PUC-77

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Uniform Cover and Calendar Sheet

1. **REPORT DATE:** November 9, 1998	2. **BUREAU AGENDA NO.** NOV-98-OSA-371*
3. **BUREAU:** Office of Special Assistants	
4. **SECTION(S):**	5. **PUBLIC MEETING DATE:**
6. **APPROVED BY:** Director: C.W. Davis 7-182[illegible] Supervisor: Russel Albert 7-8108	November 19, 1998
7. **PERSONS IN CHARGE:** P.C. Foster 3-5243	
8. **DOCKET NO.:** C-00981142	

9. (a) **CAPTION (abbreviate if more than 4 lines)**
   (b) **Short summary of history & facts, documents & briefs**
   (c) **Recommendation**

(a) Tiffany Associates v. Duquesne Light Company

(b) On January 16, 1998, Tiffany Associates (Complainant) filed a Formal Complaint against Duquesne Light Company (Respondent) wherein it alleged that the Respondent refused its request to master meter the senior citizen apartment building it owns. The Respondent filed a timely Answer. On May 12, 1998, a hearing was held before Administrative Law Judge (ALJ) Larry Gesoff, who issued an Initial Decision on June 26, 1998. The Complainant filed Exceptions to the Initial Decision on July 15, 1998, and the Respondent filed Reply Exceptions on July 24, 1998.

(c) The Office of Special Assistants recommends that the Commission adopt the draft Opinion and Order which denies the Complainant's Exceptions and affirms the ALJ's Initial Decision to the extent consistent with this Opinion and Order.

96108

10. **MOTION BY:** **Commissioner** Chm. Quain — **Commissioner** Rolka - Yes
Commissioner Brownell - Yes
SECONDED: **Commissioner** Bloom — **Commissioner** Wilson - Yes

CONTENT OF MOTION: Staff recommendation adopted.

EEF

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

November 20, 1998

IN REPLY PLEASE REFER TO OUR FILE

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:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on November 19, 1998 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Secretary

DOCKETED
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cert. mail
law

REGINA M SESTAK ESQUIRE
DUQUESNE LIGHT COMPANY
411 SEVENTH AVENUE 16-006
PITTSBURGH PA 15230-1930

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held November 19, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Tiffany Associates

v. C-00981142

Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the Exceptions of Tiffany Associates (Complainant) filed on July 15, 1998, to the Initial Decision of Administrative Law Judge (ALJ) Larry Gesoff which was issued June 26, 1998. Duquesne Light Company (Respondent or Duquesne) filed Reply Exceptions on July 24, 1998.

History of the Proceeding

On January 16, 1998, the Complainant filed a Formal Complaint against Duquesne Light Company wherein it alleged that the Respondent refused its request to master meter the senior citizen apartment building which it owns. The Complainant requested that the Commission either void the Duquesne Light Company 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 Company filed an Answer admitting to certain Complaint allegations and denying others.

Discussion

ALJ Gesoff made fourteen (14) Findings of Fact and reached seven (7) Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless specifically identified and discussed.

The Complainant challenged the interpretation of the 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, which 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.

(Complainant's Exhibit 4; Tr. 14-15, Findings of Fact 13)

The ALJ found that 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)). The ALJ noted that 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).

The ALJ reviewed the assertions made by the Complainant in support of its request for master metering. First, The Complainant submitted that 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. To the contrary, the ALJ accepted the Respondent's testimony that master metering, rather than providing a benefit, actually increases energy consumption, therefore, the ALJ concluded that any possible financial benefit to the Complainant and its tenants as a result of master metering is outweighed by the harm it would do to the public's interest in conserving natural resources and keeping energy costs low. (I.D., pp. 9-10).

Second, the Complainant argued that it would enjoy a benefit from a marketing advantage because the Tiffany Apartments would be less expensive to operate, allowing it to advertise lower rental rates. The ALJ found the Complainant's marketing advantage, however, would not be shared by other senior apartment buildings similarly situated. The ALJ concluded that 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.

Third, the Complainant submitted that energy conservation and deregulation have reduced the need for Tariff Rule 41 because people are more attuned to conserving energy. The ALJ found that the 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; therefore, the Complainant's argument regarding the effects of energy conservation and deregulation failed. (I.D., pp. 11-12).

Fourth, the Complainant relied 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. The Complainant submitted that under Section 2001 of PURPA Congress found that the protection of the public health requires equitable retail rates for electric consumers and Section 2611 provides that the purpose of PURPA is equitable rates to electric customers. (Tr. 23; Complainant's Ex. 6 and 7). The Complainant also submitted that Section 2623(b)(1) of PURPA mentions only new buildings, not buildings constructed or connected before 1981; therefore, the prohibition of master

metering does not apply to Tiffany Apartments, which was constructed prior to 1981. (Tr. 24; Complainant's Ex. 24) (I.D., p. 12).

Regarding Master Metering, Section 2623(b)(1) reads as follows:

> (1) Mastermetering. To the extent determined appropriate under section 115(d) [16 USCS §2625(d)], mastering 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 the title.

(16 USCS §2623(b)(1))

The Respondent's witness referenced Section 2611, which deals with the purpose 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.

The Respondent emphasized that the purpose of PURPA is more than just equitable rates to electric customers. Duquesne's Tariff Rule 41 is the direct result of PURPA and is designed to conserve energy. The Respondent introduced into evidence the Recommended Decision and Commission Order approving of Duquesne's Tariff Rule 41[1]. The Commission's Order, after reciting the purposes of PURPA in Section 2106, found that Duquesne Light's Tariff Rule was in

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

compliance with PURPA's master metering standards. (Respondent's Ex. 1; Tr. 34-35; *See Pennsylvania Public Utility Commission v. Duquesne Light Company,* 54 Pa. PUC 695,767, 772. (1981); Docket No. R-80011069).

The ALJ noted that 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. In addition, the ALJ concluded that Duquesne Light's Tariff Rule 41 complies with the purpose of PURPA. The ALJ noted that, the Tiffany Apartment building was constructed in 1965 and individually metered for electricity before January 1, 1981. (Findings of Fact Nos. 3 and 4). The ALJ concluded that even if Tiffany Apartments were to be considered a new building, master metering would not meet the first PURPA purpose — to conserve energy. The ALJ concluded that the master metering of Tiffany Apartments is not permitted by PURPA or Tariff Rule 41. In addition, the Complainant did not produce evidence to show that Tariff Rule 41 is unreasonable or arbitrary. (I.D., p. 15).

Finally, the Complainant contended that Tariff Rule 41 includes a grandfather exception to the master metering rule for buildings connected before 1981. The Complainant relied on the last sentence of Tariff Rule 41, which reads as follows: "The Rule shall not affect any practice undertaken prior to January 1, 1981." The Complainant asserted 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. The Complainant contended that Tiffany Apartments fits into this exception because it was connected before 1981. (I.D., pp. 15-16).

The ALJ agreed with the Respondent's argument 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, only 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, which is not the case here because Tiffany Apartments was not master metered before January 24, 1997. The ALJ concluded that the Complainant had not met its burden of proof. (I.D., pp. 16-17).

The Exceptions:

The Complainant's Exceptions address two (2) issues. In the first Exception the Complainant argues that the ALJ erred in his interpretation of relevant portions of the PURPA. The Complainant submits that after citing Section 2623(b)(1) of PURPA, the ALJ ignored the argument and the plain language of the statue, i.e., that it only applies to "new" buildings. The Complainant avers that if Congress wanted to make the PURPA apply to existing buildings it would not have used the word "new" in the two (2) sections of the PURPA that refer to the master metering provisions. (Exc., pp. 1-2).

In its Reply Exceptions, the Respondent submits that the Complainant erroneously argues that because PURPA only prohibits master metering in "new" buildings, master metering is not prohibited, and is even required, in "old" buildings. The Respondent argues 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. As a result, those buildings already master metered were grandfathered, i.e., exempt from the PURPA requirements.

The Respondent further submits that 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. Therefore, the Complainant's Exception should be denied. (R. Exc., pp. 1-2).

The Complainant submits in its second Exception that the term "connected" as used in the Respondent's Tariff Rule 41 can only be interpreted as applying to new buildings, i.e., when a new building is connected to the power grid. The Complainant submits that the ALJ erroneously accepted the Respondent's interpretation of Tariff Rule 41 as prohibiting master metering for any building connected after January 1, 1981.

The Complainant argues that the Respondent in its Tariff Rule 41 has changed the wording of the enabling legislation in PURPA 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). The Complainant submits that the Respondent interprets "connected" broadly as occurring whenever power is shut off to a building and then reconnected. According to the Complainant, the Respondent, in an attempt to broaden the legislative grant from Congress, tried 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 Tariff Rule 41, instead of the PURPA language of "new" which has an unambiguous interpretation. (Exc., pp. 3-4).

In its Reply Exceptions, the Respondent submits that term "connected" certainly would include "new" buildings as well and any older buildings that for some reason had to be reconnected after January 1, 1981. The Respondent submits that the ALJ correctly interpreted Tariff Rule 41 as prohibiting any master metering of residential buildings which were previously metered because the switch to master metering would require electric service be disconnected, then "connected after January 1, 1981". Therefore, the Complainant's Exception should be denied. (R. Exc., p. 2).

The Respondent argues that, by limiting its focus to whether the precise language of PURPA and Duquesne's Tariff Rule 41 apply only to "new" buildings, the Complainant overlooks the overall objective of requiring individual meters in residential dwelling units. As noted in the ALJ's Initial Decision, the benefits to the 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. Thus, master metering would result in tenants with low energy use subsidizing tenants with high energy use. The marketing advantage the Complainant would enjoy as a result of master metering would result in unlawful discriminatory rates. Lastly, there is no record evidence that energy conservation and deregulation has now reduce the need to prohibit master metering. (R. Exc., pp. 2-3).

Analysis

We have carefully reviewed the issues presented in this matter, and our review of the evidence leads us to adopt the ALJ's conclusion that Duquesne's Tariff Rule 41, (First Revised Page No. 25 of Supplement No. 1 to its Tariff Electric - Pa. P.U.C. No. 17) complies with the requirements under PURPA.

The Complainant argued, in its first Exception, that the ALJ erred in his interpretation of relevant portions of the PURPA is without merit. The purpose of PURPA and the Respondent's Tariff Rule 41 is to promote conservation of energy, optimization of the efficiency of use of facilities and resources, and equitable rates to consumers. We find that the interpretation of PURPA as it relates to metering requires the linkage of usage to the cost of the utility service in order to promote conservation. The public interest in the conservation of energy and in keeping energy costs low outweighs the benefits resulting from master metering.

We reject the Complainant's argument that because PURPA only prohibits master metering in "new" buildings, master metering is not prohibited, and is even required, in "old" buildings. We agree with the Respondent's argument that PURPA did not prohibit master metering in existing buildings because it would require the expensive retrofitting of those buildings already master metered to individual meters. As a result, those buildings already master metered were grandfathered, i.e. exempt from the PURPA requirements. Under such a grandfather clause, only 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, which is not the case here because Tiffany Apartments clearly was not master metered before January 24, 1997. Therefore, we will deny Tiffany Associates' Exception.

In its second Exception, the Complainant argues that the term "connected" as used in the Respondent's Tariff Rule 41 can only be interpreted as applying to new buildings, i.e., when a new building is connected to the power grid. The Complainant submits that the ALJ erroneously accepted the

Respondent's interpretation of Tariff Rule 41 as prohibiting master metering for any building connected after January 1, 1981. We accept the interpretation of both the ALJ and the Respondent that Tariff Rule 41 prohibits any master metering of residential buildings which were previously individually metered because the switch to master metering would require that electric service be disconnected, and then connected at a future date (i.e., a date which is after January 1, 1981). Therefore, we will deny Tiffany Associates' Exception.

The Complainant's request that the Commission either void the Duquesne Light Company tariff rule prohibiting residential master metering or grant it an exemption from the rule based on a grandfathered status or economic hardship will be denied. We find that the benefits to the 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. The purpose of PURPA and the Respondent's Tariff Rule 41 is to promote conservation of energy, optimization of the efficiency of use of facilities and resources, and equitable rates to consumers.

Conclusion

Based upon the foregoing discussion, we will deny the Exceptions of the Complainant. We adopt the Initial Decision of ALJ Gesoff in all respects; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Tiffany Associates are hereby denied.

2. That the Initial Decision of Administrative Law Judge Larry Gesoff in *Tiffany Associates v. Duquesne Light Company*, Docketed at No. C-00981142, is hereby adopted by this Opinion and Order.

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

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 19, 1998

ORDER ENTERED: NOV 20 1998