

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christy McGriff	:	
	:	
v.	:	F-2017-2613135
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies a formal complaint alleging a public utility company miscalculated household income, charged too much for electric service and threatened to terminate electric service.

HISTORY OF THE PROCEEDING

On July 7, 2017, Christy McGriff (Complainant or Ms. McGriff) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Duquesne Light) alleging Respondent threatens to shut off her electric service. Complainant requested the Commission review her bills because the bills were too high and the monthly CAP (Customer Assistance Program) payment was too high.

On July 27, 2017, Duquesne Light filed its Answer and denied all material allegations. Duquesne Light averred it correctly sent Complainant a 10-day termination notice for non-payment in July 2017 and asserted Complainant owed \$2,074.46.

On August 11, 2017, the Commission's Office of Administrative Law Judge (OALJ) issued a Call-In Telephonic Hearing Notice scheduling this matter to be heard at an initial telephonic hearing on Monday, September 25, 2017, from the Commission's offices in Pittsburgh, Pennsylvania. On August 15, 2017, the presiding officer issued the Prehearing Order which outlined various procedural matters, including how to request a continuance.

On September 20, 2017, the presiding officer received a hand-written letter from Ms. McGriff which requested a continuance because of a problem with the cell phone number listed on the Hearing Notice for Complainant. Counsel for Duquesne Light indicated on September 21, 2017, that it had no objection to the continuance.

On September 21, 2017, the presiding officer issued the First Interim Order and granted Complainant's request for a continuance. Thereafter, on September 26, 2017, the OALJ issued a Hearing Cancellation/Reschedule Notice, which scheduled an initial telephonic hearing to be conducted on Friday, November 3, 2017.

On November 3, 2017, the presiding officer convened the initial hearing as scheduled, at which Complainant appeared *pro se* and Respondent was represented by Jeremy V. Farrell, Esquire. Complainant testified on her own behalf and did not offer any exhibits. Respondent presented the testimony of one witness, and offered seven exhibits, marked Duquesne Light Exhibits B, D, E, F, G, H and I, which exhibits were admitted into evidence. Both parties made final statements on the record in lieu of filing briefs.

The transcript of the November 3, 2017 hearing (Nov. Tr.) contains 61 pages and was received by the presiding officer on December 4, 2017. On December 6, 2017, the presiding officer closed the hearing record by Interim Order Closing the Hearing Record.

On February 14, 2018, the presiding officer issued the Second Interim Order. In the Interim Order, the presiding officer noted the formal complaint specifically alleged the monthly bills were wrong and the CAP arrearage was too high. Despite the specific allegations in the formal complaint, Duquesne Light did not present any documentation or testimony at the

November 2017 hearing about when the arrearage accrued, how the CAP percentage was calculated, how the CAP percentage was applied to Complainant's account and what Duquesne Light determined were the income sources for Complainant when the CAP percentages were calculated. As a result, the presiding officer reopened the hearing record, ordered a further hearing to be scheduled and ordered Duquesne Light to provide specific documentation on or before March 2, 2018. The Second Interim Order specified the only purpose for the further hearing would be to admit the documentation specified and to take testimony from Duquesne Light's witnesses.

On February 14, 2018, the Commission's Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Hearing Notice scheduling this matter to be heard at a further call-in telephonic hearing on Friday, April 6, 2018, from the Commission's offices in Pittsburgh, Pennsylvania.

On April 6, 2018, the presiding officer convened the initial hearing as scheduled, at which Complainant appeared *pro se* and Respondent was represented by Paul Shane Miller, Esquire. Respondent presented the testimony of one witness and offered four exhibits, marked Duquesne Exhibits 1 through 4, which exhibits were admitted into evidence. Ms. McGriff made a final statement on the record in lieu of filing a brief.

The transcript of the April 6, 2018 hearing (Apr. Tr.) contains 84 pages and was received by the presiding officer on May 4, 2018. On May 4, 2018, the presiding officer closed the hearing record by Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainant, Christy McGriff, rents a two-story apartment located at 1019 Rebecca Avenue, Apartment 2, Pittsburgh, Allegheny County, Pennsylvania, 15221 (service address), where she has lived since January 4, 2012. (Nov. Tr. 9; Apr. Tr. 43).

2. Respondent, Duquesne Light Company, provides electric service to the service address. (Nov. Tr. 9; Duquesne Light Exhibit A).

3. Complainant is unemployed and receives \$731 monthly in Social Security Disability benefits. (Nov. Tr. 14; Apr. Tr. 33).

4. Complainant uses natural gas for the furnace, oven and hot water heater at the service address and uses electricity for one refrigerator, one window air conditioner and three televisions. (Duquesne Light Exhibit 4).

5. When Complainant moved into the service address in 2012, she had a zero CAP balance and zero account balance. (Apr. Tr. 61-64).

6. From September 5, 2012 to November 16, 2015, Complainant lived with her son and mother, and she was required to pay 85% of her monthly bills as a result of her participation in Respondent's Customer Assistance Program (CAP). (Nov. Tr. 12, 13, 34, 35; Apr. Tr. 16, 33; Duquesne Light Exhibits B, 2 & 3).

7. Respondent's CAP allows low-income households to pay a percentage of the budget bill, dependent on the level of household income. As ratepayers pay the CAP amount every month on time and in full, the unpaid balance the ratepayer entered the program with is reduced and "written off" by 1/24 of the balance. (Nov. Tr. 34; Apr. Tr. 17).

8. When calculating the appropriate CAP amount for Complainant's household in 2012, Respondent included Complainant's income, her mother's income and the court-ordered child support for Complainant's son. (Nov. Tr. 12, 13; Apr. Tr. 33; Duquesne Light Exhibit 4).

9. On November 18, 2015, Complainant's mother moved out of the service address and into a nursing home. (Nov. Tr. 13; Apr. Tr. 33-35).

10. Complainant receives \$102 every two weeks in cash assistance for her son but she does not receive child support on behalf of her son. (Nov. Tr. 11-18).

11. Duquesne Light includes the cash assistance Ms. McGriff receives for her son in the total monthly household income. (Apr. Tr. 55).

12. On November 16, 2015, Complainant's CAP percentage dropped from 85% to 60% and remained at 60% until May 2018 when Duquesne Light dropped the CAP percentage to 40%. (Nov. Tr. 10-20, 36, 37; Apr. Tr. 16-18; Duquesne Light Exhibits B, D, E, F & G).

13. When Duquesne Light determined Complainant's monthly income totaled \$939 in 2017, Duquesne Light included Complainant's Social Security Disability benefits, and her son's cash assistance benefits. (Nov. Tr. 11-13, 17-20, 45; Duquesne Light Exhibit H).

14. As of February 19, 2018, the account balance totaled \$2,528.79 and the CAP arrears balance totaled \$2,485.14. (Nov. Tr. 23, 49; Apr. Tr. 15, 43, 65; Duquesne Light Exhibits A & 1).

15. CAP arrears are calculated by subtracting the payments Complainant made from the CAP amount Complainant was billed. (Nov. Tr. 50; Apr. Tr. 15).

16. Complainant's most recent recertification to remain within the CAP was on September 1, 2017, when Complainant provided documented verification of her income and household composition. (Nov. Tr. 44, 45; Duquesne Light Exhibit H).

17. Complainant's CAP arrears balance increased every time Complainant did not pay the required CAP payment listed on a monthly bill. (Nov. Tr. 51).

18. From the date Complainant filed the formal complaint on July 6, 2017 until April 2018, Ms. McGriff paid the following amounts on the dates listed:

August 24, 2017	\$ 63
September 29, 2017	\$ 61
October 24, 2017	\$ 61
February 6, 2018	\$ 40
March 14, 2018	\$ 57

(Nov. Tr. 52; Apr. Tr. 43; Duquesne Light Exhibit 1).

19. Over the 58-month period from June 2013 through March 2018, Complainant made 15 payments totaling \$1,682.54. (Apr. Tr. 43; Duquesne Light Exhibit 1).

20. From June 2013 to March 2018, Complainant's account was credited with four grants totaling \$535. (Duquesne Light Exhibit 1).

21. From June 2013 to March 2018, Complainant's account balance increased from \$955.08 to \$2,528.79. (Duquesne Light Exhibit 1).

22. From June 2013 to March 2018, Complainant's monthly charges (before the CAP deduction was applied) ranged from approximately \$95 to \$200 in the winter and from \$80 to \$130 in the summer. (Duquesne Light Exhibit 2).

23. From June 2013 to March 2018, Complainant's monthly budget amount fluctuated between \$33 and \$180, and averaged approximately \$113 per month. (Duquesne Light Exhibit 2).

24. On July 5, 2017, Duquesne Light issued a ten-day termination notice for the service address which notified Complainant she had to pay \$2,074.46 by July 17, 2017, or Respondent would terminate electric service to the service address. (Nov. Tr. 38; Duquesne Light Exhibits D & I).

DISCUSSION

Complainant alleges the amount she must pay per month is excessive, the monthly billing statements are too high and Respondent miscalculated her household income to include her mother's income after her mother left the household. Complainant asserted she can afford to pay the CAP amount but cannot afford to pay the lump sum CAP arrearage required by Duquesne Light in its July 2017 termination notice. Complainant asks the Commission to order Duquesne Light to put her at the 60% CAP level, and to reduce the unpaid CAP balance by \$2,000 because Duquesne Light's CAP percentage was too high.

Duquesne Light contends Complainant is required to make her CAP payment in full and on time every month but she fails to do so. Duquesne Light argues Complainant has not made the required monthly payments despite dropping her CAP percentage down to 60% in 2015. Ms. McGriff's CAP arrearage increased to more than \$2,400 since 2012 because she did not pay the CAP amount in full and on time every month. Accordingly, Duquesne Light asserts the formal complaint should be dismissed.

Responsibility of Public Utility

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.... 66 Pa.C.S.A. § 1501.

The Commission has the authority and responsibility to define reasonable service under 66 Pa.C.S.A. § 1501 and § 1502. The Commission has exclusive jurisdiction to determine the reasonableness, adequacy and sufficiency of a public utility's services and facilities.¹ The term "service" should be "used in its broadest and most inclusive sense, including any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under the Public Utility Code...."²

By law, a public utility is entitled to receive payment for the service it provides.³ Otherwise, when a ratepayer does not pay the monthly bill, that unpaid bill is included in the utility's uncollectible expenses, which all other customers must pay.⁴ No public utility may receive a greater or lesser rate than the one set forth in its tariff on file with this Commission.⁵ Neither may a public utility unreasonably discriminate for or against a particular customer by establishing a special rate for them.⁶

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S.A. § 332(a). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁷ Upon a complainant's presentation of evidence sufficient to satisfy initially the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, may shift to the public utility and

¹ Elkin v. Bell of Pa., 491 Pa. 123, 420 A.2d 371 (1980).

² 66 Pa.C.S.A. § 102.

³ Scaccia v. West Penn Power Company, 55 Pa. PUC 637 (1982).

⁴ Bolt v. Duquesne Light Company, Docket No. Z-8712758 (Order entered April 8, 1988).

⁵ See 66 Pa.C.S.A. § 1303.

⁶ See 66 Pa.C.S.A. § 1304.

⁷ Norfolk & Western Ry. Company v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Board of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); Murphy v. Dept. of Public Welfare, 480 A.2d 382 (Pa.Cmwlth. 1984).

require it to rebut the evidence of the complainant. A complainant still must provide additional evidence to rebut the contrary evidence presented by the public utility.⁸ If the evidence presented by the public utility is of co-equal value or weight, then a complainant has not satisfied the burden of proof. Complainant bears the burden of going forward with evidence to show Respondent failed to provide adequate, efficient, safe and reasonable service to her.⁹

Analysis

Complainant's issue is not with the monthly CAP amount Duquesne Light currently requires her to pay. Complainant claims the problem is the CAP arrearage. Duquesne Light insists the arrearage must be paid immediately in one lump sum in order to halt a service termination, but Complainant claims the CAP arrearage is excessive and based on erroneous income assumptions by Duquesne Light over the years.

The evidence presented shows: (1) Complainant's household income and size decreased in 2015; (2) Duquesne Light reduced Complainant's CAP percentage in 2015 from 85% down to 60% due to the decreased household income and size; (3) Complainant's CAP arrears accrued after she moved into the service address in January 2012; (4) Complainant has often not paid her required CAP amounts in full and on time since June 2013; and (5) Duquesne Light has not charged her excessive amounts for her electric service since June 2013. Duquesne Light proved it appropriately reduced the required monthly payments when Complainant informed it about the reduction in her household income and size. Complainant had no CAP arrears or account arrears when she moved into the service address in 2012. Since that time, Complainant's CAP arrears grew but the increase was the result of incomplete, untimely or nonexistent payments.

⁸ Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967) and Burleson v. Pa. Pub. Util. Comm'n, 66 Pa.Cmwlth. 282, 443 A.2d 1373 (1982), aff'd 501 Pa. 443, 461 A.2d 1234 (1983).

⁹ See 66 Pa.C.S.A. § 1501 and § 332.

Ms. McGriff's formal complaint clearly indicates she is contesting when and how CAP arrears increased on her account, and averred Duquesne Light was billing her too much per month. Unfortunately, Duquesne Light chose not to provide any information or documentation of payments and debits on Complainant's account at the first hearing. That missing information was needed to answer the issue as stated by Complainant in the formal complaint. For that reason, the hearing record was reopened pursuant to 52 Pa.Code § 5.571(d). The presiding officer required that information in order to answer Complainant's question which concerned when and how Duquesne Light determined Complainant's monthly obligation including her CAP responsibility and arrearage. This information was necessary because Duquesne Light made it clear it planned to terminate electric service once the Commission issues a Final Order in this proceeding – unless Ms. McGriff pays the CAP arrearage (\$2,428.14) in a lump sum and then pays her current monthly CAP payment. Accordingly, Duquesne Light presented the testimony of its Regulatory Consumer Relations Specialist at the second hearing in April 2018 and provided documentation concerning Complainant's account as well as information about the CAP calculations and determinations.

Ms. McGriff has a poor payment history with Duquesne Light. In the 58-month period from June 2013 to March 2018, Ms. McGriff only made 15 payments. Her account statement reflects multiple times when Ms. McGriff would not make a payment for as long as 11 months at a time. As noted in Scaccia v. West Penn Power Company, supra, and Bolt v. Duquesne Light Company, supra, Duquesne Light is entitled to receive payment for the electric service it provided and continues to provide to Ms. McGriff and her son. When Ms. McGriff does not pay towards the cost of her electric service, her unpaid bills are included in Duquesne Light's uncollectible expenses, which all of Duquesne Light's remaining customers must pay.

At the hearings, Ms. McGriff continued to contest the arrears which Duquesne Light indicated had accrued only from the time Complainant began her residence at the service address until June 2013. Duquesne Light, as a certificated Electric Distribution Company, is required to maintain records for four years. For this reason, the Second Interim Order required Respondent to provide records on Ms. McGriff's account only back to June 2013. The presiding

officer could not require Respondent to provide records on Complainant's electric service account back to the date she moved into the service address in January 2012.

However, at the hearings, Complainant repeatedly contended Duquesne Light overstated the arrearage on her account and she specifically averred Duquesne Light added \$900 to her arrears balance back in 2012. Unfortunately, Complainant had no documentation to support her contention that Respondent added arrears to her account in error. Duquesne Light presented evidence that Complainant had a zero account balance and zero CAP balance when she moved into the service address in January 2012. Complainant did not provide sufficient evidence to rebut Respondent's evidence. Accordingly, Ms. McGriff was not able to meet her burden of proving Duquesne Light made a mistake or erred in calculating her arrearage.

Conclusion

Complainant failed to provide sufficient evidence to show Respondent did not provide reasonable and adequate customer service when Duquesne Light calculated her required monthly CAP payments or in how her CAP arrears were determined. Accordingly, this formal complaint is denied in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant carries the burden of proving Respondent failed to provide reasonable and adequate customer service when calculating the required monthly payments on her electric service account. 66 Pa.C.S.A. § 1501 and § 332.
3. Complainant did not meet the burden of proving Respondent failed to provide reasonable and adequate customer service when Respondent calculated the CAP arrearage due on Complainant's electric service account. 66 Pa.C.S.A. § 1501 and § 332.

