

August 20, 2018

Via Electronic Filing and E-Mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Christy McGriff v. Duquesne Light Company
Docket No. F-2017-2613135

Dear Secretary Chiavetta:

Duquesne Light Company's Reply Exceptions are enclosed for filing. 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: Christy McGriff (with enclosure)
Office of Special Assistants (OSA), via email (with enclosure)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CHRISTRY McGRIFF,)	
)	
)	
Complainant,)	
vs.)	Docket No. F-2017-2613135
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

RESPONDENT DUQUESNE LIGHT COMPANY'S REPLY EXCEPTIONS

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., and files the following Reply Exceptions:

I. INTRODUCTION

The Commission should deny the Exceptions filed by Complainant Christy McGriff ("Complainant") and adopt the Initial Decision issued by Administrative Law Judge Katrina L. Dunderdale ("ALJ Dunderdale") on June 28, 2018 ("Initial Decision"). Complainant alleges in the Exceptions that three Findings of Fact issued by ALJ Dunderdale are incorrect, but she provides no evidence to support her claims. Complainant simply disagrees with the Initial Decision and requests that the Commission change it. The Initial Decision, however, is supported by substantial evidence and should be adopted by the Commission.

II. FACTS

On July 7, 2017, Complainant initiated this matter by filing a Formal Complaint ("Complaint") against Duquesne Light. In the Complaint, she avers that Duquesne Light is threatening to shut off her service or has already shut off her service. Complaint, ¶ 4. She further alleges that her electric bills are too high because Duquesne Light had improperly used her mother's income in calculating Complainant's payment rate under the Company's Customer

Assistance Program ("CAP"). Complaint, ¶ 5. As relief, Complainant requests that Duquesne Light review her bills and change the amount that she is billed under CAP. Complaint, ¶ 5. Duquesne Light filed a timely Answer that denied all material allegations.

On November 3, 2017, ALJ Dunderdale held a telephonic hearing. Complainant represented herself and testified on her own behalf. She offered no exhibits into evidence. Duquesne Light was represented by counsel. The Company offered the testimony of one witness, Roxanne Morris, and offered seven exhibits into evidence. ALJ Dunderdale closed the hearing record on December 6, 2017.

On February 14, 2018, ALJ Dunderdale reopened the hearing record to obtain additional testimony from Duquesne Light about when Complainant's CAP arrearage accrued and the sources of income that the Company used to determine her CAP billing rate. ALJ Dunderdale scheduled a hearing for April 6, 2018.

On this date, ALJ Dunderdale held a telephonic hearing. Complainant represented herself.¹ She offered no exhibits into evidence. Duquesne Light was represented by counsel. The Company offered the testimony of one witness, Margaret Mueller, and offered four exhibits into evidence. ALJ Dunderdale closed the hearing record on May 4, 2018.

ALJ Dunderdale issued the Initial Decision on June 28, 2018. It contains 24 Findings of Fact and three Conclusions of Law. Initial Decision, pp. 2-5, 10. In Finding of Fact No. 12, ALJ Dunderdale stated, "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%." Initial Decision, p. 4; FOF No. 12. In Finding of Fact No. 14, she stated, "As of February 19, 2018, the account balance totaled \$2,528.79 and the CAP arrears balance totaled \$2,485.14." Initial Decision, p. 4; FOF No. 14. ALJ Dunderdale then found that

¹ Complainant's sister, Coty McGriff, joined Complainant on the telephone during the hearing. She asserted that Complainant had recently suffered a stroke and thus had trouble communicating. ALJ Dunderdale permitted Coty McGriff to share Complainant's thoughts when Complainant had difficulty expressing herself.

Complainant only made 15 payments totaling \$1,682.54 over the 58-month period from June 2013 through March 2018. Initial Decision, p. 5; FOF No. 19. As a result, Complainant's account balance during this period increased from \$955.08 to \$2,528.79. Initial Decision, p. 5; FOF No. 21.

In the Conclusions of Law, ALJ Dunderdale ruled that Complainant failed to prove by a preponderance of the evidence that Duquesne Light failed to provide reasonable and adequate customer service when it calculated Complainant's required monthly CAP payments and when the Company calculated her CAP arrearage. Initial Decision, p. 10; COL Nos. 2-3. The Initial Decision therefore denied the Complaint. Initial Decision, p. 11.

On or about August 6, 2018, Complainant filed Exceptions with the Commission. In the Exceptions, Complainant disagrees with the following three Findings of Fact from the Initial Decision: Finding of Fact Nos. 12, 14, and 21.

III. STANDARD OF REVIEW

To establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. The Bell Telephone Co. of Pa., Docket No. F-8966524, 1990 WL 10702674 (Pa. P.U.C. 1990). The offense must be a violation of the Public Utility Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

Section 332(a) of the Public Utility Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the "preponderance of the evidence" standard. Suber v. Pa. Com'n on Crime and Delinquency, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005); Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest

amount, the probative value of the evidence presented by the other party. See Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854, 855 (Pa. 1950).

Adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Consolidated Edison Co. of New York v. National Labor Relations Bd., 305 U.S. 197, 229 (1938). 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. PUC, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961). "Suspicion may have its place, but certainly it cannot be substituted for evidence." Union Trust Company of Pittsburgh's Petition, 20 A.2d 779, 782 (Pa. 1941).

IV. LAW AND ARGUMENT

Substantial evidence supports all three Findings of Fact that Complainant now disputes in her Exceptions. She has offered no evidence to refute these facts. The Commission thus should deny the Exceptions.

A. ***The Exceptions must be denied because substantial evidence supports Finding of Fact No. 12.***

Complainant disagrees with Finding of Fact No. 12, which states, "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%." She contends that Duquesne Light miscalculated her CAP percentage.

The uncontradicted evidence establishes that Finding of Fact No. 12 is supported by substantial evidence. Other than Complainant's own opinion testimony, she provided no evidence at the hearings to establish that Duquesne Light billed her under different or incorrect CAP percentages.

Conversely, Duquesne Light presented ample evidence at the hearing regarding Complainant's CAP percentages. Duquesne Light employees Roxanne Morris and Margaret Mueller testified that Complainant's CAP percentage equaled 85% from June 17, 2013 until November 16, 2015; 60% from November 16, 2015 to May 2018; and 40% from May 2018 to the present. Nov. Tr. 36-37; Apr. Tr. 16-18. Duquesne Light also submitted several exhibits to support these facts, including a CAP printout page from Duquesne Light's computer system and call records and customer service logs from July 12, 2017. See Duquesne Light Exhibits B, D, E, F, and G. Given that Complainant failed to contradict Duquesne Light's evidence, the Commission should find that Finding of Fact No. 12 is supported by substantial evidence and therefore is adopted.

B. *The Exceptions should be denied because substantial evidence supports Finding of Fact No. 14.*

Next, Complainant disagrees with Finding of Fact No. 14. It states, "As of February 19, 2018, the account balance totaled \$2,528.79 and the CAP arrears balance totaled \$2,485.14." Initial Decision, p. 4. She argues in the Exceptions that the "overdue amount as [of] July 5, 2018 was [\$]1,950.11." In support of this claim, Complainant attached a 10-Day Shut-off Notice to the Exceptions. This 10-Day Shut-off Notice, however, is dated July 5, 2017. It does not provide any information about Complainant's account balance as of February 19, 2018 or even July 5, 2018.

In addition, the uncontradicted evidence establishes that Finding of Fact No. 14 is supported by substantial evidence. At the hearing on April 6, 2018, Duquesne Light witness Margaret Mueller testified that Complainant's account balance as of February 19, 2018 equaled \$2,528.79 and her CAP arrears totaled \$2,485.14. Apr. Tr. 15, 65. Duquesne Light also submitted a Statement of Account as an exhibit that shows this information. See Duquesne Light Exhibit 1. Based on this uncontradicted evidence, the Commission should find that Finding of Fact No. 14 is supported by substantial evidence and therefore is adopted.

C. *The Exceptions should be denied because substantial evidence supports Finding of Fact No. 21.*

Finally, Complainant disagrees with Finding of Fact No. 21. It states, "From June 2013 to March 2018, Complainant's account balance increased from \$955.08 to \$2,528.79." Initial Decision, p. 5. She asserts that the original balance mentioned in this Finding of Fact - which is \$955.08 - "is a balance from a previous address" and should not be included in her account balance.

The uncontradicted evidence belies this assertion. Complainant's Statement of Account, which Duquesne Light submitted into evidence, shows that Complainant's account balance increased from \$955.08 to \$2,528.79 from June 2013 to March 2018. See Duquesne Light Exhibit 1. Complainant offered no evidence to refute this fact. Moreover, Duquesne Light employee Margaret Mueller testified at the hearing on April 6, 2018 that Complainant had an account balance of \$955.09 in June 2013 because she had failed to pay in full for electric service from 2012 to June 2013. Apr. Tr. 62-64. Complainant presented no evidence to contradict this testimony. Accordingly, the Commission should find that Finding of Fact No. 21 is supported by substantial evidence and therefore is adopted.

V. CONCLUSION

Each Finding of Fact that Complainant objects to in her Exceptions is supported by substantial evidence. Complainant has provided no evidence to refute these facts; rather, she simply disagrees with ALJ Dunderdale's decision. Accordingly, Duquesne Light respectfully requests that the Commission deny the Exceptions in their entirety and adopt the Initial Decision.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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

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Counsel for Respondent,
Duquesne Light Company

Dated: August 20, 2018

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