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June 12, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Frank J. Cservak, Jr. v. Duquesne Light Company
Docket No. F-2020-3019005

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Partial Judgment on the Pleadings for filing in the above-captioned matter. A copy of this document has been served on the Complainant and the Presiding Officer in accordance with the enclosed Certificate of Service. If you have any questions, comments or concerns, please feel free to contact me.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Emily M. Farah".

Emily M. Farah
Counsel, Regulatory

Enclosure

cc: Certificate of Service (w/ encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANK J. CSERVAK, JR. :

Complainant, :

vs. :

No: F-2020-3019005

DUQUESNE LIGHT COMPANY, :

Respondent. :

**MOTION FOR PARTIAL
JUDGMENT ON THE PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company

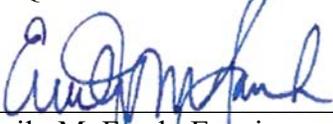
Counsel of Record for this Party:
Emily M. Farah, Esquire
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NOTICE TO PLEAD

TO COMPLAINANT FRANK J. CSERVAK:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.103 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**

| | | |
|-------------------------|---|--------------------|
| FRANK J. CSERVAK, JR. | : | |
| | : | |
| Complainant, | : | |
| | : | |
| vs. | : | No: F-2020-3019005 |
| | : | |
| DUQUESNE LIGHT COMPANY, | : | |
| | : | |
| Respondent. | : | |

MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files this Motion for Partial Judgment on the Pleadings pertaining to the above-captioned formal complaint (“Complaint” or “Formal Complaint”) filed by Frank J. Cservak, Jr. (“Complainant”) regarding electric service at 174 Barberry Road, Sewickley, PA 15143 (the “Property”) pursuant to 52 Pa. Code § 5.102(a), and states as follows:

I. INTRODUCTION

1. The Presiding Administrative Law Judge should dismiss the portions of the Complaint disputing (1) the presence of tampering at the Property and (2) the Company’s termination of Complainant’s electric service in light of the tampering.

2. The undisputed facts establish that the Complainant tampered with Duquesne Light meter(s) and appurtenances attached thereto in violation of Pennsylvania Public Utility Commission (“Commission”) regulations and the Company’s Commission-approved tariff.

3. The Company’s Motion for Partial Judgment on the Pleadings (“Motion”) should be granted because the pleadings present no genuine issue of material fact relating to: (1) the

existence of tampering with Company facilities at the Property, and (2) the Company's termination of Complainant's electric service because of the tampering.

I. PROCEDURAL HISTORY

4. On March 3, 2020, Duquesne Light was served with the above-captioned Formal Complaint initiating this matter.

5. Duquesne Light filed a timely Answer and New Matter on March 20, 2020.

6. The Answer and New Matter contained a "Notice to Plead" addressed to Complainant.

7. 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).

8. On April 24, 2020, Complainant filed a response to Duquesne Light's Answer and New Matter.

II. UNDISPUTED FACTS

9. The Complaint pertains to electric service provided to two separate and distinct buildings located at 174 Barberry Road, Sewickley, PA 15143 (the "Property").

10. On October 25, 2019, the Company discovered it was not receiving reads for one of the meters located at the Property. See Answer and New Matter ¶ 4; Reply to Answer and New Matter, ¶ 4.

11. On December 27, 2019, the Company discovered it was not receiving reads for the meter no. F82092154 at the Property. See Answer and New Matter ¶ 4.

12. On February 13, 2020, Duquesne Light personnel observed that the net meter no. F82092154 had been removed from its socket, and wiring had been reconfigured. See Answer and New Matter ¶ 4.

13. Complainant does not dispute that one of the meters was removed by him or at his direction. (“Please be advised that I have subsequently removed the second meter.”); Reply to Answer and New Matter, Attachment #3 (Letter dated December 20, 2019, at ¶¶ 1,5, stating: “I am in the process of having one of the meters removed”).

14. Further, Complainant does not deny that Company equipment was purposefully rewired by him or at his direction. Complaint ¶ 4 (“I removed the second meter so that now both the house and barn are on one meter”).

15. After the Company discovered that one of its meters had been removed and the wiring reconfigured without the Company’s prior authorization, Duquesne Light posted a 10-day termination notice to the Property. See Answer and New Matter ¶ 4, Exhibit G.

16. The termination notice indicated that electric service may be shut off on or after February 28, 2020 due to meter tampering, irregular wiring, and a potentially unsafe condition. Id.

17. The termination notice further indicated that Complainant could prevent his electric service from being terminated if the Complainant rewired the Property to direct the load for the two buildings at the Property to their respective appropriate two meters and obtained a wiring approval. See Answer and New Matter ¶ 4, Exhibit G.

18. On Monday, March 2, 2020, the Company terminated Complainant’s electric service and left a post-termination notice at the Property. See Answer and New Matter ¶ 4, Exhibit H.

III. LEGAL STANDARD

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

20. 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).

21. 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., Docket No. F-2015-2488833, 2015 WL 7348610, at *2 (Nov. 3, 2015).

22. 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).

23. The pleadings are closed, and an initial telephonic hearing is scheduled for July 9, 2020. This Motion for Partial Judgement on the Pleadings will not delay the hearing because it is being filed more than three weeks from the scheduled hearing date.

24. In the alternative, Duquesne Light respectfully requests this Motion be treated a Motion for Partial Summary Judgment in accordance with 52 Pa. Code § 5.102.

IV. ARGUMENT

A. The Complainant tampered with Company facilities by removing a meter and reconfiguring the wiring to have electricity register through the remaining meter.

25. The above paragraphs in this Motion are incorporated as if fully restated herein.

26. 52 Pa. Code § 56.2 defines meter tampering as “any act which affects the proper registration of service through a meter.”

27. The Complainant does not dispute that one of the meters was removed by him or at his direction. Complaint ¶ 4 (“I have subsequently removed the second meter in which now greatly simplifies the situation.”).

28. Complainant affirmatively states that he (or someone he employed) removed a Duquesne Light meter and rewired the electric service without Company authorization. Id.

29. Complainant further states that he “had a [l]icensed [e]lectrician familiar with such procedures remove one meter for safe keeping.” See Reply to Answer and New Matter ¶¶ 4, 23.

30. It is well-established from the pleadings in this matter that the Complainant removed the Duquesne Light meter, or had the Duquesne Light meter removed at Complainant’s direction, without Company authorization. Complaint ¶ 4, Reply to Answer and New Matter ¶¶ 4, 23.

31. In addition to removing one meter, Complainant rewired the service from the removed meter through the remaining meter. Complaint ¶ 4 (“I removed the second meter so that now both the house and barn are on one meter”).

32. Complainant admitted that he “removed the second meter so that now both the house and barn are on one meter[.]” See Complaint ¶ 4.

33. Complainant tampered with Duquesne Light facilities by removing an electric meter and further tampered with Duquesne Light facilities when the service was rewired through another meter located at the Property. See Pennsylvania Public Utility Commission, *Your Rights and Responsibilities as a Utility Customer*, http://www.puc.state.pa.us/consumer_info/electricity/

[consumer information energy efficiency conservation shopping .aspx](#), p. 5 (“is illegal for [a consumer] to remove the meter or tamper with it”).

B. Duquesne Light properly terminated service after it identified meter tampering at the Property.

34. The above paragraphs in this Motion are incorporated as if fully restated herein.

35. Pursuant to 52 Pa. Code § 56.98, a utility company is authorized to immediately terminate utility service if it discovers evidence of tampering or unauthorized use.

36. 66 Pa. C.S. § 1406(c)(1)(iii) further provides: “[t]ampering with meters or other public utility’s equipment” is grounds for immediate termination.

37. Consistent with 52 Pa. Code § 56.98 and 66 Pa. C.S. § 1406(c)(1)(iii), the Company’s Tariff Rule No. 34 states, in part: “[t]he Company may terminate electric service and remove its equipment from the premises in case the Company’s property on the premises has been interfered with, or in case evidence is found that the service wires, meters, switch-box or other appurtenances on the premises have been tampered with.”

38. Complainant tampered with Company facilities by removing the Duquesne Light meter and rewiring the service at the Property through the remaining Duquesne Light meter. See Complaint ¶ 4 (“Please be advised that I have subsequently removed the second meter”).

39. Therefore, the Company was well within its rights to terminate electric service in accordance with 52 Pa. Code § 56.98, 66 Pa. C.S. § 1406(c)(1)(iii), and the Company’s Tariff Rule No. 34.

40. Even if the Commission finds that the Complainant did not tamper with Company facilities, Complainant nonetheless “interfered” with Company facilities and Duquesne Light acted within its rights to terminate electric service in accordance with Tariff Rule 34. See Kreider

v. PECO Energy Co., No. C-2015-2469655, 2016 WL 5800351, at *19 (Aug. 17, 2016) (finding that the complainant “certainly ‘interfered with’ the Smart Meter” when she had it removed by a certified electrician and had an analog meter installed in its place).

41. Duquesne Light posted a 10-day termination notice at the Property on February 18, 2020, indicating that electric service may be shut off due to meter tampering, irregular wiring, and a potentially unsafe condition. See Duquesne Light’s Answer and New Matter ¶ 4, Exhibit G.

42. At no time after the issuance of the termination notice and actual termination occurred did the Complainant rewire the Property to direct Home and Barn load to their respective meters and obtain the necessary wiring approval. See Duquesne Light’s Answer and New Matter ¶ 4, Exhibit G.

43. Because the Company identified evidence of meter tampering, and the Complainant did not make repairs or obtain the necessary wiring inspection, Duquesne Light properly terminated Complainant’s electric service on March 2, 2020.

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the portions of the Complaint disputing the presence of tampering and disputing the Company’s authority to terminate electric service based on the tampering with prejudice, and find in favor of Duquesne Light.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| FRANK J. CSERVAK, JR. | : | |
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| Complainant, | : | |
| | : | |
| vs. | : | No: F-2020-3019005 |
| | : | |
| DUQUESNE LIGHT COMPANY, | : | |
| | : | |
| Respondent. | : | |

CERTIFICATE OF SERVICE

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

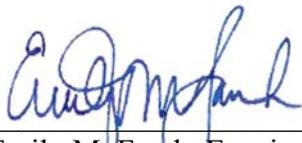
VIA FIRST-CLASS MAILING & ELECTRONIC MAILING

Frank J. Cservak, Jr.
174 Barberry Road
Sewickley, PA 15143
fcservak@c-mservices.com

VIA ELECTRONIC MAILING ONLY

Mr. Conrad A. Johnson
Administrative Law Judge
Piatt Place Downtown
301 Fifth Avenue #220
Pittsburgh, PA 15222
nmiskanic@pa.gov

Dated this 12th day of June, 2020.



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