



Emily Farah  
Counsel, Regulatory

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

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

November 14, 2019

**Via Electronic Filing**

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

**RE: A. Raymond Kochis v. Duquesne Light Company  
Docket No. C-2019-3012955**

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".

Emily M. Farah  
Duquesne Light Company  
Counsel, Regulatory

Enclosure

cc: Certificate of Service (with enclosure)



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

A. RAYMOND KOCHIS	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3012955
	:	
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 (“Present Complaint”) filed by A. Raymond Kochis (“Complainant”), pursuant to 5.102(a) and states as follows:

**INTRODUCTION**

1. The Presiding Administrative Law Judge should dismiss the Complaint filed by A. Raymond Kochis because the undisputed facts establish Complainant is not entitled to a re-litigation of the issues pertaining to the accuracy of the Complainant’s bills or the Company’s attempts to terminate Complainant’s electric service, and those allegations must be dismissed.
2. On September 18, 2019, Duquesne Light was served with the above-captioned formal complaint (“Present Complaint”) filed by A. Raymond Kochis initiating this matter.
3. Duquesne Light filed a timely Answer and New Matter on October 8, 2019.
4. The Answer and New Matter contained a “Notice to Plead” addressed to Complainant.

5. 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).

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

7. 37 days have elapsed since Duquesne Light filed its Answer and New Matter.

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

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

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

#### **UNDISPUTED FACTS**

11. In its New Matter, the Company stated that the Present Complainant seeks to bring forth two of the same allegations stated in his prior, fully litigated, formal complaint at docket number C-2017-2601038 (“Prior Complaint”). Answer and New Matter ¶ 13.

12. The allegations that incorrect charges appear on Complainant's bills and that the Company threatened to terminate his electric service are subject to an initial decision issued after a hearing was conducted on October 4, 2017. Answer and New Matter ¶ 14.

13. Administrative Law Judge Katrina Dunderdale issued an Initial Decision denying the Prior Complaint on January 22, 2018. The Initial Decision became final on April 26, 2018 when the Complainant failed to file Exceptions by the required due date. Answer and New Matter ¶ 18.

14. The allegations that the Company improperly attempted to terminate Complainant's electric service and improperly billed him are barred from being litigated again due to the doctrine of collateral estoppel (issue preclusion). Answer and New Matter ¶ 21.

#### **LEGAL STANDARD**

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

16. 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).

17. 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. Whitlock v. PECO Energy Co., No. F-2015-2488833, 2015 WL 7348610, at \*2 (Nov. 3, 2015).

18. 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).

19. The pleadings are closed, and a hearing is currently scheduled for December 9, 2019.<sup>1</sup> This Motion for Judgment on the Pleadings will not delay the hearing because it is being filed more than three weeks before the scheduled hearing.

## **ARGUMENT**

20. The above-captioned complaint should be dismissed in its entirety because (A) the doctrine of collateral estoppel applies the Company's termination attempts and charges on Complainant's bills and (B) the Complainant is not entitled to a payment arrangement because he has failed to make a good faith attempt to pay for his electric service.

**(A) The allegations regarding the Company's termination attempts and charges on Complainant's bills should be dismissed on the basis of collateral estoppel.**

21. Collateral estoppel is a doctrine of issue preclusion that seeks to prevent the re-litigation of a finally litigated issue of law or fact in a subsequent proceeding between the same parties. Baker v. Pa. Human Relations Comm'n., 462 A.2d 881 (Pa.Cmwlt. 1983).

22. For the doctrine of collateral estoppel to apply, four requirements must be met: (1) the issues decided in the prior adjudication are identical to the ones presented in the later action, (2) there was a final judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication, and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in question in the prior action. Day v. Volkswagenwerk Aktiengesellschaft, 464 A.2d 1313 (Pa.Super. 1983).

---

<sup>1</sup> On November 13, 2019, the Commission cured an ex-parte communication between the Complainant and the Administrative Law Judge in this proceeding, wherein the Complainant requested a continuance of the hearing currently scheduled. Duquesne Light Company does not object to a continuance of the hearing, should one be necessary. For the reasons stated within this Motion, Duquesne Light maintains that the Complaint should be dismissed in its entirety, and if this Motion is granted, no hearing will be necessary.

23. The allegations that the Company improperly attempted to terminate Complainant's electric service and improperly billed him must be dismissed because all four elements of the collateral estoppel doctrine are met.

24. Specifically: (1) the issues pertaining to the Company's termination attempts and charges on Complainant's bills were decided in the Prior Complaint and are identical to the ones presented in the Present Complaint action, (2) final judgment for those two issues were adjudicated on the merits, (3) the parties in the Prior Complaint and the Present Complaint are identical, and (4) the Complainant had a full and fair opportunity to litigate the issues in question in the Prior Complaint.

25. The Prior Complaint contained two of the same allegations in the Present Complaint: that the Company improperly attempted to terminate Complainant's electric service, and that incorrect charges appeared on Complainant's Duquesne Light bills. See Exhibit A.

**(B) The Commission should not issue Complainant a payment arrangement because he has failed to make a good faith attempt to pay for his electric service.**

26. In the Present Complaint, the Complainant requests a payment arrangement. See Present Complaint ¶ 4.

27. The Commission can order a payment arrangement on certain balances at its discretion, but the Commission "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., No. C-20066348, 2007 WL 4699560, at \*9 (Dec. 6, 2007).

28. The Commission may determine that a customer has failed to demonstrate a good faith effort to pay for his or her utility bills when the customer does not make payments for an

extended period of time. See Fleeger v. Pa. Elec. Co., No. F-2018-3004564, 2019 WL 1225914, at \*8 (Mar. 1, 2019) (finding that the complainant had a poor payment history when her last payment was made nearly two years ago).

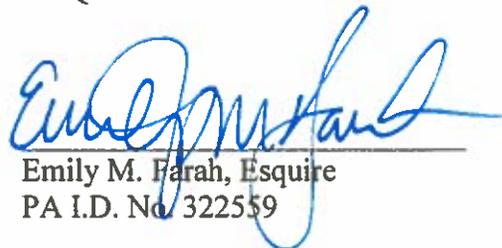
29. The Complainant has not made a payment for his electric utility service since May 24, 2017. Answer and New Matter ¶ 25.

30. Because the Complainant demonstrated a lack of good faith effort to pay his utility bills, the Commission may rightfully decline to issue the Complainant a payment arrangement

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the allegations pertaining to the Company's termination attempts and the charges on Complainant's electric service on the basis of collateral estoppel and deny Complainant a payment arrangement because the Complainant has not made a good faith attempt to pay for his electric service, and dismiss the Complaint with prejudice.

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

