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June 10, 2019

**Via Electronic Filing**

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

**RE: Franktuary Lawrenceville v. Duquesne Light Company  
Docket No. C-2019-3008886**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings regarding the Formal Complaint filed by Franktuary Lawrenceville. A copy of this document was served upon the parties on the Certificate of Service, enclosed.

Please feel free to contact me if you have any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a light blue circular stamp.

Emily M. Farah  
Counsel, Regulatory

Enclosure

cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANKTUARY LAWRENCEVILLE, :  
:   
Complainant, :   
:   
vs. :   
:   
DUQUESNE LIGHT COMPANY, :   
:   
Respondent. :

No: C-2019-3008886

**MOTION FOR JUDGMENT ON THE  
PLEADINGS**

Filed on behalf of Respondent  
Duquesne Light Company

Counsel of Record for this Party:

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411 Seventh Avenue, 15<sup>th</sup> Fl.  
Pittsburgh, PA 15219

**NOTICE TO PLEAD**

**TO: FRANKTUARY LAWRENCEVILLE**

**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.**

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire  
Attorney for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANKTUARY LAWRENCEVILLE,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3008886
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files this Motion for Judgment on the Pleadings pertaining to the Formal Complaint (“Complaint”) filed by Complainant Franktuary Lawrenceville, stating as follows:

**BACKGROUND**

1. The Presiding Administrative Law Judge should dismiss the Complaint filed by Franktuary Lawrenceville because the undisputed facts establish that Complainant is disputing the supply charges on its account from May 17, 2018 through September 4, 2018, when American Power and Gas of Pennsylvania, LLC (“APG”) was Complainant’s third-party electric supplier.
2. Therefore, any dispute Complainant has regarding the supply charges on its account from May 17, 2018 through September 4, 2018 is with APG, not Duquesne Light.

**LEGAL STANDARD**

3. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings.
4. 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).

5. 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 only those facts specifically admitted. Maureen Whitlock v. PECO Energy Co., No. F-2015-2488833, 2015 WL 7348610, at \*2 (Nov. 3, 2015) (Buckley, ALJ).

6. 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).

7. The pleadings are closed, and a hearing has been scheduled for August 6, 2019, which is approximately 8 weeks after the date of this filing. As such, this Motion for Judgment on the Pleadings will not delay the hearing in this matter.

#### **UNDISPUTED FACTS**

8. On April 3, 2019, Complainant filed the Complaint against Duquesne Light.

9. On April 18, 2019, Duquesne Light filed an Answer and New Matter to the Complaint, which denied all material allegations in the Complaint. Answer and New Matter ¶ 4.<sup>1</sup>

10. The Answer and New Matter contained a “Notice to Plead” addressed to Complainant.

11. 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).

12. Complainant did not respond to Duquesne Light’s Answer and New Matter.

13. Complainant is represented by counsel. Complaint ¶ 8.

14. 53 days have elapsed since Duquesne Light filed its Answer and New Matter.

15. 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

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<sup>1</sup> Also on April 18, 2019 Duquesne Light filed a Motion to Join American Power and Gas of Pennsylvania, LLC as an Indispensable Party (“Motion to Join”). The Motion to Join contained a “Notice to Plead” addressed to the Complainant and to APG. Neither Complainant, nor APG, responded to Duquesne Light’s Motion to Join.

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).

16. While the Commission routinely gives pro se complainants leeway, within the confines of due process, in pursuing their complaints, this Complainant is not pro se. See Macluckie v. Palmco Energy PA, LLC, Docket No. C-2014-2402558, 2014 WL 6985668, at \*10 (Dec. 4, 2014) (citing Carlock v. The United Telephone Co. of Pa., Docket No. F-00163617 (Order entered July 14, 1993)).

17. Here, Complainant is represented by counsel, and it should not be afforded the same leeway as pro se complainants. See Complaint ¶¶ 1, 8.

18. For the reasons described herein, Duquesne Light respectfully requests that the Commission deem the allegations in the New Matter admitted, and dismiss the Complaint with prejudice.

19. The Complaint alleged an “extra line item” began appearing on the Complainant’s bill from June 2018 through October 2018. Complaint ¶ 4.

20. The time period specified in the Complaint corresponds with the time period Complainant was enrolled with a third party supplier, namely, APG. Answer and New Matter ¶ 4.

21. On May 14, 2018, the Company received a request to change Complainant’s energy supplier to APG. Answer and New Matter ¶ 11.

22. Accordingly, Duquesne Light changed Complainant’s electric supplier to APG on May 17, 2018, as required by 52 Pa. Code §§ 57.173 and 57.174. Answer and New Matter ¶ 13.

23. The Company received a request to drop APG as Complainant’s electric supplier on August 29, 2018. Answer and New Matter ¶ 14.

24. Complainant returned to Duquesne Light default service, and was billed at the Duquesne Light default supply rate, after September 4, 2018. Answer and New Matter ¶ 16.

25. Duquesne Light acted as APG's billing agent while Complainant was enrolled with APG. Answer and New Matter ¶ 4.

26. The "extra line item" on the Complainant's bill refers to the APG charges from June 2018 through October 2018. Answer and New Matter ¶ 4; Complaint ¶ 4.

27. Any charges that APG billed to Complainant were set by the contract between Complainant and APG, not by Duquesne Light. Answer and New Matter ¶ 4.

28. Therefore, any dispute Complainant has regarding the supply charges on its account from May 17, 2018 through September 4, 2018 (the period in which APG acted as Complainant's supplier) is with APG, not Duquesne Light. Answer and New Matter ¶ 4.

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the relief sought by Complainant in the Complaint, and dismiss the Complaint with prejudice.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farh, Esquire  
PA I.D. No. 322559

411 Seventh Avenue, 15<sup>th</sup> Fl.  
Pittsburgh, PA 15219  
(412) 393-6431  
Counsel for Duquesne Light Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANKTUARY LAWRENCEVILLE,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3008886
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Administrative Law Judge Andrew M. Calvelli  
400 North Street 2nd Floor West  
Harrisburg, PA 17120

Franktuary Lawrenceville  
c/o Tim Tobitsch  
3810 Butler Street  
Pittsburgh, PA 15201

Sommer Law Group, P.C.  
c/o Craig Maravich, Esq.  
6 Market Street  
Pittsburgh, PA 15222  
*Counsel for Complainant, Franktuary Lawrenceville*

Dated this 10<sup>th</sup> day of June 2019

DUQUESNE LIGHT COMPANY



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