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August 19, 2019

Via Electronic Filing

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

**RE: James Flynn v. Duquesne Light Company
Docket No. C-2019-3011296**

Dear Secretary Chiavetta:

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over the typed name.

Emily M. Farah
Counsel for Duquesne Light Company

Enclosure

cc: James Flynn (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES FLYNN,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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No: C-2019-3011296

**MOTION FOR JUDGMENT
ON THE PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company

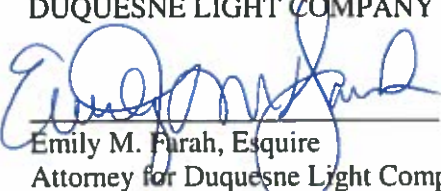
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Pittsburgh, PA 15219

NOTICE TO PLEAD

TO: COMPLAINANT JAMES FLYNN

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN MOTION FOR JUDGMENT ON THE PLEADINGS OF RESPONDENT DUQUESNE LIGHT COMPANY WITHIN TWENTY (20) DAYS OF SERVICE HEREOF 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**

JAMES FLYNN,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3011296
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to 52 Pa. Code § 5.102, Respondent Duquesne Light Company files this Motion for Judgment on the Pleadings:

I. OVERVIEW

1. Complainant James Flynn’s Formal Complaint should be dismissed because Complainant is not entitled to the relief sought in the Complaint, namely, a payment arrangement.
2. Accordingly, Duquesne Light’s Motion for Judgment on the Pleadings should be granted, and the Formal Complaint should be dismissed with prejudice.

II. FACTUAL AND PROCEDURAL BACKGROUND

3. On July 2, 2019, Duquesne Light was electronically served with Complainant’s Formal Complaint.
4. In the Formal Complaint, Complainant requested a payment arrangement for electric charges incurred 117 Old Quarry Road, Clinton, PA 15026 (the “Property”). Complaint ¶¶ 1, 4.
5. As relief, Complainant admits to accumulating a past due balance, and requested payment arrangement terms of budget bill plus \$150. Complaint ¶ 5.
6. On July 22, 2019, Duquesne Light filed a Preliminary Objection to the Formal Complaint on the basis that the Complaint was legally insufficient.

7. The Company's Preliminary Objection contained a "Notice to Plead" addressed to the Complainant, which stated, **"YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN PRELIMINARY OBJECTION OF RESPONDENT, DUQUESNE LIGHT COMPANY, WITHIN TEN (10) DAYS OF SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU."** (bold in original).

8. 28 days have elapsed since filing the Preliminary Objection, and Complainant has not responded to the Company's Preliminary Objection.

9. Also on July 22, 2019, Duquesne Light filed an Answer and New Matter.

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

11. The Answer and New Matter included a "Notice to Plead" addressed to Complainant, which stated, **"YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN NEW MATTER OF RESPONDENT DUQUESNE LIGHT COMPANY WITHIN TWENTY (20) DAYS OF SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU."** (bold in original).

12. 28 days have elapsed since filing the New Matter, and Complainant has not responded to the Company's New Matter.

13. By failing to respond to the New Matter, the Pennsylvania Public Utility Commission ("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 (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."). As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

14. 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).

15. The pleadings are closed in this case, and a hearing has not yet been scheduled. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing.

III. LAW AND ARGUMENT

16. Complainant is not entitled to a payment arrangement because he has demonstrated a poor payment history and has not made a good faith attempt to pay for electric service.

17. The Commission can order a payment arrangement on non-Customer Assistance Program arrears at its discretion. Victor Oliver, Jr., v. Pa. Elec. Co., Docket No. F-2017-2595557, 2017 WL 5564159, at *5 (Oct. 19, 2017).

18. A payment arrangement, however, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234, 2004 WL 1372864, at *2 (Mar. 17, 2004).

19. The Commission thus “should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside their control.” Crawford v. Nat’l Fuel Gas Distrib. Corp., Docket No. C-20066348, 2007 WL 4699560, at *9 (Dec. 6, 2007).

20. The Commission has held that a customer has not demonstrated a good faith effort to pay his or her utility bills if the customer has a poor payment history, has repeatedly violated past payment arrangements, or has accumulated a large account balance. Oliver, Jr., 2017 WL 5564159, at *6; Pickett v. Phila. Gas Works, Docket No. C-2014-2444967, 2015 WL 5915467, at *6 (Oct. 1, 2015) (Commission not required to issue payment arrangement on non-CAP arrears if customer has poor payment history or has failed to maintain past payment arrangements); Hewitt v. PECO Energy Co., Docket No. F-2011-2273271, 2013 WL 5232291, at *7 (Sept. 12, 2013) (Commission can refuse to issue payment arrangement on non-CAP arrears if customer has poor payment history and defaulted on prior payment arrangements).

10. A customer may be found to have an inability to keep prior payment arrangements when he or she has violated four (4) prior payment arrangements. Michail v. PECO Energy Co., Docket No. F-2014-2404586, 2015 WL 302138, at *4-5 (Jan. 15, 2015).

21. As stated in the New Matter, Complainant has had five payment arrangements within the last four years, one of which was a Commission-issued payment arrangement. Answer and New Matter ¶ 19.

22. Complainant has failed to comply with each of his five payment arrangements. Answer and New Matter ¶ 19.

23. Therefore, Complainant has demonstrated an inability to adhere to payment arrangements.

11. A customer may be found to have a poor payment history when he or she has made only ten (10) payments within two (2) years. Oliver, Jr., 2017 WL 5564159, at *6 (“[c]omplainant in this case has a poor payment history, making only ten payments in the last two years”).

24. Within the last two years (24 months), Complainant has made three payments. Answer and New Matter ¶ 15.

25. Two of the three payments Complainant made within the last two years were less than half of the billed amount. Answer and New Matter ¶ 16.

26. Complainant’s infrequent payments for less than the billed amount demonstrate a poor payment history. Answer and New Matter ¶ 17.

27. Because the Complainant has an inability to keep payment arrangements and demonstrated a poor payment history, Complainant’s requested relief for a sixth payment arrangement should be denied because the Complainant has not shown a good faith effort to pay for his electric service. Answer and New Matter ¶¶ 20-22.

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, or in the alternative, dismiss the portion of the Complaint requesting a payment arrangement.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
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Pittsburgh, PA 15219
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(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


JAMES FLYNN,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3011296
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

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

Mr. James Flynn
117 Old Quarry Road
Clinton, PA 15026

Dated this 19th day of August, 2019



Emily M. Farah
PA I.D. No. 322559
Counsel for Respondent,
Duquesne Light Company