

January 31, 2019

Via Electronic Filing

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

RE: Helen Armstead v. Duquesne Light Company
Docket No. C-2018-3006236

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings to the Formal Complaint filed by Helen Armstead. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Paul Shane Miller
Attorney for Duquesne Light Company

Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

c: Helen Armstead (with enclosure)

TADMS-5089456-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HELEN ARMSTEAD, :
 :
 Complainant, :
 :
 vs. :
 :
 DUQUESNE LIGHT COMPANY, :
 :
 Respondent. :

No: C-2018-3006236

**MOTION FOR JUDGMENT ON THE
PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:

Paul Shane Miller, Esquire
PA I.D. No. 319174
(412) 594-5503

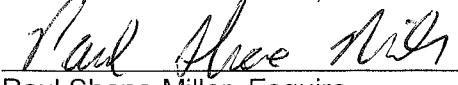
Jeremy V. Farrell, Esquire
PA I.D. No. 316258
(412) 594-3938

1500 One PPG Place
Pittsburgh, PA 15222
Counsel for Respondent

NOTICE TO PLEAD

TO COMPLAINANT HELEN ARMSTEAD:

**YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR
JUDGMENT ON THE PLEADINGS WITHIN 20 DAYS OF SERVICE OR A JUDGMENT MAY
BE ENTERED AGAINST YOU.**

TUCKER ARENSBERG, P.C.

Paul Shane Miller, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HELEN ARMSTEAD,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2018-3006236
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

MOTION FOR JUDGMENT ON THE PLEADINGS

Respondent Duquesne Light Company, by and through its attorneys, Tucker Arensberg, P.C., files its Motion for Judgment on the Pleadings to the Formal Complaint filed by Complainant Helen Armstead:

I. Overview

1. The Presiding Administrative Law Judge should dismiss the Formal Complaint filed by Helen Armstead (“Complainant”) because the undisputed facts establish that Complainant is seeking a payment arrangement for arrears that she accrued while enrolled in Duquesne Light’s Customer Assistance Program (“CAP”).

2. By law, Complainant is not entitled to a payment arrangement on CAP arrears.

3. The Presiding Administrative Law Judge thus should dismiss the Formal Complaint.

II. Undisputed Facts

4. On November 26, 2018, Complainant filed a Formal Complaint against Duquesne Light.

5. In the paragraph titled “Reason for Complaint,” Complainant checked the box stating, “I would like a payment arrangement.” Complaint, ¶ 4.

6. In the next paragraph, titled "Requested Relief," Complainant stated that she wants Duquesne Light to send correct bills to her. Complaint, ¶ 5.

7. Complainant did not attach any documents to the Formal Complaint, or further explain the reason(s) for her Formal Complaint or requested relief.

8. On December 19, 2018, Duquesne Light filed an Answer and New Matter to the Formal Complaint.

9. The Answer and New Matter contained a "Notice to Plead" addressed to Complainant.

10. The Notice to Plead stated, "**YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S NEW MATTER WITHIN 20 DAYS OF SERVICE OR A JUDGMENT MAY BE ENTERED AGAINST YOU.**" (emphasis in original).

11. Complainant did not respond to Duquesne Light's Answer and New Matter.

12. 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."); Joan R. Moore v. Pa. Power Co., No. C-2016-2564550, 2017 WL 660616, at *2 (Jan. 23, 2017) (Salapa, ALJ) (facts alleged in new matter which are not denied by the Complainant may also be accepted as true).

13. Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

14. In the Answer, Duquesne Light denied all material allegations in the Formal Complaint.

15. In the New Matter, Duquesne Light stated that Complainant enrolled in Duquesne Light's Customer Assistance Program ("CAP") on February 23, 2017. Answer and New Matter, ¶ 15.

16. Based on the income information that Complainant provided to Duquesne Light when she enrolled in CAP, she was required to pay 85% of her budget bill each month. Answer and New Matter, ¶ 17.

17. On March 27, 2018, pursuant to Duquesne Light's amended CAP plan, Complainant's CAP billing percentage decreased to 80% of her budget bill and her maximum annual CAP discount increased to \$1,500. Answer and New Matter, ¶ 18.

18. On August 3, 2018, Complainant filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court for the Western District of Pennsylvania. Answer and New Matter, ¶ 19.

19. On September 20, 2018, Duquesne Light moved Complainant's then-outstanding account balance of \$537.26 to her bankruptcy account; she had a zero account balance to Duquesne Light after the transfer. Answer and New Matter, ¶ 20.

20. Since then, Complainant accrued an account balance of \$24.13 to Duquesne Light as of her November 2018 due date. Answer and New Matter, ¶ 21.

21. Complainant's entire account balance consists of CAP arrears, which accrued because she failed to make the required CAP payments. Answer and New Matter, ¶¶ 22-23.

III. Legal Standard

22. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings.

23. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

24. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against her only those facts she specifically admits. Maureen Whitlock v. PECO Energy Co., No. F-2015-2488833, 2015 WL 7348610, at *2 (Nov. 3, 2015) (Buckley, ALJ).

25. 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).

26. The pleadings are closed, and the hearing is scheduled for March 1, 2019, which is about one month away. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing in this matter.

IV. Argument

27. 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).

28. 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.”

29. The Commission has repeatedly held that it has no authority to establish a payment arrangement on CAP arrears. Oliver, Jr., 2017 WL 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 8267743, at *4 (Pa. P.U.C. Jan. 21, 2016) (outstanding account balance cannot be subject of a Commission-ordered payment arrangement where it consists solely of CAP arrears).

30. Here, the undisputed facts establish that Complainant enrolled in CAP on February 23, 2017.

31. Complainant is seeking a payment arrangement on an account balance (\$24.13 as of her November 2018 due date) that accrued after she enrolled in CAP.

32. Under 66 Pa. C.S. § 1405(c), Complainant is not entitled to a payment arrangement on CAP arrears.

33. Accordingly, the Formal Complaint must be dismissed.

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.



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Counsel for Respondent, Duquesne Light
Company

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HELEN ARMSTEAD,	:	
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Complainant,	:	
	:	
vs.	:	No: C-2018-3006236
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

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):

Helen Armstead
1621 Lincoln Ave Apt 204
Pittsburgh, PA 15206

Administrative Law Judge Emily DeVoe
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated this 31st day of January, 2019



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