



Emily Farah
Counsel, Regulatory

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

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

December 4, 2021

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 Reply Exceptions in the matter indicated above. Copies of this document and the enclosed filing have been served upon the parties listed in the Certificate of Service.

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

Respectfully,

A handwritten signature in blue ink, appearing to read "Emily M. Farah", is written over a faint, larger version of the same signature.

Emily M. Farah
Duquesne Light Company
Counsel, Regulatory

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

No: C-2020-3021150

REPLY EXCEPTIONS

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
Emily M. Farah, Esquire
PA I.D. No. 322559
412-393-6431
efarah@duqlight.com

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY LEININGER,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2020-3021150
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

DUQUESNE LIGHT’S REPLY EXCEPTIONS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files these Reply Exceptions in the above-captioned Formal Complaint proceeding, pursuant to 52 Pa. Code § 5.535 and states as follows:

I. BACKGROUND

On July 9, 2018, Duquesne Light was served with a formal complaint at Docket No. F-2018-3003226 (“Prior Complaint”) filed by Nancy Leininger (“Complainant”) relating to electric service provided to 106 Byron Road, Pittsburgh, Pennsylvania 15237 (the “Property”) alleging incorrect charges appeared on her Duquesne Light bills. On September 28, 2018, Administrative Law Judge Matthew A. Hoyer (“ALJ”) conducted an evidentiary hearing regarding the accuracy of Complainant’s bills and the accuracy of the meter servicing the Property. On October 11, 2018, the hearing record was closed, which consisted of an 81-page transcript and 8 hearing exhibits offered by Duquesne Light. By Interim Order dated January 18, 2019, the ALJ re-opened the hearing record and ordered Duquesne Light to perform a home energy audit in an attempt to create a full and complete record in the Prior Complaint proceeding.

Duquesne Light completed a home energy audit at the Property on March 4, 2019. On June 28, 2019, a second telephonic evidentiary hearing was held where Duquesne Light presented testimony from

an additional witness and entered 2 more exhibits into the record, including the home energy audit. The hearing record for the Prior Complaint was closed on July 26, 2019.

On October 9, 2019, the ALJ, after considering all relevant facts and circumstances, entered an Initial Decision dismissing the Prior Complaint, finding that the bills at the Property were accurate, and that the Complainant failed to meet her burden of proof. No exceptions to the Initial Decision were filed, and Pennsylvania Public Utility Commission (“Commission”) marked the Prior Complaint as closed by Final Order dated December 12, 2019.

On August 5, 2020, Duquesne Light was served with the above-captioned formal complaint at Docket No. C-2020-3021150 (“Present Complaint”). The Present Complaint raised the same cause of action as the Prior Complaint, namely, that incorrect charges appeared on Complainant’s Duquesne Light electric bills. Duquesne Light filed an Answer and New Matter in response to the Present Complaint, complete with a “Notice to Plead,” advising the Complainant that, pursuant to 52 Pa. Code § 5.63, a response to the New Matter was required within 20 days or a judgment may be entered against the Complainant.

No response was filed to Duquesne Light’s New Matter. On September 21, 2020, Duquesne Light filed a Motion for Judgment on the Pleadings, requesting the Commission deem Duquesne Light’s allegations contained in the New Matter as admitted. Complainant, through counsel, filed a response to the Company’s Motion for Judgment on the Pleadings on October 7, 2020.

On January 6, 2021, the ALJ¹ entered an Initial Decision granting Duquesne Light’s Motion for Judgment on the Pleadings and dismissing the Present Complaint on the basis of collateral estoppel. On January 26, 2021,² Exceptions were filed to the ALJ’s Initial Decision. In response to Complainant’s Exceptions, Duquesne Light Company files these Reply Exceptions.

¹ ALJ Matthew A. Hoyer (“ALJ”) was the Presiding Officer assigned to the Prior Complaint and the Present Complaint.

² The Complainant’s Exceptions were served on the undersigned Duquesne Light counsel electronically on January 25, 2021, and posted on the Commission’s online docket on January 26, 2021.

II. LAW AND ARGUMENT

A. The Initial Decision rightfully denied the Present Complaint on the basis of collateral estoppel.

The Initial Decision correctly dismissed the Present Complaint in its entirety because it is barred by the doctrine of collateral estoppel, which 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.Cmwth. 1983).

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).

Here, the Initial Decision correctly concluded that all four elements of collateral estoppel are met. First, the Present Complaint contains the same exact allegation presented in the Prior Complaint: that incorrect charges appeared on Complainant's Duquesne Light bills. Second, there was a final judgment regarding the accuracy of Complainant's electric bills because the ALJ's Initial Decision dismissing the Prior Complaint became final by Pennsylvania Public Utility Commission Order entered on December 12, 2019. 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. Fourth, The ALJ gave the Complainant a full and fair opportunity to litigate the accuracy of her electric bills, being that the ALJ held not one, but two, evidentiary hearings on the issue of whether Complainant's bills were accurate.

The Initial Decision rightfully denied the Complainant's claims on the basis that collateral estoppel has attached. Initial Decision COL ¶¶ 5-6. The Complainant's allegation regarding high bills are subject

to a Final Order issued by the Commission, and it is not in the public's or the Commission's best interest to entertain or afford the Complainant with more bites at the proverbial apple. Initial Decision COL ¶ 4.

B. The Complainant's allegation that a defective transformer is causing high bills is precluded by the doctrine of claim preclusion.

The Complainant's argument that collateral estoppel should not apply because an issue of material fact exists regarding whether there is a defective transformer must be rejected on the basis of claim preclusion. Exceptions ¶¶2-3

The doctrine of claim preclusion is closely related to the doctrine of collateral estoppel. While collateral estoppel applies to fully litigated matters, the doctrine of claim preclusion applies to matters that were actually litigated *and* matters which *should have been* litigated in prior actions as part of the same cause of action. Floyd Tillman v. Philadelphia Gas Works, 2015 WL 7873839, at *2 (Pa. P.U.C. 2015) (emphasis added).

In both the Present and Prior Complaints, the box for allegations of incorrect charges were checked. It is undisputed that the cause of action here is a high bill dispute. Exceptions ¶ 3. Therefore, Complainant's allegation of a defective transformer causing her high bills could have been litigated during the Prior Complaint. Because the Complainant had ample opportunity during one of the two evidentiary hearings in the Prior Complaint to raise a question regarding the effectiveness of the transformer, and failed to do so, the Present Complaint must be dismissed on the basis of claim preclusion.

Even if the transformer serving the Complainant was defective (which it is not), the ALJ was correct in concluding that a transformer on the utility side of the meter would not impact Complainant's metered consumption. Initial Decision p. 5. The Complainant's bills are based upon her metered consumption, and her metered consumption has been determined to be accurate pursuant to a final Commission order.

Finally, Customers are obligated to pay for utility service. If customers fail to pay for utility service, the cost of the unpaid bills fall on the backs of the remaining customers as a part of a utility's uncollectible expenses. Bolt v. Duquesne Light Co., Docket No. Z-8712758 (April 8, 1988). The Complainant's

repeated attempts to contest the accuracy of her electric bills are mere attempts to avoid the obligation to pay for her utility service.

In summary, the doctrine of claim preclusion supports the ALJ's dismissal of the above-captioned complaint, given that the issue of the accuracy of Complainant's bills matters were actually litigated and could have been litigated during one of the two evidentiary hearings held for the Prior Complaint.

III. CONCLUSION

Complainant seeks to re-litigate a claims and issues that are subject to a final decision by this Commission, and the ALJ correctly dismissed the above-captioned complaint. Duquesne Light respectfully requests that the Commission affirm the Initial Decision and mark the above-captioned complaint as closed.

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the Complainant's Exceptions, with prejudice.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
PA I.D. No. 322559
Counsel, Regulatory
Duquesne Light Company
411 Seventh Avenue, Mail Drop 15-7
Pittsburgh, PA 15219
(412) 393-6431

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NANCY LEININGER,	:	
	:	
Complainant,	:	
	:	
v.	:	No: C-2020-3021150
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

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

VIA FIRST-CLASS MAILING

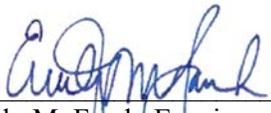
Nancy Leininger
106 Byron Road
Pittsburgh, PA 15237

ELECTRONIC MAILING

John P. Corcoran, Esq.
Jones, Gregg, Creehan & Gerace, LLP
411 Seventh Avenue
Suite 1200
Pittsburgh, PA 15219
jpc@jgcg.com
(Counsel for Complainant)

Pennsylvania Public Utility Commission
Office of Special Assistants
ra-OSA@pa.gov

Dated this 4th day of February, 2021



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