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September 21, 2020

Via Electronic Filing

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

**RE: Nancy Leininger v. Duquesne Light Company
Docket No. C-2020-3021150**

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 filing has been served upon Complainant's counsel.

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

Respectfully Submitted,

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
Duquesne Light Company
Counsel, Regulatory

Enclosure

cc: Certificate of Service (w/ encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY LEININGER :
:
Complainant, :
:
vs. :
:
DUQUESNE LIGHT COMPANY, :
:
Respondent. :

No: C-2020-3021150

**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

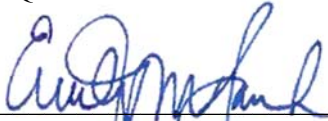
411 Seventh Avenue, MD 15-7
Pittsburgh, PA 15219

NOTICE TO PLEAD

TO COMPLAINANT NANCY LEININGER:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR 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**

NANCY LEININGER	:	
	:	
Complainant,	:	
	:	
vs.	:	No: C-2020-3021150
	:	
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 Nancy Leininger (“Complainant”), pursuant to 52 Pa. Code § 5.102(a) and states as follows:

I. INTRODUCTION

1. The Presiding Administrative Law Judge should dismiss the Complaint filed by the Complainant Nancy Leininger because the undisputed facts establish Complainant is not entitled to a re-litigation of the allegation that incorrect charges appear on her bills, which was fully litigated and subject to a Pennsylvania Public Utility Commission (“Commission”) Final Order.

2. On August 5, 2020, Duquesne Light was served with the above-captioned formal complaint (“Present Complaint”) filed by Nancy Leininger and/or her legal counsel initiating this matter.¹ Answer and New Matter **Exhibit A**, ¶¶ 1, 8.

¹ The Answer and Matter contains a typographical error, and incorrectly indicates that the Present Complaint was served on Duquesne Light on August 17, 2020.

3. Duquesne Light filed a timely Answer and New Matter on August 25, 2020.

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. No response was filed to Duquesne Light’s Answer and New Matter.

7. 26 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.

II. UNDISPUTED FACTS

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

11. In its New Matter, the Company stated that the Present Complainant seeks to bring forth the same claim stated in her prior, fully litigated, formal complaint at docket number F-2018-3003226 (“Prior Complaint”). Answer and New Matter ¶ 12.

10. Specifically, the Present Complaint contains the same exact allegation presented in the Prior Complaint: that incorrect charges appeared on Complainant’s Duquesne Light bills due to a “defective” meter. See Answer and New Matter **Exhibits A-B**.

11. Administrative Law Judge (“ALJ”) Mark A. Hoyer issued an Initial Decision dismissing the Prior Complaint on October 9, 2019. Answer and New Matter ¶¶ 4, 10.

12. The ALJ’s Initial Decision dismissing the Prior Complaint became final by Commission Order entered on December 19, 2019. Answer and New Matter ¶ 20.

III. LEGAL STANDARD

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

14. 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).

15. 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).

16. 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). The pleadings are

closed in this matter, and a hearing has not yet been scheduled. As such, the filing of this motion will not delay a hearing in this matter, should one be necessary.

IV. ARGUMENT

17. The above-captioned complaint should be dismissed in its entirety because it is barred by the doctrine of collateral estoppel.

18. 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).

19. 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).

20. Here, all four elements of collateral estoppel are met.

21. First, the Present Complaint contains the same exact allegation presented in the Present Complaint: that incorrect charges appeared on Complainant's Duquesne Light bills due to a "defective" meter. See Answer and New Matter Exhibits A-B.

22. Second, the ALJ's Initial Decision dismissing the Prior Complaint became final by Pennsylvania Public Utility Commission Order entered on December 19, 2019. See Answer and New Matter Exhibit C.

23. Third, the Prior Complaint and the Present Complaint contain identical parties who are identically situated, namely, Nancy Leininger as the Complainant and Duquesne Light as the Respondent.

24. Fourth, The ALJ gave the Complainant a full and fair opportunity to litigate her claim(s), being that the ALJ held not one, but two, evidentiary hearings on the issue of whether Complainant's bills were accurate. See Answer and New Matter **Exhibit B**.

25. By Initial Decision dated October 9, 2019, the ALJ dismissed the Complainant's Prior Complaint.

26. By Commission Order dated December 19, 2019, the ALJ's Initial Decision became final.

27. In summary, the allegation that there are incorrect charges on Complainant's bills must be dismissed because all four elements of the collateral estoppel doctrine are satisfied, and having hearing on an issue that has already been fully litigated would be contrary to the public interest.

WHEREFORE, Respondent Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission dismiss the issues pertaining to the accuracy of the charges on Complainant's bills with prejudice, and preclude the Complainant from filing any additional complaints disputing her account balance until it is paid in full.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire

PA I.D. No. 322559

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Pittsburgh, PA 15219

(412) 393-6431

**BEFORE THE
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NANCY LEININGER	:	
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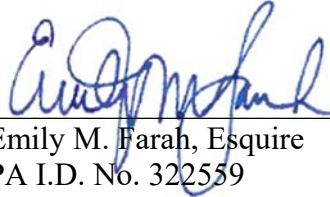
CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAILING ONLY

Mr. John P. Corcoran, Jr., Esquire
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219
JPC@jgcg.com
Counsel for Complainant

Dated this 21st day of September, 2020.



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