

July 11, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

**RE: Tina Flohr v. Duquesne Light Company
Docket No. C-2018-3002183**

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,



Paul Shane Miller
Attorney for Duquesne Light Company

Enclosure

cc: Tina Flohr (with enclosure)
ALJ Mark Hoyer (with enclosure)

LIT:643083-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TINA FLOHR,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2018-3002183

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:

I. OVERVIEW

1. The Formal Complaint filed by Complainant Tina Flohr (“Complainant”) should be dismissed for two reasons.

2. First, Duquesne Light is only seeking payment of arrears that Complainant accrued while enrolled in Duquesne Light’s Customer Assistance Program (“CAP”). CAP arrears are not subject to payment arrangements negotiated or approved by the Commission. Because the Commission cannot provide Complainant’s requested relief, the Formal Complaint fails as a matter of law.

3. Second, even if Duquesne Light were seeking payment of Complainant’s entire account balance rather than just her CAP arrears (which it is not), Complainant still would not be entitled to a payment arrangement because she has not made a good faith effort to pay for her electric service.

4. Accordingly, Duquesne Light’s Motion for Judgment on the Pleadings should be granted, and the Formal Complaint should be dismissed with prejudice.

II. FACTUAL AND PROCEDURAL BACKGROUND

5. On or about May 23, 2018, Complainant filed the Formal Complaint against Duquesne Light.

6. In the Formal Complaint, Complainant indicated that Duquesne Light is threatening to shut off her service or has already shut off her service and that she wants a payment arrangement. Complaint, ¶ 4.

7. As relief, Complainant states that she fell behind on her electric bill and cannot pay the full amount due; instead, she “can make payments on it.” Complaint, ¶ 5.

8. Duquesne Light filed an Answer and New Matter on June 13, 2018.

9. The Answer and New Matter included a “Notice to Plead” addressed to Complainant, which stated, **“YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN NEW MATTER OF RESPONDENT DUQUESNE LIGHT COMPANY WITHIN TWENTY (20) DAYS OF SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.”** (bold in original).

10. Complainant did not file a response to Duquesne Light’s New Matter.

11. By failing to respond to the New Matter, the Commission can find that Complainant has admitted to the allegations contained therein. See 52 Pa. Code § 5.63(b) (“Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted”); Stefanowicz v. Pennsylvania-American Water Co., C-20078165, 2008 WL 8014613, at *4 (Pa. P.U.C. May 22, 2008) (“The Commission’s Regulations clearly provide that failure to respond to affirmative allegations in New Matter may cause those allegations to be deemed admitted.”). As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

12. A party may move for judgment on the pleadings “after the pleadings are closed, but within a time so that the hearing is not delayed.” 52 Pa. Code § 5.102(a).

13. The pleadings are closed in this case, and a hearing has not been scheduled. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing.

III. LAW AND ARGUMENT

A. **The Formal Complaint must be dismissed because Duquesne Light is only seeking payment of Complainant's CAP arrears, which are ineligible for a payment arrangement.**

14. The Commission may establish a payment arrangement between a public utility and a customer only within the limits prescribed by 66 Pa. C.S. §§ 1401-1418. Victor Oliver, Jr., v. Pa. Elec. Co., F-2017-2595557, 2017 WL 5564159, at *4 (Pa. P.U.C. Oct. 19, 2017) (Salapa, ALJ).

15. Under 66 Pa. C.S. § 1405(c), "customer assistance program rates . . . shall not be the subject of payment arrangements negotiated or approved by the commission."

16. The Commission has repeatedly held that it has no authority to establish a payment arrangement on CAP arrears. Oliver, Jr., 2017 WL 5564159, at *5-6 (the Commission has no authority to establish a payment arrangement on CAP arrears); Harper v. PECO Energy Co., C-2015-2489249, 2016 WL 826743, at *4 (Pa. P.U.C. Jan. 21, 2016) (Cheskis, ALJ) (outstanding account balance cannot be subject of a Commission-ordered payment arrangement where it consists solely of CAP arrears).

17. Complainant enrolled in CAP on June 6, 2017 and currently is a CAP customer. Answer and New Matter, ¶¶ 16-17.

18. As of May 31, 2018, Complainant had a CAP balance of \$1,569.00. Answer and New Matter, ¶ 20; see also Statement of Account (attached as Exhibit A).

19. Complainant's entire CAP balance accrued after she enrolled in CAP on June 6, 2017. Answer and New Matter, ¶ 21; see also Exhibit A.

20. Complainant's CAP balance accrued because she failed to make the required CAP payments. Answer and New Matter, ¶ 22; see also Exhibit A.

21. Consistent with CAP, Duquesne Light currently is only seeking payment of Complainant's CAP arrears, not her total account balance. Answer and New Matter, ¶ 24; see also 10 Day Termination Notice Dated April 5, 2018 (attached as Exhibit B).

22. The Commission does not have the authority to grant a payment arrangement on Complainant's CAP arrears, which is the only sum that Duquesne Light is seeking to collect.

23. Because the Commission cannot provide Complainant the relief she is seeking (a payment arrangement), the Formal Complaint fails as a matter of law and should be dismissed with prejudice.

B. Even if Duquesne Light were seeking payment of Complainant's entire account balance, she is not entitled to a payment arrangement because she has not made a good faith attempt to pay for her electric service.

24. Even if Duquesne Light were seeking payment of Complainant's entire account balance (which it is not), she is not entitled to a payment arrangement because she has not made a good faith attempt to pay for electric service.

25. Unlike CAP arrears, the Commission can order a payment arrangement on non-CAP arrears at its discretion. Oliver, Jr., 2017 WL 5564159, at *5.

26. A payment arrangement, however, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234, 2004 WL 1372864, at *2 (Pa. P.U.C. Mar. 17, 2004).

27. The Commission thus "should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside their control." Crawford v. Nat'l Fuel Gas Distrib. Corp., Docket No. C-20066348, 2007 WL 4699560, at *9 (Pa. P.U.C. Dec. 6, 2007)

28. The Commission has held that a customer has not demonstrated a good faith effort to pay his or her utility bills if the customer has a poor payment history, has repeatedly violated past payment arrangements, or has accumulated a large account balance. Oliver, Jr.,

2017 WL 5564159, at *6; Pickett v. Phila. Gas Works, Docket No. C-2014-2444967, 2015 WL 5915467, at *6 (Pa. P.U.C. Oct. 1, 2015) (Commission not required to issue payment arrangement on non-CAP arrears if customer has poor payment history or has failed to maintain past payment arrangements); Hewitt v. PECO Energy Co., Docket No. F-2011-2273271, 2013 WL 5232291, at *7 (Pa. P.U.C. Sept. 12, 2013) (Commission can refuse to issue payment arrangement on non-CAP arrears if customer has poor payment history and defaulted on prior payment arrangements).

29. Here, Complainant has made no payments to Duquesne Light since November 13, 2017; in addition, she has accrued a total account balance of \$19,424.11 as of May 31, 2018. Answer and New Matter, ¶ 23; see also Exhibit A.

30. Complainant's failure to make any payments since November 2017 and her large account balance demonstrate that she has not made a good faith attempt to pay for electric service.

31. Therefore, Complainant is not entitled to her requested relief (a payment arrangement) even if Duquesne Light were seeking payment of her entire account balance.

32. Given that the Commission cannot grant Complainant the relief she seeks, the Formal Complaint must be dismissed with prejudice.

WHEREFORE, Duquesne Light Company respectfully requests that the Commission grant its Motion for Judgment on the Pleadings and dismiss the Complaint against Duquesne Light with prejudice.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

A handwritten signature in cursive script, appearing to read "Paul Shane Miller", is written over a horizontal line.

Paul Shane Miller, Esquire

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(412) 566-1212

Counsel for Respondent,

Duquesne Light Company



Duquesne Light Company - Statement of Account

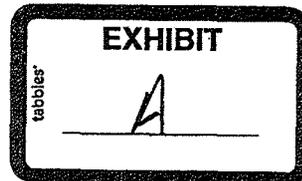
Prepared: Jun 12, 2018

Account #: 7991 [REDACTED]
 Name: FLOHR, TINA M

Paid Deposit Amount:	\$0.00
Disputed Amount:	\$1,299.82

Premise ID	Service Address
[REDACTED]	1723 MYER AVE, MCKEESPORT, PA 15133

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
6/30/14	Balance Forward							\$10,627.34	\$10,627.34	\$10,627.34	\$10,627.34
7/28/16	Dispute							-\$10,627.34	\$0.00	\$0.00	\$10,627.34
9/13/16	Payment							-\$522.00	\$0.00	-\$522.00	\$10,105.34
9/14/16	Refund Adjustment-System							\$522.00	\$0.00	\$522.00	\$10,627.34
9/26/16	Refund Adjustment-System - Cancel Transaction							-\$522.00	\$0.00	-\$522.00	\$10,105.34
9/26/16	Dispute - Cancel Transaction							\$10,627.34	\$10,105.34	\$0.00	\$10,105.34
9/26/16	Current w/payoff balance							-\$10,105.34	\$0.00	\$0.00	\$10,105.34
12/21/16	Dispute - Cancel Transaction							\$10,105.34	\$10,105.34	\$0.00	\$10,105.34
2/13/17	Dispute							-\$10,105.34	\$0.00	\$0.00	\$10,105.34
5/2/17	Dispute - Cancel Transaction							\$10,105.34	\$10,105.34	\$12,427.19	\$22,532.53
5/2/17	Current w/payoff balance							\$12,427.19	\$22,532.53	\$12,427.19	\$22,532.53
5/2/17	Payment Arrangement							-\$21,332.53	\$1,200.00	\$0.00	\$22,532.53



Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
5/2/17	Bill - Actual		5/23/17					\$350.00	\$1,550.00	\$0.00	\$22,532.53
5/4/17	Payment Arrangement							-\$350.00	\$1,200.00	\$0.00	\$22,532.53
5/11/17	Payment							-\$1,200.00	\$0.00	-\$1,200.00	\$21,332.53
5/31/17	Bill - Actual		6/21/17	5/30/17	28	18,988.76	1,539.64	\$695.00	\$695.00	\$221.82	\$21,554.35
6/6/17	Change Frozen Arrearage Amount Due							-\$21,677.53	\$0.00	\$0.00	\$21,554.35
6/6/17	Payment Arrangement - Cancel Transaction							\$20,982.53	\$0.00	\$0.00	\$21,554.35
6/29/17	Bill - Actual		7/20/17	6/28/17	29	20,841.80	1,853.04	\$199.00	\$199.00	\$250.54	\$21,804.89
6/29/17	CAP Discount							\$0.00	\$199.00	-\$133.00	\$21,671.89
7/31/17	Bill - Actual		8/21/17	7/30/17	32	23,479.11	2,637.31	\$199.00	\$398.00	\$351.42	\$22,023.31
7/31/17	CAP Discount							\$0.00	\$398.00	-\$133.00	\$21,890.31
8/21/17	Payment							-\$199.00	\$199.00	-\$199.00	\$21,691.31
8/21/17	CAP Write-Off Frozen Arrearage							\$0.00	\$199.00	-\$898.10	\$20,793.21
8/30/17	Bill - Actual		9/20/17	8/29/17	30	25,605.55	2,126.43	\$199.00	\$398.00	\$286.31	\$21,079.52
8/30/17	CAP Discount							\$0.00	\$398.00	-\$133.00	\$20,946.52
9/22/17	Payment							-\$199.00	\$199.00	-\$199.00	\$20,747.52
9/22/17	CAP Write-Off Frozen Arrearage							\$0.00	\$199.00	-\$898.10	\$19,849.42
10/1/17	Bill - Actual		10/23/17	9/30/17	32	27,202.47	1,596.92	\$199.00	\$398.00	\$218.80	\$20,068.22
10/1/17	CAP Discount							\$0.00	\$398.00	-\$133.00	\$19,935.22
10/9/17	Payment							-\$199.00	\$199.00	-\$199.00	\$19,736.22
10/9/17	CAP Write-Off Frozen Arrearage							\$0.00	\$199.00	-\$898.10	\$18,838.12
10/30/17	Bill - Actual		11/20/17	10/29/17	29	28,671.74	1,469.27	\$174.00	\$373.00	\$203.44	\$19,041.56
10/30/17	CAP Discount							\$0.00	\$373.00	-\$116.00	\$18,925.56
11/13/17	Payment							-\$199.00	\$174.00	-\$199.00	\$18,726.56
11/13/17	CAP Write-Off Frozen Arrearage							\$0.00	\$174.00	-\$898.10	\$17,828.46
11/29/17	Bill - Actual		12/20/17	11/28/17	30	30,414.68	1,742.94	\$174.00	\$348.00	\$238.47	\$18,066.93

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
11/29/17	CAP Discount							\$0.00	\$348.00	-\$116.00	\$17,950.93
1/1/18	Bill - Actual	[REDACTED]	1/22/18	12/31/17	33	33,284.58	2,869.90	\$290.00	\$638.00	\$383.81	\$18,334.74
1/31/18	Bill - Actual	[REDACTED]	2/21/18	1/30/18	30	36,274.77	2,990.18	\$290.00	\$928.00	\$399.88	\$18,734.62
3/1/18	Bill - Actual	[REDACTED]	3/22/18	2/28/18	29	38,410.17	2,135.40	\$290.00	\$1,218.00	\$289.80	\$19,024.42
4/2/18	Bill - Actual	[REDACTED]	4/23/18	4/1/18	32	40,688.35	2,278.18	\$117.00	\$1,335.00	\$308.53	\$19,332.95
4/2/18	CAP Discount							\$0.00	\$1,335.00	-\$173.00	\$19,159.95
4/23/18	Dispute							-\$1,198.00	\$137.00	\$0.00	\$19,159.95
4/23/18	Current w/payoff balance							-\$137.00	\$0.00	\$0.00	\$19,159.95
5/1/18	Bill - Actual	[REDACTED]	5/22/18	4/30/18	29	42,705.12	2,016.78	\$117.00	\$117.00	\$274.82	\$19,434.77
5/1/18	CAP Discount							\$0.00	\$117.00	-\$173.00	\$19,261.77
5/8/18	Dispute - Cancel Transaction							\$1,198.00	\$1,315.00	\$0.00	\$19,261.77
5/8/18	Current w/payoff balance							\$137.00	\$1,452.00	\$0.00	\$19,261.77
5/24/18	Dispute							-\$1,299.82	\$152.18	\$0.00	\$19,261.77
5/24/18	Current w/payoff balance							-\$152.18	\$0.00	\$0.00	\$19,261.77
5/31/18	Bill - Actual	[REDACTED]	6/21/18	5/30/18	30	45,191.54	2,486.41	\$117.00	\$117.00	\$335.34	\$19,597.11
5/31/18	CAP Discount							\$0.00	\$117.00	-\$173.00	\$19,424.11



April 5, 2018
Account Number: 7991-██████████

IMPORTANT TO KNOW

Before we shut off your utility service please read the notice below. You may be eligible for certain protections from shut off.

Atencion! Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar a (412) 393-7200.

- If you have questions or need more information, contact Duquesne Light as soon as possible at 412-393-7200. After you talk to us, if you are not satisfied, you may file a complaint with the Public Utility Commission by calling 1-800-692-7380 or writing to the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265. The Public Utility Commission may delay the shut off if you file the complaint before the shut off date.
- **If we shut off your service during the winter months (between December 1 - March 31)** we will restore your service within 24 hours of your meeting all requirements/conditions to have service reconnected.
- If you or someone in your household has a Protection from Abuse Order or a Court Order issued by a Commonwealth of Pennsylvania court which provides clear evidence of domestic violence, there are some additional protections available to you. **Call us immediately at (412) 393-7200.** You will be required to provide us with a copy of the order.
- You may be eligible for a payment arrangement or special assistance programs. **Call (412) 393-7200** to provide us with household income and occupant information. Documentation of your income may be required.
- You can avoid forgetting to pay your bills by signing up for Duquesne Light's automatic bill payment service. Your monthly payment will be automatically deducted from your specified bank account each month on the due date. Call 412-393-7200 for an application or download at www.duquesnelight.com.
- If your landlord pays your utility bill: You have certain legal protections. Please call us at 412-393-7200.
- If you have trouble understanding or speaking English or have a disability, please call us at 412-393-7200.
- All adult occupants of the premise whose names are on the mortgage, deed, or lease are considered the 'customer' and are responsible for payment of this bill.
- If service is shut off, ANY adult occupant who has been living at the premise may have to pay all or portions of this bill to have service restored.
- If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service. When service is off, you must contact us after your payment has been made to be sure you've met all conditions to have the service turned back on and to arrange access to your premises. After all conditions have been met, it may take up to 3 days to have your service restored.

WINTER NOTICE PROVISIONS (between December 1 - March 31)

- **Contact us BEFORE the shut-off date** to give us household income & occupant information to see if you qualify for any assistance programs.
- If your income is below 250% of the federal poverty guidelines, we must first ask the PUC for permission to shut off your service. Add together the monthly income of the adults in your household. If that number is the same or less than the amount listed in the chart below for your household size, call us immediately at (412) 393-7200. You may need to provide us with proof of your income.

Monthly Income at 250% of Federal Poverty Level: 2018				
Household Size	1	2	3	4
Monthly Income	\$2,530	\$3,430	\$4,330	\$5,230

ADD \$900 FOR EACH ADDITIONAL HOUSEHOLD MEMBER.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TINA FLOHR,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2018-3002183

CERTIFICATE OF SERVICE

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

Tina Flohr
1723 Myer Avenue
McKeesport, PA 15133

Administrative Law Judge Mark Hoyer
Piatt Place - 301 Fifth Avenue
Suite 220
Pittsburgh, PA 15222
Via Fax – 412-565-5692
And Regular Mail

Dated this 11th day of July, 2018



Paul Shane Miller, Esquire
PA I.D. No. 319174
Jeremy V. Farrell, Esquire
PA I.D. No. 316258

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212
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Counsel for Respondent,
Duquesne Light Company