

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eben Brown	:	
	:	
v.	:	C-2018-3000221
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This initial decision denies the formal complaint and directs the utility company to communicate to the customer how much money must be paid each month in order to avoid default on the delinquent arrearage.

**HISTORY OF THE PROCEEDING**

On February 27, 2018, Eben Brown (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne or Respondent) at Docket No. C-2018-3000221. In his complaint, Mr. Brown averred Duquesne was threatening to shut off service or has already shut off service, and there were incorrect charges on his bill. As relief, Mr. Brown requested the Commission order Duquesne to return the unpaid Customer Assistance Program (CAP) payments to the back balance and make the monthly CAP payments more affordable.

On March 26, 2018, Duquesne filed an answer requesting the complaint be dismissed. Duquesne denied there were incorrect charges on Mr. Brown's bills and averred it was correct to send termination notices to Mr. Brown. Duquesne denied Mr. Brown is entitled to any payment arrangement because he is enrolled in Duquesne's CAP. Duquesne averred the termination notices were sent because Mr. Brown failed to make payments for his electric service and has failed to make timely payments since July 8, 2014.

On April 3, 2018, the Office of Administrative Law Judge mailed a Call-In Telephone Hearing Notice to Mr. Brown and Duquesne, scheduling an initial telephonic hearing for Wednesday, May 30, 2018. On April 6, 2018, the presiding officer issued a Prehearing Order which notified the parties about various procedural matters. On April 11, 2018, the presiding officer issued a Second Prehearing Order which corrected the PIN Number required to participate in the telephone hearing via the Commission's bridge conference call.

On May 30, 2018, the presiding officer conducted the initial telephonic hearing as scheduled. Mr. Brown represented himself at the hearing and testified on his own behalf. He offered no exhibits. Paul Shane Miller, Esquire, represented Duquesne and presented one witness, Lisa Davenport. Mr. Miller offered Duquesne Light Exhibits A, D, E, F, J and K. The exhibits were admitted into evidence. The hearing record consists of the aforementioned exhibits, as well as a 61-page transcript of the hearing held on May 30, 2018. Both parties offered final statements on the record in lieu of briefs. The record closed by Interim Order Closing the Hearing Record dated June 29, 2018.

#### FINDINGS OF FACT

1. Complainant, Eben Brown, resides by himself on the top floor of a duplex home located at 400 Whigham Street, McKeesport, Pennsylvania 15132 (service address) where he has been a tenant since approximately 2011. (Tr. 11, 12, 14).

2. Respondent, Duquesne Light Company, provides electric residential utility service to Complainant at the service address.

3. Complainant's medical conditions require him to use prescribed electrical medical equipment, including a CPAP machine and nebulizer. (Tr. 12, 13).

4. Complainant's gross monthly household income is \$205. (Tr. 21, 22, 41; Duquesne Light Exhibit E).

5. Complainant enrolled in Duquesne Light's Customer Assistance Program (CAP) initially on April 7, 2011 with an arrears balance totaling \$296.77. (Tr. 40-42; Duquesne Light Exhibits D & E).

6. Duquesne Light's CAP is an assistance program that allows low income customers to pay a discounted monthly bill and provides for arrearage forgiveness on debt that existed prior to admission into CAP. (Tr. 35).

7. Complainant agreed to a CAP payment agreement with Respondent on July 8, 2014 with an arrears balance totaling \$1,608.17, that required Complainant to pay the budget bill amount monthly plus \$20 monthly. (Tr. 35, 36, 43-45; Duquesne Light Exhibit E).

8. Complainant was recertified for CAP most recently on March 6, 2018. (Tr. 36).

9. From September 29, 2015 to December 29, 2016, Duquesne sent Complainant fifteen billing statements, but Complainant made no payments on his electric service account. (Duquesne Exhibit A).

10. From September 29, 2015 to December 29, 2016, there were two times (May 4, 2016 and July 6, 2016) when Complainant's electric service account was credited with grant payments totaling \$678. (Duquesne Exhibit A).

11. From September 2015 to December 2016, Complainant's unpaid account balance increased from \$2,899.07 to \$4,344.81. (Duquesne Exhibit A).

12. From December 29, 2016 to May 3, 2018, Duquesne sent Complainant 17 billing statements and Complainant made 15 payments. (Duquesne Exhibit A).

13. From December 29, 2016 to May 3, 2018, there were four (4) times (January 25, 2017; November 15, 2017; and two on March 14, 2018) when Mr. Brown's account was credited with grant payments totaling \$1,688. (Duquesne Exhibit A).

14. From September 2017 to May 2018, Complainant made five (5) on-time payments on his CAP account. (Tr. 36).

15. From January 2017 to May 2018, Complainant's unpaid account balance decreased from \$4,344.81 to \$802.70. (Tr. 32; Duquesne Exhibit A).

16. Complainant did not make any payment on the billing statements issued on November 28, 2017 and January 30, 2018. (Duquesne Exhibit A).

17. The billing statement issued on November 28, 2017 required Complainant to pay the CAP amount totaling \$51 by December 19, 2017. (Duquesne Exhibit A).

18. Complainant paid \$51 on December 30, 2017. (Duquesne Exhibit A).

19. The billing statement issued on January 30, 2018 required Complainant to pay the CAP amount totaling \$172 by February 20, 2018. (Duquesne Exhibit A).

20. Complainant did not pay any amount to Duquesne before February 20, 2018. (Duquesne Exhibit A).

21. On February 28, 2018, Duquesne issued a billing statement which required Complainant to pay the CAP amount totaling \$172 before March 21, 2018. (Duquesne Exhibit A).

22. On February 28, 2018, Duquesne issued a ten-day shut-off notice to Mr. Brown notifying him that electric service would be suspended after April 2, 2018 if Mr. Brown did not pay \$1,404.71, which was the total amount due as of January 30, 2018. (Tr. 46, 47; Duquesne Exhibits A & F).

23. On March 2, 2018, Complainant paid \$170. (Duquesne Exhibit A).

24. On March 14, 2018, Complainant's account received two credits: a grant for \$250; and a Dollar Energy Fund grant for \$250. (Duquesne Exhibit A).

25. Complainant's CAP percentage was 30% until March 27, 2018 when Duquesne Light amended its CAP program and reduced Complainant's CAP percentage to 15%. (Tr. 36, 37).

26. Starting in March 2018, Duquesne Light increased Complainant's CAP maximum discount from \$700 to \$1,500. (Tr. 37).

27. Complainant's CAP arrears balance as of February 28, 2018 was \$1,404.71. (Tr. 46, 47; Duquesne Exhibits A & F).

28. Complainant's account balance as of May 3, 2018 was \$802.71 and consisted entirely of CAP arrears. (Tr. 37; Duquesne Exhibit A).

### DISCUSSION

There are two issues in this proceeding: (1) Mr. Brown wants the amount he pays monthly for his CAP payment to be reduced; and (2) Mr. Brown wants Duquesne to stop termination proceedings and freeze the unpaid CAP account balance.

Duquesne incorrectly interpreted the formal complaint to be a request for a payment arrangement on CAP arrears. What Mr. Brown requested was a lower current monthly CAP payment, not a payment arrangement on his CAP arrears.

In addition, Mr. Brown asked that Duquesne not seek immediate payment of the unpaid delinquent CAP account balance. Mr. Brown wanted the Commission to order Duquesne to “freeze” the remaining unpaid delinquent account balance totaling approximately \$800.

#### Current Monthly CAP Payment

Mr. Brown filed the formal complaint because he wanted his monthly CAP payment to be reduced. After Mr. Brown filed the formal complaint and after Duquesne filed its answer, Duquesne made across-the-board changes to its CAP program. One of those changes was to lower the CAP percentage for all residential CAP customers. As a result, Duquesne lowered Mr. Brown’s CAP percentage from 30% to 15% effective March 27, 2018. Accordingly, the issue in the complaint regarding Mr. Brown’s request to receive a lower CAP payment has been resolved and will be denied. A hearing is not necessary on this issue, pursuant to 66 Pa.Code § 5.21(d).

#### Non-Payment on CAP arrears

When Complainant filed his formal complaint, Mr. Brown indicated the reason for the complaint was that the utility was threatening to terminate service and there were incorrect charges on his billing statement. Under “Requested Relief”, Complainant specified the following: “Put back CAP payments on back balance where it previously was. Make monthly payments affordable (CAP). Income only \$200 a month on welfare.”

At the initial hearing, Mr. Brown made it clear he wanted the CAP arrears balance to remain “frozen” because he wanted Duquesne to stop its termination efforts. Mr. Brown assumes his CAP arrears will decrease over time with the one-time credits and/or grants which he receives each year. In fact, a close review of Duquesne Exhibit A reveals Mr. Brown

typically receives credits or grants from LIHEAP and the Dollar Energy Fund every year. In 2018, Mr. Brown's account was credited with two such grants which reduced his CAP arrears by \$500. (See Duquesne Exhibit A). Mr. Brown wants Duquesne to stop termination proceedings because Mr. Brown assumes within two years those CAP arrears will be eliminated with the grants and credits he assumes he will receive.

As the party seeking affirmative relief from this Commission, Mr. Brown bears the burden of proof. 66 Pa.C.S.A. § 332(a). The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosier v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); and Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976). "Preponderance of the evidence" means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.*

Mr. Brown testified that in the months when his account received a grant payment, Respondent's billing statement showed no current CAP payment was due from Mr. Brown. Neither party provided the presiding officer with a copy of a billing statement which reflected a zero payment was due. Duquesne did not refute Mr. Brown's statements or explain why it would issue a billing statement showing a zero payment was due, so Mr. Brown's statement was accepted as credible. However, it is noted that Duquesne Exhibit A shows that after grants or credits were received, Duquesne would apply the entire amount to pay down the CAP arrears and its records indicate a billing statement was issued which allegedly showed the monthly CAP payment which must be paid for current usage.

In those months when a grant was received, Complainant did not pay any sum. He did not pay any amount for his current usage and he did not pay any amount towards the CAP arrears which remained on the account. However, Duquesne expected Mr. Brown to pay \$20 (based on the July 2014 agreement) even in months when its billing statements did not tell Mr. Brown to make that payment. Not surprisingly, Duquesne initiated termination proceedings against Mr. Brown when he did not pay for his current usage.

Mr. Brown has a bad payment history while on CAP. He does not make monthly CAP payments on time or in full every month. For example, in the three months prior to filing his formal complaint, Mr. Brown did not make a single timely CAP payment in full. He made full payments for service provided in November 2017 and in January 2018 but those payments were paid late. In addition, he failed to make any payment for electric service provided in December 2017.

To be clear, Mr. Brown was wrong to assume that he should not make a payment for his current electricity usage every month – even in months when a grant or credit was applied to his arrears balance. He should have known to send a monthly payment. It was not reasonable for him to assume he did not have to send in any amount, especially since a billing statement would have shown Duquesne applied the grant or credit to reduce the CAP arrears.

However, to clarify the situation for Mr. Brown, Duquesne will be ordered in the Ordering Paragraphs below, to issue a written statement to Mr. Brown, with a copy to the Commission's Bureau of Consumer Services, which clearly outlines and explains the amount of CAP arrears owed currently, the CAP percentage being applied when determining his monthly payment amount, and the current plan to pay down the CAP arrears.

Meanwhile, Mr. Brown is ordered to make full and timely payments on his account every month. Duquesne may not initiate termination proceedings if Mr. Brown makes his payments in full and on time. Any grants or credits applied to Mr. Brown's account will be used to pay down the CAP arrears, and Mr. Brown will owe Duquesne a CAP payment in months when a grant or credit is applied. If Mr. Brown fails to make any monthly payment in full and on time, then Duquesne is permitted to initiate termination proceedings pursuant to 52 Pa.Code Chapter 56.

#### 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 improperly charged Complainant for electric service. 66 Pa.C.S.A. § 332(a).

3. Complainant carries the burden of proving Respondent failed to provide reasonable and adequate customer service when Respondent initiated termination proceedings when Complainant failed to make monthly payments on his Customer Assistance Program arrears. 66 Pa.C.S.A. § 332(a).

4. Pursuant to 66 Pa.C.S.A. § 1406(a), Respondent is permitted to terminate service due to nonpayment of an undisputed delinquent account.

5. Complainant failed to prove he is entitled to stop termination proceedings when he makes untimely and incomplete payments under Respondent's Customer Assistance Program. 66 Pa.C.S.A. § 332(a).

6. Complainant failed to prove Respondent's policy to require him to pay for electric service provided to his service address was unreasonable or in violation of the Public Utility Code or the Commission's regulations. 66 Pa.C.S.A. § 332(a) and 66 Pa.C.S.A. § 1501.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Eben Brown against Duquesne Light Company at Docket No. C-2018-3000221 is denied.

2. That Complainant is not entitled to have his monthly Customer Assistance Program payment reduced below its current fifteen percent (15%) level.

3. That Duquesne Light Company may not initiate termination proceedings if Complainant makes his Customer Assistance Program payments in full and on time.

4. That any grants or credits applied to Complainant's account will be used by Duquesne Light Company to pay down the Customer Assistance Program arrears, and Complainant will owe Duquesne Light Company a Customer Assistance Program payment in months when a grant or credit is applied.

5. That Duquesne Light Company shall issue a written statement of account to Complainant within thirty (30) days of the date of the Commission's Final Order in this proceeding, with a copy to the Commission's Bureau of Consumer Services.

6. That to be in compliance with Ordering Paragraph No. 5 above, Duquesne Light Company shall clearly outline and explain the Customer Assistance Program percentage being applied when determining Complainant's monthly payment amount, the amount of Customer Assistance Program arrears owed currently, and the current plan to pay down the Customer Assistance Program arrears.

7. That if Complainant fails to adhere to the terms of this Order, Duquesne Light Company is hereby authorized to terminate Complainant's service pursuant to the provisions of the Public Utility Code, 66 Pa.C.S.A. § 101 *et seq.*, and the Commission's regulations, 52 Pa. Code § 56.1 *et seq.*

8. That the docket for this proceeding, Docket No. C-2018-3000221, be marked closed.

Date: August 28, 2018

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge