



Emily M. Farah  
Counsel, Regulatory

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

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

August 13, 2019

**Via Electronic Filing**

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120

**RE: Edward Payne v. Duquesne Light Company  
Docket No. C-2019-3011279**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings regarding the Formal Complaint in the above-captioned matter. A copy of this document and the enclosed has been served upon Complainant and the Presiding Officer in accordance with Commission regulations.

Please contact me with any questions, comments, or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", written in a cursive style.

Emily M. Farah  
Counsel for Duquesne Light Company

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EDWARD PAYNE

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2019-3011279

**MOTION FOR JUDGMENT ON THE  
PLEADINGS**

Filed on behalf of Respondent  
Duquesne Light Company

Counsel of Record for this Party:

Emily M. Farah, Esquire  
PA I.D. No. 322559  
[efarah@duqlight.com](mailto:efarah@duqlight.com)

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

**NOTICE TO PLEAD**

**TO COMPLAINANT EDWARD PAYNE:**

**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**

EDWARD PAYNE

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

No: C-2019-3011279

**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 Edward Payne, stating as follows:

**INTRODUCTION**

1. The Presiding Administrative Law Judge should dismiss the Complaint filed by Edward Payne because the undisputed facts establish Complainant established electric service at 818 Blossom Way, Pittsburgh, PA 15212 (“Property 2”) on July 11, 2011 from December 24, 2012, and is therefore responsible for the balance that accrued at Property 2 during that time.

**UNDISPUTED FACTS**

2. On July 2, 2019 Duquesne Light was served with the Formal Complaint filed by Complainant Edward Payne.<sup>1</sup>

3. The Complaint alleges, “I was never a resident at this place,” referring to Property 2. Complaint ¶¶ 1, 4-5.

---

<sup>1</sup> The New Matter contains a typographical error indicating the Complaint was filed on July 26, 2019. The typographical error does not materially impact the arguments stated in this Motion, and was simply a clerical error.

4. On July 17, 2019, Duquesne Light filed an Answer and New Matter to the Formal Complaint.

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

6. 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).

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

8. 27 days have elapsed since Duquesne Light filed its Answer and New Matter.

9. 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).

10. As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

11. In the Answer, Duquesne Light denied all material allegations in the Formal Complaint. Answer and New Matter ¶ 4.

12. In the New Matter, Complainant established electric service in his name at Property 2 from July 11, 2011 to December 24, 2012. Answer and New Matter ¶¶ 11-14.

13. Also in the New Matter, Duquesne Light stated Complainant is responsible for the \$738.23 in remaining unpaid charges for electric service at Property 2 at the time he ended service on December 24, 2012.

14. At the time Complainant ended service at Property 2, on December 24, 2012, \$738.23 remained unpaid. Answer and New Matter ¶ 15

15. The New Matter further stated that the Complainant is not entitled to a refund of charges for electric service that accrued more than six years before Complaint should also be dismissed because it requests relief that is beyond the statute of limitations as outlined in 66 Pa. C.S. § 1312. Answer and New Matter ¶¶ 16-19.

#### **LEGAL STANDARD**

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

17. 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).

18. 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).

19. 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).

20. The pleadings are closed, and a hearing has been scheduled for September 16, 2019. This Motion for Judgment on the Pleadings will not delay the hearing scheduled in more than one month.

## ARGUMENT

21. The undisputed facts are that the Complainant established service in his name and was the named account holder at Property 2 from July 11, 2011 to December 24, 2012, and therefore responsible for the electric charges that accrued at Property 2 during that time.

22. Even accepting all well-pleaded facts in the Complaint as true, Complainant would not be entitled to the relief he requests. Complainant is responsible for the charges at Property 2 regardless of whether he resided there.

23. The Formal Complaint disputes charges that accrued while Complainant was the named account holder at Property 2 more than six years prior to the date of the Formal Complaint, and must be dismissed.

24. Under 66 Pa. C.S. § 1312(a) the commission has the power and authority to “make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint.”

25. Complainant filed a Formal Complaint on July 2, 2019.

26. The Complaint disputes charges accrued at Property 2 from July 11, 2011 to December 24, 2012.

27. The Commission, therefore, does not have the authority to require Duquesne Light to refund amounts paid by the Complainant for Property 2 because the charges accrued more than four years before the Formal Complaint was filed.

28. Complainant’s requested relief for a refund of certain charges accrued at Property 2 is outside of the statute of limitations outlined in 66 Pa. C.S. § 1312.

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

[signature on the following page]

Respectfully submitted,

DUQUESNE LIGHT COMPANY



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

411 Seventh Avenue, Mail Drop 15-7  
Pittsburgh, PA 15219  
(412) 393-6431  
Counsel for Duquesne Light Company

