

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Karen Feitt and H. Mendoza, Jr.	:	
	:	
v.	:	F-2017-2636316
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision (1) denies Complainants’ request for a payment arrangement because they decline to admit liability for their unpaid account balance and (2) dismisses the Complaint for Complainants’ failure to meet their burden of proving Respondent violated a Commission statute, regulation or order.

HISTORY OF THE PROCEEDING

On November 28, 2017, Karen Feitt and H. Mendoza, Jr. (Complainants) filed a Formal Complaint, seeking timely review of the Commission’s Bureau of Consumer Services’ (BCS) October 19, 2017 denial of their informal complaint against Respondent Duquesne Light Company (Duquesne Light) at BCS No. 3545710. Utilizing the Commission’s standard form listing various choices for the reasons for the Complaint, Complainants marked two boxes: “1.) I would like a payment arrangement” and “2.) Other (explain).” Complaint ¶4. Complainants explained the reasons for their Complaint as follows:

#1. Payment agreement = as mentioned to (PUC) investigator (Steve Robinson), and again with the “fax” (dated 11/15/17, @ 10:41 am) sent on 11/15/2017 (Closed Case #: 3507143, active =

Open Case # 3575409).^[1] A careful review of a recent case decision closed by investigator (Blair Prough). Furthermore, the return of overpayment, regarding arrears, that which Steve Robinson (investigator) was mediating a dispute for settlement. More importantly, the failure to discharge the debts, appears as theft by deception, extortion pursuant to 73rd Congress Session 1 CHS. 48-49, June 5, 6, 1933, HJR 192, HR 1491, Public Law 1-48, Stat 1, Public Law 10, Chap. 48. Stat 112, Public Law 73-10-40 Stat 411 Trading with the Enemy Act (TWEA) Oct. 6, 1917, but not limited to:

#2. This misappropriation of the process constitutes probable cause for reporting you the authorities the appearances consisting of a crime regarding embezzlement of public money, compliance with 18 USC 4 and 641. A very clear and comprehensive explanation of this with 12 USC 411 FRA (remedy) can be seen.

Complaint ¶¶5 #1 and #2. For relief, Complainants request a payment arrangement and “the return of arrears, billing refunds and considerations.” *Id.*

On December 21, 2017, Duquesne Light filed an Answer, (1) denying Complainants were entitled to a payment arrangement that was different from the company payment arrangement granted to them on March 22, 2016, which was in default and (2) averring in part that Complainants were responsible for an outstanding balance on their account in the amount of \$623.84. Answer ¶4; Exhibit A Attachment. As relief, Duquesne Light requested that the Complaint be dismissed with prejudice.

Contemporaneous with the filing of its Answer, Duquesne Light filed Preliminary Objections (PO) and averred as follows:

2. Although the contents of the Complaint are not completely legible or comprehensible, it appears that the gist of Complainants’ claim is that Duquesne Light failed to honor an unspecified “payment agreement” and failed to “discharge the debts.” (Complaint, Paragraph 5). Complainants allege that the actions by Duquesne Light constitute crimes including theft by

¹ On December 16, 2017, BCS closed Case No. 3575409, without a decision, as duplicative of Case No. 3545710, which is the subject of review in this proceeding.

deception, extortion, and embezzlement of public money.
(Complaint, Paragraph 5).

3. In support of their claims, Complainants cite to federal criminal statutes under the United States Code (18 USC § 4 - Misprison of Felony, and 18 USC § 641 – Public Money, Property or Records) as well as a statute under the federal banking laws (12 USC § 411 – Issuance to Reserve Banks; Nature of Obligation; Redemption). Complainants also cite other legal authority to support their claims; however, Duquesne Light is not able to decipher the citations in order to determine what laws they refer to. That being said, these other citations clearly do not refer to the Pennsylvania Public Utility Code or any associated regulations.

4. Complainants seek the return of arrears, a billing refund, and other “considerations” as damages in this case.

5. Duquesne Light files these Preliminary Objections on the grounds that this Commission lacks jurisdiction over Complainants’ claims as they invoke criminal statutes, and also potentially Pennsylvania laws relating to contracts, debt collection, or unfair trade practices.

PO ¶¶ 2-5. For relief, Duquesne Light asked the Commission to sustain its PO and dismiss the Complaint with prejudice and/or strike Complainants’ request for relief as impertinent.

Duquesne Light served its pleadings upon Complainants on December 21, 2017.

On December 28, 2017 Complainants filed an Answer to the PO, asserting in part as follows:

2. . . . Complainant admits the Complaint appears in part as ambiguous, more importantly the Complaint deficiencies do not serve as excused by Duquesne Light Company from responsibilities consisting of over payments, commitment for payment agreements, *et al.* The complainant claim is protected by (“Responsible Utility Customer Protections Act”) the Pennsylvania Public Utility Commission, furthermore the Complainants alleged actions of crimes appears to the Complaint as violations of Law.

. . .

8. The Pennsylvania Public Utility Commission established the Responsible Utility Customer Protection Act that the Complainant invokes for a claim of payment agreement.

On December 28, 2017, Complainants also filed a pleading which they characterized as a rebuttal to Duquesne Light's Answer and captioned the pleading as a "Response to Answers of Formal Complaint," which essentially reiterated Complainant's request for a "payment arrangement and billing refunds." However, the Commission's Rules of Administrative Practice and Procedure do not provide for the filing of a rebuttal or response to an Answer.²

On March 13, 2018, I issued an interim order, sustaining Duquesne Light's preliminary objections and denying the company's request for dismissal of the complaint in its entirety. Duquesne Light's preliminary objections were sustained on the grounds the Commission lacked jurisdiction over Complainants' allegations invoking federal crimes, banking laws and asserting debt collection and damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Duquesne Light's request for dismissal of the complaint was denied on the grounds the Complainants alleged they wanted a payment arrangement and "the return of arrears, billing refunds and considerations." These additional allegations raised questions of fact that could not be resolved on a preliminary motion.³

By notice dated March 13, 2018, the Commission informed the Parties that this case was scheduled for a call-in telephonic hearing before me on April 25, 2018. I issued a Prehearing Order dated March 14, 2018, addressing, *inter alia*, requests for a continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing convened as scheduled. Complainants appeared, self-represented, and testified. Complainants did not sponsor any exhibits. Respondent was represented by

² See 52 Pa.Code § 5.1. Pleadings Allowed.

³ The reader is directed to the *First Interim Order Sustaining Preliminary Objections and Denying Respondent's Request for Dismissal of the Complaint* issued herein, for a more detailed analysis and disposition of the preliminary motion.

Lauren N. Rulli, Esquire, who called one witness, Roxanne Morris, a regulatory consumer relations supervisor. Respondent's witness sponsored Exhibits A, P, R, S, Z, and AA, which were admitted into the record. Also, I informed the Parties I was taking official notice of Duquesne Light's Exhibit N, which is the March 14, 2018, electric bill signed by Complainants and mailed to the company.⁴

The hearing generated a 97-page transcript. The record was closed by an interim order entered on May 29, 2018. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainants Karen Feitt and H. Mendoza, Jr. reside at 1036 Jackman Avenue, Avalon, Allegheny County, Pennsylvania (service address). Transcript (Tr.) 5.

2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.

3. Duquesne Light Company established electric service for Complainants at the service address on August 10, 2010. Tr. 55.

4. The last payment Complainants made on their electric account was in the amount of \$98.00 on October 13, 2017, thereby resulting in an account balance of \$433.52. Exhibit A.

5. After October 13, 2017, Complainants began stamping, signing and returning their monthly electric bill to Respondent with the following endorsement:

. . . All rights reserved.

All rights not mentioned Herein reserved.

⁴ Upon notification to the Parties, the Commission or the Presiding Officer may take official notice of a material fact not appearing in the record. *See* 52 Pa.Code §§ 5.408(a) and (b).

ACCEPTED for VALUE
Exempt from levy without recourse
R & R s/K. Feitt s/H. Mendoza
Void where prohibited by law . . .

Tr. 14-16, 42-43, 78; Exhibit N.

6. On the date of the hearing Complainants' electric service was active. Tr. 39, 41.

7. On the date of the hearing Complainants' account balance was \$1,036.64. Tr. 52.

8. Complainants' \$1,036.64 account balance does not include any customer assistance program (CAP) charges. Tr. 74.

9. Complainants' monthly, household income is approximately \$2,416.00 which includes monthly social security disability benefits in the amount of \$860.00, and Complainant Mendoza's income working in maintenance and as a certified legal assistant/paralegal. Tr. 75, 82-83.

10. Based upon their \$2,416.00 monthly, household income and 3-member household (2 adults and one minor), Complainants have had the financial ability to pay their monthly electric bill since October 13, 2017. Tr. 82-84.

11. Respondent is willing to grant a payment arrangement to Complainants, and Respondent does not object to the Commission granting Complainants a payment arrangement. Tr. 77.

12. Respondent requires its customers to make payment for electric service rendered in U.S. currency. Tr. 71.

13. Complainants are seeking a Commission-ordered payment arrangement.
Tr. 11, 86.

14. Complainants decline to admit liability for any of the electric service they received and used between October 13, 2017 and April 25, 2018, resulting in a \$1,036.64 account balance. Tr. 39, 50, 52, 93.

DISCUSSION

Legal Standards

Complaints and Burden of Proof

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

As the proponent of a rule or order, Ms. Feitt and Mr. Mendoza, Complainants in this proceeding, bear the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainants must show that Duquesne Light is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, Complainants' evidence must be more convincing, by even the smallest amount, than that presented by Duquesne Light. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence in the record. More is required than a mere

trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of Complainants shifts to Duquesne Light. If the evidence presented by Duquesne Light is of co-equal value or “weight,” the burden of proof has not been satisfied. Complainants now have to provide some additional evidence to rebut that of Duquesne Light. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Reasonable Service

Section 1501 of the Code, 66 Pa.C.S. § 1501, states, “Every public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make all repairs, changes, alterations, substitutions, extensions, and improvements in or to its service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” Section 102 of the Code, 66 Pa.C.S. § 102, defines “service” as:

Used in its broadest and most inclusive sense, includes *any and all acts done, rendered, or performed*, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities

(emphasis added). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75 (Pa.Cmwlth. 1990). In the instant proceeding, this means that

Duquesne Light's billings must be rendered in a reasonable manner and in accordance with the Code and the Commission's regulations.

Payment Arrangements

Here, Complainants seek a payment arrangement from the Commission. Thus, Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, as amended, effective December 14, 2004, applies to this proceeding.

Section 1403 of the statute defines a payment arrangement as follows:

§ 1403. Definitions.

“Payment arrangement.” An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.

66 Pa.C.S. § 1403.

Section 1405 of the statute sets forth the authority for the Commission to grant a payment arrangement and the customer's responsibility under the payment arrangement as follows:

§ 1405. Payment arrangements.

(a) General rule.—The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

....

(f) Failure to comply with payment arrangement.—Failure of a customer to comply with the terms of a payment arrangement shall be grounds for a public utility to terminate the customer's service.

Pending the outcome of a complaint filed with the commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

66 Pa.C.S. §§ 1405(a) and (f).

Positions of the Parties

In their Complaint, Complainants did not check the box on the complaint form, which reads, “Incorrect charges are on my bill.” Generally, this is the box complainants check when alleging incorrect charges, a high bill or unexplained high usage. Instead, Complainants asserted they were seeking “the return of arrears, billing refunds and considerations.” At the commencement of the hearing, Complainants maintained the arrears related to a \$310.00 account balance dating back to 2010, but they conceded that Duquesne Light had “absorbed that” amount. Tr. 11, 62. Duquesne Light’s customer relations supervisor, Ms. Roxanne Morris (Supervisor Morris), explained that in 2010, Complainants received the benefit of the company’s CAP and any arrearages dating back to 2010 had been forgiven. Tr. 62, 65; Exhibit AA. Complainants did not present any evidence relating to the “billing refunds and considerations” allegations.

Complainants went on to explain their position as follows:

We’d like an opportunity to clarify our request and – the law is responsible, consumer – through the Commission’s Protection Act, Chapter 14. What we’re requesting is a protection of that Act through a payment arrangement, that it is a payment that is afforded to us through a public trust from back in 1933, where it was giving us the credit by my signature for service provided by our relation in the last . . . six months.

Tr. 33. Complainants added they wanted a Commission-ordered payment arrangement, whereby they would be protected from service termination. Tr. 42. Notably, Complainants did not check the box provided on the complaint form which reads, “The utility is threatening to shut off my service or has already shut off my service.” Initially, during the hearing, Complainants were

agreeable to paying \$378.49, which had accrued on their account since the denial of their informal complaint on October 19, 2017. Tr. 28.

Duquesne Light submitted that termination proceedings had started following the filing of the November 28, 2017 Complaint on the undisputed amount, i.e. \$378.49, which had accrued since the filing of the Complaint. Tr. 16, 80. Supervisor Morris asserted at the time of the filing of the Complaint the account balance was \$623.84, which was frozen as the disputed amount. Tr. 76; Exhibit A. The termination process was based upon the undisputed charges in the amount of \$378.49.

While initially conceding that \$378.49 was owed to Duquesne Light, Complainants changed position and asserted they did not owe Duquesne Light a “red cent.” Tr. 41. Complainants explained that since October 2017 they had been signing and stamping their electric bill with the endorsement “ACCEPT for VALUE.” Afterwards, Complainants would mail the signed and endorsed electric bill to Duquesne as payment for their electric usage. Complainants argued there is no legal tender such as U.S. currency, and by operation of law their signature and endorsement on their electric bill serves as payment for their electric service. Tr. 85-87. Duquesne Light retorted that the company requires payment for electric service in U.S. currency (Tr. 71) and maintained Complainants had an unpaid, outstanding balance in the amount of \$1,036.64. Tr. 52; Exhibit A.

Analysis

First, I will address Complainants’ request for a Commission-ordered payment arrangement. The Commission has authority to grant utility customers a payment arrangement. *See* 66 Pa.C.S. § 1405(a), cited above. However, by definition, the granting of a payment arrangement requires an unpaid account balance and a customer’s admission of liability for billed service. *See* 66 Pa.C.S. § 1403, cited above. In the present case, while the evidence establishes that Complainants have received electric service from Respondent from October 2017 to April 2018 (Tr. 39, 41), resulting in an unpaid \$1,036.64 balance (Tr. 52), Complainants contend they do not owe a “red cent” to Duquesne Light. Tr. 41.

Since Complainants maintain they do not owe any money to Respondent, granting them a payment arrangement on a zero balance would be contrary to the definition of “payment arrangement.” In other words, there must be an unpaid account balance upon which to grant a payment arrangement, and the customer must admit liability for the unpaid account balance. However, Complainants assert they do not owe any money to Respondent because since October 2017 they have been signing their bill and returning it to Respondent as payment for their electric consumption. Thus, according to Complainants their bill is paid by operation of law, apparently referring to a June 5, 1933 House Joint Resolution of the U.S. Congress. Tr. 44-45. Here, I must note that Complainants’ reliance upon federal enactments to support their Complaint was preliminarily objected to by Respondent, and the objection was sustained. See Footnote 3, cited above. Furthermore, several courts in other jurisdictions have found “bills of exchange purporting to be drawn against a trust account at the U.S. Treasury to be ‘nothing more than a string of words that sound as though they belong in a legal document, but which, in reality, are incomprehensible, signifying nothing.’” *In re: Denise Fachini*, 2012 Bankr. LEXIS 448 at 5 (Bankr. M.D. Ga. 2012) (and the cases cited therein).

As an alternative to resolving Complainants’ request for a payment arrangement, I queried Complainants as to whether they would continue to sign their utility bill and return the bill as payment for their electric bill, if they were granted a payment arrangement by the Commission. Tr. 86-87. Their answer was in the affirmative. *Id.* Therefore, to grant Complainants a payment arrangement on their unpaid \$1,036.64 balance, when they intend to continue their past practice, i.e., signing and returning the electric bills as payment, would be a futile act. Consequently, I am compelled to deny their request for a payment arrangement.

Next, I will address whether Complainants met their burden of proving that Respondent in some manner violated the Public Utility Code, a Commission regulation or a Commission order. Respondent asserts that Complainants must pay their utility bill in U.S. currency. Tr. 71. The Commission’s regulations do not specifically address the forms of payment which a utility is required to accept from a customer as payment for services rendered. However, the regulation relating to service termination provides that a customer may avoid termination if “payment in full is tendered in *any reasonable manner...*” 52 Pa.Code § 56.94

(emphasis added). Here, I find that Respondent's requirement that Complainants pay their bill in U.S. currency is a reasonable manner of payment. Therefore, Complainants have failed to carry their burden of proof that Respondent violated the Code or a Commission regulation or order. Accordingly, their Complaint will be dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over Complainants and Respondent in this proceeding. 66 Pa.C.S. § 701.
2. The Commission has the authority to establish a payment arrangement for an applicant or customer. 66 Pa.C.S. § 1405(a).
3. A Commission-ordered payment arrangement is an agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments. 66 Pa.C.S. § 1403.
4. Complainants do not admit liability for their billed electric, nor do they admit that they have an unpaid account balance, which are prerequisites to receiving a Commission-ordered payment arrangement. *Id.*
5. Respondent's requirement that Complainants pay their electric bill in U.S. currency does not violate the reasonable service provisions of the Public Utility Code. 66 Pa.C.S. § 1501.
6. Pending the outcome of a complaint filed with the Commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute. 66 Pa.C.S. § 1405(f).

7. Complainants have not met their burden of proving that Respondent violated the Public Utility Code, a Commission regulation or a Commission order. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Complainants Karen Feitt and H. Mendoza, Jr. for a Commission-ordered payment arrangement is denied.
2. That the Complaint filed by Karen Feitt and H. Mendoza, Jr. against Duquesne Light Company at Docket No. F-2017-2636316 is dismissed.
3. That the Secretary's Bureau shall marked Docket No. F-2017-2636316 closed.

Date: July 25, 2018

_____/s/
Conrad A. Johnson
Administrative Law Judge