

February 15, 2018

*Via Electronic Filing*

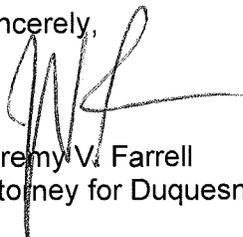
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
2nd Floor, Room-N201  
Harrisburg, PA 17120

**Re: Melissa Linn Johnson v. Duquesne Light Company  
Docket No. F-2017-2638955**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings. 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: Melissa Linn Johnson (w/enc.)  
ALJ Conrad Johnson (w/enc.)

LIT:635292-1 014657-158498



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA LINN JOHNSON,

Complainant,

vs.

No: F-2017-2638955

DUQUESNE LIGHT COMPANY,

Respondent.

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to 52 Pa. Code. § 5.102, Respondent Duquesne Light Company (“Duquesne Light”), by and through its attorneys, Tucker Arensberg, P.C., files this Motion for Judgment on the Pleadings:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On December 19, 2017, Duquesne Light was served with the Formal Complaint initiating this matter, alleging that her ex-husband should be responsible for paying half of an outstanding balance in her name. Complaint at ¶¶ 4-5. Complainant acknowledges this balance accrued sometime between 2010 and 2012, Complaint at ¶ 5, and does not dispute her responsibility for it. She merely alleges that her ex-husband should be forced to pay half.

2. Complainant was an adult occupant and the ratepayer of record at 444 Taylor Street, Pittsburgh, Pennsylvania 15224 and 318 Washington Road, Pittsburgh, Pennsylvania 15216 when the outstanding balance of \$882.64 accrued (the “Balance”). Answer ¶ 4; New Matter, ¶ 10.

3. Duquesne Light filed an Answer and New Matter on January 8, 2018. Duquesne Light incorporates the allegations in its Answer and New Matters as if fully restated.

4. The New Matter explained that according to Duquesne Light’s Tariff, which has been filed with and approved by the Commission, explicitly allows Duquesne Light to hold

Complainant responsible for the Balance charges because those charges accrued while Complainant was an adult occupant of the properties and the ratepayer of record at the two addresses where the balance accrued. Answer at ¶ 4; New Matter, ¶ 10. Specifically, the Company's tariff provides:

**5a. PAYMENT OF OUTSTANDING BALANCE** As a condition of the furnishing of service to an applicant, the payment of any outstanding account amount with the Company for which the applicant is legally responsible is required. The Company may require the payment of an outstanding balance or portion of any outstanding balance as a condition of furnishing service if the applicant or customer resided at the property for which service is required during the time the outstanding balance accrued and for the time applicant/customer resided there, not exceeding four (4) years from the date that the last bill rendered. . . .

New Matter, ¶ 11.

5. Duquesne Light also alleged in its New Matter that Complainant was responsible for the balance under 52 Pa. Code § 56.35(b)(1), which states: "A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding four years from the date of the service request." New Matter, ¶ 12.

6. Duquesne Light's New Matter included a notice to plead, which required that Complainant file a response within 20 days, which equated to a deadline of January 29, 2018.

7. Complainant did not file a response to the New Matter.

8. Pursuant to 52 Pa. Code § 5.60, Complainant's failure to reply to the New Matter may be deemed in default, and the facts stated in the new matter may be deemed to be admitted.

9. This hearing in this matter is not scheduled to take place until April 4, 2018; as such, Duquesne Light respectfully submits that the filing of this motion will not delay a hearing in this matter.

## STANDARD

10. Pursuant to 52 Pa. Code § 5.102(a), a party may file a motion for judgment on the pleadings after the pleadings are closed, but within a time so that the hearing will not be delayed.

11. 52 Pa. Code § 5.102(d)(a) provides that a motion for judgment on the pleadings will be rendered if the applicable pleadings “show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.”

## LAW AND ARGUMENT

**A. Complainant is responsible for the Balance and the Commission lacks jurisdiction to adjudicate the private dispute between Complainant and her ex-husband regarding whether the bill should be split.**

12. Complainant is responsible for the Balance pursuant to the Commission’s regulations at 52 Pa. Code § 56.35(b)(1), and its Tariff, which has been filed with and approved by the Commission, and which states in relevant part:

**5a. PAYMENT OF OUTSTANDING BALANCE** As a condition of the furnishing of service to an applicant, the payment of any outstanding account amount with the Company for which the applicant is legally responsible is required. The Company may require the payment of an outstanding balance or portion of any outstanding balance as a condition of furnishing service if the applicant or customer resided at the property for which service is required during the time the outstanding balance accrued and for the time applicant/customer resided there, not exceeding four (4) years from the date that the last bill rendered. . . .

13. Similarly, 52 Pa. Code § 56.35(b)(1) states: “A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding four years from the date of the service request.”

14. Complainant does not dispute in the Complaint that she was not the ratepayer of record or an adult occupant of the Property when the balance accrued. See Complaint

Addendum. In fact, she actually admits she's responsible for the bill referenced in the Complaint (though, because of a private dispute with her ex-husband, she feels that she is only responsible for half). Complaint at ¶ 5.

15. Accordingly, Duquesne Light is properly holding Complainant responsible for the disputed balance.

16. Complainant's remaining allegations relate to matters outside the Commission's jurisdiction; namely, whether her ex-husband should have to split the bill.

17. "The Commission must act within, and cannot exceed, its jurisdiction." *City of Pittsburgh v. Pa. Public Utility Comm'n*, 43 A.2d 348 (Pa. Super. Ct. 1945). The Commission lacks jurisdiction to award damages or to litigate a private action for damages on behalf of a Complainant. *Poorbaugh v. Pa. Public Utility Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995).

18. The Pennsylvania Public Utility Commission lacks jurisdiction to determine a dispute between private parties.

19. Therefore, the Commission is without jurisdiction to determine whether Complainant's ex-husband should pay half her bill.

**B. The claims in the Formal Complaint are barred by the statute of limitations.**

20. The Public Utility Code contains a three-year statute of limitations set forth at 66 Pa. C.S. § 3314(a), which states: "No action for the recovery of any penalties under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part."

21. The statute of limitations is non-waivable because it terminates the right to bring an action as well as any remedy. "The statute of limitations at 66 Pa. C.S. § 3314 **divests the Commission of jurisdiction to hear an action brought more than three years from the**

***date liability arose. . . .*** Pearson v. Duquesne Light Co., Docket No. C-2015-2465168, 2015 WL 3763781 (Pa. P.U.C. May 8, 2015) (Salapa, ALJ) (barring any claims for events that occurred more than three years before the complaint was filed) (emphasis added).<sup>1</sup>

22. Complainant admits in her Complaint that the disputed balance accrued in 2012, or even earlier. See Complaint Addendum.

23. Thus, it is undisputed that the disputed balance accrued outside the statute of limitations period. Since Complainant did not challenge her responsibility for the balance within the statute, her claims are barred as a matter of law.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission sustain this Motion for Judgment on the Pleadings and dismiss Complainant's Complaint against it with prejudice.

TUCKER ARENSBERG, P.C.



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Jeremy V. Farrell, Esquire  
Attorney for Duquesne Light Company

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<sup>1</sup> "Since the statute of limitations at 66 Pa. C.S. § 3314 is non-waivable and divests the Commission of jurisdiction, it may be raised at any time." Id.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MELISSA LINN JOHNSON,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: F-2017-2638955
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

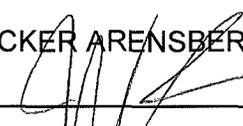
I hereby certify that I have this day served a true copy of the foregoing document upon the participant listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

Melissa Linn Johnson  
375 Rodi Road, Apt. 302  
Pittsburgh, PA 15235

Administrative Law Judge Conrad A. Johnson  
Piatt Place  
Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222  
Via Fax - 412.565.5692  
And Regular Mail

Dated this 15<sup>th</sup> day of February, 2018

TUCKER ARENSBERG, P.C.

  
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