

February 12, 2018

Via Electronic Filing and E-Mail

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

RE: Ron Richards v. Duquesne Light Company
Docket No. C-2017-2616828

Dear Secretary Chiavetta:

Duquesne Light Company's Reply Exceptions are enclosed for filing. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Ron Richards (with enclosure)
Office of Special Assistants (OSA), via email (with enclosure)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RON RICHARDS,)	
)	
)	
vs.)	Docket No. C-2017-2616828
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

RESPONDENT DUQUESNE LIGHT COMPANY'S REPLY EXCEPTIONS

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., and files the following Reply Exceptions:

I. INTRODUCTION

The Commission must deny the Exceptions filed by Complainant Ron Richards ("Complainant") and adopt the Initial Decision issued by Administrative Law Judge Dennis J. Buckley on December 20, 2017 (the "Initial Decision"). In his Exceptions, Complainant does not identify any findings of fact or conclusions of law from the Initial Decision that are incorrect. Rather, the Exceptions consist entirely of inadmissible settlement discussions and post-hearing evidence. The Initial Decision is supported by substantial evidence and should be adopted by the Commission.

II. FACTS

Complainant initiated this matter by filing a Formal Complaint (the "Complaint") against Duquesne Light on July 27, 2017. He claimed that Duquesne Light mis-billed him by transferring charges for service incurred under his wife's name at a prior residence to his name at their new residence. He also requested a payment arrangement. Duquesne Light filed a timely Answer and denied Complainant's allegations.

On October 10, 2017, Administrative Law Judge Dennis J. Buckley ("ALJ Buckley") held a telephonic hearing. Complainant represented himself and testified on his own behalf. Duquesne Light was represented by counsel. The Company offered the testimony of one witness and offered two exhibits into evidence. Duquesne Light also moved to dismiss the Complaint, which ALJ Buckley took under advisement. The record was closed on October 31, 2017.

ALJ Buckley issued the Initial Decision about two months later. It contains thirteen Findings of Fact and seven Conclusions of Law. Initial Decision, pp. 2-3, 7-8. In the Findings of Fact, ALJ Buckley found that Complainant lived with his wife at 34 Hawthorne Avenue, Pittsburgh, PA 15205 (the "Hawthorne Avenue Property") before moving to his current address, 204 Webster Drive, Pittsburgh, PA 15235 (the "Webster Drive Property"). FOF No. 1, 3; Tr. at 7, 14. ALJ Buckley also found that Duquesne Light provided electric service to the Hawthorne Avenue Property (billed to an account in Complainant's wife's name) and that a past due balance was transferred from the Hawthorne Avenue Property to the Webster Drive Property. FOF No. 4, 5; Tr. at 7, 14. Finally, ALJ Buckley found that Complainant and his wife had received four previous payment arrangements: two from the Commission and two from Duquesne Light. FOF No. 8; Tr. at 19-20. They defaulted on all of them. FOF No. 13; Tr. at 20.

Based on these Findings of Fact, ALJ Buckley ruled that Complainant was responsible for the bills that accrued at the Hawthorne Avenue Property. Initial Decision, pp. 5-6; COL No. 6. ALJ Buckley also held that Complainant is not entitled to another payment arrangement or other relief. Initial Decision, p. 7; COL No. 7. Accordingly, ALJ Buckley dismissed the Complaint. Initial Decision, p. 8.

Complainant filed Exceptions in a letter dated January 20, 2018.¹ He states that he discussed possible enrollment in Duquesne Light's Customer Assistance Program ("CAP") with Duquesne Light representative(s) before the hearing. The parties allegedly could not reach an agreement, so the hearing was held. Complainant also claims that he applied for and was accepted into CAP in "late November" of 2017. He states, "Duquesne Light Company and the PUC is required and obligated to accept this resolution and and [sic] continue in the direction." Complainant did not object to any Findings of Fact or Conclusions of Law from the Initial Decision and did not state that he disagreed with the Initial Decision. He also did not file a motion to admit post-hearing evidence.

III. LAW AND ARGUMENT

The Exceptions must be denied for three reasons. First, Complainant has not identified any findings of fact or conclusions of law from the Initial Decision that he contends are not supported by the record or the law. Second, the Exceptions are based on inadmissible settlement discussions and post-hearing evidence, which are insufficient to undermine ALJ Buckley's undisputed findings of fact and carry Complainant's burden of proof. Finally, the Initial Decision is supported by substantial evidence and should be adopted by the Commission.

A. *The Exceptions must be denied because Complainant has not identified any findings of fact or conclusions of law from the Initial Decision that are not supported by the record or the law.*

Under 52 Pa. Code § 5.533(b), "Each exception must be numbered and identify the finding of fact or conclusions of law to which exception is taken and cite relevant pages of the decision." Exceptions must be denied if a complainant merely disagrees with an initial decision and does not identify specific findings of fact or conclusions of law that should be reversed. See Meena v. PECO Energy Co., Docket No. F-2016-2523604, 2017 WL 4552491, at *6 (Pa. P.U.C. Oct. 5, 2017); Buske v. Pa. Elec. Co., Docket No. F-2015-2491561, 2017 WL 3420810, at *7

¹ Complainant did not serve the Exceptions on Duquesne Light. The Company received a copy from Secretary Chiavetta instead. She stated that Duquesne Light could file its Reply Exceptions by February 12, 2018.

(Pa. P.U.C. Aug. 3, 2017). In Meena, for example, the complainant filed a Formal Complaint with the Commission against PECO Energy Company for alleged overbilling. Meena, 2017 WL 4552491, at *1. The Administrative Law Judge conducted a hearing and dismissed the Formal Complaint. Id. The complainant filed Exceptions and stated that she disagreed with the Initial Decision. Id. at *5-6. The Commission denied the Exceptions and adopted the Initial Decision because “the Complainant has not excepted to any specific findings of fact or conclusions of law delineated in the ALJ's Initial Decision.” Id. at *6.

The Commission made a similar ruling in Buske. The complainant in that case, like Mr. Richards, filed a Formal Complaint with the Commission challenging her responsibility for payment of an outstanding account balance from a previous electric account. Buske, 2017 WL 3420810, at *1. The Administrative Law Judge held a hearing and dismissed the Formal Complaint. Id. at *3. The complainant filed Exceptions and asserted, without elaborating, that she was appealing the Initial Decision. Id. at *6. The Commission denied the Exceptions and adopted the Initial Decision, ruling that the complainant “has not excepted to any specific findings of fact or conclusions of law” and thus failed to “identify and dispute any specific matters addressed by the ALJ in violation of . . . 52 Pa. Code § 5.533(b)”

As in Meena and Buske, Complainant has not excepted to any specific findings of fact or conclusions of law in the Initial Decision. He does not even expressly disagree with the Initial Decision. Instead, he merely contends that Duquesne Light and the Commission must allow him to remain enrolled in CAP. Complainant's CAP enrollment, however, occurred roughly a month after the record was closed and is unrelated to any finding of fact or conclusion of law in the Initial Decision. For example, the fact that Complainant enrolled in CAP in November 2017 does not mean that he did not break prior payment arrangements issued by the Company and the Commission; nor does it mean that Complainant did not live with his wife at the Hawthorne Avenue Property while the disputed balance accrued. Complainant thus has failed to “identify

the finding of fact or conclusions of law to which exception is taken,” and his Exceptions must be denied.

B. *The Exceptions must be denied because they are based on inadmissible settlement discussions and post-hearing evidence.*

Complainant's Exceptions also must be denied because they are based on inadmissible settlement discussions and post-hearing evidence. Under 52 Pa. Code § 5.231(d), "Offers of settlement . . . will not be admissible in evidence against a counsel or party claiming the privilege." The Commission has repeatedly held that offers of settlement or discussions are inadmissible and cannot be used to grant exceptions. See Kay v. Pa. Elec. Co., Docket No. F-2012-2324869, 2013 WL 5770721, at *4 n.3 (Pa. P.U.C. Oct. 17, 2013); Sugar v. Duquesne Light Co., Docket No. F-2012-2330853, 2013 WL 5770719, at *5 (Pa. P.U.C. Oct. 17, 2013). In Kay, for instance, the complainant filed a Formal Complaint against Pennsylvania Electric Company ("Penelec") for alleged incorrect charges on his bill. Id. at *1. Following a hearing, the Administrative Law Judge dismissed the Formal Complaint. Id. at *2. The complainant filed Exceptions and presented arguments about a payment arrangement allegedly offered by Penelec during settlement discussions. Id. at *4 n.3. The Commission refused to consider these arguments because "offers of settlement or discussions thereof are inadmissible evidence." Id. The Commission denied the Exceptions and adopted the Initial Decision. Id. at *4.

The Commission also refused to consider settlement discussions in Sugar. In that case, the complainant filed a Formal Complaint alleging an inability to pay her electric bills. 2013 WL 5770719, at *1. Following a hearing, the Special Agent dismissed the Formal Complaint. Id. The complainant filed Exceptions, alleging that the Special Agent erred by refusing to admit into evidence an email about settlement discussions. Id. at *4. The Commission denied the Exceptions, holding that the Special Agent correctly declined to admit the settlement discussion email into evidence. Id. at *4-5.

In addition to settlement discussions, a complainant also usually cannot rely on evidence acquired after the hearing record is closed as a basis for granting their exceptions. Specifically, under 52 Pa. Code § 5.431(b), "After the hearing record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." The Commission has repeatedly ruled that post-hearing evidence cannot be considered during the exception process unless a motion is made and good cause is demonstrated. See Huh v. PECO Energy Co., F-2013-2386249, 2015 WL 302145 at *6 (Pa. P.U.C. Jan. 15, 2015) (refusing to consider extra-record information in the complainant's exceptions because, after the record was closed, complainant made no request under the regulations to support consideration of the additional material); Hodak v. Pa. Elec. Co., C-2011-2274277, 2013 WL 392700 at *5 (Pa. P.U.C. Jan. 24, 2013) (holding that extra-record attachments and information submitted after the record was closed cannot be relied upon unless the conditions in Section 5.431 are met); Williams v. Verizon Pa., Inc., F-01790520, 2006 WL 6611457 at *3-4 (Pa. P.U.C. July 20, 2006) (ruling that complainant's exceptions should be stricken on the grounds that they are an inappropriate attempt to introduce newer evidence through the Exception process).

Here, Complainant's Exceptions consist entirely of inadmissible evidence. For example, Complainant discusses settlement conversations between the parties that occurred prior to the hearing. As the Commission held in Kay and Sugar, these settlement conversations are inadmissible and cannot be considered in ruling on the Exceptions.

Complainant also states in the Exceptions that he applied for and was accepted into CAP in "late November" of 2017. Given that the hearing record closed on October 31, 2017, Complainant is attempting to support his Exceptions with events that occurred roughly one month after the hearing record was closed. He has not filed a motion demonstrating that good cause exists to consider this evidence, and it cannot be considered in ruling on his Exceptions.

Further, even if Complainant's enrollment in CAP could be considered as part of his Exceptions, it does not affect the Initial Decision. Under 66 Pa. C.S. § 1405(c), customer assistance program rates must be timely paid and are not subject to payment arrangements negotiated or approved by the Commission. Complainant's enrollment in CAP does not affect ALJ Buckley's finding that Complainant is responsible for the account balance transferred from the Hawthorne Avenue Property or that he is not entitled to another Commission-ordered payment arrangement. Therefore, Complainant's allegations in the Exceptions are both inadmissible and irrelevant and should be denied.

C. *The Exceptions must be denied because the Initial Decision is supported by substantial evidence.*

Finally, the Exceptions must be denied because the Initial Decision is supported by substantial evidence and should be adopted by the Commission. The evidence supports – and Complainant does not dispute – that he resided with his wife at the Hawthorne Avenue Property, that Duquesne Light provided electric service to that address billed to an account in Complainant's wife's name, and that a past due balance was transferred from the Hawthorne Avenue Property to the Webster Drive Property. The Initial Decision thus correctly held that Duquesne Light acted properly in transferring the outstanding balance from his wife's account at the Hawthorne Avenue Property to his account at the Webster Drive Property.

The Initial Decision also correctly held that Complainant is not entitled to another payment arrangement. The undisputed evidence establishes that Complainant and his wife defaulted on four previous payment arrangements: two ordered by the Commission and two provided by Duquesne Light. Complainant also did not meet the required change in income criteria. Accordingly, the Initial Decision properly found that Complainant is not entitled to another payment arrangement.

IV. CONCLUSION

For these reasons, Duquesne Light respectfully requests that the Commission deny the Exceptions in their entirety and adopt the Initial Decision.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Counsel for Respondent,
Duquesne Light Company

Dated: February 12, 2018

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

RON RICHARDS,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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Docket No. C-2017-2616828

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).

Ron Richards
204 Webster Drive
Pittsburgh, PA 15235

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(Via Electronic Filing)

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

Dated this 12th day of February 2018

BY: 

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