

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darnell D. Jones	:	
	:	
v.	:	C-2019-3014574
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint for Complainant’s failure to meet his burden of proving that there were incorrect charges on his bill or that the utility’s billing cycles and threat of service termination violated the Public Utility Code or a Commission regulation or order.

**HISTORY OF THE PROCEEDING**

**Complaint, Answer and Preliminary Objections**

On November 7, 2019, Darnell D. Jones (Complainant or Mr. Jones) filed a Formal Complaint against Duquesne Light Company (Duquesne Light or Respondent) with the Pennsylvania Public Utility Commission (Commission).<sup>1</sup> Complainant alleges 1) the utility is threatening to shut off my service or has already shut off my service; and 2) incorrect charges are

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<sup>1</sup> Mr. Jones filed an informal complainant with the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3746240. Tr. 86-87. On November 15, 2020, BCS issued a decision that Mr. Jones was correctly billed for his electric usage. Tr. 48-49, 53; Duquesne Light’s Exhibit D.

on my bill. Complaint ¶4. As relief, Complainant in part states, “This complaint is about overpayments from day one. Always overlapping statements. They have ‘35’ days to make a bill statement. There are only 7 months with 31 days! They use 35 days to make a bill for one month each month.” *Id.* ¶5.

Duquesne Light filed an Answer on December 16, 2019, 1) admitting sending a termination notice to Complainant but denying that doing so was improper; and 2) further denying that there were incorrect charges on Complainant’s bills. Contemporaneous with its Answer, Duquesne Light filed Preliminary Objections, which included a Notice to Plead. Duquesne Light argued, “Complainant’s sole allegation is that Duquesne Light should not be able to create bills that include more days [than] the calendar month fails as a matter of law.” Preliminary Objections ¶3. The Commission regulations, Duquesne Light claimed, define a billing month as a period of not less than 26 days and not more than 35 days. 52 Pa.Code § 56.2. *Id.* ¶9. Accordingly, Duquesne Light objected, “Even accepting as true all well-pleaded material facts and reasonable inferences, the Complainant does not raise a violation of the Public Utility Code, Commission Order or regulations, or any Commission-approved tariff. It is, therefore, legally insufficient.” *Id.* ¶7. For relief, Duquesne Light requested dismissal of the Formal Complaint with prejudice and without a hearing. Complainant did not file a response to the Preliminary Objections within the time prescribed by the Commission’s regulations.<sup>2</sup>

By Notice dated January 22, 2020, the Parties were informed that the Preliminary Objections were assigned to me. Considering Complainant was self-represented, I issued an Interim Order on February 10, 2020, holding Respondent’s preliminary objections in abeyance pending an evidentiary hearing on the Complaint. I referenced the ruling in *Carlock*,<sup>3</sup> under which the Commission held that, in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which self-represented complainants could further explain their position and the factual basis for their

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<sup>2</sup> An answer to a preliminary objection shall be filed within 10 days of the date of service of the objection. 52 Pa.Code § 5.101(b).

<sup>3</sup> *Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993).

complaint. The concern was expressed that, in general, complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts.<sup>4</sup> I ruled that the Preliminary Objections did not raise a novel issue of law. Also, holding a ruling on the Preliminary Objections in abeyance would not prejudice Duquesne Light.

By Notice dated February 12, 2020, the Parties were informed that a telephone hearing on the Complaint and Answer would be convened by me on March 6, 2020. On the same date, I issued a Prehearing Order informing the Parties about the procedural rules for the hearing.

On February 20, 2020, Respondent requested a continuance of the telephone hearing scheduled for the March 6, 2020, because its counsel was unavailable due to a scheduled vacation. On February 27, 2020, I issued a second Interim Order granting Respondent's request, and the telephone hearing was rescheduled to April 21, 2020.

The Commission's physical offices were closed beginning on March 16, 2020, in response to the Governor's Proclamation of Disaster Emergency regarding the Covid-19 pandemic and pursuant to the Commission's *Emergency Order Re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 (Order entered March 20, 2020) (*Emergency Order*). However, the Commission continued working remotely. Consequently, the hearing scheduled on April 21, 2020, was cancelled and rescheduled.

By Notice dated May 14, 2020, the Parties were informed that a telephone hearing in this matter would be convened by me on June 19, 2020. On May 15, 2020, I issued a corrected Prehearing Order, reminding the Parties about the procedure for the telephone hearing and encouraging them to sign up for e-filing and e-service on the Commission's website.

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<sup>4</sup> See also *Richmond v. PECO Energy Co.*, Docket No. F-2010-2187305 (Opinion and Order entered December 7, 2011).

The June 19, 2020 telephone hearing convened as scheduled. Mr. Jones appeared, self-represented, and testified, but he did not sponsor any exhibits. Duquesne Light was represented by Emily Farah, Esquire, who on behalf of Respondent called one witness, Lisa Davenport (Witness Davenport), a regulatory customer service specialist. Witness Davenport sponsored Duquesne Light Company (DLC) Exhibits A, C, D, F, G, I, J, L, M, N, P and Q, which were admitted into the record.

During the telephone hearing, the Parties were informed that the record would remain open until July 24, 2020, for the submission of late-filed exhibits and any objections thereto. Tr. 45. On July 8, 2020, Complainant submitted one exhibit consisting of 17 pages, which was marked as Complainant's Exhibit A. On the same date, Respondent's counsel, via email, represented that Respondent did not have any objection to Complainant's late-filed Exhibit A. By an Interim Order entered on July 29, 2020, Complainant's late-filed Exhibit A was admitted into the record and the record was closed.

The hearing held in this proceeding generated a 116-page transcript. This case is procedurally ready for ruling.

### FINDINGS OF FACT

#### The Parties and Service Address Description

1. Complainant Darnell D. Jones resides at 1210 Holmes Street, Apartment 1, McKees Rocks, Pennsylvania 15136 (Service Address). Tr. 4.
2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Complainant and Pennsylvania customers.
3. Duquesne Light established electric service for Mr. Jones at the Service Address in August 2016. Tr. 34; DLC Exhibit A.

4. The Service Address is a one-bedroom apartment, which includes a living room, sunroom, kitchen, and bathroom. Tr. 24.

5. The heat source for the Service Address is gas. Tr. 26.

6. The electrical appliances at the Service Address include a refrigerator, television, and fan. Tr. 25.

7. Mr. Jones is the only occupant at the Service Address. Tr. 27.

8. On February 5, 2018, Duquesne Light sent Mr. Jones a letter informing him that the Company had received notice that he wished to change his electric generation supplier (EGS) to National Gas & Electric, LLC (National Gas). Tr. 68; DLC Exhibit J.

9. On April 12, 2018, the assets of National Gas were purchased by Verde Energy USA, Inc. (Verde Energy), thereby transferring the customer contracts of National Gas to Verde Energy, including Mr. Jones' EGS contract. Tr. 69, 74; DLC Exhibit K.

10. On or about April 24, 2018, Mr. Jones filed a complaint with BCS complaining about the billing for his usage; at the time Mr. Jones' account balance was \$137.52. Tr. 70; DLC Exhibits A and L.

11. When a customer files a complaint on a billed amount, Duquesne Light suspends collection on the disputed amount until the dispute is resolved. Tr. 42, 90.

12. On April 24, 2018, Duquesne Light suspended collection on the \$137.52 in billing charges, which Mr. Jones disputed. DLC Exhibit A.

13. After April 24, 2018, Mr. Jones made partial payments on his electric account, resulting in account balances being forwarded to the next billing period. Jones Exhibit A and DLC Exhibit A.

14. On July 23, 2018, Mr. Jones called Duquesne Light's customer service 1) complaining about Verde as his EGS, 2) claiming his electric usage could not be \$53.86, and 3) requesting that Verde be dropped as his EGS. Tr. 74-75; DLC Exhibit L.

15. On July 23, 2018, Duquesne Light's customer service informed Mr. Jones that his complaint was pending with BCS and Verde would be dropped as his EGS. Tr. 74-75; DLC Exhibit L.

16. On July 23, 2018, Duquesne Light sent Mr. Jones a letter confirming Duquesne Light as his EGS. Tr. 78; DLC Exhibit M.

17. On October 30, 2018, Mr. Jones disputed his billing charges, resulting in the suspension of the collection of \$226.35 in billing charges. DLC Exhibit A.

18. On December 21, 2018, Mr. Jones disputed his billing charges, resulting in the cancellation of \$137.52 in billing charges and the suspension of the collection of \$232.95 in billing charges. DLC Exhibit A.

19. While Mr. Jones' disputed billing charges were pending, he continued to make partial payments on his undisputed charges, thereby resulting in account balances being forwarded to the next billing period. DLC Exhibit A.

20. On January 21, 2019, Duquesne Light sent Mr. Jones a bill showing an account balance for -\$17.82, in other words a credit for \$17.82 and a disputed amount for \$232.95, thereby resulting in no amount due for the January 2019 billing. Tr. 90; DLC Exhibit Q.

21. On the remittance portion of Mr. Jones' January 21, 2019 bill there was a statement which read as follows: "PLEASE PAY THIS AMOUNT BY FEB 11, 2019 \$0.00." Tr. 89-90; DLC Exhibit Q.

22. After January 21, 2019, Mr. Jones made partial payments on his electric bill, resulting in undisputed charges being forwarded to the next billing period. DLC Exhibits A and Q.

23. The disputed charge of \$232.95 also appeared on Mr. Jones' monthly electric bills from January 2019 to October 2019. DLC Exhibit Q.

24. On October 22, 2019, Duquesne Light sent Mr. Jones a 10-Day Shutoff Notice for a past due amount of \$289.65 in undisputed charges. Tr. 80; DLC Exhibit N.

25. Upon receipt of Mr. Jones' informal complaint filed with BCS in November 2019, Duquesne Light suspended termination of Mr. Jones' electric service. Tr. 82-83.

26. At the time of the hearing, Mr. Jones' electric service was active. Tr. 83.

27. At the time of the hearing, Mr. Jones' account balance was \$613.79 and \$566.24 was in dispute. Tr. 42, 108.

## DISCUSSION

### Legal Standards

#### Complaints and Burden of Proof

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

As the proponent of a rule or order, Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainant must show that Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal value or "weight," the burden of proof has not been satisfied. Complainant now must provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

#### Reasonable Service

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must

make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Section 102 of the Code, 66 Pa.C.S. § 102, defines “service” as:

Used in its broadest and most inclusive sense, includes *any and all acts done, rendered, or performed*, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . .

66 Pa.C.S. § 102 (emphasis added). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *W. Penn Power Co. v. Pa. Pub. Util. Comm’n*, 578 A.2d 75 (Pa.Cmwlth. 1990). Accordingly, a utility’s billing practices are included within the scope of reasonable service.

#### Service Termination

Section 1406 of the Code permits a utility company to terminate service under certain conditions. Section 1406(a)(1), in relevant part, states:

**(a) Authorized termination.** — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.

- (1) Nonpayment of an undisputed delinquent account.

66 Pa.C.S. § 1406(a)(1).

#### Analysis

##### The Parties’ Positions

In his Complaint, Mr. Jones raised three issues: 1) service termination, 2) incorrect billing charges, and 3) Duquesne Light’s 35-day billing cycles. At the hearing, Mr. Jones stated he was not objecting to the billing cycles. Tr- 12-13. Mr. Jones’s withdrawal of

the billing cycle issue effectively mooted Duquesne Light's Preliminary Objections. Mr. Jones' testimony focused on his claims that his account was not properly credited with his payments, and he owed nothing because a couple of his statements showed a zero balance. Tr. 96. Duquesne Light argues Mr. Jones' account was properly credited with his payments and the Company issued a service termination notice for an undisputed delinquent amount.

Each issue and the competing positions of the Parties are addressed below.

#### Termination Issue

First, I will address the termination issue. Under the Code, a utility may start termination procedures for an undisputed balance. *See* 66 Pa.C.S. § 1406(a)(1), cited above. In the present case, on October 22, 2019, Duquesne Light sent Mr. Jones a 10-Day Shut Off Notice in the amount of \$289.65 in undisputed charges. Tr. 80; DLC Exhibit N. Therefore, Mr. Jones' allegation concerning termination of his service or the threat of service termination is summarily dismissed.

#### Incorrect Charges Issue

Generally, if a customer claims he is not consuming as much electricity for which he is being charged, the *Waldron Rule* is implicated. In *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980), the Commission held while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100. *Also see, Bennett v. Peoples Natural Gas Company, LLC*, Docket No. C-2009-2122979 (Opinion and Order entered September 23, 2010, at 5).

Here, however, Mr. Jones is not seriously questioning his electric usage. He contends Duquesne Light failed to credit all his payments to his account. As evidence for his

contention, Mr. Jones points to his January 21, 2019 bill (January 2019 bill) which states \$0.00 is the amount due by February 11, 2019. Tr. 88; DLC Exhibit Q. He questions how his bill went from zero balance to over six hundred dollars. Tr. 88. Witness Davenport explained that when Duquesne Light receives a complaint disputing billing charges, collection on the disputed amount is suspended while the complaint is pending. Tr. 90. In the case of the January 2019 bill, Witness Davenport further explained the disputed amount of \$232.95 was noted on the bill. *Id.*

Mr. Jones insisted that his billing was incorrect because he had zero balances for a couple of months. Tr. 96. The only other billing period showing a zero balance was for April 2017. Jones Exhibit A. Mr. Jones received a customer assistance program credit in April 2017 which exceeded that amount of his billing charges, thereby resulting in \$0.00 due for that billing period. *Id.*

Mr. Jones further contends his account was not properly credited with his payments. Tr. 19-20. Mr. Jones was given the opportunity to submit late-filed exhibits to demonstrate his account was not properly credited. Tr. 45-113. Mr. Jones submitted his late-filed Exhibit A, which was admitted into the record by the Interim Order issued on July 29, 2020. Mr. Jones' Exhibit A is a stack of various bills and receipts dating from April 19, 2017 to July 18, 2020. The billing charges and payments reflected in Mr. Jones' Exhibit A comport with or confirm the billing charges and payments reflected in Duquesne Lights' Exhibit A, which is an account history of Mr. Jones' billing charges and payments from August 18, 2016 to June 2, 2020.

The evidence establishes that Mr. Jones' account grew to more than six hundred dollars because he filed a series of disputes about his charges dating back to April 2018. Tr. 70; DLC Exhibits A and L. Each time he filed a dispute Duquesne Light suspended collection on the disputed amount, which would appear on Mr. Jones' billing statements. Tr. 42, 90. Upon resolution of the dispute, Duquesne Light added the disputed amount back to Mr. Jones' monthly bill. DLC Exhibit A. Additionally, the evidence presented by both Parties establish that

Mr. Jones repeatedly made partial payments on his account, resulting in an unpaid balance being forwarded to the next billing period. DLC Exhibit Q and Jones Exhibit A.

Mr. Jones did not present any additional evidence that he made payments that were not credited to his account. Accordingly, Mr. Jones allegation that there are incorrect charges on his account is without merit and must dismissed.

### Ruling

Weighing the testimony and analyzing exhibits presented in this proceeding, a ruling is required that Mr. Jones failed to carry his burden to demonstrate that Duquesne Light violated the Code or a Commission order or regulation. Accordingly, the Complaint will be dismissed in the ordering paragraphs below.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Complainant carries the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code, or the regulations of the Commission or a Commission order in providing her with electric service. 66 Pa.C.S. § 332(a).

3. The Public Utility Code requires a public utility to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501.

4. Complainant has not met his burden of proof as required under the Public Utility Code. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Darnell D. Jones v. Duquesne Light Company at Docket No. C-2019-3014574 is dismissed.
2. That the Secretary's Bureau shall mark Docket No. C-2019-3014574 closed.

Date: November 19, 2020

\_\_\_\_\_/s/  
Conrad A. Johnson  
Administrative Law Judge