PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Robert J. Kramer
v.
Duquesne Light Company

Public Meeting held March 16, 2017
2499181-OSA
Docket No. F-2015-2499181

JOINT STATEMENT OF CHAIRMAN GLADYS M. BROWN AND COMMISSIONER JOHN F. COLEMAN, JR.

On August 10, 2015, Robert Kramer filed a Complaint alleging that there were incorrect charges on his electric bill because from December of 2000 to December of 2014, he was paying the higher residential heating (RH) rate when his rate should have been the lower residential add-on heat pump (RA) rate. Following an evidentiary hearing, Administrative Law Judge Dunderdale sustained the Complaint holding that Duquesne failed to provide reasonable service when Mr. Kramer applied to become a customer in 2000, and directed Duquesne to recalculate the rate from December 2010 through November 2014,[1] using the then applicable rate RA, and imposed a civil penalty of $10,000.

When Mr. Kramer applied for electric service, his residence was placed on the higher rate RH by Duquesne. During the application process, there was no discussion of whether the home heated with electricity or the existence of a heat pump. Tr. at 44. Duquesne testified that its policy when processing an application for service is to "review the account, and the rate that is on the account at that time is the rate that is assigned to the new customer," using historical data provided by the previous owner or tenant at the service address. Tr. at 45-46. The ALJ noted that Duquesne also made this assumption (that the rate applicable to the previous owner of Mr. Kramer's home would remain the applicable rate for Mr. Kramer) without advising Mr. Kramer there might be options as to which distribution rate was most applicable to the service address. According to the ALJ, Duquesne, at the very least, knowing it had three applicable residential distribution rates available, should have asked the Complainant, as a new applicant, two simple questions: (1) will electricity be required to heat the premises; and (2) if the answer is "yes," is there an add-on heat pump? The ALJ opined that if Duquesne had asked those two simple questions, Mr. Kramer would have been placed on the most advantageous rate.[2]

In its Exceptions, Duquesne argues that since it had no notice of the service conditions, in this case, the heat-pump, it had no Section 1303 duty to place Mr. Kramer's service on rate RA. Duquesne cites to *Springfield Township v. Pa. PUC*, 676 A.2d 304, at 307 (1996), *Ferguson v. PECO Energy Co.*, Docket No. C-2013-2360708 (January 8, 2014), and *Victory Condominium Assoc. v. PECO Energy Co.*, Docket No. C 2011 2268126, 2012 WL 6087518 (September 27, 2012), to support its case noting that the Commonwealth Court and the Commission alike hold

[1] Section 1312 of the Code, 66 Pa. C.S. § 1312, provides a four-year time limitation for refunds.
[2] Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron. 66 Pa. C.S. § 1303.

that utilities "must have actual knowledge of service conditions before it is required to compute the most favorable rate for its customer." *Springfield* at 308.

Duquesne also argues that the Complaint is time barred, as the alleged error occurred in 2000, fifteen years before the filing of the Complaint. The Public Utility Code provides for a three year statute of limitations.[3]

We agree that *Springfield, Victory, and Ferguson* clearly stand for the proposition that a utility has no obligation to compute the most favorable rate for its customer unless it has actual knowledge of the service conditions. However, the question that must first be asked in a controversy such as this is what is a utility's obligation with regard to educating its customers that there is more than one rate available? In other words, was reasonable customer service provided?

In a case with a similar fact pattern, *Ben Mauro v. Duquesne Light Co.*, C-871571, 1989 Pa. PUC LEXIS 12; 69 Pa. PUC 105 (January 6, 1989), an existing customer alleged that Duquesne failed to notify him of the availability of a new rate, "Rider 5" service, for his commercial property and thus overcharged him for service. Mr. Mauro asked for a refund of the difference between the two rates. *Mauro* differs from the case at bar in that Duquesne mailed notice of the availability of "Rider 5" to customers, including Mr. Mauro. In fact, the Commission determined that Mr. Mauro was not entitled to a refund of the higher rate because, "we are convinced that the Complainant did not meet his burden of proof of establishing that he did not receive information concerning Rider 5 Service in August of 1984." *Mauro* at *16.

In the instant case, ALJ Dunderdale summed up the situation succinctly:

> Looking at the facts in the light more favorable to Duquesne Light, an applicant initiates residential electric service unaware there are three potentially applicable rates, unaware the previous owners were charged the highest distribution rate available, and unaware the previous owners who installed a heat pump should have notified but did not notify Duquesne Light about the installation of the heat pump. Between the two parties herein, the party most in possession of salient and vital facts was Duquesne Light, not Mr. Kramer.

I.D. at 13. We believe that in order to provide adequate and reasonable customer service under Section 1501 of the Code, 66 Pa. C.S. § 1501, a utility must inform a new customer if there is more than one rate available in that customer's rate class. This is a basic duty to notify a customer of the availability of new or existing rates. *Mauro* at *10-11. For Duquesne to impute a previous customer's rate to a new applicant, who has no idea what information the prior occupant may or may not have conveyed to the utility, is not logical, nor is it reasonable under Section 1501 of the Code. Duquesne should treat a new customer as simply that, a new customer.

However, we must agree with Duquesne's argument that we cannot impose liability in this case as the statute of limitation has expired.[4] Given this threshold legal issue, it may not

[3] 66 Pa.C.S. § 3314.

have been necessary for the presiding ALJ to reach a determination on the question of whether Duquesne provided reasonable service. If the statute of limitations had not been at issue, we may have been inclined to find that Duquesne failed to provide reasonable service on the facts before us.

This is a harsh outcome for Mr. Kramer, who like most utility customers, is not aware of the many service and rate details contained in a utility's published tariff. We ask that Duquesne and other similarly situated utilities review whether they are asking new customers salient questions during the service enrollment process and whether sufficient customer education is provided to customers. As demonstrated here, a lack of customer education about rate options can cause customers to spend more than necessary for utility service.[5]

We encourage Duquesne to strongly consider issuing a partial refund to Mr. Kramer for the difference between what he was charged on rate RH, and would he could have been charged under Rate RA for a period of time. We note that at least one other major utility, when it discovers that customers have been on a higher rate, will offer such a credit for at least one year as a goodwill gesture. Finally, we ask that Duquesne review its customer enrollment process for opportunities to improve customer education on this and any other relevant issues.

March 16, 2017
Date

Gladys M. Brown, Chairman

John F. Coleman, Jr., Commissioner

[4] The ALJ reasoned that the statute of limitations on this matter was not tolled until December 2, 2014, when Mr. Kramer became aware of Duquesne's residential rate options.
[5] Mr. Kramer's estimate of the rate differential is approximately $850 per year. Tr. at 20.