COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
ISSUED: June 26, 1998

REFER TO OUR FILE
IN REPLY PLEASE
C-00981142

PETER R PATTERSON ESQUIRE
MCGREGOR & PATTERSON
SUITE 300
412 FIRST AVENUE
PITTSBURGH PA 15219-1307

DOCUMENT
FOLDER

Tiffany Associates v. Duquesne Light Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Larry Gesoff. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

BTL

law
Encls.
Certified Mail
Receipt Requested

cc: ALJ GESOFF/ OFFICE OF ALJ/ OSA/ OCA/ PIO/ LAW/ OTS/ BFUS/ NEW FILING/ OUR FILE/ CHAIRMAN/ COMMISSIONERS
REGINA M SESTAK ESQUIRE
DUQUESNE LIGHT COMPANY
411 SEVENTH AVENUE 16-006
PITTSBURGH PA 15230-1930

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tiffany Associates	:	
	:	Docket No.
v.	:	C-00981142
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Larry Gesoff
Administrative Law Judge

History of the Proceeding

By Complaint filed January 16, 1998, Tiffany Associates ("Complainant") alleges that Duquesne Light Company ("Duquesne Light" or "Respondent") refused its request to master meter the senior citizen apartment building it owns and requests that the Commission either void the Duquesne Light tariff rule prohibiting residential master metering or grant it an exemption from the rule based on a grandfathered status or economic hardship. On February 20, 1998, Duquesne Light filed an Answer admitting to certain Complaint allegations and denying others.

The Commission held a hearing on May 12, 1998. Peter R. Patterson, Esquire, represented Complainant which produced one witness who sponsored nine exhibits. Richard

S. Herskovitz. Esquire, represented Duquesne Light which presented one witness who sponsored one exhibit.

The record in this proceeding consists of the above-mentioned exhibits and a 70-page transcription of the notes of testimony.

Summary of Decision

Complainant has not met its burden of proof and its request for the master metering of the Tiffany Apartments must be denied. First, the benefits to Complainant and the tenants of Tiffany Apartments resulting from master metering are outweighed by the public interest in the conservation of energy and in keeping energy costs low. Second, master metering would result in tenants with low energy use subsidizing the tenants with high energy use. Third, the marketing advantage Complainant would enjoy as a result of the master metering of Tiffany Apartments would result in discriminatory rates in violation of the Public Utility Code. Fourth, there is no record evidence to support Complainant's contention that energy conservation and deregulation have reduced the need for Tariff Rule 41. Fifth, PURPA and Tariff Rule 41 prohibit master metering. Sixth, the exception to this prohibition in PURPA does not apply to Tiffany Apartments. Finally, Duquesne Light's tariff does not include a grandfather exception to the master metering rule for buildings connected before 1981.

Findings of Fact

1. Clarence H. Steiner is President of Steiner Realty, Incorporated which he has managed since 1985. Steiner Realty, Incorporated, a real estate brokerage firm, manages apartment buildings. It manages slightly more than 450 apartment units. Mr. Steiner is in charge of the day to day operations of Steiner Realty, which includes managing the apartment units it owns. Tr. 4-5.

2. Mr. Steiner is also the President of Tiffany G.P., Incorporated, the corporate general partner for Tiffany Associates ("Complainant"). Complainant was formed for the sole purpose of purchasing Tiffany Apartments, which it did purchase on January 9, 1998. Tr. 6-7, 12-13.

3. Tiffany Apartments was constructed in 1965. It is located at 925 California Avenue, Avalon, Pennsylvania 15202. It is served electricity by Duquesne Light. Four units were vacant when Complainant purchased Tiffany Apartments; ten units were vacant at the time of the hearing. Tr. 7-9; Plaintiff's Ex. 1.

4. Tiffany Apartments has 84 units, 83 of which were individually metered for electricity before January 1, 1981. Tr. 10-11.

5. A meter controls the house lights of Tiffany Apartments, its central air conditioning and its 84th unit, a basement apartment. The gas and water service to Tiffany Apartments are not individually metered. Tr. 11-12.

6. Complainant advertises Tiffany Apartments as a seniors apartment building. To be marketed as a senior citizens apartment HUD requires that at least 80% of

the occupants of an apartment building be over 55. At the time of the hearing, about 92 percent of the Tiffany Apartment occupants were senior citizens. Tr. 20, 29-30.

7. Before November 20, 1997, Complainant entered into an agreement to purchase Tiffany Apartments with the closing scheduled for January 1998. Plaintiff's Ex. 2.

8. On November 18, 1997, Mr. Steiner called Mr. William C. Zollars, an Account Representative of Duquesne Light's Marketing and Sales Group, to request that the Tiffany Apartment units be master metered. Mr. Zollars, referring to Duquesne Light's Tariff Rule 41, refused the request. Tr. 12, 38; Plaintiff's Ex. 2.

9. By letter to Mr. Zollars dated November 20, 1997, Mr. Steiner claimed that Rule 41 does not apply to Tiffany Apartments and requested authorization and assistance to proceed with master metering after closing in January 1998. Plaintiff's Ex. 2.

10. By letter to Mr. Steiner dated January 2, 1998, Mr. Zollars stated that Duquesne Light cannot honor Mr. Steiner's request for master metering because it must operate within the rules and regulations of its Tariff. Tr. 13; Plaintiff's Ex. 3.

11. Complainant filed the instant complaint as a result of Duquesne Light's decision not to master meter Tiffany Apartments. Tr. 14-15.

12. Mr. Steiner knew before the closing that Duquesne Light would not master meter Tiffany Apartments, but he did not know this before he signed the agreement of sale. Tr. 28-29.

13. Duquesne Light's Tariff Rule 41, located on First Revised Page No. 25 of Supplement No. 1 to its Tariff Electric - Pa. P.U.C. No. 17, reads as follows:

> **41. PROHIBITION OF RESIDENTIAL MASTER METERING** Each Residential dwelling unit in a building must be individually metered by the Company for buildings connected after January 1, 1981. For the purposes of the Rule, a dwelling unit is defined as:
>
> > One or more rooms for the use of one or more persons as a housekeeping unit with space for eating, living, and sleeping, and permanent provisions for cooking and sanitation.
>
> This Rule does not preclude the use of a single meter for the common areas and common facilities of a multi-tenant building.
>
> This Rule shall not affect any practice undertaken prior to January 1, 1981.

Plaintiff's Exhibit 4: Tr. 14-15.

Discussion

Because Tiffany Associates is the complainant in this proceeding, it bears the burden of proof. Section 332(a) of the Public Utility Code ("Code"), 66 Pa. C.S. §332(a). In Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950), the Pennsylvania Supreme Court stated that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest degree, than the evidence presented by the other party. To establish a sufficient case against a utility and

satisfy the burden of proof, a complainant must show that the utility is responsible or accountable for the problem described in the complaint. Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976).

Complainant makes several assertions in support of its request for master metering. First, in the long run, customers will benefit from master metering because the charges for rent and electric will be on one bill and volume discounts will be passed on to the tenants. Second, Complainant will benefit from a marketing advantage. Third, energy conservation and deregulation have reduced the need for Rule 41 because people are more attuned to conserving energy. Fourth, there is no prohibition against master metering. And finally, Duquesne Light's tariff includes a grandfather exception to the master metering rule for buildings connected before 1981. Tr. 64-65. Complainant has not met its burden of proof. Its complaint, therefore, will be dismissed.

Customer benefit

To support Complainant's position on the long run benefits of master metering on customers, Mr. Steiner sponsored Plaintiff's Exhibit 5, an electric usage comparison among Tiffany Apartments and two other apartment buildings Complainant owns. One apartment building, the Normandy, is master metered; the other apartment building, Tree Haven, is individually metered. Plaintiff's Exhibit 5 purports to show three things. First, that if the Normandy was individually metered, its electric rates would be almost 46 percent higher than they are now for master metered rates. Second, that if Tiffany Apartments, which uses more electricity than does the Normandy, was master metered, its rates would be

much lower than they are now. Third, that because Duquesne Light charges a service fee for each residential unit, the cost to the tenant in a separately metered building is higher. Mr. Steiner estimates that Complainant would save between $10,000 and $15,000 annually if Tiffany Apartments is master metered. Tr. 15-20. Complainant would recoup the $5,000 to $10,000 cost to convert to master metering[1] in a year or less. Tr. 20, 32. Mr. Steiner testified that because senior citizens are typically on a fixed income they like to have all utilities included in the rent so they can avoid an electric expense surprise. If Tiffany Apartments is master metered, Complainant would increase the tenants' rent, but by less than the amount of their current electric budget bill. According to Mr. Steiner, master metering will benefit current tenants and make Tiffany Apartments more attractive to prospective tenants. Tr. 20-21, 33.

Counsel for Duquesne Light objected to the use comparison among apartment buildings, noting that individuals have different usage patterns and buildings are different and built at different times. Tr. 16.

To counter this objection, Mr. Steiner testified that the Normandy and Tree Haven are "virtually identical in location, size, composition as far as the mix and makeup of the units," (Tr. 16) and that "they are built identical construction [sic], 1950, along Fifth Avenue...[t]hey both have gas furnaces so there is not electric heat involved...[t]hey all have gas ranges...[t]hey all have one refrigerator per apartment...[t]hey all have new

[1] To pay Duquesne Light for the meters if they remain in place, or to remove the meters and return them to Duquesne Light. Tr. 46-47, 50.

windows...[t]hey all have a new roof." Tr. 57-58. About Tiffany Apartments, Mr. Steiner stated that it has "gas heat, so ...whether the building is insulated ...as well as the buildings of Fifth Avenue ...doesn't come into play since there is not electric heating involved, but it is similar construction, brick masonry construction." Tr. 57-68.

Although I admitted Plaintiff's Exhibit 5 into the record, I give it no weight. It does not support any finding in this proceeding because a comparison of the electric usage of different tenants in different buildings is unreliable. It is not possible to know what electric using appliances are in each apartment unit. Mr. Steiner testified that the 83 separately metered units each have an electric stove and an electric oven. He did not know, however, what additional appliances are in each unit. Tr. 10, 31. He did not know if the tenants in Tiffany Apartments or in the Normandy or Tree Haven used space heaters, or computers, or stereo systems. Tr. 58-60. He did not know whether certain tenants use 100 kilowatt hours of electricity a month and whether certain others use 300 kilowatt hours a month. Tr. 60. While 92 percent of Tiffany Apartment occupants are senior citizens, the record is silent regarding the age composition of the occupants of the other two apartment buildings. In addition, while the Normandy and Tree Haven were constructed at around the same time, it is not clear from the record whether the same insulation was used and if all other factors affecting the electric consumption levels of its occupants are the same. Also, while the Normandy and Tree Haven were constructed about the same time, around 1950, Tiffany Apartments was built in 1965 so it is not possible to equate the effects of its construction on electric consumption with that of the other two buildings. Mr. Zollars

testified that "[b]uildings...vary dramatically as far as the electrical consumption based on the type of equipment...installed, the efficiency of...the equipment, the type of exposure...[the buildings] receive, the environment in which they are [located], the size and shape of the building, the windows, the number of doors, the type of insulation, the roofing material." He also testified that the average annual energy cost of buildings in his accounts varies by as much as $2 per square foot. Tr. 45-56. Complainant did not rebut this testimony.

Complainant claims that its tenants will benefit by its passing on to them volume discount savings. It will do this by raising their rent, but not as much as their budget electric bills. In addition, master metering will avoid the customer service charge which is $6.38 per tenant per month. Tr. 19, 33, 50-51. Mr. Steiner, however, gave no details about how much of the savings would be passed on to the tenants and how the rent increase/budget bill decrease would be done equitably for existing tenants and for new tenants.

The possible benefit of master metering to Complainant's tenants can not be viewed in a vacuum. The Commission is concerned with the overall public interest, not just the interests of Complainant and its tenants. The benefit to Complainant and its tenants, therefore, must be weighed against the effect master metering has on energy consumption and the effect of energy consumption on the public. Complainant has not shown that master metering conserves electricity. I accept Mr. Zollars' expert testimony to the contrary, that master metering increases energy consumption. Tr. 36-38, 40-43. I discuss Mr. Zollar's testimony in more detail in the section below headed **Complainant's assertion that there is no prohibition against master metering.** Because master metering increases energy

consumption, it would result in the increased use of natural resources and, eventually, a higher cost of energy. This is not in the public interest. I find, therefore, that any possible financial benefit to Complainant and its tenants as a result of master metering is outweighed by the harm master metering would do to the public's interest in conserving natural resources and keeping energy costs low.

There is another reason why the benefit of master metering is not in the best interests of the public — subsidization. As counsel for Duquesne Light argued, master metering would cause one tenant to subsidize the electric use of another. This is because a tenant with minimal electric appliances uses less electricity than a tenant with the maximum amount of electric appliances, yet each tenant pays the same. As a result, the tenant who uses a minimal amount of electricity will pay for some of the bill of the tenant who uses more electricity. Tr. 66. This, too, is not in the public interest.

Benefit to Complainant

Complainant is clear about the marketing advantage it would enjoy if it could master meter Tiffany Apartments. Mr. Steiner testified that because Complainant would save $10,000 to $15,000 annually, Tiffany Apartments would be less expensive to operate, allowing it to advertise lower rental rates and obtain higher occupancy. Tr. 27-28.

Complainant's marketing advantage, however, would not be shared by other senior apartment buildings similarly situated. This would violate the prohibition against discriminatory service set forth in Section 1502 of the Public Utility Code, 66 Pa. C. S. §1502, which states as follows:

> No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities, or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

Complainant's request for master metering must be denied because it would result in a violation of Section 1502.

Energy conservation and deregulation

Complainant has not proven its assertion that energy conservation and deregulation have reduced the need for Rule 41 because people are more attuned to conserving energy. Mr. Zollars agrees that senior citizens seem to be more conscientious about conserving energy. Tr. 52. This, alone, however, does not support Complainant's assertion. There is no record evidence that energy conservation and deregulation have reduced the need for the master metering which Rule 41 prohibits. Complainant has produced no evidence of the trends in energy conservation among the general population or the senior citizen population since the Commission approved Tariff Rule 41. Senior citizens might be more conscientious about conserving energy, and people in general might be more attuned to conserving energy. This assumption is meaningless, however, in the absence of evidence showing that this change in attitude has resulted in the conservation of electricity to such an extent that individual metering is no longer necessary. Because the deregulation of electric generation in Pennsylvania is in its infancy, it is not possible to determine the

effect it might have on energy consumption. Complainant's argument regarding the effects of energy conservation and deregulation fails.

Complainant's assertion that there is no prohibition against master metering

Complainant relies on selective portions of the Public Utility Regulatory Policy Act of 1978, 16 USC §§2601 et seq. ("PURPA"), to support its position that master metering is not prohibited. According to Complainant, Section 2601 states that Congress finds that the protection of the public health requires equitable retail rates for electric consumers. Tr. 23; Plaintiff's Ex. 6. Section 2611 of PURPA provides that its purpose is equitable rates to electric consumers. Tr. 23-34; Plaintiff's Ex. 7. Section 2623(b)(1) (Master metering), reads as follows:

> To the extent determined appropriate under section 2625(d) of this title, master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this chapter.

Tr. 24; Plaintiff's Ex. 24. Mr. Steiner testified that this language does not mention anything about buildings constructed or connected before 1981 and that it refers only to new buildings. Tr. 24. Section 2625(d) (Master metering) of PURPA reads as follows:

> Separate metering shall be determined appropriate for any new building for purposes of section 2623(b)(1) of this title if—
>
> (1) there is more than one unit in such building,
> (2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and
> (3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the

costs of purchasing and installing separate meters in such building.

Tr. 24-26; Plaintiff's Ex. 9. According to Mr. Steiner, this language means that Tiffany Apartments can have a master meter because it has more than one unit, because its occupants can control a portion of the electric usage by turning lights on and off, and because, if Tiffany Apartments was a new building, the benefits to the electric consumers would be a lower charge for electricity. Tr. 24-26.

Mr. Zollars testified about two portions of PURPA which Mr. Steiner did not mention during his testimony. First, he read Section 2601(1) in its entirety: "a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers." Tr. 39; Plaintiff's Ex. 6. Mr. Steiner mentioned only "equitable retail rates for electric consumers" when he referred to Section 2601(1).

Next, Mr. Zollars read Section 2611, the purposes of PURPA, in its entirety:

(1) conservation of energy supplied by electric utilities;
(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and
(3) equitable rates to electric consumers.

Mr. Zollars emphasized that the purpose of PURPA is more than just equitable rates to electric customers. Tr. 39-40; Plaintiff's Ex. 7.

Mr. Zollars testified that Duquesne Light's Tariff Rule 41 is the direct result of PURPA and that it is designed to conserve energy. He opined that separately metered apartment buildings encourage tenants to conserve electricity because they have more control

over their electric bill. Tr. 38. He also stated the corollary to this, that master metering does not promote conservation because if an individual has control over his or her electric bill, there is more emphasis on taking prudent measures to conserve electric energy. Tr. 42. Mr. Zollars' opinion is based on his being an electrical engineer, working for Duquesne Light for several years, and having duties including mainly conservation issues and energy savings regarding apartment buildings in his position in Duquesne Light's Marketing and Sales Group. Tr. 36-37. Mr. Zollars qualified as an expert witness regarding electric energy conservation in apartment buildings. Tr. 41. I accept his expert opinion that individually metering apartment buildings promotes energy conservation, whereas master metering apartment buildings does not.

Duquesne Light introduced into evidence the Recommended Decision and Commission order approving of Duquesne Light's Tariff Rule 41[2]. Respondent's Ex. 1; Tr. 34-35. The proceeding in question was a general rate increase filing by Duquesne Light in 1980 at Docket No. R-80011069. The Administrative Law Judge's Recommended Decision, at page 119, indicates that Tariff Rule 41 prohibits master metering for residential structures connected after January 1, 1981. The Commission's order, after reciting the purposes of PURPA in Section 2106, finds that Duquesne Light's Tariff Rule is in compliance with PURPA's master metering standards.

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[2] Which, at the time the Commission approved it was Tariff Rule 42. Tr. 34.

It is clear that PURPA's purpose is threefold: to conserve energy, to optimize the efficiency of the use of facilities and resources by electric utilities and to provide equitable rates to electric customers. It is also clear that Duquesne Light's Tariff Rule 41 complies with the purpose of PURPA. While Sections 2623 and 2625 of PURPA allow master metering for new buildings, Tiffany Apartments is not a new building. It was constructed in 1965 and individually metered for electricity before January 1, 1981. Findings of Fact Nos. 3 and 4. Even if Tiffany Apartments could be considered a new building, master metering would not meet the first PURPA purpose — to conserve energy.

Based on Mr. Zollars' expert opinion, PURPA, and the Recommended Decision and Commission order approving Tariff Rule 41, I conclude that the master metering of Tiffany Apartments is not permitted by PURPA or Tariff Rule 41. In addition, Complainant has produced no evidence to show that Tariff Rule 41 is unreasonable or arbitrary.

Grandfather clause

Complainant contends that Tariff Rule 41 prohibits master metering only for buildings connected after 1981, so it should be read to include a grandfather exception for buildings connected before 1981. Complainant relies on the last sentence of Tariff Rule 41 as supporting this argument. It reads as follows: "This Rule shall not affect any practice undertaken prior to January 1, 1981." Complainant asserts that a "practice undertaken prior to January 1, 1981" includes the practice of converting individual meters to one meter and that this practice continues for buildings connected before 1981. Complainant concludes that

Tiffany Apartments fits into this exception because it was connected before 1981. Therefore, Tariff Rule 41 does not prohibit the master metering of Tiffany Apartments presently. Tr. 35, 65; Respondent's Ex. 1.

As Duquesne Light points out, the record is silent regarding the nature of any practice before 1981 regarding apartment buildings being converted from individual meters to master meters. Tr. 66-67. Counsel for Duquesne Light read the following definitions for "grandfathering" from Black's Law Dictionary: "A provision in a new law or regulation exempting those already in or a part of the existing system which is being regulated," and "An exception to a restriction that allows all those already doing something to continue to do it even if they would be stopped by the new restriction." Tr. 67-68. I agree with counsel for Duquesne Light that if grandfathering applied in this proceeding it would have to refer to master metering, the practice newly prohibited by Tariff Rule 41. Under such a grandfather clause, master metered residential apartment buildings connected before 1981 could continue to be master metered after January 24, 1997, the effective date of Tariff Rule 41. This is not the case here because Tiffany Apartments was not master metered before January 24, 1997.

As counsel for Duquesne Light states, the language "buildings connected after January 1, 1981" contained in Tariff Rule 41, upon which Complainant relies, would prohibit a switch to master metering for Tiffany Apartments. This is because the switch to master metering would require the electric service to Tiffany Apartments to be disconnected. Tr.

44. When connected after master metering is installed, the building would be "connected after January 1, 1981," and, therefore, fall within the prohibition set forth in Tariff Rule 41.

Complainant's argument that Tariff Rule 41 contains a grandfathering clause which would allow it to master meter the Tiffany Apartment fails.

Conclusions of Law

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

2. Master metering Tiffany Apartments would produce discriminatory service in violation of the Public Utility Code. 66 Pa. C. S. §1502.

3. Tiffany Apartments does not fall within any PURPA exception against master metering. 16 USC §§2601, 2623(b)(1), and 2625(d).

4. Duquesne Light's Tariff Rule 41 is in compliance with and is the result of PURPA. Pa PUC v. Duquesne Light Company, Docket No. R-80011069 (1980).

5. Duquesne Light's Tariff Rule 41 does not have a grandfathering clause permitting the master metering of Tiffany Apartments.

6. Duquesne Light's Tariff Rule 41 is not unreasonable or arbitrary.

7. Complainant has not met its burden of proof and its Complaint should be dismissed. 66 Pa. C.S. §332(a).

ORDER

THEREFORE:

IT IS ORDERED:

1. That the Complaint of Tiffany Associates against Duquesne Light Company at Docket No. C-00981142 is dismissed.

2. That the docket in this proceeding be marked closed.

Date: June 15, 1998

Larry Gesoff

LARRY GESOFF
Administrative Law Judge

Act 294

Case Identification: C-00981142; Tiffany Associates v. Duquesne Light Company

Initial Decision By: ALJ Larry Gesoff

DOCKETED

JUL 23 1998

Deadline for Return to OSA: July 17, 1998

This decision has not been reviewed by OSA.

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OFFICE OF SPECIAL ASSISTANTS

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Commissioner Date

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_____ 7-17-98

Commissioner Date

Act 294

Case Identification: C-00981142; Tiffany Associates v. Duquesne Light Company

Initial Decision By: ALJ Larry Gesoff

Deadline for Return to OSA: July 17, 1998

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

Robert K. Bloom GES
Commissioner

7/17/98
Date

Act 294

Case Identification: C-00981142; Tiffany Associates v. Duquesne Light Company

Initial Decision By: ALJ Larry Gesoff

Deadline for Return to OSA: July 17, 1998

This decision has not been reviewed by OSA.

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I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

David W. Rolka/yi Commissioner

7-16-98 Date

Act 294

Case Identification: C-00981142; Tiffany Associates v. Duquesne Light Company

Initial Decision By: ALJ Larry Gesoff

Deadline for Return to OSA: July 17, 1998

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

Nora Mead Brownell Commissioner

7-14-98 Date

Act 294

Case Identification: C-00981142; Tiffany Associates v. Duquesne Light Company

Initial Decision By: ALJ Larry Gesoff

Deadline for Return to OSA: July 17, 1998

This decision has not been reviewed by OSA.

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I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

_____ Commissioner

7/17/98 Date

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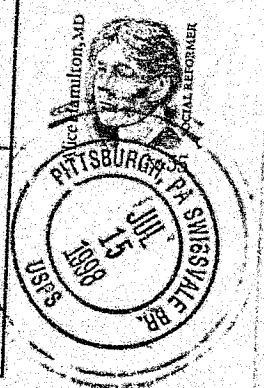

ORIGINAL

SRB

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JUL 15 1998

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT FOLDER

Mr. James J. McNulty
Secretary of the Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

July 15, 1998

RE: C-00981142

Dear Secretary McNulty,

Enclosed are an original and 10 copies of exceptions submitted on behalf of Tiffany Associates. These pertain to exceptions to an adverse decision of Judge Larry Gesoff in the case Tiffany Associates v. Duquesne Light Company heard on May 12, 1998 in Pittsburgh.

A true and correct copy has been mailed today to Attorney Herskovitz at Duquesne Light Company.

Respectfully submitted,

Clarence H. Steiner

88

ORIGINAL

TIFFANY ASSOCIATES :
:
: DOCKET NO.
: C-00981142
V. :
:
DUQUESNE LIGHT CO. :

EXCEPTIONS OF TIFFANY ASSOCIATES, PROTESTANT

EXCEPTION 1

Judge Gesoff erred in interpreting relevant portions of the Public Utility Regulatory Policy Act of 1978. 16 USC sec 2601 et seq. ("PURPA").

Section 2623 (b)(1) of the Act, entitled, (b) Establishment, (1) Master metering reads as follows:

> "To the extent determined appropriate under section 2625(d) of the title, master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this chapter" (emphasis added).

Section 2625(d) referenced in 2623 (b)(1) above reads as follows:

> "(d) Master metering Separate metering shall be determined appropriate for any new building for purposes of section 2623 (b)(1) of this title if-. . ." (emphasis added).

and then proceeds with a list of three factors that can allow master metering for a new building.

Judge Gesoff refers to Plaintiff's argument that the master metering prohibition applies only to new buildings, those built after enactment of the PURPA Act, and not to the Tiffany Apartments which were constructed in 1965 (on page 12 of his decision), after citing section 2623(b)(1) cited above, but then proceeds to ignore the argument and the plain language of the statute, i.e., that it only applies to "NEW" buildings. His discussion continues over pages 12 through 15 of the decision and comes to the conclusion that the Tiffany Apartments does not satisfy the three part test for exemption from the master metering prohibition for new buildings outlined in 2625(d) of the PURPA statute. While Attorney Patterson did argue that the Tiffany Apartments, even if it was built after 1981, would fulfill the three part test for an exemption, Judge Gesoff focused only on this alternate argument and ignored the core argument that PURPA and Rule 41 only apply to "new" buildings.

It seems obvious that had Congress wanted to make the act apply to existing buildings it would not have used the word "new" in the two sections of the act that refer to the master metering provisions of the PURPA Act (both sections reproduced and attached hereto as plaintiff's exhibits 8 and 9). If the intent was to prohibit conversions from existing buildings, why not use a term other than "new"?

Judge Gesoff on page 3 number 3 as a finding of fact states that the Tiffany Apartments were constructed in 1965. Since it is not a "new" building the PURPA restriction for master metering does not apply.

EXCEPTION 2

The Term "Connected" as used in Rule 41 can only be interpreted as applying to

new buildings only, i.e. when a new building is connected to the power grid.

Judge Gesoff erroneously accepts Duquesne Light Company's interpretation of Rule 41 as prohibiting master metering for any building connected after January 1, 1981 (bottom page 16).

Duquense Light's Tariff Rule 41 (Hereinafter "Rule 41"), located on First Revised Page No. 25 of Supplement No. 1 to its Tariff Electric - Pa. P.U.C . No. 17, cited on page 5 of the Decision is reproduced as follows (copy of Rule 41 attached hereto as plaintiff's exhibit 4):

> **41. PROHIBITION OF RESIDENTIAL MASTER METERING.** Each Residential dwelling unit in a building must be individually metered by the Company for buildings connected after January 1, 1981. For the purposes of the Rule a dwelling unit is defined as:
>
> > One or more rooms for the use of one or more persons as a housekeeping unit with space for eating, living and sleeping and permanent provisions for cooking and sanitation.
>
> This Rule does not preclude the use of a single-meter for the common areas and common facilities of a multi-tenant building.
>
> This Rule shall not affect any practice undertaken prior to January 1, 1981.

DISCUSSION

Duquesne Light Co. in its Rule 41 has changed the wording of the enabling legislation in PURPA 2623 (b)(1) from a prohibition against master metering applying only to NEW buildings, to a prohibition against master metering for "buildings connected after January 1, 1981" (emphasis added). DLCO then interprets "connected" broadly as occurring whenever power is shut off to a building and then reconnected (page 16 of the decision at bottom). This same line of reasoning would prohibit a building that was properly master metered before January 1, 1981 from continuing as a master metered

building if the building had to replace the main electric feed to the building or to update its service box or any number of reasons a building may need to temporarily disconnect the main service.

Judge Gesoff accepts Duquesne Light Company's interpretation of this vaguely worded Rule 41. Since Rule 41 derives its authority directly from the PURPA statute and indeed the PUC public hearing on this issue notes that "Congress specifically stated that nothing prohibits a regulatory body from making any determination that it is not appropriate to implement any of the delineated standards (16 U.S.C. sec 2621(a))" (see page 139 Defendant's exhibit Pa. PUC v. Duquesne Light Company, Docket No. R-80011069 (1980) cited at page 17 of the Decision, copy attached hereto), it is impossible to interpret Rule 41 as being **more** restrictive then the enabling legislation itself! As such, Rule 41 can only be interpreted as applying to new buildings constructed/connected after January 1, 1981.

Basic contract and zoning law holds that ambiguity in a contract or statute should be construed against the drafter in a dispute. Here Duquesne Light Company, in an attempt to broaden the legislative grant from Congress tries to extend the prohibition against master metering to OLD buildings or buildings built before January 1, 1981 with the use of "connected", a term not mentioned in the PURPA statute and not defined in Rule 41, instead of the PURPA language of "new" which has an unambiguous interpretation. The economic benefit to Duquesne Light Company that results from this change is clear and is confirmed by Judge Gesoff on page 10 of his decision (Benefit to Complainant on page 10).

SUMMARY

Judge Gesoff states at page 5-6 of the decision that the complainant has the burden of proof and that to satisfy the burden of proof, a complainant must show that the utility is responsible or accountable for the problem described in the complaint. It is clear that DLCO and the PUC did not have the authority to institute RULE 41 as interpreted by DLCO and Judge Gesoff. Also clear is the benefit to be realized by the utility if its interpretation is upheld. Rule 41 must be interpreted to apply only to buildings constructed after January 1, 1981. The decision states as a finding of fact that the Tiffany Apartments was constructed in 1965 (page 3, number 3). Tiffany Apartments should be allowed to master meter the building as Rule 41 does not govern buildings constructed prior to January 1, 1981.

Respectfully Submitted,

Clarence H. Steiner
Attorney for Protestant

121 Edgewood Avenue
Pittsburgh, PA 15218

412-242-0273

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TIFFANY ASSOCIATES	)	
	)	
	)	
vs.	)	Docket No. C-00981142
	)	
	)	
DUQUESNE LIGHT COMPANY	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 PA. Code Sec. 1.54 (relating to service by a participant).

Richard S. Herskovitz
Duquesne Light Co.
411 Seventh Avenue, 16-006
Box 1930
Pittsburgh, PA 15230-1930

Dated this 15th day of July, 1998.

Clarence H. Steiner
Counsel for:
Tiffany Associates
121 Edgewood Avenue
Pittsburgh, PA 15218

§ 2623. Adoption of certain standards

(a) Adoption of standards

Not later than two years after November 9, 1978, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall provide public notice and conduct a hearing respecting the standards established by subsection (b) of this section and, on the basis of such hearing, shall—

(1) adopt the standards established by subsection (b) of this section (other than paragraph (4) thereof) if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law, and

(2) adopt the standard established by subsection (b)(4) of this section if, and to the extent, such authority or nonregulated electric utility determines that such adoption is appropriate and consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) or (2) and any review of such determination in any court in accordance with section 2633 of this title, the purposes of this chapter supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to adopt any such standard, pursuant to its authority under otherwise applicable State law.

(b) Establishment

The following Federal standards are hereby established:

(1) Master metering

To the extent determined appropriate under section 2625(d) of this title, master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this chapter.

(2) Automatic adjustment clauses

No electric utility may increase any rate pursuant to an automatic adjustment clause unless such clause meets the requirements of section 2625(e) of this title.

(3) Information to consumers

Each electric utility shall transmit to each of its electric consumers information regarding rate schedules in accordance with the requirements of section 2625(f) of this title.

(4) Procedures for termination of electric service

No electric utility may terminate electric service to any electric consumer except pursuant to procedures described in section 2625(g) of this title.

prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if—

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers.

(b) Time-of-day rates

In undertaking the consideration and making the determination required under section 2621 of this title with respect to the standard for time-of-day rates established by section 2621(d)(3) of this title, a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates.

(c) Load management techniques

In undertaking the consideration and making the determination required under section 2621 of this title with respect to the standard for load management techniques established by section 2621(d)(6) of this title, a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if—

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(2) the long-run cost-savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique.

(d) Master metering

Separate metering shall be determined appropriate for any new building for purposes of section 2623(b)(1) of this title if—

(1) there is more than one unit in such building,

(2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

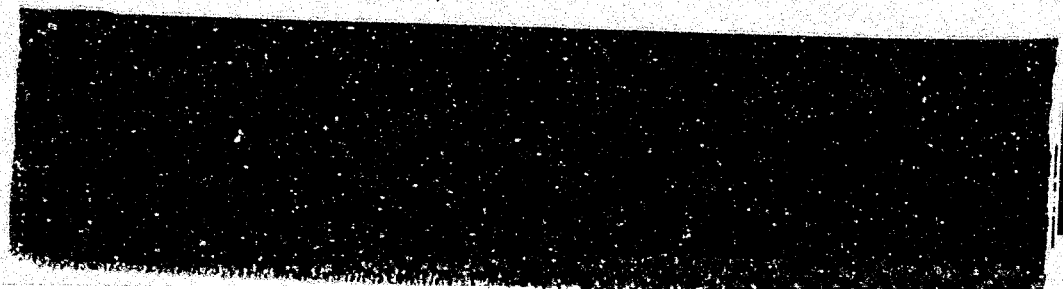
(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

(e) Automatic adjustment clauses

(1) An automatic adjustment clause of an electric utility meets the requirements of this subsection if—

(A) such clause is determined, not less often than every four years, by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by the electric utility (in the case of a nonregulated electric utility), after an evidentiary hearing, to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) by such electric utility, and

PLAINTIFFS EXHIBIT 9



RULES AND REGULATIONS - (Continued)

DISCONTINUANCE, CURTAILMENT OR INTERRUPTION OF ELECTRIC SERVICE - (Continued)

41. PROHIBITION OF RESIDENTIAL MASTER METERING Each residential dwelling unit in a building must be individually metered by the Company for buildings connected after January 1, 1981. For the purposes of the Rule, a dwelling unit is defined as:

> One or more rooms for the use of one or more persons as a housekeeping unit with space for eating, living, and sleeping, and permanent provisions for cooking and sanitation.

This Rule does not preclude the use of a single meter for the common areas and common facilities of a multi-tenant building.

This Rule shall not effect any practice undertaken prior to January 1, 1981.

GENERAL PROVISIONS

42. METER TESTING The Company will inspect or test the accuracy of a meter at the request of the customer for whom the meter registers service, but reserves the right to require payment of the fees set forth in 52 Pa. Code § 57.22 for such test.

43. OTHER SERVICES The Company may, where possible, provide and charge a reasonable fee for services including, but not limited to, energy audits, equipment inspections, technical reports and other similar services, at the request of the customer. Where possible, the Company will give an advanced, written estimate of the cost to provide the service.

44. SURGE PROTECTION SERVICE Surge Shield ™, a surge suppression device that will reduce or eliminate voltage surges, is available to customers pursuant to the terms and conditions set forth below. The device is mounted behind the meter socket at the customer's premise. (C)

A. Availability

The Company will provide Surge Shield ™, to any customer with a 120/240 volt single-phase meter upon request, provided that the customer is determined by the Company to have an acceptable credit history.

B. Billing

A charge of $4.65 per month for Surge Protection Service will be billed quarterly for a total of $13.95. (One hundred and forty customers who elected monthly billing in the initial stage of the pilot program were subsequently offered a $0.25 per quarter discount to accept quarterly billing. This discount will remain in effect for those customers.) At the Company's option, monthly billing may be offered in the future.

PLAINTIFF'S EXHIBIT 4

(C) - Indicates Change

The exceptions of PAJE and the Consumer Advocate are denied.

2. PURPA

The Public Utility Regulation Policy Act of 1978 (PURPA), 16 U.S.C., §2601, et seq., requires state regulatory ratemaking authorities to consider and make a determination concerning whether or not certain rate standards established by the Act are appropriate to be implemented in the state (16 U.S.C. §2621). The stated purposes of that Act are as follows:

(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency and use of facilities and resources by electric utilities;

(3) equitable rates to electric consumers (PURPA §101)

Congress specifically stated that nothing prohibits a regulatory body from making any determination that it is not appropriate to implement any of the delineated standards (16 U.S.C. §2621(a)). The only requirements are that a determination be arrived at after public notice and hearing; that the determination be in writing; on record evidence; and, if the Commission declines to implement a standard, the reasons for that decision be in writing and available to the public. Section 2621(d) establishes the following standards:

> (1) Cost of service. - Rate charged by any electric utility for providing electric service to each class of electric consumers shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class, as determined under section 2625(a) of this title.

DEFENDANT'S EXHIBIT

Duquesne Light Company

Legal Unit
411 Seventh Avenue
P.O. Box 1930
Pittsburgh, Pennsylvania 15230-1930
Phone: (412) 393-6000
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Writer's DIRECT DIAL Number:

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SRB

July 24, 1998

Via Overnight Express Mail Delivery

RECEIVED

JUL 24 1998

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17105-3265

Re: Tiffany Associates v. Duquesne Light Company
Docket No. C-00981142

Dear Mr. McNulty:

Enclosed for filing are an original and nine (9) copies of Reply Exceptions of Duquesne Light Company.

Very truly yours,

R S Herskovitz

Richard S. Herskovitz
Corporate Attorney

LRC/njp:C005

Enclosures

cc: The Honorable Larry Gesoff (w/enclosure)
Peter R. Patterson, Esquire (w/enclosure)
Clarence H. Steiner, Esquire (w/enclosure)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tiffany Associates :
:
v. :
:
Duquesne Light Company :

Docket No. C-00981142

Reply Exceptions of Duquesne Light Company, Respondent

Duquesne Light Company ("Duquesne") replies to the Exceptions of Tiffany Associates ("Complainant") to the Initial Decision of Administrative Law Judge Larry Gesoff ("ALJ") issued June 26, 1998, as follows:

1. Complainant's first Exception improperly focuses on the language of the Public Utility Regulatory Policies Act ("PURPA"), 16 USC § 2601, et seq., which prohibits master metering of electric service in new buildings. Complainant's erroneous argument is that because PURPA only prohibits master metering in "new" buildings, master metering is not prohibited, and is even required, in "old" buildings (in this case, buildings constructed prior to 1981). This argument is a non-sequitur. There is no law permitting or prohibiting master metering in buildings constructed prior to the enactment of PURPA. It is obvious that PURPA did not prohibit master metering in existing buildings, as it would require the expensive retrofitting of those buildings already master metered to individual metering. Thus, those buildings already master metered were grandfathered, i.e., exempt from the PURPA requirements.

However, the reasons set forth in PURPA for prohibiting master metering in new buildings (conservation of energy, optimization of the efficiency of use of facilities and resources, and equitable rates to consumers) are equally applicable to Duquesne's prohibition against switching from individual metering to master metering in older buildings, and the ALJ correctly so held. (Initial Decision at 12-15). Complainant's Exception should therefore be denied.

2. Complainant's second Exception focuses on the language of Duquesne's Tariff Rule 41, which requires individually metered residential dwelling units in buildings "connected after January 1, 1981". The term "connected" certainly would include "new" buildings as well as any older buildings that for some reason had to be reconnected after January 1, 1981. The ALJ correctly interpreted Rule 41 as prohibiting any master metering of residential buildings which were previously individually metered because the switch to master metering would require electric service be disconnected, then "connected after January 1, 1981". (Initial Decision at 16-17). Complainant's Exception should therefore be denied.

3. Complainant's two Exceptions ignore the primary reasons the ALJ dismissed the Complaint. By limiting its focus to whether the precise language of PURPA and Duquesne's Tariff Rule 41 apply only to "new" buildings, Complainant overlooks the overall objective of requiring individual meters in residential dwelling units. As stated in the ALJ's Summary of Decision (and discussed in detail in the Initial Decision), the benefits to Complainant and its tenants resulting from master metering are outweighed by the public interest in the conservation of energy and in keeping energy costs low; master metering would result in tenants with low energy use subsidizing tenants with high energy use; the marketing advantage

Complainant would enjoy as a result of master metering would result in unlawful discriminatory rates; and there is no record evidence that energy conservation and deregulation has now reduced the need to prohibit master metering. (Initial Decision at 2.) Thus, the reasons cited by the ALJ for prohibiting master metering would be applicable to "new" or "old" buildings. The Complainant (who has the burden of proof) has produced no evidence to the contrary to show that this prohibition is unreasonable or arbitrary. Complainant's Exceptions should therefore be denied.

WHEREFORE, Duquesne requests Your Honorable Commission to deny the Exceptions of the Complainant and affirm the Initial Decision of the ALJ.

Respectfully submitted,

Dated this 24th day of July, 1998.

RS Hershovitz

Richard S. Hershovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, Pennsylvania 15219

LRC/njp:C005X

Complainant would enjoy as a result of master metering would result in unlawful discriminatory rates; and there is no record evidence that energy conservation and deregulation has now reduced the need to prohibit master metering. (Initial Decision at 2.) Thus, the reasons cited by the ALJ for prohibiting master metering would be applicable to "new" or "old" buildings. The Complainant (who has the burden of proof) has produced no evidence to the contrary to show that this prohibition is unreasonable or arbitrary. Complainant's Exceptions should therefore be denied.

WHEREFORE, Duquesne requests Your Honorable Commission to deny the Exceptions of the Complainant and affirm the Initial Decision of the ALJ.

Respectfully submitted,

Dated this 24th day of July, 1998.

RS Herskovitz

Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, Pennsylvania 15219

LRC/njp:C005X

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tiffany Associates	:	
v.	:	Docket No. C-00981142
Duquesne Light Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54.

Peter R. Patterson, Esquire
412 First Avenue
Pittsburgh, Pennsylvania 15219

Clarence H. Steiner, Esquire
121 Edgewood Avenue
Pittsburgh, Pennsylvania 15218

The Honorable Larry Gesoff
Administrative Law Judge
Pennsylvania Public Utility Commission
Room 1103, State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Respectfully submitted,

Dated this 24th day of July, 1998.

RS Herskovitz

Richard S. Herskovitz, Esquire
Corporate Attorney
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, Pennsylvania 15219

LRC/njp:C005XX

SRB

DATE: July 29, 1998

SUBJECT: C-00981142

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
JJMcN

DOCKETED
JUL 30 1998

DOCUMENT FOLDER

TIFFANY ASSOCIATES
VS
DUQUESNE LIGHT COMPANY

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

TIFFANY ASSOCIATES

Reply Exceptions have been received from:

DUQUESNE LIGHT COMPANY

cc: Annette Shelley