

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

1

HEART & SOUL FOODS, INC, |
v. |
DUQUESNE LIGHT COMPANY |
P.U.C.

Docket No.: C-20043794

**DOCUMENT
FOLDER**

Pages: 1 - 20

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Pittsburgh, PA 15222-1205

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April 13, 2005
Commencing at 10:02 a.m.

BEFORE:

ROBERT P. MEEHAN, Administrative Law Judge

APPEARANCES:

LOUIS CAPUTO, Esquire
Caputo & Caputo, PC
The Pitt Building
213 Smithfield Street
Pittsburgh, PA 15226
For the Complainant

REGINA M. SESTAK, Esquire
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
For the Respondent

REPORTER: KAY-LYNN BIELAWSKI

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WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

Burnett

8

P R O C E E D I N G S

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2 -----
3 JUDGE ROBERT P. MEEHAN:

4 Open the record for today. This is the
5 date set by the Pennsylvania Public Utility Commission
6 for the hearing on the complaint of Heart & Soul
7 Foods, Inc. against Duquesne Light Company. It's
8 C-20043794. I'm Robert Meehan, the Administrative Law
9 Judge assigned by the Commission to preside over the
10 matter and render an initial decision in this case.
11 At the outset, let me ask Ms. Burnett, do you have an
12 attorney here representing the corporation?

13 MS. BURNETT:

14 I don't see him, but he is supposed to be
15 here.

16 JUDGE MEEHAN:

17 Who is your attorney?

18 MS. BURNETT:

19 I'd rather not say. Can I write it down.

20 JUDGE MEEHAN:

21 No, you're going to have to tell us.
22 We're going to have to know him when he comes in.

23 MS. BURNETT:

24 It's Charles Caputo.

25 JUDGE MEEHAN:

1 And he is supposed to be here?

2 MS. BURNETT:

3 He said he'd be here. He said he'd come
4 with me.

5 JUDGE MEEHAN:

6 Do you have a phone number for Mr.
7 Caputo?

8 MS. BURNETT:

9 It's 412-690-0300

10 JUDGE MEEHAN:

11 Where would he be coming from, do you
12 know?

13 MS. BURNETT:

14 No, probably downtown. I don't know. I
15 don't know him.

16 JUDGE MEEHAN:

17 Well, I don't have an entry of appearance
18 from Mr. Caputo.

19 MS. BURNETT:

20 I FAXed him the information.

21 JUDGE MEEHAN:

22 We will wait 'til 10:15 to see if Mr.
23 Caputo arrives.

24 MS. BURNETT:

25 Did you want me to call him?

1 JUDGE MEEHAN:

2 If he's not here by 10:15, I'll call him.

3 MS. BURNETT:

4 Okay.

5 JUDGE MEEHAN:

6 Okay. Let's see if we can find Mr.
7 Caputo.

8 OFF RECORD DISCUSSION

9 JUDGE MEEHAN:

10 We are back on the record. At this
11 point, are there any preliminary matters that anyone
12 wants to address before we start with the hearing?

13 ATTORNEY SESTAK:

14 No, your honor.

15 JUDGE MEEHAN:

16 All right. Mr. Caputo, we will take
17 Heart & Soul Foods, Inc. first. Then we will proceed
18 with Duquesne Light Company.

19 ATTORNEY CAPUTO:

20 Your honor, my client would just like to
21 explain a little bit about the situation with the
22 restaurant.

23 JUDGE MEEHAN:

24 What I'd prefer is this would all be done
25 on the record, under oath as a witness, so if anything

1 is said and it's a preliminary matter, it's available
2 to be cross examined on and considered as evidence in
3 the record when it comes time to make the decision.

4 ATTORNEY CAPUTO:

5 Okay.

6 JUDGE MEEHAN:

7 And your witness is?

8 ATTORNEY CAPUTO:

9 Ms. Sylvia Burnett.

10 -----

11 SYLVIA BURNETT, HAVING FIRST BEEN DULY SWORN,
12 TESTIFIED AS FOLLOWS:

13 -----

14 JUDGE MEEHAN:

15 Okay. Mr. Caputo.

16 ATTORNEY CAPUTO:

17 What we have here, Your Honor, my client,
18 Ms. Burnett, of Heart & Soul Foods, basically just had
19 some problems with income based upon them trying to
20 survive in the current operations. They are in the
21 process of turning that around, and she would just
22 like to explain a little bit about the position that
23 they are in and explain to Duquesne Light some of the
24 options that they have available to them and try to
25 resolve the situation.

1 JUDGE MEEHAN:

2 First, let's identify her, her position
3 with the corporation, and that she's authorized to
4 appear and testify for the corporation:

5 A. I am the president and CEO.

6 DIRECT EXAMINATION

7 BY ATTORNEY CAPUTO:

8 Q. State your name for the record.

9 A. Sylvia Burnett. Heart & Soul Foods, Incorporated.

10 Q. What position do you hold?

11 A. President.

12 Q. Ms. Burnett, please ---.

13 A. I want to explain how we got into the situation we
14 are in. In January 2003, my husband had to retire.
15 He worked in his job for 40-some years. Due to
16 physical ailments, he had to retire, so right there it
17 knocked out \$55,000 from our income, which actually
18 devastated us. Trying to run a business, which is a
19 restaurant, and maintaining a house, all those
20 expenses were on Social Security and pensions. So, it
21 has just become increasingly difficult. Our debts
22 exceed our income. I think I sent you to show our
23 expenses and our income. We are just trying to dig
24 ourselves out of the hole. No one wants to be in this
25 situation, believe me. We have paid, I brought some

1 of the checks that we have paid, \$7,000 since 2003 up
2 to the present and that is just for the one utility.
3 We are paying double mortgages, double taxes, double
4 insurance, double everything, on Social Security and
5 pensions. It's tough. The restaurant is not making
6 the revenue. We don't have the money to advertise.
7 We don't have the money to do anything. So what we
8 did, with these increasing utility bills and
9 everything it was just too much. We closed the
10 restaurant except for one day a week, thinking we
11 weren't doing that much business anyway, and if we
12 just operated the one day a week, that would bring our
13 utilities way down, we thought, but it hasn't.
14 Duquesne Lights utilities have come down some, but not
15 enough to justify only being open one day and say,
16 four hours Saturday to prepare for Sunday. I don't
17 know if you want to know what we are proposing, or
18 want to propose as a solution to this or not. Because
19 we are in the process of going into a venture that is
20 connected with food that should bring enough money to
21 pay off all these utilities, to pay off everything
22 within the next couple months. We do need some time.
23 And that's it in a nutshell pretty much where we are.

24 ATTORNEY CAPUTO:

25 I guess as a preliminary matter, which

1 would have been passed, and I'd like to have conferred
2 with Regina and Duquesne Light. Can I have a couple
3 minutes to confer with her?

4 JUDGE MEEHAN:

5 Cff the record.

6 ATTORNEY CAPUTO:

7 Yes.

8 OFF RECORD DISCUSSION

9 JUDGE MEEHAN:

10 Okay, we are back on the record. The
11 parties have had an off the record discussion. So let
12 me ask at this point, did those discussions help in
13 resolving this complaint proceeding?

14 ATTORNEY CAPUTO:

15 Yes, they did, Your Honor.

16 JUDGE MEEHAN:

17 All right. How would this be handled at
18 this point?

19 ATTORNEY SESTAK:

20 Your Honor, if we may put the agreement
21 on the record, and then request that an order be
22 issued in accordance with the agreement?

23 JUDGE MEEHAN:

24 Certainly.

25 ATTORNEY SESTAK:

1 Your Honor, would you like me to recite
2 the terms of the agreement that we've reached?

3 JUDGE MEEHAN:

4 Please.

5 ATTORNEY SESTAK:

6 The present balance of this commercial
7 account is \$4,748.69, not including a bill for current
8 service that is due to be issued on or about today or
9 tomorrow. The agreement that has been reached is that
10 Heart & Soul Foods, Incorporated will pay to Duquesne
11 Light Company the amount of \$1,500 by May 1st. It
12 will pay an additional \$1,500 by June 1st. Then
13 beginning with the bill issued in mid-June, which will
14 be due in either late June or early July, Heart & Soul
15 Foods will pay current bill plus \$300 per month
16 towards the account balance until the account balance
17 has been totally extinguished, after which it will pay
18 current bills.

19 JUDGE MEEHAN:

20 I gather that for commercial accounts
21 there is no budget billing as the Commission is
22 familiar with it in terms of residential?

23 ATTORNEY SESTAK:

24 Correct. It is not possible to do budget
25 billing on commercial because of the changes due to

1 the demand changes and other billing anomalies that
2 are unique to commercial accounts.

3 JUDGE MEEHAN:

4 Okay. Just let me see if I have this
5 correct again. There will be a \$1,500 payment by May
6 1st and a second \$1,500 payment by June 1st. And
7 beginning with the bill becoming due in July ---.

8 ATTORNEY SESTAK:

9 Well, Your Honor, we're not certain it
10 will be the bill due in July. Bills on this account
11 are usually issued mid-month and they're due either at
12 the end of the month they are issued in or the
13 beginning of the following month. So the way we had
14 phrased it is, beginning with the bill issued in
15 mid-June, which will be due either in late June or
16 early July. But it begins with the bill issued on or
17 about June 12th or 15th.

18 JUDGE MEEHAN:

19 Okay. Beginning with the bill issued in
20 mid-June then, there will be a payment of the current
21 bills plus \$300 a month, which will continue until the
22 remaining balance is paid in full. Then there will be
23 monthly payments of current bills thereafter.

24 ATTORNEY SESTAK:

25 Correct.

1 JUDGE MEEHAN:

2 And it's consistent with your
3 understanding of the agreement?

4 ATTORNEY CAPUTO:

5 Yes, Your Honor.

6 JUDGE MEEHAN:

7 And the Complainant will be able to
8 maintain that agreement?

9 A. Prayerfully.

10 JUDGE MEEHAN:

11 Okay. I know this is somewhat different,
12 but if I am not mistaken there was a consumer services
13 decision at one point in time.

14 ATTORNEY SESTAK:

15 Yes, Your Honor, there was a consumer
16 services decision. I have a copy.

17 JUDGE MEEHAN:

18 As I looked at it, this will be an
19 accelerated payment as opposed to what had been ---.

20 ATTORNEY SESTAK:

21 Your Honor, I believe the consumer
22 services agreement was not an agreement, it was a
23 notice to pay the total balance of the account.

24 JUDGE MEEHAN:

25 I see.

1 ATTORNEY SESTAK:

2 Is that your understanding?

3 ATTORNEY CAPUTO:

4 My understanding is that the BCS
5 agreement 17647 ---.

6 ATTORNEY SESTAK:

7 I don't know if we should put this in as
8 an exhibit, but this is the Bureau of Consumer
9 Services Decision. Mr. Pool is not under oath, but
10 he's certainly able to explain what it means. It's
11 the electronic form that is transmitted from the
12 Bureau of Consumer Services to Duquesne Light.

13 MR. POOL:

14 This isn't a decision. This is a copy of
15 an electronic transmission that comes through between
16 the BCS and Duquesne Light. That's how we communicate
17 complaints received and reports filed. And on 9/1/04,
18 this complaint was received by the company
19 electronically in this format. And the BCS number is
20 1764768. What happened was, prior to the BCS
21 rendering a decision, this formal complaint was filed,
22 so it was closed without a decision in order to
23 proceed with the form.

24 A. Who is BCS?

25 MR. POOL:

1 Bureau of Consumer Services.

2 A. How are those contested?

3 MR. POOL:

4 The customer would contact the PUC; it's
5 the Bureau that serves ---.

6 JUDGE MEEHAN:

7 All right. I have no problem with the
8 terms of the agreement. And shortly you should be
9 receiving a copy of my decision, which will approve
10 it. That will come with a letter informing everybody
11 that you have the right to file what's called
12 exceptions, which basically requests the Commission to
13 review my decision. If this is the agreement you are
14 satisfied with, then you don't file those, of course.

15 The Commission still has the option,
16 itself, to review my decision on its own. I will tell
17 you that the Commission has the prerogative to change
18 my decision, to refuse that settlement, if it so
19 chooses. But unless you get an order from the
20 Commission that is different from my decision,
21 considering that this is to start in May. Honor the
22 agreement you've made. If the Commission changes it,
23 then you have to deal with that at that point,
24 sometimes they do and sometimes they don't. I have no
25 idea what to tell you on this. But you've made this

1 agreement, so beginning in May, everybody honor the
2 agreement. I assume there will be a waiver of late
3 payment charges?

4 ATTORNEY SESTAK:

5 We had not anticipated waiving late
6 payment charges. In fact, under the changes to the
7 Public Utility Code in 2004, the companies are no
8 longer required to waive late payment charges on
9 residential accounts.

10 ATTORNEY CAPUTO:

11 I request that you do that. We could
12 come to some type of agreement. I mean, we're making
13 best efforts to come current on the account. She's
14 struggling to do that, to accommodate, and they do
15 want to continue their service with Duquesne Light and
16 will in the future, once everything is resolved here.
17 We would request good will or even to show that we are
18 trying, you know.

19 ATTORNEY SESTAK:

20 I'm not even certain that we have the
21 capacity to waive late payment charges on commercial
22 accounts. Are you aware?

23 MR. POOL:

24 I am not aware.

25 ATTORNEY SESTAK:

1 There are some times where it's on
2 consumer accounts because it was previously by
3 Commission order and also by federal regulation on
4 consumer accounts that receive federal energy
5 assistance. Late payment charges are waived. As a
6 general rule they are not waived on commercial
7 accounts.

8 ATTORNEY CAPUTO:

9 As a general rule, but is it anywhere
10 written?

11 ATTORNEY SESTAK:

12 The problem with this is that it's very
13 unusual to make a payment arrangement on a commercial
14 account. I'm not certain that the Duquesne Light
15 Company computer system can support a waiver of late
16 payments on a commercial account.

17 ATTORNEY CAPUTO:

18 What is owed as far as late payments?
19 What is the late payment charge?

20 ATTORNEY SESTAK:

21 The late payment charge is one and one
22 quarter percent per month on the unpaid balance.
23 Commission regulations permit us to charge up to one
24 and a half percent per month. However, Duquesne Light
25 Company has elected to only charge one and a quarter

1 percent.

2 ATTORNEY CAPUTO:

3 But there is the potential that that
4 could be waived? I mean, if there is the potential
5 that you could enter into a settlement agreement.

6 ATTORNEY SESTAK:

7 At this point, I don't think that is
8 something Duquesne Light is willing to do. At this
9 point the Duquesne Light Company has entered into a
10 payment arrangement on a commercial account, which it
11 is not required by law to do. It has agreed to
12 amortize this account over a substantial period of
13 time. In addition, provide an interest-free loan of
14 the account balance. I do not believe it is
15 appropriate.

16 JUDGE MEEHAN:

17 Well, let me ask, since I've muddied the
18 water; is there still an agreement?

19 ATTORNEY SESTAK:

20 Yes.

21 JUDGE MEEHAN:

22 Well, the only thing that I think I would
23 add would be that as long as the Complainant maintains
24 the payment arrangement that they've agreed to,
25 service won't be interrupted except for safety or

1 emergency reasons. I will also tell you, if the
2 agreement isn't maintained, then Duquesne has the
3 authority to terminate the service to the corporation.
4 All right. Shortly then, you will have my decision.
5 I'm approving it. I am glad that you were able to
6 work out something rather than go through the full
7 hearing.

8 ATTORNEY CAPUTO:

9 Thank you, Your Honor.

10 * * * * *

11 HEARING CONCLUDED AT 11:31 A.M.

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C E R T I F I C A T E

I hereby certify, as the
stenographic reporter, that the foregoing
proceedings were taken stenographically by
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Kay-Lynn Bielawski
Court Reporter