase	4 wire	Contract on peak demand 800 kw	Contract off peak demand 800 kw
120/208 volt base	3 phase	4 wire	Contract on peak demand 700 kw	Contract off peak demand 700 kw

The generic use of the word "service" in the contract's introductory paragraph does not constitute evidence in Complainant's favor, nor does it create a conflict or ambiguity in the contract, because the contract explicitly states that service is described below and then goes on to explicitly provide that there are two services at the Gulf Tower. RXH. That renders Complainant's one-sentence argument that ALJ Haas misread the contract because the word "service" is not explicitly stated below the introductory paragraph completely unpersuasive. Exceptions, p. 4.

Complainant's argument also fails under the basic rule of contract interpretation that specific language controls general language. As the Commonwealth Court has explained: "When interpreting contract language, specific provisions ordinarily will be regarded as

qualifying the meaning of broad general terms in relation to a particular subject. Thus, where specific or exact terms seem to conflict with broader or more general terms, the former is more likely to express the meaning of the parties with respect to the situation than the general language." A.G. Cullen Construction, Inc. v. State System of Higher Education, 898A.2d 1145, 1168 (Pa. Cwmlth. 2006) (internal citations omitted). Therefore, the contract's specific description of the two services that Duquesne Light provides to Complainant is controlling over the generic language in the contract's introductory paragraph. Not only is Complainant's argument undermined by the plain language of the contract itself, but it also violates a fundamental rule of contract interpretation.

Complainant's reliance on the testimony of its witness that "different voltages do not constitute different services" is equally unconvincing. Exceptions, p. 4. Complainant apparently relies on such testimony for the proposition that the mere fact that the 120/208V Lighting Service and 277/480V Power Service are different voltages does not mean that they are separate services. That argument is a red herring. Duquesne Light does not contend that it provides two separate services to the Gulf Tower solely because the Lighting Service and Power Service are different voltages.[16] The reason why the Lighting Service and the Power Service do not constitute the same service is because they operate completely separately and

[16] Complainant's Exception No. 1 makes another flawed contention that must be corrected. Complainant argues, without citation to the record, that the fact that the meters are fed by separate and independent equipment "is irrelevant since meters served by separate equipment under the same voltage would still be considered one service by Respondent's interpretation of the tariff." Exceptions, p. 5. See also, Exceptions, p. 6. That is not true. If two meters of the same voltage were part of separate and independent metered services, then they would not be considered one service by Duquesne Light for purposes of calculating billing demand. (Note, however, that Rule 10 of the Company's Tariff prevents Duquesne Light from providing more than one service of the same type of voltage and phase at the same service address. RXQ.) It is also possible that Complainant's argument is a factual misunderstanding of the circumstances present when Duquesne Light had two active meters on the 120/208V Lighting Service. As noted above, at one point, Duquesne Light used two meters to register demand on the Lighting Service. Contrary to Complainant's argument, however, those two meters were part of the *same* service because they were tied into the same service equipment. Tr. at 141-42. Thus, if this was the point Complainant was trying to make, the premise of Complainant's argument is flawed because those two meters were not "served by separate equipment," but by the same equipment.

independently of one another.[17] Complainant's argument is abstract, theoretical, and irrelevant to the disposition of this case. This issue is whether the Gulf Tower actually has one or two services. Complainant offered no actual, affirmative evidence (let alone substantial evidence) that there is only one service at the Gulf Tower. All Complainant offered is a strained, unreasonable interpretation of the Parties' contract and theoretical commentary by a witness who did not even claim to have been to the Gulf Tower, which does not undermine the wealth of evidence presented by Duquesne Light and falls woefully short of Complainant's burden of proof.

B. The billing demand formula in Duquesne Light's Tariff is clear and unambiguous. (Response to Complainant's Exception No. 2.)

The Tariff provision that applies to the Gulf Tower contains a section titled "Determination of Demand for Distribution." RXB p. 2. It contains a clear and unambiguous formula for calculating billing demand. Specifically, it states: "The Billing Demand will be the sum of the individual demands of each metered service. . . ." Id. (emphasis added). The methodology for calculating billing demand established by the Tariff is simple and straightforward: (1) determine how many metered services exist at the service address; (2) determine the individual demand of each of those metered services (which is also defined in the Tariff); and (3) add those figures together.

Complainant unconvincingly argues that that the Tariff is ambiguous because it does not "identify whether the greatest kilowatt-hour use occurs per meter, per service, or per building."

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[17] Without explicitly stating so, Complainant seems to take the position that all equipment within a single building must necessarily constitute a single service. But that obviously cannot be the case because the Commission approved Duquesne Light's billing demand formula, which expressly contemplates that the Company can provide more than one "metered service" to a customer. RXB, p. 2. Specifically, Duquesne Light's Tariff states: "The Billing Demand will be the sum of the individual demands of each metered service. . . ." (emphasis added).

Exceptions, pp. 5-6.[18] ALJ Haas correctly rejected this argument because it ignores the plain language of the Tariff. Initial Decision, pp. 15-16. The phrase "greatest kilowatt hour use" is a component of the definition of "individual demand." RXB, p. 2. The "billing demand" is calculated by taking the "individual demands of each metered service," so the language highlighted by Complainant clearly occurs per metered service, not per meter or per building. Simply put, the alleged ambiguity proposed by Complainant does not exist.

C. ALJ Haas correctly determined that Complainant failed to carry its burden of proof. (Response to Complainant's Exception No. 3.)

Complainant argues that ALJ Haas made various "key" findings of fact that are not supported by substantial evidence, though Complainant did not actually identify any specific findings of fact that it contends were not supported by the evidence as required by 52 Pa. Code § 5.533(b). Exceptions, p. 6. Instead, Complainant claims to have carried its burden of proof by reiterating its conclusory arguments that the Tariff is ambiguous and about "the definition of service as it relates to voltage." Id. Both arguments were debunked above and Duquesne Light need not do so again here.

The only other argument that Complainant raises in support of its position that it carried its burden of proof is that it is possible from an arithmetic standpoint to calculate the coincident demand of the Gulf Tower's 120/208V Lighting Service and the 277/480V Power Service. Exceptions, p. 6. But that does not mean that the Tariff requires that Complainant be billed on a coincidental basis. As explained above, Duquesne Light's Tariff mandates non-coincidental billing and, as Complainant's acknowledged, the Tariff is binding on utility and customer alike. See Complainant's Opening Post-Hearing Brief, p. 6. The mere fact that Duquesne Light can,

[18] Complainant also noted in passing that the Tariff does not "explicitly define" the word "service," but did not offer any support for the proposition that the absence of an explicit definition for a term renders it ambiguous. Exceptions, p. 6.

ex post facto, mathematically manipulate demand readings to calculate a coincidental demand does not mean that the Tariff actually entitles Complainant to coincidental billing.

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). Complainant failed to carry its burden as its whole case rests on strained and unsupported interpretations of Duquesne Light's Tariff (RXB) and the Parties' Contract (RXH). Moreover, the testimony of Complainant's witnesses – one of whom has a direct financial interest in the case, and neither of whom are even employed by the customer or claim to have seen the equipment Duquesne Light must use to provide the Lighting Service and Power Service to Complainant -- was unconvincing and, at times, confusing.[19]

Complainant failed to prove that it is entitled to a refund under the Public Utility Code because Duquesne Light's method of calculating Complainant's billing demand is reasonable and adheres to the formula established in the Company's Tariff, which has been filed with and approved by the Commission. RXB. Section 1312 of the Public Utility Code only allows the Commission to order a public utility to refund rates that were: (1) unlawful; (2) unjust or unreasonable; or (3) in excess of the rates contained in the public utility's tariff. 66 Pa. C.S. § 1312. See also, Springfield Twp. v. Pa. Public Utility Comm'n, 676 A.2d 304, 307 (Pa. Cmwlth. 1996). As the Commission is well aware, "[a] public utility's tariff . . . has the force of law and therefore is binding on both the public utility and its consumers." Springfield Twp., 676 A.2d at 308. See also, PPL Elec. Utilities Corp. v. City of Lancaster, 125 A.3d 837, 842 n. 7 (Pa. Cwmlth. 2015) ("A tariff has the force of law and is binding on the utility and its customers."). Indeed, "[t]ariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable." Leber v. PPL Electric Utilities Corp., Docket No. C-20055083,2006 WL 2788371, *3 (Pa. P.UC. Sept. 18, 2006). Since Duquesne Light's

[19] For example, Mr. Steifman claimed that the Tariff's definition of "individual demand" was vague, which he suggested supported Complainant's position that the Tariff contemplated coincidental billing, but later stated that the definition of individual demand was "irrelevant" to the analysis of whether the Tariff envisioned coincidental or non-coincidental billing. Tr. at 22-23, 32.

methodology for calculating Complainant's billing demand is expressly mandated by its Tariff, Complainant has not carried its burden of proving it is entitled to a refund. ALJ Haas correctly dismissed the Complaint.

IV. CONCLUSION

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

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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Counsel for Respondent

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ONE TEN ASSOCIATES (DRAXHALL MANAGEMENT CORP.) Complainant, vs. DUQUESNE LIGHT COMPANY, Respondent.	)))))))))	Docket No. C-2015-2507068

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).

John G. Harris, Esq.
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(Via email and regular mail)

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

Dated this 21st day of October 2016:

BY: _____

Jeremy V. Farrell, Esquire
PA I.D. # 316258
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ONE TEN ASSOCIATES (DRAXHALL MANAGEMENT CORP.)	)	
Complainant,	)	
vs.	)	Docket No. C-2015-2507068
DUQUESNE LIGHT COMPANY,	)	
Respondent.	)	

APPENDIX TO RESPONDENT'S REPLY TO EXCEPTIONS

September 12, 2016 Initial Decision
April 11, 2016 Hearing Transcript
Respondent's Exhibit B
Respondent's Exhibit C (submitted via mail only)
Respondent's Exhibit F (submitted via mail only)
Respondent's Exhibit G (submitted via mail only)
Respondent's Exhibit H (submitted via mail only)
Respondent's Exhibit L
Respondent's Exhibit Q

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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

LIT:613634-1 014657-158498

SEPTEMBER 12, 2016
INITIAL DECISION

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 scribener'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

REFERENCED PAGES OF

APRIL 11, 2016 HEARING TRANSCRIPT

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

John Lee C/O UtiliSave LLC, v. Duquesne Light Company	Docket No.: C-2015-2507068
Miscellaneous/Other Disputes	

Pages 1 - 173

Keystone Building
400 North Street
Plaza Level
Harrisburg, PA 17120

Monday, April 11, 2016
Commencing at 10:02 a.m.

BEFORE:

STEVEN K. HAAS, Administrative Law Judge

APPEARANCES:

JOHN G. HARRIS, Esquire
Berger Harris, LLP
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For the Complainant

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For the Respondent

REPORTER: KARISSA KROSS

ATTORNEY HARRIS:

If I just may have one moment, please.

JUDGE:

Yes, this is Judge Haas again. My Duquesne Exhibit A is tariff pages, the first page at the bottom, the effective date is 1969, and then my Exhibit B looks like the corresponding tariff pages, but with an effective date of 2014.

BY ATTORNEY HARRIS:

Q. So if you look, I think we are on Exhibit B and the pertinent line which, Mr. Steifman, in that sentence ends with the word the billing period? Is that right?

A. Yes.

Q. All right. So my apologies for the confusion. These telephonic hearings can be challenging for this reason. But I think we're now all on the same page. So just to clarify for the record, the pertinent language reads individual demand, except in unusual cases, will be determined by measurement of the average kilowatts during the 15-minute period of greatest kilowatt-hour use during the billing period. Is that right?

A. That's what it says.

Q. Do you have an understanding as to what that

means?
A. Well, I think it's vague. I think it could mean a couple of different things.
Q. Can you elaborate, please?
A. Well, it's not clear if they're talking about an individual meter or they're talking about the building total or something else.
Q. And why do you say that?
A. Because the language reads in a way that doesn't specifically say --- I think if they meant it to be for each meter, then they should have added at the end of that sentence per meter. If they wanted it to mean something else, it should have been more explicit. I just think it's not explicit.
Q. And do you have an understanding of how or view as to how Duquesne, the Respondent, has interpreted this particular language in this particular case?
A. I'm not sure how they interpreted this specific sentence because I don't think we had a specific discussion about this specific sentence. So anything I say would be an inference.
Q. Do you have a view as to how Duquesne interpreted its own tariff in this particular case?
A. Well, if you're talking about broadly, they have interpreted that because there are two different

practices, the contracts.
Q. And I understand, sir. My question is the practical effect of that would be to lower bills for One Ten Associates; isn't that correct?
A. Well, if we find it in things where the rules, regulations, tariffs, contracts aren't being implemented in a way that's consistent with any of those documents, then our goal is to bring that to bear and bring about a change.
Q. Your company is being compensated for the work that it's performing for One Ten Associates; is it not?
A. Our company is compensated if we're successful in finding such an instance and implementing it.
Q. I'm sorry, I didn't hear the second part of your answer.
A. If we find such an instance, such an occurrence in that the charges aren't accurate or aren't appropriate according to the contractual elements or documents, then we do receive compensation.
Q. So in other words, your company has this matter on a contingency basis; is that correct?
A. Correct. Yes, it is.
Q. What I mean by that is if you were to recover some form of relief for One Ten Associates in this

case, then UtiliSave would receive a financial benefit as a result of that; isn't that correct?
A. Correct.
Q. Now, you were asked several questions about Exhibit B as in boy, which is a copy of Duquesne Light's current tariff. Do you still have a copy of that in front of you?
A. I do.
Q. Now, putting aside briefly the whole coincidental versus non-coincidental dispute, you will agree with me, sir, that the tariff --- Duquesne Light's tariff as shown in Exhibit B does apply to One Ten Associates; correct?
A. This rate class is applicable to them if that's what your question is, yes.
Q. So you're not disputing that the tariff doesn't apply, your dispute is what your interpretation of the language of the tariff might have been. Am I understanding your position correctly?
A. Well, I'm disputing the utility company's interpretation of the tariff.
Q. By providing an alternate interpretation of your own; isn't that correct?
A. I provided a --- yes. The answer's yes.
Q. And your company has been dealing with Duquesne

A. I have it in front of me.
Q. All right. And the first sentence there reads individual demand, except in unusual cases, will be determined by measurement of the average kilowatt during the 15-minute period of greatest kilowatt-hour use during the billing period. Did I read that correctly?
A. Yes.
Q. And it's your testimony that that language is vague or ambiguous; is that correct?
A. It's vague and ambiguous and is irrelevant to this coincident or non-coincident demand.
Q. So the answer to my question then is, yes, you believe that this language is ambiguous?
A. It's ambiguous to the intent of what we're focusing on, yes.
Q. And I believe you stated on your Direct Examination that what would clarify the ambiguity would be to add words to the effect of per meter at the end of that sentence; isn't that correct?
A. If the intent was for it to be an individual demand of the meter as an example.
Q. And then if you skip down to the next paragraph, it appears right under the equation there. The first full sentence begins the billing demand will be the

meters?
A. Two of those meters are 120/208 volt meters and one of those meters is a 277/480 volt meter.
Q. Are all three of those meters currently registering consumption?
A. No.
Q. I'm sorry, go ahead.
A. I believe two of them are, one for the 120/208 volt service and one for the 277/480 service. The one 120/208 volt installation that is metered from the roof has been disconnected.
Q. Generally speaking from an engineering perspective, are there differences between the types of things that are better serviced by a 120/208 volt service versus a 277/480 volt service?
A. Typically, 120/208 volt services feed more of what we call lighting type loads, whereas 277/480 volt services are usually employed to feed larger motor type loads, you know, commercial type loads, large chillers, large power equipment.
Q. Is there different equipment that's required to service or operate each of the two separate services currently in use at the Gulf Tower?
A. Yes.
Q. Can you give us some examples of what type of

Q. And let's start very briefly with Exhibit F as in Frank. Do you recognize this document?
A. Yes, I do.
Q. And what is it?
A. This is the electrical equipment plan for the 120/208 volt service at the Gulf Building.
Q. And where do you see that this relates to the service provided to the Gulf Building?
A. In the title block in the lower right-hand corner where it says Gulf Building 435 Seventh Avenue.
Q. And what was the date that this particular drawing was prepared?
A. It was originally prepared on December 19th, 1952 and it was last revised July 21st, 1954.
Q. Turn back for me to Exhibit C. And I want to focus your attention to the single line diagram which for reference, Your Honor, appears on the bottom part of the page kind of right in the middle there. Does this particular diagram, Mr. Kovach, show where the 277/480 volt service meter is located?
A. Electrically, yes.
Q. And can you explain for the record where that is?
A. If you look in the lower center of the drawing on the figure that says single line diagram, just above the words single line diagram, which are double

underlined, there is an M with a circle with an 18 pointing to it that says metering. That drawing is showing the details of how the metering is connected at that location.

Q. And could you provide a brief overview of the type of equipment that we're seeing in the single line diagram just above where that meter is located?

A. Yeah. So it's showing electrically how the vault is laid out. So it shows the transformers that feed the 277/480 volt service, the associated network protectors on this service on the secondary and the primary cables coming in to feed the service along with some metering equipment and control cabinets.

Q. And how are the three transformers that you just mentioned, how are those depicted on this particular drawing?

A. They are the boxes. They have a couple squiggles on the top and the bottom of them and they have Bay 1, Bay 2, Bay 3 written on them.

Q. And then if I understand your testimony correctly, then each of those transformers has a network protector associated with it?

A. Correct.

Q. And where do you see those on this drawing?

A. They are attached just below the transformer on

the drawing. They are designated by a box with a half circle with two dots on both ends.

Q. And you also mentioned primaries for feeding the circuit. Can you point out where those are?

A. Yes. In the single line diagram, they're in the upper right-hand corner of the diagram. They show the lines coming in and they say 3-1/C-#1/0 23 KV primary cable.

Q. And what does 23 KV mean?

A. That is the voltage that the cable was operated at.

Q. So this particular service is set up at 23 KV voltage?

A. That is correct.

Q. Let's turn to Exhibit F, and I want to ask you a set of questions. And am I correct that this drawing relates to the 120/208 volt service?

A. Correct.

Q. How many transformers are depicted on this drawing?

A. Four.

Q. And where are they?

A. If you look in the main equipment layout that you're --- in the upper center of the document, they are each labeled compartment one, compartment two,

compartment three, compartment four. And they all say 500 KVA transformer on them.

Q. Are any of the four transformers that are shown on Exhibit F the same as any of the three transformers that are shown on Exhibit C?

A. They are not.

Q. And why not?

A. They are in a different location and they have a different secondary voltage.

Q. Are there any network protectors shown on Exhibit F?

A. There are.

Q. And where do you see those?

A. They are shown in the single line wiring diagram in the bottom lower left-hand corner of the document. If you look, they look like almost a --- there's a half circle with the line in the middle of it and three dots and they say right next to them, they even have an arrow pointing to them that say network protector. And then I believe the one on the far left says install 1600 amp open type network protector.

Q. Are any of the network protectors that are shown on Exhibit F the same as the network protectors that were shown on Exhibit C?

A. No.

Q. And does Exhibit F show the primary cables that are feeding this particular service?
A. It does.
Q. And where do you see those?
A. In the single line wiring diagram at the top of the diagram where it has the network feeder and then it has the circuit number, those --- 10027, 10088, those are the circuit numbers of the network meters.
Q. And what are the voltage that is associated with the circuit that feeds it?
A. These four circuits are 11 KV.
Q. And what were the voltage that feed the service show in Exhibit C?
A. Twenty-three (23) KV.
Q. Mr. Kovach, the equipment that's shown on Exhibit C and the equipment that is shown on Exhibit F, do those operate independently of one another?
A. Yes.
Q. Are the 120/208 volt service and the 277/480 volt service feed from the same circuit?
A. No.
Q. Are they feed from the same pump station?
A. No.
Q. Do the 120/208 volt service and the 277/480 volt service that are depicted in Exhibits C and F

constitute the same service or separate services?
A. Separate.
Q. And why?
JUDGE:
I'm sorry, could you give your answer again, Mr. Kovach? It didn't come through.
A. Yes, Your Honor. Separate services.
JUDGE:
Thank you.
BY ATTORNEY FARRELL:
Q. And would you please explain why those are separate services?
A. They 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.
Q. Mr. Kovach, if I could turn your attention to Exhibit G as in Gary.
(Respondent's Exhibit G marked for identification.)
BY ATTORNEY FARRELL:
Q. Let me know when you have that in front of you. And I'll represent for the record that this is a six-page exhibit. Do you have that, Mr. Kovach?

exactly what sort of information is being set forth here under the present installation heading?
A. So the present installation was at that time when the request was made and the details of the services. So if you look down below present installation, it lists service voltage, phase, and then 15 minute maximum KVA demand in the summer and then in the winter. So here they're showing two separate service voltages, one for lighting and one for power. The lighting service is 120/208 volt three phase service and the power service was a 460 volt three phase service. And then they just show what their peak 15 minute demands were, which would have been reflective to what they actually were at that point in time.
Q. So the present installation column there, does that depict what the service setup was at the Gulf Tower as of February 18th, 1981 which is the date in the top right corner of this document?
A. That's correct.
Q. And how many different services are reflected in the present installation?
A. Two.
Q. And what are they?
A. The 120/208 volt service and 460 volt service.
Q. And are those the same two services that we have

been discussing through the course of your testimony this morning?

A. They're the same equipment installed at both locations.

Q. With the caveat of the 460 volt meter that we discussed earlier?

A. Correct. It would be the same equipment that can provide either service.

Q. That's all I have on this record. Thank you, Mr. Kovach. I'd like to finally turn to Exhibit H, H as in Harold. Let me know when you have that in front of you.

(Respondent's Exhibit H marked for identification.)

A. I have it.

BY ATTORNEY FARRELL:

Q. Do you recognize this document, sir?

A. Yes, I do.

Q. This is the electric service contract associated with One Ten Associates; isn't that correct?

A. That is correct.

Q. How many different services are identified in this particular contract?

A. Two.

Q. And what are they?

A. They are a 277/480 volt three phase four wire service and a 120/280 three phase four wire service.
Q. And if you see in the middle there right where there's --- those services are listed, I see there's a designation that says contract on peak demand. And I see that the number is different for the 277/480 volt service than it is for the 120/208 service. My question is, from an engineering perspective, why is it that peak demand is relevant?
A. Essentially for distribution planning capacity additions, you know, we have to maintain that our system has enough capacity to feed all of the customers and typically during peak demand time period. So essentially based on this contract, we're required to be able to provide 800 KW of demand to 1,300 KW demand from the 277/480 volt service and 700 KW demand from the 120/208 volt service whether they occur simultaneously or not. So our system is planned around being able to do that at any time.
Q. Thank you, Mr. Kovach.

ATTORNEY FARRELL:

Your Honor, I have no further questions at this time.

JUDGE:

All right. Mr. Harris, any Cross?

grounded or is that supported by the in the judgement of the company language that appears in rule ten?
A. I believe what it's saying that the customer can have more than one service at the same voltage. These are two separate voltages, so I don't know that that applies.
Q. Mr. Kovach, aren't voltages merely technical details of one electric service?
A. No.
Q. Why do you say that?
A. Because essentially they can't feed the same equipment, they can't be tied together. Essentially the way Duquesne Light does business is that we provide one service at the same voltage. We only defer from that if the customers reflect for a second service or additional services at separate service voltages.
Q. And is your answer supported by the tariff?
A. I believe so, yes.
Q. But doesn't rule ten actually say that voltage does not matter in regard to the exception note?
A. I believe it says with the same voltage, hence when we had the 120/208 volt service on which you said one service, there was an installation on the roof and in the basement. Therefore, those were treated as one

hand corner. Rate GL.
Q. Thank you, Mr. Pfrommer. I want to take a step back and talk a little bit more generally about how Duquesne Light calculates bills for its commercial and industrial customers. What are the two primary components that make up the bills for those sorts of customers?
A. For commercial industrial customers, in this case the Gulf Tower, the two primary components are the demand for the consumption component and the demand component.
Q. And would you briefly explain what consumption is?
A. Consumption is the total electricity measured in kilowatt-hours consumed during a given period.
Q. And what about demand? What is that?
A. Demand is measured in kilowatts. It is the average rate of electricity consumption in a period. So demand measures how fast energy is being consumed on average.
Q. And how does Duquesne Light determine what a particular customer's billing demand is?
A. The company installed meters for commercial industrial customers that are capable of measuring demand every 15 minutes in each billing period for

each month. So each meter takes over 2,800 readings per month. And so for billing purposes, in particular for the average customer with one service voltage, we take the highest 15 minute reading of those 2,800 readings and we use that for billing the customer for demand.

Q. And is that sometimes referred to as peak demand?

A. Yes.

Q. Why does Duquesne Light charge based off of a customer's maximum or for peak demand?

A. A couple reasons. One, it reflects the fact that customers tell us what load they want so they want to be served at, what they're loaded from their premise and, therefore, it's a measure of how much equipment we have to put in. Secondly, you know, we can't store electricity so the fact that we have to be standing ready to serve customers at any time whenever they need electricity, we create rates that are based on demand so that we have electricity available whenever our customers want it.

Q. What about customers --- well, let me take a step back. You mentioned that a customer's demand is based on the highest 15 minute demand measured by the customer's meter. What about customers like One Ten Associates in this case that have more than one

Q. I'll represent, Mr. Pfrommer, that this is a chart that represents similar service conditions to that at the Gulf Tower. Using Exhibit P as an example, would you please explain for the record how Duquesne Light would calculate the billing demand for this particular customer.

A. Sure. The Exhibit P has four columns and is illustrative of three periods of demand measured, for example, in a given time period. The second column and the third column represent each service voltage that we provide. The first column being 120/208, the second column is 277/480. I'll note that there's a little typo. Instead of 270, it should be 277/480. And the fourth column is the sum of columns two and three.

BRIEF INTERUPPTION

BY ATTORNEY FARRELL:

Q. Sorry, Mr. Pfrommer. Go ahead.

A. So what this table is intended to show is the numbers in the table are, you know, demand measured in kilowatts for illustrative purposes. And so the second column shows that over the three periods identified here, the peak demand for the 120/208 service was 1,500 kilowatts, and the third column for illustrative purposes, the peak demand for the 277/480

volt meter service would be 200 kilowatts.

So for billing purposes in accordance with rate schedule GL that I just described, the company would take the sum of the rate of highest usage, the peak demand of each service voltage, and add those two together for billing purposes. So the peak demand in this example in compliance with our tariff would be 1,500 KW for the 120/208 meter and 200 for the 277/480 volt meter, which would be a total of 1,700 kilowatts for billing demand in this example.

Q. And that's what we've been referring to as non-coincidental billing?

A. Yes.

Q. Mr. Pfrommer, if the 120/208 volt meter shown in the second column was in a building that was completely different that the 277/480 volt meter that is shown in the third column over, what would the billing demand to Duquesne Light be under that scenario?

A. If it were two separate buildings, the billing demand would be 1,500 kilowatts for one building and 200 kilowatts for the second building.

Q. And so that would be a total billing demand for Duquesne Light of 1,700 kilowatts?

A. Yes.

Q. And that would be the exact same scenario we have with One Ten Associates?
A. Yes.
Q. And now explain for the record, please, using Exhibit P as an example how it is that One Ten Associates or UtiliSave would like to Duquesne Light to calculate its customer's billing?
A. Yeah. Rather than sum the peaks of each metered service, what One Ten Associates would like the company to do is add the demand for each period, which would be the fourth column, the sum of the second and third column. And then over the course of the entire billing period, use the peak demand of the sum of those two columns.

So in this example, what One Ten Associates would like us to do is use the greatest number in the fourth column, which would be 1,500 kilowatts, which is the greatest sum of the three periods.
Q. Mr. Pfrommer, would you explain from a company perspective why Duquesne Light utilizes non-coincidental billing?
A. Sure. There's a couple reasons. As I mentioned before when I discussed demand, the company has an obligation to provide enough capacity to meet the peak demand of our customers. So in this situation, we

have to have facilities' equipment in place so that we can meet the peak demand of our customers, and in this situation, it would be those for the Gulf Tower. Otherwise, we can't guarantee reliable service.

Secondly, you know, in the situation when we have multiple voltages, it's equivalent to having two separate services. Two separate customers. Meaning we have to have the appropriate equipment installed, transformers, lines, et cetera so that we can serve the total demand of each one of those services --- the peak demand of each one of those services. So just because they're under the same roof doesn't mean anything. It doesn't mean we should change things. From my perspective, we still have to provide enough facilities to serve the peak demand of the customer whenever the customer needs it.

And from a cost perspective, it's fair to our other customers because in this situation we have multiple services, we also have additional equipment. So by billing this way, it's consistent with how we bill all customers when it comes to demand. But more importantly it reflects for this particular installation the fact that we have addition equipment, transformers and other equipment, to serve each one of these services. So using non-coincident demand, the

peak demand --- I'm sorry, non-coincident peak demand, you know, reflects the additional equipment to serve the multiple voltages in this situation.

Q. Did Duquesne Light always to the best of your knowledge bill its customers on a non-coincidental basis for the Rate GL?

A. Yes.

Q. I'd like to turn your attention to the document that's been pre-marked as Exhibit A. Let me know when you have that in front of you.

(Respondent's Exhibit A marked for identification.)

A. Yes, I have it in front of me.

BY ATTORNEY FARRELL:

Q. I'll represent for the record that this is a three-page exhibit. What is Exhibit A, Mr. Pfrommer?

A. Yes. Exhibit A is Rate Schedule, Rate N, which is General Service that was dated effective October 1st, 1969. And there's three pages from Rate N, each with a different effective date. But the intent here for clarity is to show the availability of Rate N, which was available for all the standard electric service taken on a customer's premise where the demand is not less than 300 kilowatts. So this rate was a precedent with what we have in place today, Rate GL.

reviewed that file in the ordinary course of your job responsibilities?

A. Yes.

Q. The first thing I want to talk about, Mr. Goldbach, is the order and the installation of the meters that are at the Gulf Tower. Based on your involvement as a major account rep and your conversations with the customer, what is your understanding of which one of these services that we've been discussing today was the last one installed?

A. It's my understanding that the 277/480 volt was the latest service installed at the building.

Q. And from what do you base that understanding?

A. Mainly conversations with the building, Mr. Baldauff, the property manager had mentioned that that was installed at some point for --- I think it was mainly for a central HVAC system.

Q. And you mentioned Mr. Baldauff. Who does he work for?

A. He works for One Ten Associates.

Q. I'd like to turn your attention to Exhibit H.

ATTORNEY HARRIS:

Object. My apologies, I'd like to object to this line of questioning, the last Q and A

on the basis of hearsay.

ATTORNEY FARRELL:

Your Honor, I would respond that as I'm about to establish, the statements were made by the president of One Ten Associates, who is a Complainant in this action. So any statements made by One Ten Associates would be considered an admission and a statement by a party in this case. So it would qualify for an exception to the hearsay rule.

JUDGE:

I'm going to allow it at this point.

ATTORNEY FARRELL:

Thank you, Your Honor.

BY ATTORNEY FARRELL:

Q. Mr. Goldbach, to Exhibit H, turn to the bottom third of the page there. Who was it that signed this particular contract on behalf of One Ten Associates?

A. It was Mr. Baldauff.

Q. And are you familiar with his signature?

A. Yes.

Q. And is that Mr. Baldauff's signature there on Exhibit H?

A. Yes. That's his signature.

Q. And based on company records and your prior conversations with Mr. Baldauff, why was the 277/480

volt meter installed?
A. Based on conversations with Mr. Baldauff, it appeared that at some point the customer wanted that installed. I think it was mainly to install as part of a central HVAC system being installed in the building.
Q. And you may have touched on this, but I just want to follow up. Based on your understanding, at whose request was this second service installed?
A. Based on my understanding, it was a customer request.
Q. Based on your review of the files associated with the account for the Gulf Tower, is there any information in that file that indicates that fluctuation or unbalances were a concern in establishing that second service?
A. I did not find any evidence of that in the historical file.
Q. Is there any indication in the file that rule 17 was of concern when configuring the services at the Gulf Tower as they presently are?
A. Again, there is no mention of that in the file.
Q. I have a couple of questions about the 120/208 volt service and the 277/480 volt service that are currently operating at the Gulf Tower. Are those two

meters fed from the same circuit?
A. No.
Q. Are they fed from circuits with the same voltages?
A. No.
Q. Are they even fed from the same substation?
A. No.
Q. What is the voltage associated with the 480 volt service?
A. The 480 volt service is fed from a primary circuit of 23,000 volts. And the 120/208 volt service is fed from a primary of 11,000 volts.
Q. In your conversations with Mr. Baldauff or anyone else from One Ten Associates, has Mr. Baldauff or any one of his employees ever denied that there are two separate services at the Gulf Tower?
A. No, they have not.
Q. In your conversations with --- well, let me take a step back. You did indicate that you had conversations with employees of UtiliSave related to this particular issue; correct?
A. Yes.
Q. And who is your primary contact from UtiliSave?
A. Mr. John Lee.
Q. Has Mr. Lee ever denied in the course of his

non-coincidental basis?
A. I did not find any records, no.
Q. Prior to initiating this dispute through UtiliSave, was One Ten provided or notified of the information indicating that they were being billed on a non-coincidental basis?
A. Yes. That information would have been on their monthly bills.
Q. Thank you, Mr. Goldbach. I'm going to change gears on you one more time. Mr. Kovach testified earlier that there were three meters at this property, two of them are 120/208 volt meters. Could you just sort of refresh our memory as to where those two meters are located?
A. Yes. One is on the roof of their 39th floor and the other is in the basement.
Q. And are both of those meters currently registering?
A. No.
Q. Which one is not?
A. The rooftop meter has been shut off.
Q. Based on your involvement with this particular account as well as your conversations with the customer, when that rooftop 120/208 volt meter was active, was this part of the same service as the

120/208 volt meter in the basement?
A. Yes. Both meters, the basement and the roof at 120/208 have the same customer load within the building.
Q. And how do you know that information?
A. Based on discussions with the building, especially when that roof unit, their roof service, we disconnected that. The customer had nothing on their side that needed to be done in order to feed the remaining 120/208 volt service from the basement.
Q. And what did that indicate to you?
A. That indicates that that was a single service volt, that both meters fed into the same service point.
Q. And when the rooftop 120/208 volt meter was active, was the demand of that meter totalized with the 120/208 volt meter in the basement?
A. Yes.
Q. And why was that?
A. Basically because that was a single service. Both 120/208 volt meters fed the exact same service.
Q. Thank you, Mr. Goldbach. I don't have further questions.

JUDGE:

Mr. Harris, any Cross?

Q. And you say that based on --- not on any firsthand knowledge regarding the implementation of the original contract in 1986, but rather your own interpretation of rule ten; is that right?
A. Can you repeat that? Or restate that?
Q. Sure. You don't have any firsthand knowledge as to the circumstances under which the original electric service contract was put in place in 1986; do you?
A. It's our company policy that a customer would typically request a second service, and since they are different kinds, they can both be put under one contract.
Q. And there was such a request made in this case?
A. Per our policy and procedure it appears that was the case.
Q. But there's nothing in your account file that supports your statement; right?
A. There's no specific record that says that fact from the '70s or whenever the services were physically installed.
Q. Is there a general statement?
A. I'm not sure what you mean by that.
Q. Well, I think you said there's nothing specific in your file. Is there anything general that would support your conclusion?

CERTIFICATE

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
Karissa Kross

Sargent's Court Reporting Service, Inc.
210 Main Street
Johnstown, PA 15901

RESPONDENT'S
EXHIBIT B

RATE GL - GENERAL SERVICE LARGE

AVAILABILITY

Available for all the standard electric service taken on a customer's premises where the demand is not less than 300 kilowatts.

MONTHLY RATE

SUPPLY

Customers who elect to purchase their electric supply requirements from the Company will do so under the provisions of Rider No. 9 – Hourly Price Service and will be billed in accordance with the terms contained therein.

DISTRIBUTION

DEMAND CHARGES

First 300 kilowatts or less of Demand	$2,700.00	(I)
Additional kilowatts of Demand	$8.15per kW	(I)

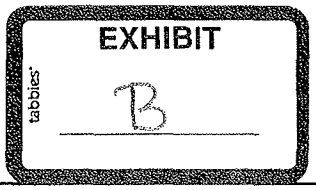
ELECTRIC CHARGES

The Company will provide and charge for transmission service consistent with the PJM Open Access Transmission Tariff approved or accepted by the Federal Energy Regulatory Commission for customers who receive Default Service from the Company. The Transmission Service Charges are included, for informational purposes, in Appendix A of this Tariff.

Customers who elect to purchase their electric energy requirements from an EGS will be charged the full Distribution Charge by the Company, and must purchase their transmission and supply requirements from their selected EGS. Customers may change suppliers or return to the Company for electric supply requirements as defined in Rule No. 45.

For customers who elect to purchase their supply from an EGS, the customer is responsible for any other charges from the EGS. Any month in which the supplier becomes unavailable or during which the customer has not chosen a supplier, the Company will supply electricity pursuant to Rider No. 9 – Hourly Price Service.

Customers who choose an EGS may elect Consolidated Billing or Separate Billing as defined in Rule No. 20.1.



(I) – Indicates Increase

RATE GL - GENERAL SERVICE LARGE - (Continued)

MONTHLY RATE – (Continued)

MINIMUM CHARGE (C)

The Minimum Charge shall be the sum of a Demand Charge based on 50% of the Contract On-Peak Demand for distribution, plus the charges for Company supplied transmission and supply, if any. The Demand Charge shall be determined using the Distribution Charge, and in total shall not be less than the demand charges associated with the first 300 kWs or less of demand. For Company supplied transmission and supply, the transmission charges shall be calculated as set forth in Appendix A and the supply charges shall be calculated as set forth under Rider No. 9.

RIDERS

Bills rendered under this schedule are subject to the charges stated in any applicable rider.

LATE PAYMENT CHARGE

Bills will be calculated on the rates stated herein, and are due and payable on or before fifteen days from the date of mailing of the bill to the ratepayer. The bill is overdue when not paid on or before the due date indicated on the bill. An overdue bill is subject to a Late Payment Charge of 1.25% interest per month on the full unpaid and overdue balance of the Company charges on the bill. The Charge shall be calculated on the overdue portions of the Company charges on the bill and shall not be charged against any sum that falls due during a current billing period.

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. Individual demands which exceed 30 kilowatts will be adjusted for power factor by multiplying by

$$\left\{0.8 + \left[0.6 \frac{\text{Reactive Kilovolt - ampere hours}}{\text{Kilowatt - hours}}\right]\right\},$$

where such multiplier will be not less than 1.00 nor more than 2.00. The Billing Demand will be the sum of the individual demands of each metered service, adjusted for power factor as defined above, but not less than 50% of the Contract On-Peak Demand nor less than 300 kilowatts, whichever is the greater.

CONTRACT DEMAND

The Contract Demand is the maximum electrical capacity in kilowatts which the Company shall be required by the contract to deliver to the customer.

RATE GL - GENERAL SERVICE LARGE - (Continued)

CONTRACT DEMAND – (Continued)

The Customer shall not establish a demand greater than 105 percent of the individual demands specified in the customer's contract unless written approval shall first have been obtained from the Company. If the customer establishes a repeated pattern of exceeding the Contract Demand, the Contract Demand may be raised to the highest demand established for the remaining term of the contract.

CONTRACT PROVISIONS

Contracts will be written for a period of not less than one year.

Where the customer has established an energy management and conservation program and has demonstrated to the satisfaction of the Company that such program has resulted in a reduced demand, the Company will, upon the customer's request, amend the contract to reflect such reduced demand for the purpose of calculating the Minimum Charge, but in no case shall the Billing Demand be reduced to less than 300 kilowatts if the customer remains on this rate.

STANDARD CONTRACT RIDERS

For modifications of the above rate under special conditions, see "Standard Contract Riders."

RESPONDENT'S
EXHIBIT L

UtiliSave®
Total Utility Management Partner

UtiliSave, LLC
129 W 27 St 11th Floor
New York, NY 10001

www.UtiliSave.com
T: 718 382 4500
F: 718 645 4100

Friday, July 31, 2015

Adam Goldbach
Duquesne Light Company
Major Account Representative
2825 New Beaver Avenue
Pittsburgh, PA 15233
Mail Drop N6-CS

RE: **Draxxhall Management Corp.**
Account: 5932200000
Address: 435 7th Ave
Pittsburgh, PA 15219

Dear Mr. Adam Goldbach:

Draxxhall Management Corporation has retained us to audit their utility bills. Enclosed is a duly signed Letter of Authorization.

During the course of our review and analysis of the billing for the above referenced account, we discovered that the recorded demand is billed on a non-coincident maximum demand basis. The account has plural meters and has 15 minute interval readings recorded by an Interval Data Recorder for each meter. Billing demand for this account is derived as a sum of non-coincident maximum demands for each of the multiple meters.

Since the Interval Data Recorder system records information every 15 minutes, the account should be billed on the basis of coincident maximum demand based on our interpretation of Duquesne Light Company's Retail Tariff Rate GL-General Service Large page 48 which states:

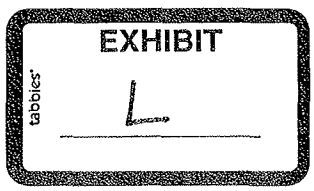
> *"The Billing Demand will be the sum of the individual demands of* ***each metered service****..."*

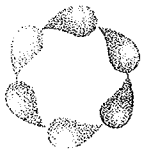
If the intent was to bill on a non-coincident demand basis for each metered service, the tariff should have stated "The Billing Demand will be the sum of the **maximum** peak individual demands of **each metered service**..." Billing a customer on a coincident demand basis is typically beneficial for customers and more accurately identifies the customer's demand on the system. Furthermore, billed demands should be revised from the beginning of the IDR readings.

Please also note that the contract demand for this account is 2400 kW. The highest recorded demand over the past year is 1450 kW, which is roughly 40% less than the contract demand. We believe the high contract demand has adversely impacted the customer's billing and respectfully request that the contract demand be lowered to reflect the history on the customer's account and adjustments be applied to prior instances of minimum demand billing based on contract demand.

Please have someone investigate if the billed and contract demands are erroneous. If your findings reveal that our client was incorrectly billed, please send a check for the adjustment with any applicable interest to our office for delivery to our client as indicated in our letter of authorization.

Thank you in advance for your prompt attention to this matter. If you have any questions, please do not hesitate to contact me at (718) 382-4500 ext. 245 or email me at jlee@utilisave.com.





Sincerely,

John Lee
UtiliSave, LLC

Encl.

RESPONDENT'S
EXHIBIT Q

RULES AND REGULATIONS - (Continued)

INSTALLATION OF SERVICE - (Continued)

10. ONE SERVICE OF A KIND Only one service of each type as to voltage and phase will be provided to a customer under one contract; provided, however, that when, in the judgment of the Company, compliance with Rule No. 17, Fluctuations and Unbalances, may be most economically effected by establishing a separate service connection for a portion of the customer's load, such separate service connection may, at the option of the customer, be combined, notwithstanding similarity as to voltage and phase, with other service connections under a single contract for the customer's entire electric delivery service requirements at the affected location. Electric service at different premises, regardless of voltage or phase, shall never be combined for billing under one account for the purpose of reducing Company charges.

11. METER SUPPORTS The customer shall provide on the premises, at a location satisfactory to the Company, proper space, supports, and enclosures for metering equipment.

12. TRANSFORMERS AND CONTROL EQUIPMENT Where, in the judgement of the Company, it is necessary to install transformers and other control or protective equipment on the customer's premises, the customer shall provide a suitable place, foundation and housing for such installation, in accordance with the Company's "Electric Service Installation Rules."

13. CUSTOMER'S FACILITIES The installation and maintenance of the customer's wiring and equipment shall be in accordance with the Company's "Electric Service Installation Rules" and shall be subject to the approval of the proper authorities. The Company is not required to provide electric service thereto unless so approved, but does not assume any responsibility for securing such approval. The Company shall not be liable for damages or injuries resulting from any defects in the customer's wiring or equipment.

13.1 UNDERGROUND DISTRIBUTION

A. When the Company is required by governmental order or enters into agreements with redevelopment authorities, a private real estate developer or a group of customers to change its distribution supply lines from overhead to underground, customers receiving or to receive electric service at voltages of 600 volts or less from these supply lines shall provide at their own expense the necessary facilities for receiving such underground service.

B. Underground Service Lines from Overhead Supply Lines

(1) Service Line Voltages Under 600 Volts.

(a) Where an underground service line is installed from the Company's overhead, street secondary supply lines, the customer shall furnish and install all conductors and conduit in accordance with the Company's "Electric Service Installation Rules."

(2) Service Line Voltages Over 600 Volts.

(a) Where the Company's supply lines are overhead, the customer shall furnish and install all conduits or ducts for the underground primary service line within the street area as well as all necessary conduit, ducts, manholes and junction boxes on private property in accordance with the Company's "Electric Service Installation Rules."