



Emily M. Farah
Counsel, Regulatory

411 Seventh Avenue
Mail drop 15-7
Pittsburgh, PA 15219

Tel: 412-393-6431
efarah@duqlight.com

August 9, 2018

Via Electronic Filing

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

**RE: Judy Ballo v. Duquesne Light Company
Docket No. C-2018-3002579**

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,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over the typed name and title.

Emily M. Farah
Counsel for Duquesne Light Company

Enclosure

cc: Judy Ballo (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUDY BALLO,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

:
:
:
:
:
:
:
:
:
:
:

No: C-2018-3002579

MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to 52 Pa. Code § 5.102, Respondent Duquesne Light Company (“Duquesne Light”), by and through its attorney, Emily M. Farah, Esq., files this Motion for Judgment on the Pleadings:

I. OVERVIEW

1. The Formal Complaint filed by Complainant Judy Ballo (“Complainant”) should be dismissed for three reasons.

2. First, after Complainant filed the instant Complaint, Complainant’s entire account balance was transferred to the property owner after the Duquesne Light discovered foreign load at her residence, 506 California Avenue, Apartment A, Pittsburgh, PA 15202 (“Property”), pursuant to Act 54 of 1993 (“Act 54”), codified in relevant part at 66 Pa. C.S.A. § 1529.1. The Company cannot issue a payment arrangement on \$0.

3. Second, prior to such transfer, Duquesne Light was only seeking payment of account balances that Complainant accrued while enrolled in Duquesne Light’s Customer Assistance Program (“CAP”). Similarly, even if Complainant had an account balance, Duquesne Light would only seek payment of CAP arrears. 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.

4. Third, even if Complainant had an account balance, and even if Duquesne Light were seeking payment of Complainant's entire account balance rather than just her CAP arrears, 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.

5. 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

6. On or about June 6, 2018 Complainant filed the Formal Complaint against Duquesne Light.

7. In the Formal Complaint, Complainant indicated that Duquesne Light is threatening to shut off her service. Complaint, ¶ 4.

8. As relief, Complainant states that she wants a payment arrangement that she can afford. Complaint, ¶ 4.

9. Duquesne Light filed an Answer and New Matter on June 28, 2018.

10. 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).

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 Complainant cannot receive a payment arrangement on \$0.

14. It is well established that Act 54 and corresponding case law require a utility company to transfer one or more residential tenants’ account balances that accrued at the propoerty to the property owner when foreign load is discovered. Ace Check Cashing, Inc. v. Philadelphia Gas Works, C-2008-2056428 (Order entered May 21, 2010).

15. “Foreign load” refers to billing a tenant for electric service not related to that tenant. Santos v. Metropolitan Edison Co., C-00967757, 1997 WL 33702247 (Pa.P.U.C. Aug. 7, 1997). Foreign load exists when a tenant’s meter registers usage load from electric usage outside of that tenant’s dwelling. George W. Kopf, Jr. v. PECO Energy Co., C-2012-2332993, 2013 WL 3070745 (Pa.P.U.C. June 13, 2013).

16. On June 18, 2018, a Duquesne Light technician confirmed that Complainant’s electric meter was registering usage from the apartment building’s common basement, which constituted foreign load. Answer and New Matter, ¶ 14.

17. Consistent with the Duquesne Light representative confirming the presence of foreign load, service to the Property was listed in the Property owner’s name, and Complainant’s account balance accrued at the Property was transferred to the Property owner. Answer and New Matter, ¶ 15.

18. Complainant’s entire account balance accrued while residing at the Property, leaving her with a \$0 account balance as of June 18, 2018. Answer and New Matter, ¶ 18-19.

19. Duquesne Light cannot issue Complainant a payment arrangement on \$0.

20. 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. The Formal Complain must be dismissed because the Commission may not establish a payment arrangement on Complainant's CAP arrears.

22. 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).

23. 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.”

24. 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).

25. Complainant enrolled in CAP on May 7, 2015, and currently is a CAP customer. Answer and New Matter, ¶4.

26. As of June 12, 2018, Complainant had a CAP balance of \$2,187.80. Answer and New Matter, ¶¶ 4; see also Statement of Account (attached to Answer and New Matter as **Exhibit C**).

27. Complainant's entire CAP balance accrued after she enrolled in CAP on May 7, 2015. Answer and New Matter, ¶ 23-25; see also **Exhibit A**.

28. Complainant's CAP balance accrued because she failed to make the required CAP payments. Answer and New Matter, ¶ 24; see also **Exhibit A**.

29. Consistent with CAP, prior to June 18, 2018, Duquesne Light was only seeking payment of Complainant's CAP arrears, not her total account balance. Answer and New Matter, ¶ 26; see also 10 Day Termination Notice Dated May 23, 2018 (attached as to Answer and New Matter Exhibit C).

30. 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 would be seeking to collect. Answer and New Matter, ¶¶ 21-26

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

C. Even if Complainant had an account balance, and 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

32. Even if Complainant had an account balance, and Duquesne Light were seeking payment of non-CAP 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.

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

34. 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).

35. 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).

36. 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).

37. Here, Complainant has frequently failed to pay her electric bills. For example, in 2017, only two payments posted to Complainant's account, and both were grants from outside agencies. Answer and New Matter, ¶ 29; see also Exhibit A.

38. In addition, Complainant accrued a total account balance of \$2,187.80 as of June 12, 2018. Answer and New Matter, ¶ 4; see also Exhibit A.

39. Complainant's failure to make payments and her large account balance demonstrate that she has not made a good faith attempt to pay for electric service. See Cates v. Pennsylvania Electric Co., Docket No. F-2016-2572361, 2016 WL 9150563, at *8 (Pa. P.U.C. May 17, 2016).

40. Therefore, Complainant would not be entitled to her requested relief (a payment arrangement) even if Complainant had an account balance, and even if Duquesne Light were seeking payment of non-CAP account balance.

41. 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.

[signature on the following page]

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
411 Seventh Avenue, 15th Fl.
Pittsburgh, PA 15219
efarah@duqlight.com
(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

