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February 12, 2020

Via Electronic Filing

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

RE: Tracy Lyn Scopel v. Duquesne Light Company
Docket No. c-2019-3015037

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 a faint, larger version of the signature.

Emily M. Farah
Counsel for Duquesne Light Company

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TRACY LYN SCOPEL,	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3015037
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION FOR JUDGMENT
ON THE PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company

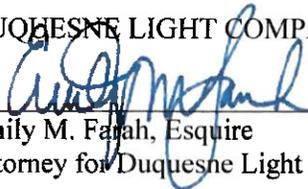
Counsel of Record for this Party:
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Pittsburgh, PA 15219

NOTICE TO PLEAD

TO: COMPLAINANT TRACY LYN SCOPEL

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**

TRACY LYN SCOPEL	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2019-3015037
	:	
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 Tracy Lyn Scopel’s Formal Complaint (“Complaint”) should be dismissed because the Complaint seeks a remedy that the Complainant is not entitled to, namely, a payment arrangement.

2. Complainant is not entitled to a payment arrangement because she has not made a good faith effort to pay for her electric service.

3. 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

4. On or about December 19, 2019, Complainant’s Formal Complaint was served on Duquesne Light.

5. In the Formal Complaint, Complainant alleged the Company was threatening to shut off her electric service at her residence located at 115 North South Drive, Pittsburgh, PA 15237 (“the Property”). Complaint ¶ 4.

6. As relief, Complainant states that she wants a payment arrangement. Complaint ¶¶ 4- 5.

7. Duquesne Light filed an Answer and New Matter on January 7, 2020.

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

9. 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 IN ACCORDANCE WITH 52 PA. CODE § 5.63.”** (bold in original).

10. 36 days have elapsed since the Answer and New Matter was filed.

11. The Complainant has not responded to the Answer and New Matter as instructed in the Notice to Plead.

12. 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 (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.”). As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

13. 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).

14. The pleadings are closed in this case, and a hearing has been scheduled for March 11, 2020. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing (should one be necessary), which is scheduled one month from the date of this filing

III. LAW AND ARGUMENT

15. Complainant is seeking a payment arrangement, but she is not entitled to a payment arrangement because she has not made a good faith attempt to pay for her electric service.

16. The Commission can order a payment arrangement on non-CAP arrears at its discretion. Victor Oliver, Jr., v. Pa. Elec. Co., F-2017-2595557, 2017 WL 5564159, at *5 (Oct. 19, 2017).

17. 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).

18. 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).

19. 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).

20. Here, Complainant has had seven payment arrangements: one established by the Commission and five established by the Company (excluding Complainant’s CAP enrollment). See Answer and New Matter **Exhibit B**.

21. Complainant violated each of her payment arrangements by failing to make timely, in-full payments. See Answer and New Matter **Exhibit B**.

22. Complainant's repeated failure to comply with Company and Commission-issued payment arrangements demonstrates a lack of good faith effort to pay for her electric service.

23. Complainant's poor payment history is additional evidence that Complainant has not made a good faith attempt to pay for her electric service.

24. In the last two years, only ten payments have posted to the Complainant's account. See Answer and New Matter **Exhibit A**.

25. Given that the Complainant has demonstrated a lack of good faith effort to pay for her electric service by failing to comply with numerous payment arrangements and failing to make timely and in-full payments, Complainant is not entitled to the relief she is seeking in the Complaint, namely, a payment arrangement. Complaint ¶¶ 4-5.

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,
DUQUESNE LIGHT COMPANY



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(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TRACY LYN SCOPEL	:	
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Complainant,	:	
	:	
vs.	:	No: C-2019-3015037
	:	
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):

Tracy Lyn Scopel
115 North South Drive
Pittsburgh, PA 15237

Pennsylvania Public Utility Commission
c/o Special Agent Kailey Maguire
400 North Street
Harrisburg, PA 17120

Dated this 12th day of February, 2020



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