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August 27, 2020

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Answer to Petition for Leave to Withdraw Formal Complaint Without Prejudice filed by Nancy Leininger. Copies of this document and the enclosed filing were served upon Complainant and Complainant's counsel in accordance with Commission regulations.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily M. Farah".

Emily M. Farah
Counsel, Regulatory

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER TO PETITION FOR
LEAVE TO WITHDRAW
FORMAL COMPLAINT
WITHOUT PREJUDICE**

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
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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.	:	

**ANSWER TO PETITION FOR LEAVE
TO WITHDRAW FORMAL COMPLAINT WITHOUT PREJUDICE**

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”), files its Answer to the Petition For Leave to Withdraw Formal Complaint Without Prejudice (“Petition”) pursuant to 52 Pa. Code § 5.94(a), and states as follows:

I. INTRODUCTION AND BACKGROUND

On August 17, 2020, Duquesne Light was served with a Formal Complaint (“Complaint”) docketed at C-2020-3021150, filed by John P. Corcoran, Esq. and Mark E. Casper, Esq. from the law firm of Jones, Gregg, Creehan & Gerace LLP on behalf of Nancy Leininger (“Complainant”), initiating the above-captioned proceeding. The Complaint checked the box alleging “incorrect charges,” and further alleged that the Complainant’s service address, 106 Byron Rd., Pittsburgh, PA 15237 (the “Property”) had a defective meter. Complaint ¶ 4.

On August 25, 2020, Duquesne Light filed a timely Answer and New Matter to the Complaint, arguing that the Complainant attempts to re-litigate issues already decided in a previous case against Duquesne Light, at Docket Number F-2018-3003226 (“Prior Proceeding”).¹ In fact, the formal complaint

¹ Complainant’s history with the Company is lengthy. For the purposes of this filing, the Company is including a truncated history of the Prior Proceeding. To the extent further background is required, the Company notes that Administrative Law Judge Mark A. Hoyer (“ALJ”) conducted two evidentiary hearings in the Prior Proceeding on September 28, 2018, and June 28, 2019. On October 9, 2019, the ALJ entered an Initial Decision dismissing the formal complaint that initiated the Prior Proceeding. No exceptions to the Initial Decision were filed, and Pennsylvania Public Utility Commission marked the docket closed by Final Order dated December 12, 2019.

that initiated the Prior Proceeding alleged incorrect charges appeared on Complainant's bills due to a defective meter. Complaint, Docket No. F-2018-3003226 ¶¶ 4-5.

No response was filed to the Company's New Matter within the 20-day time period as indicated in the "Notice to Plead" contained in the Answer and New Matter, and as outlined by 52 Pa. Code § 5.63. Accordingly, on September 21, 2020, the Company filed a Motion for Judgment on the Pleadings, requesting the Complaint be dismissed with prejudice on the basis that collateral estoppel prevented the Complainant from bringing the same claim that had been finally decided by the Pennsylvania Public Utility Commission ("Commission") less than one year prior to the above-captioned proceeding being initiated.²

On October 7, 2020, counsel for the Complainant filed a response to the Motion for Judgment on the Pleadings in which she claimed that the meter is not at issue but that the Duquesne Light transformer serving the Property is the real cause of the high bill allegation. Response in Opposition to Motion for Judgment on the Pleadings, p. 2.

On January 6, 2021, the Administrative Law Judge ("ALJ") issued an Initial Decision granting the Motion for Judgment on the Pleadings and dismissing the Complaint, finding that re-litigation of the issues was barred by both the doctrines of res judicata and collateral estoppel and by Section 316 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 316.

On January 26, 2021, counsel for the Complainant filed Exceptions, which reiterated her claim that the transformer is now the cause of her high bills. Exceptions, pp. 1-2.

On February 5, 2021, the Company filed Reply Exceptions and maintained its position that the Complaint should be barred by the doctrines of res judicata and collateral estoppel. Reply Exceptions, pp. 4-5.

On or about June 1, 2021, the Commission vacated the ALJ's Initial Decision in the instant proceeding and remanded to the Office of the ALJ for further proceedings. The Commission found that, while the Complainant "cannot change the cause of action in an attempt to circumvent the final order of the

² The Final Order in the Prior Proceeding was entered on December 12, 2019, and the present proceeding was initiated when Duquesne Light was served with the Complaint on August 17, 2020. See fn 1.

Commission,” res judicata and issue preclusion could not be applied to the bills that were not subject of the Prior Proceeding. Opinion and Order, Docket No. C-2020-3021150, p. 6 (June 1, 2021).

On June 2, 2021, the above-captioned matter was scheduled for a telephonic evidentiary hearing on July 21, 2021. Pursuant to the Prehearing Order dated June 8, 2021, the parties were required to present hearing exhibits to the ALJ’s legal assistant at least 5 business days prior to the scheduled hearing, and request continuances in writing no later than 5 days prior to the scheduled hearing. Prehearing Order ¶¶ 2-3.

On July 15, 2021, Duquesne Light timely served its proposed hearing exhibits on the ALJ, the Complainant, and Complainant’s counsel.

By email on Monday, July 19, 2021, Complainant’s counsel made an untimely request to the ALJ for a continuance and provided its proposed hearing exhibits to the ALJ.³ Pursuant to the Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice dated July 21, 2021, the evidentiary hearing was rescheduled for August 20, 2021.

On August 18, 2021, Complainant’s counsel filed the instant Petition, pursuant to 52 Pa. Code § 5.94(a), on the basis that counsel for the Complainant intends to file a motion in the pending civil action with the Allegheny Court of Common Pleas at Docket No. GD-21-7318 (“Civil Proceeding”)⁴ for an inspection of the transformer serving the Property. Petition, ¶¶ 10-11. The civil complaint is attached hereto as **Exhibit A** and referred to hereinafter as “Civil Complaint.”

Counsel for Duquesne Light emailed the ALJ and counsel for the Complainant noting the Company’s opposition to the Petition. The ALJ cancelled the telephonic hearing scheduled for August 20,

³ While counsel for Duquesne Light was not included on the initial email to the ALJ that included the proposed hearing exhibits and requested a 10-day continuance, the ALJ cured the ex-parte communication by including Duquesne Light counsel on the response granting Complainant’s request for a continuance. Duquesne Light counsel subsequently received Complainant’s proposed hearing exhibits by email from Complainant’s counsel on July 21, 2021.

⁴ On or around June 24, 2021, counsel for the Complainant filed the Civil Proceeding against Duquesne Light Company. On August 8, 2021, the Company’s counsel filed Preliminary Objections in the Civil Proceeding. Oral argument for the Preliminary Objections in the civil proceeding is currently scheduled for November 4, 2021.

2021, and directed the Company to file its response to the Petition pursuant to 52 Pa. Code § 5.94(a). Pursuant to the ALJ's directive and 52 Pa. Code § 5.94(a), Duquesne Light is timely filing its response to the Petition.

II. LAW

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94(a) permit parties to petition to withdraw pleadings in a contested proceeding:

Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

In deciding whether to grant a party's request to withdraw a pleading, the Presiding Officer or the Commission must consider: (1) the petition, (2) objections to the petition, if any, and (3) the public interest. Robinson-Dunbar v. PECO Energy Co., Docket No. C-2020-3019494, 2020 WL 4207491, at *2 (July 15, 2020).

Duquesne Light opposes the Petition because allowing Complainant to withdraw the Complaint because doing so would not be in the public interest, and in support thereof, states as follows:

III. ARGUMENT

- A. The Petition should be denied in the interest of judicial economy, because the allegations in the Civil Proceeding fall within the Commission's jurisdiction and may ultimately be dismissed or transferred to the Commission for litigation.

The sole basis for Complainant's request for leave to withdraw the Complaint is due to Complainant's counsel's intent "to file a motion in [the Civil Proceeding] to allow inspection of the transformer[.]" Petition, ¶ 11.

The Civil Complaint contains allegations that are squarely within the Commission’s jurisdiction. In fact, the first count in the Civil Complaint is an allegation of Pennsylvania Public Utility Code, Section 1301, 66 Pa. C.S. § 1401. See **Exhibit A**, ¶¶ 23-26.

After the Civil Complaint was filed, the Company, through counsel, filed Preliminary Objections in the Civil Proceeding on August 4, 2021. A true and correct copy of the Preliminary Objections are attached to this filing and marked as **Exhibit B**. The Preliminary Objections in the Civil Proceeding request that the Allegheny County Court of Common Pleas dismiss the Civil Proceeding or transfer the matter to the Commission. Complainant’s counsel filed a response to the Company’s Preliminary Objections on August 24, 2021, and enclosed as **Exhibit C**. Oral argument on the Preliminary Objections is currently scheduled for November 4, 2021.

Notwithstanding the fact that, had the above-captioned matter been litigated on August 20, 2021, the Company would have presented evidence showing that the transformer serving the Complainant has already been inspected,⁵ the basis for Complainant’s request to withdraw the Complaint is flawed because the Civil Proceeding may be dismissed or transferred to the Commission for litigation. Given that the allegations in the Civil Proceeding are undoubtedly within the Commission’s jurisdiction, it is likely that the Civil Proceeding will either be dismissed or transferred to the Commission for adjudication. See Exhibit B. In other words, Complainant’s intent to “file a motion” in the Civil Proceeding may be moot if the Allegheny County Court of Common Pleas grants Duquesne Light’s Preliminary Objections and transfers the matter to the Commission for adjudication. Petition, ¶ 11. It would a waste of this Commission’s judicial resources to allow the Complainant to withdraw her Complaint, without prejudice, only then to have the Civil Proceeding transferred to the Commission.

In sum, the current status of litigation in the Civil Proceeding does not warrant a withdrawal of the Complaint at this time. It is more appropriate to hold the above-captioned proceeding in abeyance until

⁵ See Duquesne Light’s Proposed Hearing Exhibits K, N (August 13, 2021).

after the Allegheny County Court of Common Pleas has made a ruling on the Company's Preliminary Objections in the Civil Proceeding.

- B. Duquesne Light opposes the Petition because it is not in the public interest to allow the Complainant's poor payment patterns to continue and cause other customers to bear the burden of her unpaid electric bills.

Customers are obligated 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). As shown on Complainant's Statement of Account, attached as **Exhibit D**, her account balance has more than doubled since the Final Order was entered in the Prior Proceeding. At the time the Final Order was entered in the Prior Proceeding on December 12, 2019, Complainant's account balance was \$3,000. See Exhibit D, p. 4. As of August 23, 2021, Complainant's account balance is \$6,6475.10. See Exhibit D, p. 6.

Complainant has established a poor payment history with Duquesne Light Company. Since the Final Order was entered in the Prior Proceeding, Complainant has made 17 payments, but only 4 of those payments have been for the fully billed amount. In fact, Complainant has recently demonstrated a pattern of paying less than half of her billed amount. See Exhibit D, p. 5. For example, on January 3, 2021, Complainant was billed \$427.46, but her corresponding payment was only \$150. **Exhibit D**, p. 5. On February 2, 2021, Complainant was billed \$348.81, but her corresponding payment was only \$150. **Exhibit D**, p. 5. On March 3, 2021, Complainant was billed \$338.04, but her corresponding payment was, again, only \$150. **Exhibit D**, p. 5. The pattern continued on April 4, 2021 and May 3, 2021, when Complainant was billed \$330.72 and \$274.54 respectively, but Complainant only paid \$150 toward both of those bills. **Exhibit D**, p. 5. In brief, Complainant paid less than half (44%) of her monthly electric charges that accrued between January and May of this year.

Should the Complainant's pattern of paying less than half her monthly electric charges continue, the Company's remaining ratepayers will be responsible for picking up the other half (or more) of Complainant's unpaid balance. It is not in the public interest to allow the Complainant to withdraw her

Complaint and continue to make payments for 50% or less of her monthly electric bills because the unpaid portion of Complainant's bills will be a part of the Company's uncollectible expenses and then be the responsibility of other customers.

In all, the public's interest will not be served if Complainant is permitted to withdraw her Complaint while other customers are carrying the financial burden for her unpaid utility bills. Duquesne Light reserves the right to terminate Complainant's electric service for unpaid bills (or portions thereof) going forward, pursuant to Commission regulations.

IV. CONCLUSION

Granting the Petition will likely result in a waste of Commission resources and result in Complainant's account balance to growing and eventually falling on the backs of other customers. As such, it is not in the interest of the public or this Commission to permit the Complainant to withdraw her Complaint without prejudice.

WHEREFORE, Respondent Duquesne Light Company respectfully requests that the Petition for Leave to Withdraw Formal Complaint Without Prejudice be denied with prejudice, or hold the instant proceeding in abeyance until after the Preliminary Objections in the Civil Proceeding are ruled upon.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



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efarah@duqlight.com
(412) 393-6431
Counsel for Respondent,
Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **ANSWER TO PETITION FOR LEAVE TO WITHDRAW FORMAL COMPLAINT WITHOUT PREJUDICE** upon the participant(s) listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

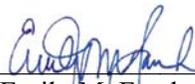
VIA FIRST-CLASS MAILING

Nancy Leininger
106 Byron Road
Pittsburgh, PA 15237

VIA ELECTRONIC MAILING ONLY

John P. Corcoran, Jr.
Mark E. Casper, Jr.
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219
JPC@jgcg.com
MEC@jgcg.com
(Counsel for the Complainant)

Dated this 27th day of August, 2020



Emily M. Farah, Esq.
PA I.D. No. 322559
Counsel for Respondent,
Duquesne Light Company

NOTICE OF SUIT TO SHERIFF OF ALLEGHENY CO.

You are hereby notified that on 06/24/2021

a COMPLAINT has been filed in this case

and you are required to serve the same on or before the

07/24/2021

Michael McGeever, Director

Department of Court Records

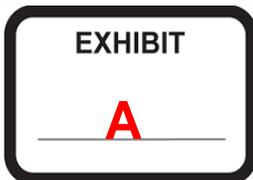
COMPLAINT IN CIVIL ACTION

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Plaintiff(s) Leininger, Nancy	Case Number: GD-21-007318 Type of pleading: Complaint Filed on behalf of: Leininger Nancy <u>Casper E. Mark</u> (Name of filing party)
Defendant(s) Duquesne Light Company,	VS <input checked="" type="checkbox"/> Counsel of Record <input type="checkbox"/> Individual, If Pro Se Name, Address and Telephone Number: Casper E. Mark Jones Gregg Creehan & Gerace 411 Seventh Avenue Suite 1200 Pittsburgh, PA, 15219 412 2616400 Attorney's State ID: 326381



Michael McGeever, Director, Department of Court Records



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

NANCY LEININGER,

Plaintiff,

v.

DUQUESNE LIGHT COMPANY,

Defendant.

No. **GD-21-7318**

COMPLAINT IN CIVIL ACTION

FILED ON BEHALF OF PLAINTIFF

ATTORNEYS OF RECORD
FOR THIS PARTY:

JOHN P. CORCORAN, JR., ESQUIRE
PA I.D. NO. 74906

MARK E. CASPER, JR., ESQUIRE
PA I.D. NO. 326381

JONES, GREGG, CREEHAN &
GERACE, LLP
411 SEVENTH AVENUE
SUITE 1200
PITTSBURGH, PA 15219
(412) 261-6400

FILED

2021 JUN 24 PM 3:46

CLERK OF COURT
CIVIL DIVISION
ALLEGHENY COUNTY, PA

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

NANCY LEININGER,

No.

Plaintiff,

v.

DUQUESNE LIGHT COMPANY,

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
Telephone: (412) 261-5555**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

NANCY LEININGER,

No.

Plaintiff,

v.

DUQUESNE LIGHT COMPANY,

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, NANCY LEININGER, by and through her undersigned counsel, John P. Corcoran, Jr., Esquire and Mark E. Casper, Jr., and Jones, Gregg, Creehan & Gerace, LLP, and files the within Complaint in Civil Action, and in support thereof avers as follows:

PARTIES

1. Plaintiff, Nancy Leininger, is an adult individual residing at 106 Byron Road, Pittsburgh, Allegheny County, Pennsylvania 15237.

2. Defendant, Duquesne Light Company, d/b/a Duquesne Light ("DLC"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business located at 411 Seventh Avenue, Pittsburgh, Allegheny County, Pennsylvania 15219.

FACTS

3. As early as October 9, 1997, Defendant has provided electric utility services to Plaintiff's residence at 106 Byron Road, Pittsburgh, Pennsylvania 15237.

4. In 2015, Defendant began exchanging existing electrical meters with new digital meters, sometimes referred to as "Smart Meters," at residences and buildings across Pittsburgh.

5. In support of this decision, Defendant stated that installation of Smart Meters would allow ratepayers to "save energy," "manage high-usage activity," and ultimately allow customers to save money. (See Exhibit "A").

6. On October 15, 2015, Defendant installed a Smart Meter at the residence of Plaintiff.

7. In connection with its electrical utility services, Defendant has installed and owns the transformer which directs electricity from Defendant's power lines to Plaintiff's residence.

8. This transfer of electricity is read and measured by the Smart Meter installed by Defendant on Plaintiff's residence.

9. Numerous times since 2015, the transformer and associated power lines have suffered damage due to falling tree branches. (See Exhibit "B").

10. Plaintiff has requested Defendant examine the damaged transformer to ensure its proper functioning, but Defendant has refused to do so.

11. Since installation of the Smart Meter at the Plaintiff's residence, Plaintiff has continued to incur exorbitantly high electricity bills.

12. These exorbitantly high electricity bills do not correlate with Plaintiff's usage of electricity at her residence, as significant bills have been generated for periods of time in which neither Plaintiff nor anyone else has occupied the residence.

13. From June 2015 to September 2017, neither Plaintiff nor anyone else occupied the residence.

14. During this time, Plaintiff would ensure the A/C unit was set to 50 degrees in the winter and 78 degrees in the summer.

15. Despite this, Plaintiff was charged monthly amounts between One Hundred Sixty-eight dollars (\$168.00) and Three Hundred Ninety-Seven Dollars and Twenty Cents (\$397.27) for electricity usage.

16. For frame of reference, prior to installation of the Smart Meter, four individuals lived at the residence (from 2013 to 2015), during which time the average electricity bill was approximately Three Hundred Dollars (\$300.00).

17. Upon moving back into her residence, Plaintiff has continued to receive increasingly high electricity bills.

18. For instance, Plaintiff received bills of Four Hundred Thirty-Seven Dollars and Ninety-Two Cents (\$437.92), Six Hundred Twenty-Two Dollars and Ninety-Three Cents (\$622.93), and Six Hundred Twenty-Six Dollars and Ninety-Four Cents (\$626.94) for November 2017, December 2017, and January 2018, respectively. (See Exhibit "C").

19. More recently Plaintiff, living alone, was charged Two Hundred Eighty-Four Dollars and Eighty-Two Cents (\$289.82) for electricity usage in October 2020. (See Exhibit "D").

20. Plaintiff's neighbors and other nearby homeowners, with similarly-situated homes, pay approximately Eighty Dollars (\$80.00) a month for electricity.

21. Electric bills of this magnitude were not generated until the installation of the Smart Meter.

22. Plaintiff's exorbitantly high electricity bills have been caused as a result of either the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the damaged transformer.

COUNT I - VIOLATION OF PENNSYLVANIA PUBLIC UTILITY CODE § 1301

23. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

24. Pennsylvania Public Utility Code § 1301 governs Defendant and provides that "[e]very rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa.C.S.A. § 1301.

25. Defendant has violated Public Utility Code § 1301 by charging Plaintiff unreasonable amounts as a result of the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the damaged transformer.

26. As the charges are neither just or reasonable, Plaintiff is entitled to a refund of the amounts paid in excess of a just and reasonable rate. 66 Pa.C.S.A. § 1312

WHEREFORE, Plaintiff, Nancy Leininger, demands judgment in her favor and against Defendant, Duquesne Light Company, d/b/a Duquesne Light, in an amount to be determined at a hearing on this matter, plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

COUNT II - UNJUST ENRICHMENT

27. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

28. Plaintiff conferred a benefit on the Defendant by paying unjust, unreasonable, and exorbitant overcharges for electricity usage, such overcharges being caused as a result of the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the damaged transformer.

29. Defendant appreciated the benefit of such overcharges, as they would not have otherwise received such payment but for the installation of the Smart Meter system and/or as a result of the damaged transformer.

30. Additionally, but for the misrepresentation and/or concealment of the facts surrounding the Smart Meter system's inability to accurately gauge electricity usage, Defendant and/or the defective condition of the transformer, Defendant would not have received such payment.

31. It would be against fundamental principles of justice, equity, and good conscience to allow Defendant to retain payments caused by such overcharges.

WHEREFORE, Plaintiff, Nancy Leininger, demands judgment in her favor and against Defendant, Duquesne Light Company, d/b/a Duquesne Light, in an amount to be determined at a hearing on this matter, plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

COUNT III - NEGLIGENCE

32. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

33. Defendant had a duty to Plaintiff to:

- a. To charge just and reasonable rates to Plaintiff;

- b. To sufficiently test and ensure the accuracy/reliability of the Smart Meter system and billing function at Plaintiff's property; and
- c. To test and ensure the transformer at Plaintiff's property was not defective and causing Plaintiff to pay unjust, unreasonable, exorbitant rates.

34. Defendant breached their duty to the Plaintiff, as Plaintiff has been overbilled/overcharged for electricity usage due to the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the damaged transformer.

35. As a direct and proximate result of Defendant's breach, Plaintiff has been financially and economically damaged, insofar as it has paid unjust, unreasonable, and exorbitant electricity service bills, well in excess of what it should have paid.

WHEREFORE, Plaintiff, Nancy Leininger, demands judgment in her favor and against Defendant, Duquesne Light Company, d/b/a Duquesne Light, in an amount to be determined at a hearing on this matter, plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

COUNT IV - BREACH OF CONTRACT

36. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

37. Plaintiff and Defendant entered into a valid contractual agreement wherein Plaintiff would receive electricity at a set rate that was reasonable and just, and Defendant would receive payment for such electrical service.

38. Defendants failed to deliver electricity at a set, reasonable, and just rate.

39. Defendant breached the contract in overcharging Plaintiff for electrical usage, as a result of the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the defective transformer.

40. As a result of Defendants breach, Plaintiff has been financially and economically damaged, having paid for electricity usage well in excess of what it should have paid.

WHEREFORE, Plaintiff, Nancy Leininger, demands judgment in her favor and against Defendant, Duquesne Light Company, d/b/a Duquesne Light, in an amount to be determined at a hearing on this matter, plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

COUNT V - FRAUD

41. Plaintiff incorporates the foregoing paragraphs by reference as if fully set forth herein.

42. Defendant made misrepresentations to the Plaintiff when it stated that installation of the Smart Meter system would allow ratepayers to decrease electric usage and save money.

43. Specifically, Defendant has stated that installation of Smart Meter system will allow ratepayers to "save money" and "manage high-usage activity."

44. These statements were false and/or misleading.

45. Defendant knew, or should have been aware, that the Smart Meter system would be inaccurate and result in higher charges to the Plaintiff.

46. These statements were intended to induce Defendant's customers, including Plaintiff, to switch over to and allow installation of the Smart Meter system.

47. Plaintiff reasonably relied upon the Defendant's statements, as Defendant is one of the largest electric utilities in Pennsylvania and is in a superior position, and allowed installation of the Smart Meter System.

48. As a proximate result of Defendant's misrepresentation, Plaintiff has suffered damages in having paid unreasonable, unjust, and exorbitant rates caused by the installation of the Smart Meter system and its inaccurate billing system.

WHEREFORE, Plaintiff, Nancy Leininger, demands judgment in her favor and against Defendant, Duquesne Light Company, d/b/a Duquesne Light, in an amount to be determined at a hearing on this matter, plus interest, costs, reasonable attorney's fees, and other such relief as is appropriate.

Respectfully Submitted,

JONES, GREGG, CREEHAN & GERACE, LLP

BY: 
MARK E. CASPER, JR., ESQUIRE
ATTORNEY FOR PLAINTIFF

BENEFITS

How does the advanced metering infrastructure benefit me?

Our meters put more information in the hands of our customers, allowing you to make more informed decisions about your energy consumption. Having hourly electric usage information enables you to better understand how much electricity you are using, and where. By having access to near real-time information, you can begin to make informed decisions on how you are using energy. You then can determine if modifying or changing your behavior may help decrease your electric usage. Using less electricity will save you money and help the environment.

CURRENT BENEFITS

- Online tools that provide access to your electric usage information 24-7 and help you discover ways to manage your bill
- Email or phone alerts that reduce high bill surprise and worry and help you manage high-usage activity
- The ability to participate in optional Time-of-Use programs, if offered by energy generation suppliers, that may provide benefits to residential customers who can shift portions of their power use to non-peak hours
- A more convenient connection process when starting new service or transferring service to another location in our service territory.

FUTURE BENEFITS

- The new meter technology, in conjunction with other system improvements, will enable us to provide outage alerts and time-restoration estimates that could help customers make plans during storm-related interruptions.

Does my meter benefit the environment?

YOUR PRIVACY

How will you keep my energy usage data private?



RADIO FREQUENCY

I heard my meter uses radio frequency to transmit energy-use information back to DLC. Should I be concerned?

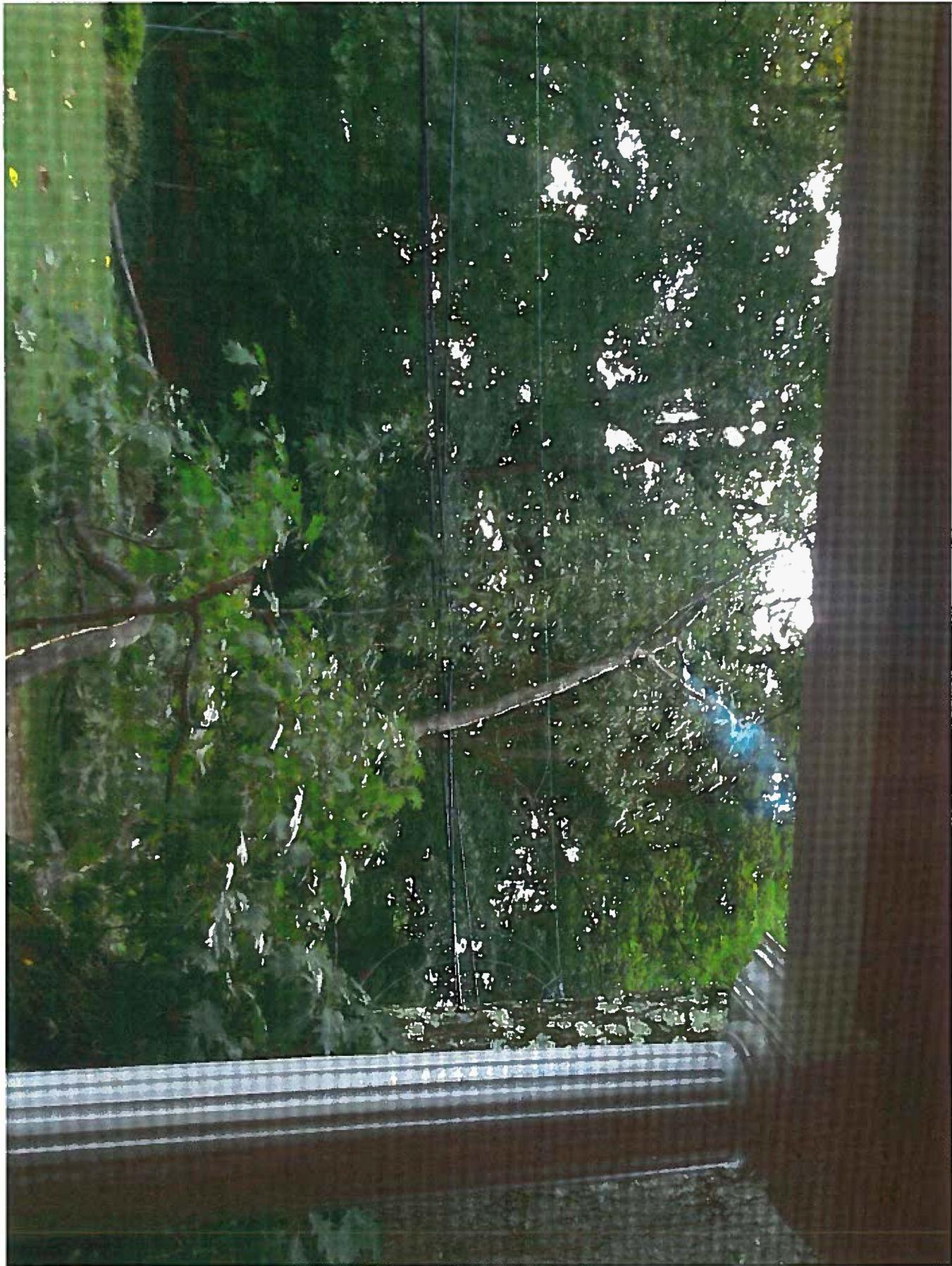


EXHIBIT

B









Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
 BILL ID: 9376813942

Account Number: 9376-888-124
 Rate: RS-Residential Service
 Date Prepared: 11/29/17

Meter Reading Usage Information		Summary																																																	
Next Scheduled Meter Reading Date: December 28, 2017		Prior Billing Information																																																	
Meter Read Information for Meter Number: F74454663		Amount of Last Bill	\$264.89																																																
Present:	Nov 28, 2017 - Actual	Payment(s) Received as of 11/06/17	-\$264.89																																																
Prior:	Oct 29, 2017 - Actual	Prior Account Balance	\$0.00																																																
	Difference	Current Billing Information																																																	
Your Meter Multiplier	X 1	DLC Basic Service Charges	\$437.92																																																
Total kWh Used	3078.8050	TOTAL ACCOUNT BALANCE PAYABLE TO DLC	\$437.92																																																
Electric Usage:		ACTUAL METER READING BILL																																																	
Comparing Your Usage		For more information see www.duquesnelight.com .																																																	
	Nov 16	Nov 17	Give to Dollar Energy Fund to help people without heat or light. Make a monthly pledge at www.duquesnelight.com or send a check to Duquesne Light Hardship Fund Donations, 411 Seventh Avenue MD 15-1, Pittsburgh, PA 15219. Your gift is tax deductible.																																																
Avg. kWh Per Day	0	103																																																	
Avg. Temperature (F)	0	42																																																	
YTD Usage (kWh)	0	6262																																																	
		<p><i>NOV</i></p>																																																	
<table border="1"> <thead> <tr> <th colspan="12">DAYS IN BILLING PERIOD</th> </tr> <tr> <th>D</th><th>J</th><th>F</th><th>M</th><th>A</th><th>M</th><th>J</th><th>J</th><th>A</th><th>S</th><th>O</th><th>N</th> </tr> </thead> <tbody> <tr> <td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td> </tr> <tr> <td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>19</td><td>29</td><td>30</td> </tr> </tbody> </table>		DAYS IN BILLING PERIOD												D	J	F	M	A	M	J	J	A	S	O	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	19	29	30	<p><i>PPD</i></p> <p><i>Added \$47 So hi & H from other MWS - actual reading</i></p>	
DAYS IN BILLING PERIOD																																																			
D	J	F	M	A	M	J	J	A	S	O	N																																								
0	0	0	0	0	0	0	0	0	0	0	0																																								
0	0	0	0	0	0	0	0	0	19	29	30																																								
<ul style="list-style-type: none"> Your Average usage for the past 3 months is 2087 kWh. Total Usage for the past 3 months is 6262 kWh. 																																																			
Estimated Gross Receipts Tax	Estimated PA State Taxes	Late Charge After Dec 20, 2017	Payment Due	Amount Due																																															
\$25.83	\$29.78	1.25%	Dec 20, 2017	\$437.92																																															





Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
 BILL ID: 937685218406

Account Number: 9376-888-124
Rate: RS-Residential Service
Date Prepared: 10/01/18

70,405.22
 35.72
 48,300.94

Meter Reading Usage Information
 Next Scheduled Meter Reading Date: January 30, 2018

Meter Read Information for Meter Number: F74454663

Present:	Dec 31, 2017 - Actual	52086.4740
Prior:	Nov 28, 2017 - Actual	47671.8120
	Difference	4414.6620

Your Meter Multiplier: $\times 1$
 Total kWh Used: 4414.6620

Electric Usage:

	Comparing Your Usage	
	Jan 17	Jan 18
Avg. kWh Per Day	0	134
Avg. Temperature (F)	0	32
YTD Usage (kWh)	0	10676

kWh:

DAYS IN BILLING PERIOD											
F	M	A	M	J	J	A	S	O	N	D	J
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	19	29	30	0	33

- Your Average usage for the past 4 months is 2669 kWh.
- Total Usage for the past 4 months is 10676 kWh.

Summary

Prior Billing Information

Amount of Last Bill	\$437.92
Payment(s) Received as of 12/05/17	-\$437.92
Prior Account Balance	\$0.00

Current Billing Information

DLC Basic Service Charges	\$622.93
TOTAL ACCOUNT BALANCE PAYABLE TO DLC	\$622.93

ACTUAL METER READING BILL

For more information see www.duquesnelight.com.

Give to Dollar Energy Fund to help people without heat or light. Make a monthly pledge at www.duquesnelight.com or send a check to Duquesne Light Hardship Fund Donations, 411 Seventh Avenue MD 15-1, Pittsburgh, PA 15219. Your gift is tax deductible.

High Bill 4

10/9/17 - \$196.10
 # 59 11/3 - 264.89
 12/5 437.92
 (I left 12/21)

*WORKERS
 Don't use
 heater.
 electric saw - month
 Bb. I left 622
 437*

Estimated Gross Receipts Tax	Estimated PA State Taxes	Late Charge After Jan 22, 2018	Payment Due	Amount Due
\$36.76	\$42.36	1.25%	Jan 22, 2018	\$622.93



Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
 BILL ID: 937689162073

Account Number: 9376-888-124
Rate: RS-Residential Service
Date Prepared: 01/31/18

Meter Reading Usage Information
 Next Scheduled Meter Reading Date: February 28, 2018

Meter Read Information for Meter Number: F74454663

Present:	Jan 30, 2018 - Actual	56496.0300
Prior:	Dec 31, 2017 - Actual	52086.4740
	Difference	4409.5560

Your Meter Multiplier: X 1
Total kWh Used: 4409.5560

Electric Usage:

Comparing Your Usage

	Jan 17	Jan 18
Avg. kWh Per Day	0	147
Avg. Temperature (F)	0	26
YTD Usage (kWh)	0	4410

kWh:

DAYS IN BILLING PERIOD											
F	M	A	M	J	J	A	S	O	N	D	J
0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	19	29	30	33	30

- Your Average usage for the past 5 months is 3017 kWh.
- Total Usage for the past 5 months is 15086 kWh.

Summary

Prior Billing Information

Amount of Last Bill	\$622.93
Payment(s) Received as of 01/16/18	-\$622.93
Prior Account Balance	\$0.00

Current Billing Information

DLC Basic Service Charges	\$626.94
TOTAL ACCOUNT BALANCE PAYABLE TO DLC	\$626.94

ACTUAL METER READING BILL

For more information see www.duquesnelight.com.

Give to Dollar Energy Fund to help people without heat or light. Make a monthly pledge at www.duquesnelight.com or send a check to Duquesne Light Hardship Fund Donations, 411 Seventh Avenue MD 15-1, Pittsburgh, PA 15219. Your gift is tax deductible.

PD 3009
2/7/18

Estimated Gross Receipts Tax	Estimated PA State Taxes	Late Charge After Feb 21, 2018	Payment Due	Amount Due
\$36.99	\$42.64	1.25%	Feb 21, 2018	\$626.94



DuquesneLight.com
412-393-7100

NANCY LENINGER
106 BYRON RD
PITTSBURGH, PA 15237-3901
BILL ID: 0376888124

ACCOUNT NUMBER: 9376-888-124

Rate: RS-Residential Service

Date Prepared: 10/29/20

Meter Reading Usage Information

Next Scheduled Meter Reading Date: November 30, 2020

Meter Read Information for Meter Number: F74454663

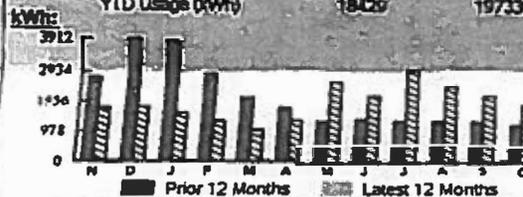
Present:	Oct 28, 2020 - Actual	25778.6400
Prior:	Sep 29, 2020 - Actual	23696.0430
	Difference	1882.5970

Your Meter Multiplier: \times 1

Total kWh Used: 1882.5970

Electric Usage

	Comparing Your Usage	
	Oct 19	Oct 20
Avg. kWh Per Day	.41	.65
Avg. Temperature (F)	57	55
YTD Usage (kWh)	18429	19733



DAYS IN BILLING PERIOD											
N	D	J	F	M	A	M	J	J	A	S	O
30	31	29	31	30	31	30	31	30	31	29	31
27	27	27	31	28	31	27	29	27	29	30	29

- Average Monthly Usage for the past 12 months is 1939 kWh.
- Total Annual Usage for the past 12 months is 23265 kWh.

Summary

Prior Billing Information	
Amount of Last Bill	\$348.76
Payment(s) Received as of 10/16/20	-\$80.00
Prior Account Balance	\$268.76
Current Billing Information	
DLC Basic Service Charges	\$284.83
Non-Basic Service Charges	\$4.99
TOTAL ACCOUNT BALANCE PAYABLE TO DLC	\$558.58

ACTUAL METER READING BILL

For more information see www.duquesnelight.com

Give to Do an Energy Fund to help people without heat or light. Make a monthly pledge at www.duquesnelight.com or send a check to Duquesne Light Hardship Fund Donations, 411 Seventh Avenue MD 15-1, Pittsburgh, PA 15219 Your gift is tax deductible.

The amount of \$4,368.37 is currently in dispute. Please pay the undisputed charges below while your dispute is pending.

Go paperless! E-Bill is simple, convenient and good for the environment. Enroll today at DuquesneLight.com/ebill or with our mobile app.

Estimated Gross Receipts Tax	Estimated PA State Taxes	Late Charge After Nov 19, 2020	Payment Due	Amount Due
\$16.81	\$19.37	1.25%	Nov 19, 2020	\$558.58

Please return this portion with your payment. Please enclose check being forwarded. Make payment payable to Duquesne Light Company in US Currency.

Account Number
9376-888-124

PLEASE PAY THIS AMOUNT BY Nov 19, 2020
\$558.58

\$

To make account changes, enroll in Autopay or pledge to the Dollar Energy Fund, please update information on the back of this coupon and check the box to the right.

USD Amount Enclosed

01891 00008941



NANCY LENINGER
106 BYRON RD
PITTSBURGH PA 15237-3901

DUQUESNE LIGHT COMPANY
PAYMENT PROCESSING CENTER
PO BOX 67
PITTSBURGH, PA 15267-0001



tabbles
EXHIBIT
A

VERIFICATION

I, Nancy Leininger, have read the foregoing Complaint in Civil Action. The statements contained therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. §4904 relating to unsworn falsification to authorities, which provides that I make knowingly false averments, I may be subject to criminal penalties.

DATED:

6/10/21

Nancy M. Leininger

NANCY LEININGER

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

JONES, GREGG, CREEHAN & GERACE, LLP

BY:


MARK E. CASPER, ESQUIRE
PA I.D. #326381

ATTORNEY FOR PLAINTIFF

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

NANCY LEININGER,

Plaintiff,

vs.

DUQUESNE LIGHT COMPANY,

Defendant.

CIVIL DIVISION

No. GD-21-007318

**PRELIMINARY OBJECTIONS RAISING
QUESTIONS OF FACT AND PROPOSED
ORDER**

Filed on Behalf of Defendant
Duquesne Light Company

Counsel of Record for this Party:

Jeremy V. Farrell, Esquire

Pa. I.D. #316258

jfarrell@tuckerlaw.com

Paul Shane Miller, Esquire

Pa. I.D. #319174

smiller@tuckerlaw.com

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Jones, Gregg, Creehan & Gerace LLP

411 Seventh Avenue, Suite 1200

Pittsburgh, PA 15219

TUCKER ARENSBERG, P.C.

1500 One PPG Place

Pittsburgh, PA 15222

(412) 566-1212

**Date Preliminary Objections Raising
Questions of Fact Were Served:**

To Plaintiff:

August 4, 2021

You are hereby notified to file a written response to the enclosed Preliminary Objections Raising Questions of Fact within 20 days of service hereof or a judgment may be entered against you.

/s/ Paul Shane Miller

Paul Shane Miller, Esq.

EXHIBIT

B

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

NANCY LEININGER,)
) No. GD-21-007318
 Plaintiff,)
)
 vs.)
)
 DUQUESNE LIGHT COMPANY,)
)
 Defendant.)
)
)
)

PRELIMINARY OBJECTIONS RAISING QUESTIONS OF FACT

Defendant Duquesne Light Company files these Preliminary Objections Raising Questions of Fact:

I. Preliminary Statement

1. Plaintiff Nancy Leininger, who is a Duquesne Light customer, filed this five-count Complaint in Civil Action (“Complaint”) against Duquesne Light. All of Leininger’s claims are based on the allegation that Duquesne Light is overcharging her for electric service, an issue that is regulated exclusively by the Pennsylvania Public Utility Commission (“PUC”). In fact, Leininger is, at this moment, simultaneously litigating another high bill complaint against Duquesne Light before the PUC. See Nancy Leininger v. Duquesne Light Co., Docket No. C-2020-3021150, (Pa. P.U.C.).¹

¹ Leininger actually has filed two complaints against Duquesne Light with the PUC in recent years; they both relate to alleged overcharges. On June 25, 2018, she filed the first Complaint with the PUC at Docket No. F-2018-3003226 (the “2018 PUC Complaint”). A copy of the 2018 PUC Complaint is attached as Exhibit A. She alleged that “[i]ncorrect charges are on my bill.” See Exhibit A, ¶ 4. As relief, she requested that her bills be adjusted and lowered. *Id.* at ¶ 5. The case proceeded to a hearing before Administrative Law Judge Mark A. Hoyer. On October 9, 2019, ALJ Hoyer dismissed the 2018 PUC Complaint. A copy of ALJ Hoyer’s decision is attached as Exhibit B. The case was closed on December 12, 2019. A copy of the Final Order is attached as Exhibit C. About seven months later, Leininger filed another Complaint with the PUC against Duquesne Light at Docket No. C-2020-3021150 (the “2020 PUC Complaint”). A copy of the 2020 PUC Complaint is attached as Exhibit D. Once again, she indicated that “[i]ncorrect charges are

2. More specifically, the Complaint raises the following five counts:
 - i. Count I asserts a statutory violation of § 1301 of the Public Utility Code, 66 Pa. C.S. 1301, which alleges that Duquesne Light charged Leininger unreasonable bills and seeks a refund of alleged overpayments. Complaint at ¶¶ 24-26.
 - ii. Count II asserts that Leininger’s payment of the alleged high electric bills entitles her to recover under an unjust enrichment theory. Id. at ¶¶ 28-31.
 - iii. Count III asserts that Leininger’s payment of the alleged high electric bills entitles her to recover under a negligence claim. Id. at ¶¶ 32-35.
 - iv. Count IV asserts that Leininger’s payment of the alleged high electric bills entitles her to recovery under a breach of contract claim. Id. at ¶¶ 36-40.
 - v. Count V asserts that Duquesne Light defrauded Leininger by installing a smart meter that Duquesne Light allegedly knew would result in high electric bills. Id. at ¶¶ 41-48.

3. The Complaint contains several notable omissions. For example, it never mentions that Leininger already has the 2020 PUC Complaint pending before the PUC against Duquesne Light. The 2020 PUC Complaint involves the same alleged high bill issues. Specifically, Leininger claims in the 2020 PUC Complaint that there are “incorrect charges are on my bill” and that her “[a]ccount balance and smart energy meter is defective.” See Exhibit D, ¶ 4. As relief in the 2020 PUC Complaint, Leininger requests that her “bill be expunged due to overbilling” and that “all billing cease until this matter is resolved.” Id. at ¶ 5. The 2020 PUC Complaint is scheduled for a hearing on August 20, 2021. See Exhibit E.

4. The Court should dismiss the Complaint in its entirety, or transfer it to the PUC, for three separate reasons.

on my bill.” See Exhibit D, ¶ 4. She also stated, “Account balance and smart energy meter is defective.” Id. As relief, she requested that “the bill be expunged due to over billing ... [and] that all billing cease until this matter is resolved.” Id. at ¶ 5. The 2020 PUC Complaint is scheduled for a hearing on August 20, 2021. A copy of the Hearing Notice is attached as Exhibit E. Duquesne Light redacted any confidential information from the exhibits.

5. First, the PUC has exclusive jurisdiction. The subject matter of the Complaint – whether Duquesne Light overbilled Leininger for electric service – is squarely within the PUC’s statutory and regulatory authority and expertise. The PUC also can grant full relief to Leininger by issuing a refund, with interest, if her claims have merit.

6. Second, Leininger failed to exhaust a statutory remedy. Pennsylvania has a comprehensive statutory scheme that requires utility customers like Leininger to seek a full refund from the PUC for alleged high bills. Leininger failed to exhaust that process here.

7. Third, the Complaint is barred under the *lis pendens* doctrine. Although the Complaint neglects to mention it, Leininger’s 2020 PUC Complaint is currently pending before the PUC. It raises the same high bill allegations against Duquesne Light and seeks the same relief – a refund for the alleged overcharges. Duquesne Light should not be compelled to simultaneously defend both cases in two different forums. If the Complaint is not dismissed or transferred to the PUC, it must be stayed until the 2020 PUC Complaint is closed.

8. In addition, this Court should dismiss Leininger’s negligence, breach of contract, and fraud claims for several independent reasons.

9. The economic loss doctrine bars Leininger’s negligence claim because she fails to allege that she sustained any personal injury or property damage.

10. The Court should dismiss her breach of contract claim because Leininger fails to identify a private contract that she entered into with Duquesne Light; instead, she merely parrots the statutory requirements imposed on Duquesne Light as her electric service provider. Leininger cannot recast a statutory claim into a contract action. As further proof that Leininger lacks a contract with Duquesne Light, she does not even try to state if the alleged contract is oral or written; and if written, she failed to attach the contract to the Complaint, as required by the Pennsylvania Rules of Civil Procedure.

11. The Court should dismiss Leininger's fraud claim because she misrepresents Duquesne Light's statements that form the basis for her claim, never claims those statements were "material" to her, and fails to adequately allege that she relied on them or that they caused her alleged injuries. Leininger thus falls short on four essential elements of a fraud claim under Pennsylvania law.

12. Finally, the Court must strike Leininger's request for attorneys' fees (which is present in all five counts) because she identifies no statutory or contractual provision that entitles her to recover them.

II. The Complaint's Allegations

13. Leininger resides in Allegheny County. Complaint at ¶ 1. Duquesne Light has provided electric utility services to her home for nearly 25 years. Id. at ¶ 3.

14. In October 2015, Duquesne Light installed a "smart meter" at Leininger's residence. Id. at ¶ 6.

15. Leininger claims that she received "exorbitantly high" electric bills after Duquesne Light installed the smart meter. Id. at ¶ 11.

16. According to Leininger, these alleged high bills are caused by one of two factors: (a) the smart meter's allegedly inaccurate billing system; or (b) an allegedly damaged transformer near her home. Id. at ¶¶ 7, 9, and 22.

17. Because Leininger believes that the smart meter's billing system may be inaccurate, she also alleges that Duquesne Light misled her about a smart meter's potential benefits. Id. at ¶¶ 42-48.

Preliminary Objection No. 1²
Lack of Subject Matter Jurisdiction Pursuant to Pa. R.C.P. 1028(a)(1)
All Counts

18. A party may file a preliminary objection to any pleading based on lack of jurisdiction over the subject matter of the action. Pa. R.C.P. 1028(a)(1).

19. A preliminary objection based on lack of subject matter jurisdiction is proper where the action is brought before a court rather than under the exclusive jurisdiction of an agency. Bell Tel. Co. of Pa. v. Sanner, 375 A.2d 93, 95 (Pa. Super. Ct. 1977).

20. This Court lacks subject matter jurisdiction over the Complaint because it is within the PUC's exclusive jurisdiction.

21. Pennsylvania courts cannot originally adjudicate matters that are within the PUC's jurisdiction. DiSanto v. Dauphin Consol. Water Supply Co., 436 A.2d 197, 199 (Pa. Super. Ct. 1981). Initial jurisdiction in matters concerning the relationship between public utilities and their customers is in the PUC – not the courts. Id.

22. It has long been recognized that the reasonableness, adequacy, and sufficiency of public utility services are all matters within the exclusive original jurisdiction of the PUC. Id. at 199 (citing Duquesne Light Co. v. Monroeville Borough, 298 A.2d 252 (Pa. 1972); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968); Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. Ct. 1977)). Moreover, if the available administrative remedy is “adequate and complete,” the PUC has exclusive jurisdiction over the controversy. DiSanto, 436 A.2d at 202.

23. Under the Public Utility Code, the term “service” is “used in its broadest and most inclusive sense....” 66 Pa. C.S. § 102. “Service” includes, “[a]ny and all acts done, rendered, or

² In ruling on preliminary objections, the Court must accept as true all well-pleaded material facts alleged in the complaint and all reasonable inferences deducible therefrom. Minor v. Kraynak, 155 A.3d 114, 121 (Pa. Commw. Ct. 2017). Conclusions of law are neither deemed admitted nor deemed true. Small v. Horn, 722 A.2d 664, 668 (Pa. 1998). Likewise, unwarranted inferences from facts, argumentative allegations, and expressions of opinion do not have to be accepted as true. Myers v. Ridge, 712 A.2d 791, 794 (Pa. Commw. Ct. 1998).

performed, and any and all things furnished or supplied ... by public utilities ... in the performance of their duties ... to their patrons ... and the public....” Id.

24. The Public Utility Code also contains provisions governing “rates.” Specifically, the Public Utility Code states, “Every rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission.” 66 Pa. C.S. § 1301(a). Section 1301 covers high bill complaints because the Public Utility Code defines a “rate” as “[e]very **individual ... charge ...or other compensation whatsoever of any public utility** ... made, demanded, or received for any service ... offered, rendered, or furnished by such public utility ... and any rules, regulations, practices, classifications or contracts affecting any such compensation [or] charge....” 66 Pa. C.S. § 102.

25. In sum, the Public Utility Code “envisions that the PUC has jurisdiction over matters relating to the reasonableness of a utility’s services ... and rates ... as well as over matters concerning the utility’s formation of reasonable rules and regulations governing the conditions under which service ... and rates shall be rendered, constructed or imposed.” DiSanto, 436 A.2d at 201.

26. Not only does the Public Utility Code establish that high bill complaints are within the PUC’s exclusive jurisdiction, but the Pennsylvania Supreme Court has also opined, “[b]oth the Public Utility Law and the decisions of this Court, with unmistakable clarity, require that **questions dealing excessive charges be decided in the first instance exclusively by the Commission.**” Einhorn v. Phila. Elec. Co., 190 A.2d 569, 571 (Pa. 1963) (emphasis added). Following the Pennsylvania Supreme Court’s lead, the Commonwealth Court has also recognized that the PUC “[h]as particular expertise over such matters.” Springfield Twp. v. Pa. Public Utility Com’n, 676 A.2d 304, 308 (Pa. Commw. Ct. 1996).

27. Consistent with its oversight over high-bill complaints, the PUC has a well-developed body of law governing this topic. See Burleson v. Pa. Public Utility Com’n, 461 A.2d

1234, 1235 (Pa. 1983) (describing the PUC’s “Waldron Rule,” which creates an evidentiary framework for proving an overbilling claim before the PUC); Milkie v. Pa. Public Utility Com’n, 768 A.2d 1217, 1219 (Pa. Commw. Ct. 2001) (same); Exhibit B at *6 (“In Waldron v. Philadelphia Electric Company ... the Commission outlined the general dynamics for the burden of proof in a case that raises a high bill dispute.”) (Hoyer, ALJ).

28. In determining where jurisdiction properly lies, the Court must “must look to the essence of the underlying claims, rather than to magic words. Pettko v. Pa. American Water Co., 15 Pa. D. & C. 5th 565, 570 (Pa. Com. Pl. Aug. 27, 2010) (citing Poorbaugh v. Pa. Public Utility Com’n, 666 A.2d 744, 750 (Pa. Commw. Ct. 1995)).

29. Here, the Complaint’s “essence” is clear: Leininger contends that Duquesne Light overbilled her for electric service. See Complaint at ¶ 11 (“Plaintiff has continued to incur exorbitantly high electricity bills.”); ¶ 12 (“These exorbitantly high electricity bills do not correlate with Plaintiff’s usage...”); ¶ 17 (“Plaintiff has continued to receive increasingly high electricity bills.”); ¶ 21 (“Electric bills of this magnitude were not generated until the installation of the Smart Meter.”); ¶ 22 (“Plaintiff’s exorbitantly high electricity bills have been caused as a result of either the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the damaged transformer.”).

30. Leininger’s high-bill complaint is within the PUC’s exclusive jurisdiction because she is challenging Duquesne Light’s “service” (“[a]ny ... acts done, rendered, or performed ... by public utilities ... in the performance of their duties ... to their patrons ...”) and/or “rates” (“[e]very individual ... charge ... or other compensation whatsoever of any public utility ... made, demanded, or received for any service ... offered, rendered, or furnished by such public utility ...”).

31. The Public Utility Code and Pennsylvania caselaw establish that high-bill complaints like the one raised by Leininger are within the PUC’s exclusive jurisdiction.

32. Not only has the PUC developed an extensive body of law and expertise regarding high bill complaints, but it can also award Leininger a full refund, with interest, if she prevails on her claims:

“If ... the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, ***the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron ... together with interest at the legal rate from the date of each such excessive payment...***”

66 Pa. C.S. § 1312(a) (emphasis added).

33. Accordingly, the Court should find that the PUC has exclusive jurisdiction over Leininger’s claims. The Court should dismiss this case or transfer it to the PUC in its entirety.

34. Alternatively, if the Court finds that the PUC lacks exclusive jurisdiction over the Complaint, then it should rule that the PUC has primary jurisdiction. In that circumstance, the Court should bifurcate the case and initially send it to the PUC for a determination as to whether Duquesne Light overcharged Leininger for electric service. After the PUC addresses that issue, the case could be returned to this Court for a potential remedy.

35. Pennsylvania courts have developed the doctrine of primary jurisdiction to accommodate the role of the court with that of an agency. Elkin v. Bell Telephone Co. of Pa., 420 A.2d 371, 376 (Pa. 1980).

36. The doctrine of primary jurisdiction permits the bifurcation of a plaintiff’s claim, whereby a court, faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, will first cede the analysis of the issue or issues to that agency. Erie Ins. Exchange ex rel. Sullivan v. Pa. Ins. Dep’t, 133 A.3d 102, 107 (Pa. Commw. Ct. 2016) (*en banc*).

37. Once the agency resolves the issue(s) over which it has primary jurisdiction, the court may proceed, if necessary, to apply the agency's decision to the dispute remaining before the court. Id.

38. If this Court concludes that the PUC lacks exclusive jurisdiction, it should nonetheless find that the PUC has primary jurisdiction over Leininger's high-bill allegations. As noted above, the PUC has expertise and a well-developed body of law governing high-bill complaints. If the PUC has primary but not exclusive jurisdiction, the case should be bifurcated and transferred to the PUC for an initial determination on that issue. After the PUC makes an initial ruling, the case can be returned to this Court for consideration of a remedy.

Preliminary Objection No. 2
Failure to Exhaust a Statutory Remedy Pursuant to Pa. R.C.P. 1028(a)(7)
All Counts

39. A party may not seek judicial resolution of a dispute until he or she has exhausted available statutory or administrative remedies. Martel v. Allegheny Cnty., 216 A.3d 1165, 1172 (Pa. Commw. Ct. 2019) (citing City of Phila. V. Lerner, 151 A.3d 1020, 1024 (Pa. 2016)). Leininger fails to claim that she exhausted those remedies here. Accordingly, the Court should dismiss her Complaint under Pa. R.C.P. 1028(a)(7).

40. The exhaustion doctrine "reflects a recognition of the general assembly's directive of strict compliance with statutorily prescribed remedies," and it also acknowledges that "an unjustified failure to follow the administrative scheme undercuts the foundation upon which the administrative process was founded." Id. (citing Jordan v. Fayette Cty. Bd. of Assessment Appeals, 782 A.2d 642, 646 (Pa. Commw. Ct. 2001)).

41. If a party fails to pursue a statutory or administrative remedy, the court is without power to act until these remedies have been exhausted. Id. (citing Muir v. Alexander, 858 A.2d 653, 660 (Pa. Commw. Ct. 2004)).

42. In determining whether a litigant will be excused from exhausting a statutory or administrative remedy, courts must look to whether an adequate remedy exists. Cnty. of Berks ex rel. Baldwin v. Pa. Labor Relations Bd., 678 A.2d 355, 360 (Pa. 1996). A litigant is not permitted to circumvent the administrative process if the litigant can achieve full relief before the agency. Id.

43. Here, the Complaint fails to claim that Leininger exhausted her available statutory remedies. She does not allege, for instance, that she sought a refund from the PUC under 66 Pa. C.S. § 1312 before filing this action.

44. The Court should not intervene in this case because, as discussed above, the PUC has expertise in adjudicating high-bills complaints, as well as a comprehensive body of law to address them.

45. Moreover, the PUC can provide an adequate remedy to Leininger.

46. In the Complaint, Leininger states that she is “entitled to a refund of the amounts paid in excess of a just and reasonable rate.” See Complaint at ¶ 26.

47. The PUC has the power to award a full refund to Leininger, with interest, if she prevails on her claims. See 66 Pa. C.S. § 1312(a) (“If ... the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron ... together with interest at the legal rate from the date of each such excessive payment...”).

48. Allowing Leininger to bypass the PUC and file suit directly in this Court would undercut the robust administrative framework that the Pennsylvania legislature created by establishing the PUC and providing it with jurisdiction over high-bill complaints.

49. Accordingly, the Court should dismiss the Complaint or transfer it to the PUC in its entirety.

Preliminary Objection No. 3
Pendency of a Prior Action Pursuant to Pa. R.C.P. 1028(a)(6)
All Counts

50. Leininger's 2020 PUC Complaint is pending against Duquesne Light before the PUC. It is scheduled for a hearing on August 20, 2021. If the Court does not dismiss the Complaint or transfer it to the PUC, it should stay the Complaint until the 2020 PUC Complaint is closed under the *lis pendens* doctrine.

51. Preliminary objections may be filed by any party for "pendency of a prior action," often called *lis pendens*. Pa. R.C.P. 1028(a)(6).

52. A *lis pendens* defense is intended to protect a defendant from harassment by having to defend several suits on the same cause of action at the same time. Feldman v. Lafayette Green Condominium Ass'n, 806 A.2d 497, 502 (Pa. Commw. Ct. 2002).

53. A *lis pendens* defense is available when the parties, the causes of action, and the relief sought are the same in both actions. Rostock v. Anzalone, 904 A.2d 943, 945 (Pa. Super. Ct. 2006).

54. The party raising the defense of *lis pendens* can ask that the action in which the defense is being raised be stayed pending the outcome of the prior litigation. Cardenas v. Schober, 783 A.2d 317, 327 (Pa. Super. Ct. 2001).

55. Here, the 2020 PUC Complaint and this action involve the same parties: Leininger and Duquesne Light.

56. Leininger raises the same basic claims in both actions: alleged overbilling by Duquesne Light. Compare Complaint at ¶ 11 ("Plaintiff has continued to incur exorbitantly high electricity bills."), and ¶ 12 ("These exorbitantly high electricity bills do not correlate with Plaintiff's usage..."), and ¶ 17 ("Plaintiff has continued to receive increasingly high electricity bills."), and ¶

21 (“Electric bills of this magnitude were not generated until the installation of the Smart Meter.”), and ¶ 22 (“Plaintiff’s exorbitantly high electricity bills have been caused as a result of either the installation of the Smart Meter system and its inaccurate billing system and/or as a result of the damaged transformer.”), with Exhibit D at ¶ 4 (“Incorrect charges are on my bill ... [the] account balance ... is defective.”).

57. Leininger seeks the same basic relief in both actions: a refund for the alleged overcharges. See Complaint at ¶ 26 (“As the charges are neither just or reasonable, Plaintiff is entitled to a refund of the amounts paid in excess of a just and reasonable rate.”); Exhibit D at ¶ 5 (“It is requested that the bill be expunged due to over billing...”).

58. Duquesne Light should not be forced to simultaneously defend itself from both claims in two different forums. Not only is this unfair to Duquesne Light, but it also would waste limited judicial resources.

59. Thus, if the Complaint is not dismissed or transferred to the PUC, it should be stayed until the 2020 PUC Complaint is closed.

Preliminary Objection No. 4
Legal Insufficiency Pursuant to Pa. R.C.P. 1028(a)(4)
Count III (Negligence)

60. Leininger’s negligence claim (Count III) should be dismissed because it is barred by the economic loss doctrine and therefore is legally insufficient. See Pa. R.C.P. 1028(a)(4) (“Preliminary objections may be filed ... [for] legal insufficiency of a pleading.”).

61. The economic loss doctrine provides that no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage. Preferred Contractors Ins. Co., RRG, LLC v. Sherman, 193 A.3d 1009, 1021 (Pa. Super. Ct. 2018).

62. Pure economic loss, when not accompanied with or occasioned by injury, is considered beyond the scope of recovery even if a direct result of the negligent act. Id.

63. The Complaint never claims that Leininger suffered personal injury or property damage. In fact, Count III expressly acknowledges that Leininger's losses are purely economic: "As a direct and proximate result of Defendant's breach, Plaintiff has been **financially and economically damaged**, insofar as it [sic] has paid unjust, unreasonable, and exorbitant electricity service bills..." Complaint at ¶ 35 (emphasis added).

64. Accordingly, the Court should dismiss Leininger's negligence claim for legal insufficiency.

Preliminary Objection No. 5
Legal Insufficiency Pursuant to Pa. R.C.P. 1028(a)(4)
Count IV (Breach of Contract)

65. The Court should dismiss Leininger's breach of contract claim because she fails to identify a private contract that she entered into with Duquesne Light. Instead, she merely parrots the language set forth in Section 1301 of the Public Utility Code. Compare 66 Pa. C.S. § 1301 ("**[e]very rate** made, demanded, or received by any public utility ... **shall be reasonable and just**"), with Complaint at ¶ 37 ("Plaintiff and Defendant entered into a valid contractual agreement wherein Plaintiff would receive electricity at a set **rate that was reasonable and just**, and Defendant would receive payment for such electrical service.") (emphasis added).

66. To plead a viable breach of contract claim with Duquesne Light, Leininger must – at a minimum – identify an actual contract she entered with Duquesne Light. Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C., 137 A.3d 1247, 1258 (Pa. 2016). Leininger cannot simply repurpose and recast a statutory provision as a separate, freestanding breach of contract claim.

67. As further proof that Leininger lacks a contract with Duquesne Light, she does not even try to state if the alleged contract is oral or written; and if written, she failed to attach the contract to the Complaint, as required by the Pennsylvania Rules of Civil Procedure.

68. Specifically, under Rule 1019(h), “When any claim ... is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.” Pa. R.C.P. 1019(h).

69. Leininger failed to identify if the alleged contract with Duquesne Light is oral or written, which is not surprising given that she merely repeats a provision of the Public Utility Code rather than a specific contract with Duquesne Light.

70. Further, under Rule 1019(i), “When any claim ... is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.” Pa. R.C.P. 1019(i).

71. Leininger satisfied none of the requirements in Rule 1019(i).

72. In sum, if Leininger contends that the parties have a private contract, she must identify and/or produce it under Rule 1019. Alternatively, if she merely alleges that Duquesne Light violated Section 1301 of the Public Utility Code, this claim must be dismissed because this statutory provision does not create a contract between Leininger and Duquesne Light.

Preliminary Objection No. 6
Legal Insufficiency Pursuant to Pa. R.C.P. 1028(a)(4)
Count V (Fraud)

73. The Court should dismiss Leininger’s fraud claim because it is legally insufficient for several reasons.

74. A fraudulent misrepresentation claim has six essential elements: (1) a misrepresentation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. Ira G. Steffy & Son, Inc. v. Citizens Bank of Pa., 7 A.3d 278, 290 (Pa. Super. Ct. 2010).

75. Leininger failed to plead nearly all of these elements.

76. To start, the Complaint misrepresents what Duquesne Light actually stated about its smart meter program:

Leininger's Allegations	Duquesne Light's Actual Statements
<p>"In support of this decision [to exchange existing electrical meters with new digital meters], Defendant stated that installation of Smart Meters would allow ratepayers to "save energy," "manage high-usage activity," and ultimately allow customers to save money. (See Exhibit "A")." Complaint at ¶ 5</p> <p>...</p> <p>"Defendant made misrepresentations to the Plaintiff when it stated that installation of the Smart Meter system would allow ratepayers to decrease electric usage and save money." Complaint at ¶ 42</p> <p>...</p> <p>"Specifically, Defendant has stated that installation of Smart Meter system will allow ratepayers to "save money" and "manage high-usage activity." Complaint at ¶ 43.</p>	<p>"Our meters put more information in the hands of our customers, allowing you to make more informed decisions about your energy consumption. Having hourly electric usage information enables you to better understand how much electricity you are using, and where. By having access to near real-time information, you can begin to make informed decisions on how you are using energy. You then can determine if modifying or changing your behavior may help decrease your electric usage. Using less electricity will save you money and help the environment."</p> <p>See Complaint, Exhibit A.</p> <p>...</p> <ul style="list-style-type: none"> • Email or phone alerts that reduce high bill surprise and worry and help you manage high-usage activity" <p>See Complaint, Exhibit A.</p>

77. Contrary to Leininger's claims in paragraphs 5, 42, and 43 of the Complaint, Duquesne Light never promised that a customer would "save energy," "manage high-usage activity," and "save money" simply by receiving a smart meter.

78. Duquesne Light only asserted that its smart meters would "put more information in the hands of our customers, allowing you to make more informed decisions about your energy consumption." See Complaint, Exhibit A. This additional information "**may** help decrease your electric usage" **if the customer elected to modify or change their behavior based on the information.** Id.

79. Leininger fails to allege that Duquesne Light's statement that its smart meters would provide more information to its customers is false, nor does she disagree that using less electricity will save money for customers. Instead, she incorrectly suggests that Duquesne Light promised that its smart meters would automatically "save energy," "manage high-usage electricity," and "save money." But Duquesne Light made no such promise; it only stated that its smart meters would provide more information to customers, who could then take action to reduce their electric consumption and save money as a result.

80. Because Leininger fails to identify a false representation by Duquesne Light, her fraud claim must be dismissed.

81. What is more, even if Duquesne Light's statements could be construed in the light suggested by Leininger, they still cannot constitute fraud.

82. It is "well-established that the breach of a promise to do something in the future is not actionable in fraud." Shoemaker v. Commonwealth Bank, 700 A.2d 1003, 1006 (Pa. Super. Ct. 1997).

83. Even if Duquesne Light guaranteed that smart meters would reduce electric consumption and save money for its customers, these statements would be, at most, a promise of a future benefit after the smart meter was installed. Accordingly, they cannot constitute fraud.

84. In addition, Leininger never claims that Duquesne Light's alleged misrepresentations were "material" in any way, which is an essential element of her fraud claim.

85. Finally, Leininger cannot satisfy the fifth or sixth elements of a fraudulent misrepresentation claim, which is that she justifiably relied on Duquesne Light's alleged misrepresentations and that her injuries were proximately caused by her reliance.

86. Leininger appears to rely on a "fraud in the inducement" theory, which asserts that she would not have entered into an agreement "but for" Duquesne Light's fraudulent misrepresentations. See Complaint at ¶ 46 ("These statements were intended to induce ...

Plaintiff ... to switch over to and allow installation of the Smart Meter system.”); Blumenstock v. Gibson, 811 A.2d 1029, 1036 (Pa. Super. Ct. 2002).

87. Although Leininger makes the blanket assertion that she “reasonably relied” on Duquesne Light’s statements and thus “allowed installation of the Smart Meter System,” she provides no well-pleaded facts to support these conclusions. See Complaint at ¶ 47.

88. To begin with, Leininger fails to allege that she even knew about Duquesne Light’s alleged misrepresentations before receiving a smart meter.

89. More importantly, Leininger’s claim that she “allowed the installation of the Smart Meter System” is false as a matter of law. Pennsylvania law **required** Duquesne Light to install a smart meter at her home. See 66 Pa. C.S. § 2807(f)(1)-(2) (“Within nine months after the effective date of this paragraph, electric distribution companies shall file a smart meter technology procurement and installation plan with the commission for approval. ... [e]lectric distribution companies **shall** furnish smart meter technology as follows: (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (ii) In new building construction; (iii) In accordance with a depreciation schedule not to exceed 15 years) (emphasis added); Anthony v. PPL Electric Utilities Corp., Docket No. C-2018-3000490, 2020 WL 5876962, at *11 (Pa. P.U.C. Sept. 15, 2020) (Barnes, ALJ) (“The Commission has ruled that there is no provision in the Code, the Commission’s Regulations or Orders that allows an electric distribution company’s customer to “opt out” of smart meter installation.”).

90. Duquesne Light did not “induce” Leininger to purchase or accept a smart meter. Pennsylvania law required her to receive one.

91. Accordingly, Leininger’s fraud claim must be dismissed.

Preliminary Objection No. 7
Legal Insufficiency Pursuant to Pa. R.C.P. 1028(a)(4)
All Counts

92. Finally, in each “Wherefore” clause in the Complaint, Leininger requests “reasonable attorney’s fees.”

93. Under the “American Rule”, a party may not recover attorneys' fees from its adversary absent an express statutory or contractual provision allowing for the recovery of such attorneys' fees. Mosaica Academy Charter School v. Com.Dept. of Educ., 813 A.2d 813, 822 (Pa. 2002).

94. Leininger identified no applicable contractual or statutory provision that permits her to recover attorneys' fees here.

95. Accordingly, Leininger’s request for attorneys’ fees must be dismissed.

IV. Conclusion

96. In conclusion, the Court should dismiss or transfer this case to the PUC in its entirety because the Court lacks subject matter jurisdiction and Leininger failed to exhaust a statutory remedy. But if the case is not dismissed or transferred in its entirety, it should be stayed until Leininger’s pending PUC case is closed.

97. In addition, Leininger’s negligence, breach of contract, and fraud claims – and her request for attorneys’ fees – run counter to established Pennsylvania law. Accordingly, they should be dismissed.

WHEREFORE, Duquesne Light Company respectfully requests that this Honorable Court sustain its Preliminary Objections Raising Questions of Fact and enter the proposed Order attached hereto.

TUCKER ARENSBERG, P.C.

/s/ Paul Shane Miller

Paul Shane Miller, Esquire
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

TIMELY

BCS: 3604056

DUQUESNE LIGHT COMPANY

Must be returned by JUNE 25, 2018

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Nancy M. Leininger

Street/P.O. Box 106 Byron Rd Apt #

City Pgh. State PA Zip 15237

County Allegheny

Telephone Number(s) Where We Can Contact You During the Day: Summer

[Redacted] (home) [Redacted] (mobile)

E-mail Address (optional): [Redacted]

Utility Account Number (from your bill) [Redacted] 8124

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Duquesne Light Co.

RECEIVED 2018 JUN 25 AM 11:02 PA PUC SECRETARY'S BUREAU

3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
- GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
- (WATER)
- MOTOR CARRIER (e.g. taxi, moving company, limousine)
- STEAM HEAT

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain)

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

The DLC bills I have averaged just under \$300 in 2013-14 as per my bank statements. My husband Jeff paid all bills but passed away 9/1/17. Curiously, the bills started to go above \$300 in Nov 2017, to over \$400 - when I called DLC. Meter is accurate reading - they told me. Bills cont'd to rise above \$300 to \$572 - then \$618! That is when I filed the complaint.

Since June 2015 - Aug 2017 - NO ONE HAS BEEN living in the house yet the bills for \$168 3 mos. via row - then up to \$300. w/ heat turned to 55 in winter & AC set at 76 in summer.

Notice that in Sept - Oct 2017 - when living in house - bills were under \$200. Meter man checked my smart meter and declared it 100% accurate! I requested on his form to have an old-style meter installed for a month to see if smart meter was defective as I have found they can be in my research. wanted to see what could be causing these erratic and highly suspicious charges of over \$600 - in the spring esp. No action was taken on my request.

The bills for the last 2 mos. 5 & 6 - have gone down mysteriously

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

to the \$400's & last one \$360! while using more electric than ever w/ AC running constantly. If I would appreciate my complaint to be resolved by at least adjusting the bills in the \$400's - \$600's also would like to know why bills were higher in the 2 yrs when house was empty. Thank you, Nancy M. Deminger

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. **Legal Representation**

If you are filing a Formal Complaint as an individual on your own behalf, you are **not** required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are **required** to have a lawyer represent them at a hearing **and** to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

I Nancy M. Leininger, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Nancy M. Leininger _____ 6/4/18 _____
(Signature of Compla....., (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **Two Ways to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Note: **Formal Complaints sent by fax or e-mail will not be accepted.**

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.



Duquesne Light Company - Statement of Account

Prepared: May 16, 2018

FEB 201
\$261.00

6/15 - 9/17
NO ONE

Resending in
House - Next
turn to 55.

Account #: [REDACTED] 8124

Name: LEININGER, NANCY

600
Air - 75 in Summers (168 X 3
\$300 another mo.)

T
BCS
800-692-7380

Paid Deposit Amount:	\$0.00
Disputed Amount:	-\$213.90

Premise ID: 4384620527
Service Address: 106 BYRON RD, PITTSBURGH, PA 15237

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing	Meter Reading	KWh Usage	Bill, Payment, Adjustment	Amount Due	Actual Amount	Account Balance
10/1/17	Bill - Actual	4384620527	10/23/17	9/30/17	19	42,774.90	1,364.65	\$196.10	\$196.10	\$196.10	\$196.10
10/11/17	Payment							-\$196.10	\$0.00	-\$196.10	\$0.00
10/30/17	Bill - Actual	4384620527	11/20/17	10/29/17	29	44,593.01	1,818.11	\$264.89	\$264.89	\$264.89	\$264.89
11/6/17	Payment							-\$264.89	\$0.00	-\$264.89	\$0.00
11/29/17	Bill - Actual	4384620527	12/20/17	11/28/17	30	47,671.81	3,078.81	(\$437.92)	\$437.92	\$437.92	\$437.92
12/5/17	Payment							-\$437.92	\$0.00	-\$437.92	\$0.00
1/1/18	Bill - Actual	4384620527	1/22/18	12/31/17	33	52,086.47	4,414.66	(\$622.93)	\$622.93	\$622.93	\$622.93
1/16/18	Payment							-\$622.93	\$0.00	-\$622.93	\$0.00
1/31/18	Bill - Actual	4384620527	2/21/18	1/30/18	30	56,496.03	4,409.56	\$626.94	\$626.94	\$626.94	\$626.94
2/12/18	Payment							-\$626.94	\$0.00	-\$626.94	\$0.00
3/1/18	Bill - Actual	4384620527	3/22/18	2/28/18	29	60,845.33	4,349.30	(\$618.57)	\$618.57	\$618.57	\$618.57
3/19/18	Payment							-\$618.57	\$0.00	-\$618.57	\$0.00
4/2/18	Bill - Actual	4384620527	4/23/18	4/1/18	32	65,002.10	4,156.77	\$592.54	\$592.54	\$592.54	\$592.54
4/18/18	Dispute							-\$592.54	\$0.00	\$0.00	\$592.54
5/1/18	Bill - Actual	4384620527	5/22/18	4/30/18	29	67,951.35	2,949.25	\$424.70	\$424.70	\$424.70	\$1,017.24
5/2/18	Meter Inspection Fee							\$20.00	\$444.70	\$20.00	\$1,037.24
5/2/18	Payment							-\$20.00	\$424.70	-\$20.00	\$1,017.24
5/9/18	Payment							-\$424.70	\$0.00	-\$424.70	\$592.54
5/15/18	Dispute - Cancel Transaction							(\$592.54)	\$592.54	\$0.00	\$592.54

5/31/18

Page 1 of 1

359.88

DUQUESNE LIGHT CO.

Bank statements show
2013-15 - avg \$300
10/2015 smart meter
June thru Sept.
no one living in house - still 168 to 300
(+ 572.54) dispute
932.42 due June 21st.

5/01/18
8424.70
5/31/18
359.88
OC RUNN
NOM STOP
TABLE 2-3
6/10/18



Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
BILL ID: 937681394342

Account Number: 8-124
Rate: RS-Residential Service
Date Prepared: 11/29/17

Meter Reading Usage Information

Next Scheduled Meter Reading Date: December 28, 2017

Meter Read Information for Meter Number: F74454663

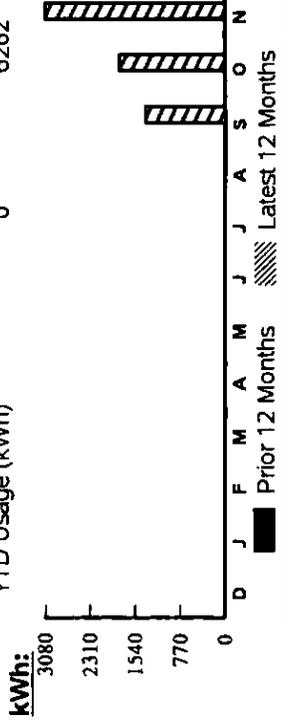
Present: Nov 28, 2017 - Actual 47671.8120
 Prior: Oct 29, 2017 - Actual 44593.0070
Difference 3078.8050
 X
Total kWh Used 3078.8050

Your Meter Multiplier 1

Electric Usage:

Comparing Your Usage
 Nov 16 0
 Nov 17 103
 42
 6262

Avg. kWh Per Day
 Avg. Temperature (F)
 YTD Usage (kWh)



DAYS IN BILLING PERIOD

Day	Prior 12 Months	Latest 12 Months
D	0	0
J	0	0
F	0	0
M	0	0
A	0	0
M	0	0
J	0	0
J	0	0
A	0	0
S	0	0
O	0	0
N	19	29
Total	19	29

• Your Average usage for the past 3 months is 2087 kWh.

Summary

Prior Billing Information

Amount of Last Bill \$264.89
 Payment(s) Received as of 11/06/17 -\$264.89
Prior Account Balance \$0.00

Current Billing Information

DLC Basic Service Charges \$437.92

TOTAL ACCOUNT BALANCE PAYABLE TO DLC \$437.92

ACTUAL METER READING BILL

For more information see www.duquesnelight.com.

Give to Dollar Energy Fund to help people without heat or light.
 Make a monthly pledge at www.duquesnelight.com or send a
 check to Duquesne Light Hardship Fund Donations, 411
 Seventh Avenue MD 15-1, Pittsburgh, PA 15219. Your gift is
 tax deductible.

Added \$437.92



May 16, 2018

Nancy Leininger
106 Byron Rd
Pittsburgh, PA 15237

*meterman wrote
my request on form.
want an old meter installed
for a month to compare.
no word from DLC.*

RE: Account # [REDACTED] 8124

Dear Ms. Nancy Leininger,

On May 4, 2018, we visited your premise and inspected your meter.

Enclosed is the Company Utility Report that details our findings and explains your customer rights as set forth by the Pennsylvania Public Utility Commission.

If you need further assistance, please call our Customer Care Department at 412-393-7100 or visit our website at www.duquesnelight.com.

Sincerely,

Customer Care Department



Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
 BILL ID: 937684880182

Account Number: [REDACTED] 8-124
Rate: RS-Residential Service
Date Prepared: 05/31/18

Duquesne Light Company Basic Service Charges

Adjustments

Meter Inspection Fee		20.00	
Late Payment Charge - Distribution		5.76	
Late Payment Charge - Gen & Tran		1.39	
Total Adjustments	<i>5/01/18 - K-2949</i> <i>\$424.70</i>		\$27.15

Current Charges

Customer Charge		14.35	
Supply	2287.3590 kWh@ 6.240700¢	142.75	
Transmission	2287.3590 kWh@ 1.585100¢	36.26	
Distribution	2287.3590 kWh@ 5.857400¢	133.98	
DSIC Surcharge	3.77%	5.59	
Pennsylvania Tax Adjustment		-0.20	
Total Current Charges	<i>A.C. Rurning 4-5-6</i>		\$332.73

DLC Basic Service Charges (see Page 1 Summary)

\$359.88

The Price to Compare for your rate class is 7.83 cents/kWh. It will change every June and December. For more information & supplier offers visit www.PAPowerSwitch.com and www.oca.state.pa.us.

Duquesne Light Company Information

Duquesne Light's WATT CHOICES offers energy efficiency programs to help customers save money by conserving energy and reducing demand. To participate or to learn more about these programs, visit www.wattchoices.com or call 1-888-WATTLEY.

Need to reach us? Call (412) 393-7100 or on the web @www.duquesnelight.com

YOUR ACCOUNT IS PAST DUE. TO AVOID POSSIBLE TERMINATION OF ELECTRIC SERVICE, PLEASE PAY THE AMOUNT DUE SHOWN.

You can join our Budget Plan by calling us at (412) 393-7100. If eligible, the Budget Plan will begin with your next bill. For this bill, please pay the Amount Due shown.

Please visit our website www.duquesnelight.com to sign up for electriccheck, and to learn about other convenient payment options.

Shopping Information Box

When shopping for electricity with an Electric Generation Supplier, please provide the following:

Supplier Agreement ID: 9376888062

Rate Schedule: RS-Residential Service

If you are already shopping, it is important to understand the terms of your contract and expiration date.

Supplier Basic Service Charges

Supplier Agreement ID: 9376888062

Duquesne Light provides a dependable, reasonably priced source of energy through our agreements with regional electric generation suppliers. We also deliver that power, in a safe, reliable way.

- Generation/Supply prices and charges are set by the electric generation supplier you have chosen.
- The Public Utility Commission regulates distribution prices and services.
- The Federal Energy Regulatory Commission regulates transmission prices and services.

Non-Basic Service Charges

Currently you are not subscribing to any Non-Basic Services.



Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
BILL ID: 93768480182

Account Number: [REDACTED] 8-124
Rate: RS-Residential Service
Date Prepared: 05/31/18

Meter Reading Usage Information

Next Scheduled Meter Reading Date: June 28, 2018

Meter Read Information for Meter Number: F74454663

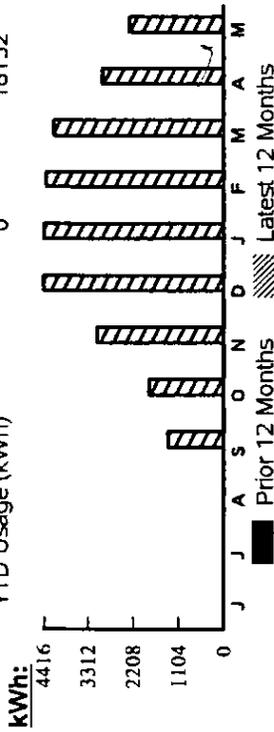
Present: May 30, 2018 - Actual 70238.7120
 Prior: Apr 30, 2018 - Actual 67951.3530
 Difference 2287.3590

Your Meter Multiplier x 1

Total kWh Used 2287.3590

Electric Usage:

Comparing Your Usage
 May 17 0 76
 May 18 0 69
 YTD Usage (kWh) 0 18152



DAYS IN BILLING PERIOD

Month	J	A	S	O	N	D	J	F	M	A	M
Usage	0	0	0	0	0	0	0	0	0	0	0
Days	0	0	19	29	30	33	30	29	32	29	30

- Your Average usage for the past 9 months is 3203 kWh.
- Total Usage for the past 9 months is 28828 kWh.

Summary

Prior Billing Information

Amount of Last Bill \$1,017.24
 Payment(s) Received as of 05/09/18 -\$444.70
Prior Account Balance *contested (\$572.54)*
Current Billing Information *w/ PUC*
 DLC Basic Service Charges **\$359.88**
TOTAL ACCOUNT BALANCE PAYABLE TO DLC \$932.42

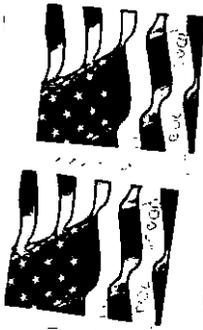
ACTUAL METER READING BILL

For more information see www.duquesnelight.com.
 Give to Dollar Energy Fund to help people without heat or light.
 Make a monthly pledge at www.duquesnelight.com or send a
 check to Duquesne Light Hardship Fund Donations, 411
 Seventh Avenue MD 15-1, Pittsburgh, PA 15219. Your gift is
 tax deductible.

pd 359-88

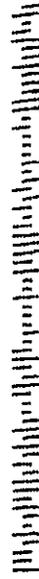
Estimated Gross Receipts Tax	Estimated PA State Taxes	Late Charge After June 21, 2018	Payment Due	Amount Due
\$19.63	\$22.62	1.25%	June 21, 2018	\$932.42

Nancy M. Leininger
106 Byron Rd
Pittsburgh, PA 15237



Secretary
PA Public Utility Comm.
400 North Street 2nd Floor
HARRISBURG, PA 17120

17120*0093 6000



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Leininger	:	
	:	
v.	:	F-2018-3003226
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal complaint of Nancy Leininger (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light or Respondent) on June 25, 2018, at Docket No. F-2018-3003226 for failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On June 25, 2018, Complainant filed a formal complaint alleging that her bills for electric utility service were high and disputing the accuracy of her meter.¹ As relief, Complainant requested that her bills be adjusted and lowered. On July 30, 2018, Duquesne Light filed its answer. Duquesne Light denied the material averments contained in the complaint and requested that the complaint be dismissed with prejudice.

¹ Complainant timely appealed the decision of the Commission's Bureau of Consumer Services (BCS) dismissing her informal complaint at BCS Case No. 3604056.

An initial call-in telephone hearing was held on September 28, 2018. Complainant appeared *pro se* and testified on her own behalf. Duquesne Light was represented by Shane Miller, Esquire. Duquesne Light presented one witness at the initial hearing, Margaret Mueller, and offered the following exhibits that were admitted into evidence: Exhibits A, E, F, H, K, M, N, and O. The record was closed upon receipt of the hearing transcript by interim order entered on October 11, 2018.

During the hearing, Duquesne Light had offered to perform a home energy audit to attempt to determine the consumption occurring at the service location and Complainant declined the offer. Tr. 27-31.

On January 18, 2019, the hearing record was re-opened for the purpose of developing a full and complete record. 52 Pa.Code § 5.483. The undersigned ordered that a home energy audit and testimony and exhibits related thereto were necessary for a complete record in this proceeding. The undersigned further ordered that a home energy audit must be scheduled between the parties on a date when Complainant can be present for the audit or make sure that Duquesne Light has access to the service location. After the home energy audit had been conducted and a report generated, Duquesne Light was ordered to inform the undersigned in writing so that a further hearing could be scheduled for the purpose of considering the home energy audit and providing each party with an opportunity to offer additional evidence related to the home energy audit.

A further call-in telephone hearing was held on June 28, 2019. Complainant appeared *pro se* and testified on her own behalf. She also offered the testimony of Daniel Ewing. Duquesne Light was represented by Shane Miller, Esquire. Duquesne Light presented one witness, Gregory Wozniak and offered the following exhibits that were admitted into evidence: Exhibits AA and EE.

The record was closed by interim order on July 26, 2019. The hearing record consists of the transcripts of the initial and further hearings and Respondent's Exhibits A, E, F, H, K, M, N, O, AA and EE. This case is now ready for a decision.

FINDINGS OF FACT

1. Complainant, Nancy Leininger, resides at 106 Bryson Road, Pittsburgh, Pennsylvania 15237 (service address) (Tr. 9).

2. Respondent, Duquesne Light, provides electric utility service to Complainant at her residence (Tr. 10).

3. Complainant's residence is a two-story, 3,300 square foot, brick colonial home with a finished attic (Tr. 33, 94; Exhibit EE, p. 2).

4. Complainant's residence has nine total rooms including three bedrooms, two full bathrooms and one-half bathroom, a porch room and a sunroom (Tr. 94, 116; Exhibit EE, p. 2).

5. Complainant's residence has two fireplaces, one in the basement and one in the porch room (Tr. 94; Exhibit EE, p. 2, 13).

6. Complainant's residence is heated with a natural gas forced air furnace, for the core of the home, and five electric baseboard heaters located in the finished attic, the porch room, the sunroom and basement (Tr. 94, 101, 116; Exhibit EE, p. 17).

7. The windows in Complainant's residence are at least 35 years old (Tr. 110).

8. On February 15, 2019, and February 20, 2019, Respondent's witness, Gregory Wozniak, performed an energy audit of Complainant's residence which included an air leakage test (Tr. 91-93; Exhibit EE, p. 12).

9. Complainant's residence contains 36 recessed can lighting fixtures which are a source of air leakage (Tr. 100; Exhibit EE, p. 12).

10. The fireplace damper in the porch room fireplace was opened when the home energy audit was performed. This opened fireplace damper is a source of air leakage (Tr. 100; Exhibit EE, p. 13).

11. Some of the upstairs windows in Complainant's residence were not locked during the energy audit (Tr. 100-101).

12. Complainant's residence contains the following electric appliances: two refrigerators, a double wall stove, a cook top, a microwave oven, a dishwasher, a clothes washer, a clothes dryer, exercise equipment, a sauna and a jacuzzi tub (Tr. 103; Exhibit EE, p. 23-24).

13. Complainant's account for electric service was established in her name on September 11, 2017 (Tr. 39; Exhibit AA).

13. Prior to September 11, 2017, Complainant's husband, Jeffrey Leininger, was the ratepayer of record for Complainant's residence and the account was enrolled in budget billing (Tr. 47-48, 67-69, 117; Exhibit M).

14. When Complainant established the account for service it was removed from budget billing (Tr. 67-69).

15. Complainant's bills for electric service are based on actual meter readings (Tr. 47, Exhibit AA).

16. Complainant lived with her father in the residence from September 2017 until June 23, 2018 (Tr. 24).

17. Complainant was not living in the residence in 2017 until she moved back in in September 2017 (Tr. 24, 109).

18. Between June 2015 and September 2017, Complainant lived in Chautauqua, NY. Complainant's residence was unoccupied at times, but her husband would stay there for business during this timeframe (Tr. 11, 15).

19. Complainant has resided in her residence alone since January 2019 (Tr. 111).

20. There was an analog meter installed to record electricity usage at Complainant's residence between October 9, 1997, and October 15, 2015 (Tr. 50).

21. On October 2, 1997, a meter test of the analog meter installed at Complainant's residence was found to be accurate (Tr. 56; Exhibit N).

22. On October 15, 2015, a smart meter was installed at Complainant's residence (Tr. 50).

23. The smart meter installed at Complainant's residence was tested for accuracy on August 27, 2015, and it was accurate. It tested at 100.02 percent on full load and 99.98 percent on light load for a weighted average of 100.01 (Tr. 52; Exhibit F).

24. On May 4, 2018, the smart meter installed at Complainant's residence was tested for accuracy a second time and found to be accurate (Tr. 52-54; Exhibit K).

DISCUSSION

Since Complainant is requesting affirmative relief from the Commission, she bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, she must demonstrate that Duquesne Light violated the Public Utility Code (the Code), 66 Pa.C.S. § 101 *et seq*, a Commission regulation or a Commission Order. This must be shown by a preponderance of the evidence. 66 Pa.C.S. § 701; Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by

the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600, 602 (Pa.Cmwh. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. Norfolk and Western Railway v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

In Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980), the Commission outlined the general dynamics for the burden of proof in a case that raises a high bill dispute. In order to determine whether a complainant has established a *prima facie* case where there are claims of unusually high bills, the Commission has declared that certain factors must be considered. While the accuracy of the meter is an important factor in resolving a billing dispute, it is not the sole criterion. *Id.* at 100. A complainant may establish a *prima facie* case by showing that: (1) the disputed bill was abnormally high when compared to prior usage patterns; and (2) his/her pattern of usage had not changed. *Id.* In looking at these criteria, one may consider the billing history of the account, any change in the number of occupants residing in the household, the potential for energy utilization, and any other relevant facts or circumstances that come to light during the proceeding. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980). In this way, a complainant may prove entitlement to relief by wholly circumstantial evidence, rather than direct evidence of some utility misfeasance. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001).

In Thomas v. PECO, Docket No. C-2010-2187197 (Order entered November 15, 2011), the Commission reiterated its position as set forth in Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), which clarifies the Waldron rule provision that a complainant may establish a *prima facie* case in a "high bill" complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a "high bill" complaint, the Commission

may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*” *Id.* at 6 (emphasis added).

In the instant case, Complainant has failed to produce evidence that her electric bills are abnormally high. Complainant has failed to establish a *prima facie* case. Complainant’s electric bill is based upon actual meter readings. The meter installed at the residence on October 15, 2015, tested accurately on August 27, 2015, and then again, for a second time, on May 4, 2018. *See* 52 Pa.Code § 57.20(c).

The record in this case was reopened for the purpose of obtaining more evidence about the residence and the possibility of electricity consumption at the residence. The evidence adduced at the second day of hearing revealed that, although Complainant did not occupy the residence for periods of time, the consumption recorded was accurate.

Complainant testified that the heat for the home was set at 50 degrees in the winter when it was unoccupied, and the air conditioning was set at 78 degrees in the summer when the home was unoccupied. Tr. 19. The home has five electric baseboard heaters, but the main core of the home is heated by natural gas. If the thermostat for the natural gas furnace were set at 50 degrees and the baseboard heaters that were operating were not set that low, it would cause those heaters to use a lot of electricity. In addition, the home energy audit performed on Complainant’s home revealed air leakage occurring in 36 recessed lighting fixtures, doors, windows, and an open fireplace damper in the porch room fireplace.

Consequently, Complainant has failed to meet her burden of proof. Accordingly, the complaint is dismissed in the ordering paragraphs to follow for failure to meet the burden of proof. 66 Pa.C.S. § 332(a).

CONCLUSIONS OF LAW

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

2. Complainant bears the burden of proving her entitlement to relief from the Commission. 66 Pa.C.S. § 332(a).

3. “Burden of proof” means the duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest amount, than the evidence presented by the other side. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

4. In evaluating a “high bill” dispute, one may consider the billing history of the account, any change in the number of occupants residing in the household, the potential for energy utilization, and any other relevant facts or circumstances that come to light during the proceeding. Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980); Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980).

5. Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a); Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Nancy Leininger filed on June 25, 2018, at Docket No. F-2018-3003226, against Duquesne Light Company, is dismissed.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Nancy Leininger	:	
	:	
v.	:	F-2018-3003226
	:	
Duquesne Light Company	:	

FINAL ORDER

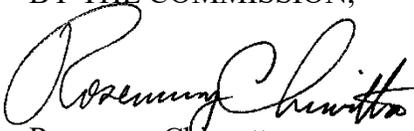
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Deputy Chief Administrative Law Judge Mark A. Hoyer dated October 9, 2019, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Nancy Leininger filed on June 25, 2018, at Docket No. F-2018-3003226, against Duquesne Light Company, is dismissed.
2. That the Docket in this proceeding, Docket No. F-2018-3003226, be marked closed.

BY THE COMMISSION,


Rosemary Chlavetta
Secretary

(SEAL)

ORDER ENTERED: December 12, 2019

RECEIVED

JOHN P. CORCORAN, JR.
(412) 261-6400
jpc@jpcg.com

JUL 16 2020

April 27, 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

~~RECEIVED~~
~~APR 25 2020~~
~~PA PUBLIC UTILITY COMMISSION~~
~~SECRETARY'S BUREAU~~

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Nancy Leininger

To Whom it May Concern:

Please find enclosed this correspondence a formal PUC Complaint regarding excessive overbilling on my client's property from Duquesne Light. This matter has proceeded to prior actions. However, it is now necessary to bring this action at this time in order to terminate the improper and unlawful billing being engaged in by Duquesne Light.

Please contact me upon receipt of this correspondence to set an appropriate Hearing with the Commission.

Thank you for your kind attention to this matter.

Very truly yours,

John P. Corcoran, Jr.

JPC/tsd

Enclosure

Secretary
Pennsylvania Public Utility Commission
April 17, 2020
Page 2

bcc: Nancy Leininger

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

RECEIVED
APR 25 2020
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Nancy Leininger

Street/P.O. Box 106 Byron Road Apt #

City Pittsburgh State PA Zip 15237

County Allegheny

Telephone Number(s) Where We Can Contact You During the Day:

(412) 261-6400 (Attorney)(home) () (mobile)

E-mail Address (optional):

Utility Account Number (from your bill) 8-124

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

Duquesne Light Company

RECEIVED

JUL 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

4. **Reason for Complaint**

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.

- I would like a payment agreement.

- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
Account balance and smart energy meter is defective

- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

- Other (explain).

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

It is requested the bill be expunged due to over billing (See Exemplar attached).

Requested that all billing cease until this matter is resolved.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a “Protection From Abuse” order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a “Protection From Abuse” order for your personal safety or welfare?

YES

NO

If your answer to the above question is “yes,” attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC’s Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. **If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.**

Utility company refuses to resolve.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____ John P. Corcoran, Jr., Esq. _____

Street/P.O. Box _____ 411 Seventh Avenue, Suite 1200 _____

City _____ Pittsburgh _____ State _____ PA _____ Zip _____ 15219 _____

Area Code/Phone Number _____ 412-261-6400 _____

E-mail Address (if known) _____ jpc@jgcg.com _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. **If you do not sign the Formal Complaint, the PUC will not accept it.**

Verification:

I Nancy M. Leininger, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Nancy M. Leininger _____ 4/11/20 _____
(Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **Two Ways to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

RECEIVED

JUL 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.



Customer Name and Service Address:
 NANCY LEININGER
 106 BYRON RD
 PITTSBURGH, PA 15237-3901
BILL ID: 937687404391

Account Number: 8-124
Rate: RS-Residential Service
Date Prepared: 03/01/20

Meter Reading Usage Information

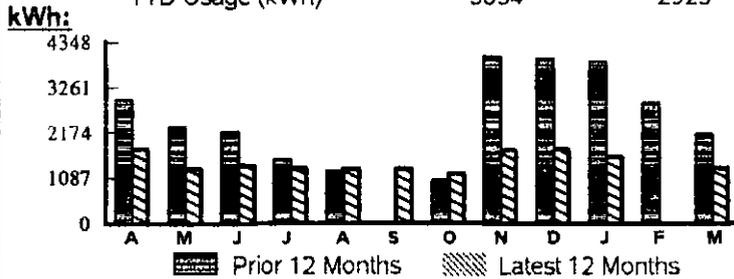
Next Scheduled Meter Reading Date: March 27, 2020

Meter Read Information for Meter Number: F74454663
 Present: Feb 29, 2020 - Actual 8968.7950
 Prior: Jan 29, 2020 - Actual 7637.5940
Difference 1331.2010
 Your Meter Multiplier \times 1
Total kWh Used 1331.2010

Electric Usage:

Comparing Your Usage

	Mar 19	Mar 20
Avg. kWh Per Day	73	43
Avg. Temperature (F)	37	34
YTD Usage (kWh)	3854	2923



DAYS IN BILLING PERIOD											
A	M	J	J	A	S	O	N	D	J	F	M
29	30	31	30	30	0	32	59	33	29	32	29
30	32	29	30	33	29	29	32	31	29	0	31

- Average Monthly Usage for the past 13 months is 1618 kWh.
- Total Annual Usage for the past 13 months is 21030 kWh.

Dec 12 - sent in mail

2/05 - 266.63

Summary

Prior Billing Information

Amount of Last Bill \$3,266.63
 Payment(s) Received as of 02/24/20 -\$266.63
Prior Account Balance \$3,000.00

Current Billing Information

DLC Basic Service Charges \$239.42
 Non-Basic Service Charges \$4.99
TOTAL ACCOUNT BALANCE PAYABLE TO DLC \$3,244.41

ACTUAL METER READING BILL

For more information see www.duquesnelight.com.
 Give to Dollar Energy Fund to help people without heat or light. Make a monthly pledge at www.duquesnelight.com or send a check to Duquesne Light Hardship Fund Donations, 411 Seventh Avenue MD 15-1, Pittsburgh, PA 15219. Your gift is tax deductible.

checks from 2017

9/8/19 - \$1000.00

10/10 207.50

11/ 207.83

12/31 \$305.05 271.84

10/18-11/21 - in NY

NO ONE HOME

Estimated Gross Receipts Tax	Estimated PA State Taxes	Late Charge After Mar 23, 2020	Payment Due	Amount Due
\$11.96	\$13.79	1.25%	Mar 23, 2020	\$3,244.41

Please return this portion with your payment. Please enclose check facing forward. Make payment payable to Duquesne Light Company in US Currency.

Account Number 8-124 **PLEASE PAY THIS AMOUNT BY** MAR 23, 2020 **\$3,244.41**

\$

USD Amount Enclosed

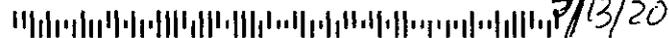
To make account changes, enroll in Autopay or pledge to the Dollar Energy Fund, please update information on the back of this coupon and check the box to the right.

034211 000002060



NANCY LEININGER
 106 BYRON RD
 PITTSBURGH PA 15237-3901

DUQUESNE LIGHT COMPANY
 PAYMENT PROCESSING CENTER
 PO BOX 67
 PITTSBURGH, PA 15267-0001



\$231 Budget Called DLC - 3/13/20

Paid 244.41 3/10/20 #3794

mailed 3/13

81248 000000000000 000003244410 000003244410



Ms. Nancy M. Leininger
106 Byron Rd.
Pittsburgh PA 15237-3901

PITTSBURGH PA 150

09 JUL 2020 PM 2 L



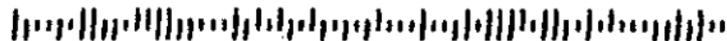
RECEIVED

JUL 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Secretary
PA Public Utility Comm.
400 NORTH ST.
Harrisburg, PA 17120

17120-007999





COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
400 NORTH STREET, HARRISBURG, PA 17120
July 20, 2021

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-2020-3021150

(SEE ATTACHED LIST)

Nancy Leininger v. Duquesne Light Company

Billing Dispute

Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice

This is to inform you that the Initial Call-In Telephonic Hearing on the above captioned case previously scheduled for Wednesday, July 21, 2021, was cancelled.

The hearing has been rescheduled as follows:

Type: Initial Call-In Telephonic Hearing
Date: Friday, August 20, 2021
Time: 10:00 a.m.
Presiding: Deputy Chief Administrative Law Judge Mark A. Hoyer
Telephone: 412.565.3550 Fax: 412.565.5692

To participate in the hearing,

- You must dial the toll-free conference number listed below.
- You must enter the PIN # when instructed to do so, also listed below.
- You must speak your name when prompted.
- The telephone system will connect you to the hearing.

Toll-free Conference Number: **1.866.566.0651**
PIN Number: **59956427**

If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the Conference and PIN numbers above.

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

REPRESENTATION. If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

PRESENTING EXHIBITS. If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to the Legal Assistant, Nicholas Miskanic, at nmiskanic@pa.gov and one (1) copy each must be sent to every other party. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly pre-marked for identification purposes.

ACCOMMODATION. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Please call the OALJ scheduling office at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearing, please call the scheduling office at least ten (10) business days prior to your hearing to submit your request.

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

COVID-19. Currently the PUC’s buildings are closed due to the COVID-19 pandemic. However, the PUC remains fully functional and continues to work remotely. Because the PUC does not have access to regular U.S. Mail, all service will be electronic. Further, the Commission shall only accept e-filings for all documents. Therefore, a party who wishes to file a document with the PUC must sign-up for e-Filing and e-Service as indicated below.

E-FILING. The PUC offers a free e-Filing Subscription Service. This service allows a user to file documents electronically and receive an automatic email notification whenever a document is added, removed, or changed on the PUC website in a specific case. For information and to subscribe to this service, visit the PUC’s website at:

<https://www.puc.pa.gov/filing-resources/efiling/>

cc:

ALJ Hoyer
Nicholas Miskanic
calendar file

C-2020-3021150 - NANCY LEININGER v. DUQUESNE LIGHT COMPANY

NANCY LEININGER
106 BYRON RD
PITTSBURGH PA 15237


(notice mailed 7/21/21)

JOHN P. CORCORAN JR., ESQUIRE
JONES, GREGG, CREEHAN & GERACE, LLP
411 SEVENTH AVENUE
SUITE 1200
PITTSBURGH PA 15120
412.261.6400

jpc@jgcg.com

Accepts eService

(Counsel for the Complainant)

EMILY M. FARAH ESQUIRE
DUQUESNE LIGHT COMPANY
411 SEVENTH AVENUE
PITTSBURGH PA 15219

412.393.6431

efarah@duqlight.com

Accepts eService

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

NANCY LEININGER,)	
)	No. GD-21-007318
)	
Plaintiff,)	
)	
vs.)	
)	
DUQUESNE LIGHT COMPANY)	
)	
Defendant.)	

ORDER OF COURT

On this _____ day of _____, 2021 upon consideration of Duquesne Light Company's Preliminary Objections Raising Questions of Fact, it is hereby ORDERED, ADJUDGED, and DECREED that the Preliminary Objections are hereby SUSTAINED. The Complaint in Civil Action is hereby dismissed without prejudice on the grounds that the Court lacks subject matter jurisdiction, and that Plaintiff Nancy Leininger failed to exhaust a statutory remedy before the Pennsylvania Public Utility Commission. Defendant Duquesne Light Company's remaining Preliminary Objections are moot, and so the Court need not rule on them at this time. Plaintiff may pursue her claims before the Pennsylvania Public Utility Commission in accordance with any applicable limitations period and to the extent permitted by applicable law, rules, and regulations.

BY THE COURT

_____, J.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Paul Shane Miller

Paul Shane Miller, Esquire
Pa. I.D. #319174

TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 594-5503

Attorney for Defendant,
Duquesne Light Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Preliminary Objections Raising Questions of Fact have been served upon the following at the address set forth below by e-mail and U.S. First Class mail on the 4th day of August, 2021:

John P. Corcoran, Esquire
jpc@jgcg.com
Mark E. Casper, Esquire
mec@jgcg.com
Jones, Gregg, Creehan & Gerace LLP
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219

/s/ Paul Shane Miller

Paul Shane Miller, Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

NANCY LEININGER

Plaintiff,

v.

DUQUESNE LIGHT COMPANY

Defendant.

No. GD-21-007318

**RESPONSE TO DEFENDANT'S
PRELIMINARY OBJECTIONS
RAISING QUESTIONS OF FACT**

FILED ON BEHALF OF PLAINTIFF

ATTORNEYS OF RECORD FOR THIS
PARTY:

JOHN P. CORCORAN, JR., ESQUIRE
PA. ID. NO. 74906

MARK E. CASPER, JR., ESQUIRE
PA. ID. NO. 326381

JONES, GREGG, CREEHAN &
GERACE, LLP
411 SEVENTH AVENUE
SUITE 1200
PITTSBURGH, PA 15219
(412) 261-6400

FILED

2021 AUG 24 PM 3:21

DEPT OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

EXHIBIT

C

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

NANCY LEININGER

No. GD-21-007318

Plaintiff,

v.

DUQUESNE LIGHT COMPANY

Defendant.

**RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS RAISING
QUESTIONS OF FACT**

AND NOW, comes the Plaintiff, NANCY LEININGER, by and through her undersigned counsel, John P. Corcoran, Jr., and Mark E. Casper, Jr., and Jones, Gregg, Creehan & Gerace, LLP, and hereby file the within Response to Defendant's Preliminary Objections Raising Questions of Fact, and states as follows:

I. **Preliminary Statement**

1. The Complaint speaks for itself and, therefore, no response is required. Further, the averments set forth in Paragraph 1 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

2. The Complaint speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the averments set forth in Paragraph 2 are denied.

3. The Complaint speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the averments set forth in Paragraph 3 are denied.

4. The averments set forth in Paragraph 4 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

5. The averments set forth in Paragraph 5 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

6. The averments set forth in Paragraph 6 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

7. The averments set forth in Paragraph 7 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

8. The averments set forth in Paragraph 8 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

9. The averments set forth in Paragraph 9 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

10. The averments set forth in Paragraph 10 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

11. The averments set forth in Paragraph 11 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

12. The averments set forth in Paragraph 12 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

II. The Complaint's Allegations

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. The averments set forth in Paragraph 17 are admitted in part and denied in part. Admitted insofar as Plaintiff alleges fraudulent misrepresentation against the Defendant. Denied in all other respects.

Preliminary Objection No. 1
Lack of Subject Matter Jurisdiction Pursuant to Pa.R.C.P. 1028(a)(1)
All Counts

18. The averments set forth in Paragraph 18 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

19. The averments set forth in Paragraph 19 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

20. The averments set forth in Paragraph 20 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

21. The averments set forth in Paragraph 21 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

22. The averments set forth in Paragraph 22 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

23. The averments set forth in Paragraph 23 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

24. The averments set forth in Paragraph 24 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

25. The averments set forth in Paragraph 25 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

26. The averments set forth in Paragraph 26 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

27. The averments set forth in Paragraph 27 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

28. The averments set forth in Paragraph 28 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

29. The averments set forth in Paragraph 29 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

30. The averments set forth in Paragraph 30 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

31. The averments set forth in Paragraph 31 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

32. The averments set forth in Paragraph 32 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

33. The averments set forth in Paragraph 33 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

34. The averments set forth in Paragraph 34 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

35. The averments set forth in Paragraph 35 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

36. The averments set forth in Paragraph 36 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

37. The averments set forth in Paragraph 37 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

38. The averments set forth in Paragraph 38 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

Preliminary Objections No. 2
Failure to Exhaust a Statutory Remedy Pursuant to Pa.R.C.P. 1028(a)(7)
All Counts

39. The averments set forth in Paragraph 39 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

40. The averments set forth in Paragraph 40 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

41. The averments set forth in Paragraph 41 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

42. The averments set forth in Paragraph 42 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

43. The averments set forth in Paragraph 43 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

44. The averments set forth in Paragraph 44 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

45. The averments set forth in Paragraph 45 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

46. Admitted.

47. The averments set forth in Paragraph 47 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

48. The averments set forth in Paragraph 48 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

49. The averments set forth in Paragraph 49 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

Preliminary Objection No. 3
Pendency of Prior Action Pursuant to Pa.R.C.P. 1028(a)(6)
All Counts

50. The averments set forth in Paragraph 50 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, the hearing scheduled for August 20, 2021 has been cancelled and continued by Administrative Law Judge Mark A. Hoyer.

51. The averments set forth in Paragraph 51 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

52. The averments set forth in Paragraph 52 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

53. The averments set forth in Paragraph 53 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

54. The averments set forth in Paragraph 54 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

55. Admitted.

56. The Complaint speaks for itself and, therefore, no response is required. Further, the averments set forth in Paragraph 56 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, the Complaint sets forth allegations regarding fraudulent

misrepresentation which are not present in the Pennsylvania Public Utilities ("PUC") action.

57. The Complaint speaks for itself and, therefore, no response is required. Further, the averments contained in Paragraph 57 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, the Plaintiff is also seeking "interest, costs, attorney's fees and other such relief as is appropriate." See *generally* Complaint.

58. The averments set forth in Paragraph 58 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

59. The averments set forth in Paragraph 59 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

Preliminary Objection No. 4
Legal Insufficiency Pursuant to Pa.R.C.P. 1028(a)(4)
Count III (Negligence)

60. The averments set forth in Paragraph 60 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

61. The averments set forth in Paragraph 61 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

62. The averments set forth in Paragraph 62 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

63. The averments set forth in Paragraph 63 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

64. The averments set forth in Paragraph 64 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

Preliminary Objection No. 5
Legal Insufficiency Pursuant to Pa.R.C.P. 1028(a)(4)
Count IV (Breach of Contract)

65. The averments set forth in Paragraph 65 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

66. The averments set forth in Paragraph 66 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

67. The averments set forth in Paragraph 67 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, attached to the Complaint are invoices submitted to Plaintiff by the Defendant, establishing a course-of-dealing between the Plaintiff and Defendant sufficient for establishing, at the least, the existence of an implied-in-fact contract.

68. The averments set forth in Paragraph 68 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

69. The averments set forth in Paragraph 69 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, attached to the Complaint are invoices submitted to Plaintiff by the Defendant, establishing a course-of-dealing between the Plaintiff and Defendant sufficient for establishing, at the least, the existence of an implied-in-fact contract.

70. The averments set forth in Paragraph 70 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

71. The averments set forth in Paragraph 71 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, attached to the Complaint are invoices submitted to Plaintiff

by the Defendant, establishing a course-of-dealing between the Plaintiff and Defendant sufficient for establishing, at the least, the existence of an implied-in-act contract.

72. The averments set forth in Paragraph 72 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

Preliminary Objection No. 6
Legal Insufficiency Pursuant to Pa.R.C.P. 1028(a)(4)
Count V (Fraud)

73. The averments set forth in Paragraph 73 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

74. The averments set forth in Paragraph 74 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

75. The averments set forth in Paragraph 75 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

76. The exhibit speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the averments set forth in Paragraph 76 are denied.

77. The exhibit speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the averments set forth in Paragraph 77 are denied.

78. The exhibit speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the averments set forth in Paragraph 78 are denied.

79. The Complaint speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the averments set forth in Paragraph 79 are denied.

80. The averments set forth in Paragraph 80 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

81. The averments set forth in Paragraph 81 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

82. The averments set forth in Paragraph 82 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

83. The averments set forth in Paragraph 83 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

84. The averments set forth in Paragraph 84 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

85. The averments set forth in Paragraph 85 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

86. The averments set forth in Paragraph 86 are legal conclusions to which no response is required.

87. The averments set forth in Paragraph 87 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied. By way of further response, ¶¶ 42-47 set forth that Defendant made the misrepresentations regarding the ability of ratepayers to decrease electric usage and save money, as a result of the Smart Meter, and that Plaintiff allowed installation of the Smart Meter as a result of these misrepresentations.

88. The Complaint speaks for itself and, therefore, no response is required. To the extent a response is deemed required, the same are denied. By way of further response, ¶¶ 42-47 set forth that Defendant made the misrepresentations regarding the ability of ratepayers to decrease electric usage and save money, as a result of the Smart Meter, and that Plaintiff allowed installation of the Smart Meter as a result of these misrepresentations.

89. The averments set forth in Paragraph 89 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

90. The averments set forth in Paragraph 90 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

91. The averments set forth in Paragraph 91 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

Preliminary Objections No. 7
Legal Insufficiency Pursuant to Pa. R.C.P. 1028(a)(4)
All Counts

92. Admitted.

93. The averments set forth in Paragraph 93 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

94. The averments set forth in Paragraph 94 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

95. The averments set forth in Paragraph 95 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

III. Conclusion

96. The averments set forth in Paragraph 96 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

97. The averments set forth in Paragraph 97 are legal conclusions to which no response is required. To the extent a response is deemed required, the same are denied.

WHEREFORE, Plaintiff, Nancy Leininger, respectfully requests this Honorable Court find in her favor and deny Defendant's Preliminary Objections Raising Questions of Fact.

Respectfully Submitted

JONES, GREGG, CREEHAN & GERACE, LLP

By: 

John P. Corcoran, Jr., Esquire
Mark E. Casper, Jr., Esquire
Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

JONES, GREGG, CREEHAN & GERACE, LLP

BY:



John P. Corcoran, Jr., Esquire
PA I.D. #74906
Mark E. Casper, Jr., Esquire
PA I.D. #326381

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this **RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS RAISING QUESTIONS OF FACT** has been furnished via email and U.S. First Class Mail on this 24 day of August, 2021, to counsel for the Defendant, addressed as follows:

Shane Miller
1500 One PPG Place
Pittsburgh, PA 15222
smiller@tuckerlaw.com

JONES, GREGG, CREEHAN & GERACE, LLP

By: 

John P. Corcoran, Jr., Esquire
Mark E. Casper, Jr., Esquire
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Pittsburgh, PA 15219
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Duquesne Light Company - Statement of Account

Prepared: Aug 23, 2021

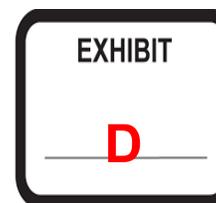
Account #: 9376888124

Name: LEININGER, NANCY

Paid Deposit Amount:	\$0.00
Disputed Amount:	\$6,555.10

Premise ID	Service Address
4384620527	106 BYRON RD, PITTSBURGH, PA 15237

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
10/1/17	Bill - Actual	4384620527	10/23/17	9/30/17	19	42,774.90	1,364.65	\$196.10	\$196.10	\$196.10	\$196.10
10/11/17	Payment							-\$196.10	\$0.00	-\$196.10	\$0.00
10/30/17	Bill - Actual	4384620527	11/20/17	10/29/17	29	44,593.01	1,818.11	\$264.89	\$264.89	\$264.89	\$264.89
11/6/17	Payment							-\$264.89	\$0.00	-\$264.89	\$0.00
11/29/17	Bill - Actual	4384620527	12/20/17	11/28/17	30	47,671.81	3,078.80	\$437.92	\$437.92	\$437.92	\$437.92
12/5/17	Payment							-\$437.92	\$0.00	-\$437.92	\$0.00
1/1/18	Bill - Actual	4384620527	1/22/18	12/31/17	33	52,086.47	4,414.66	\$622.93	\$622.93	\$622.93	\$622.93
1/16/18	Payment							-\$622.93	\$0.00	-\$622.93	\$0.00
1/31/18	Bill - Actual	4384620527	2/21/18	1/30/18	30	56,496.03	4,409.56	\$626.94	\$626.94	\$626.94	\$626.94
2/12/18	Payment							-\$626.94	\$0.00	-\$626.94	\$0.00
3/1/18	Bill - Actual	4384620527	3/22/18	2/28/18	29	60,845.33	4,349.30	\$618.57	\$618.57	\$618.57	\$618.57
3/19/18	Payment							-\$618.57	\$0.00	-\$618.57	\$0.00
4/2/18	Bill - Actual	4384620527	4/23/18	4/1/18	32	65,002.10	4,156.77	\$592.54	\$592.54	\$592.54	\$592.54



Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
4/18/18	Dispute							-\$592.54	\$0.00	\$0.00	\$592.54
5/1/18	Bill - Actual	4384620527	5/22/18	4/30/18	29	67,951.35	2,949.25	\$424.70	\$424.70	\$424.70	\$1,017.24
5/2/18	Meter Inspection Fee							\$20.00	\$444.70	\$20.00	\$1,037.24
5/2/18	Payment							-\$20.00	\$424.70	-\$20.00	\$1,017.24
5/9/18	Payment							-\$424.70	\$0.00	-\$424.70	\$592.54
5/15/18	Dispute - Cancel Transaction							\$592.54	\$592.54	\$0.00	\$592.54
5/28/18	Late Payment Charge							\$7.15	\$599.69	\$7.15	\$599.69
5/31/18	Bill - Actual	4384620527	6/21/18	5/30/18	30	70,238.71	2,287.36	\$332.73	\$932.42	\$332.73	\$932.42
6/13/18	Payment							-\$359.88	\$572.54	-\$359.88	\$572.54
6/27/18	Late Payment Charge							\$7.07	\$579.61	\$7.07	\$579.61
7/1/18	Bill - Actual	4384620527	7/23/18	6/30/18	31	72,413.54	2,174.82	\$318.61	\$898.22	\$318.61	\$898.22
7/9/18	Dispute							-\$898.22	\$0.00	\$0.00	\$898.22
7/31/18	Bill - Actual	4384620527	8/21/18	7/30/18	30	73,918.87	1,505.34	\$225.14	\$225.14	\$225.14	\$1,123.36
8/27/18	Late Payment Charge							\$2.82	\$227.96	\$2.82	\$1,126.18
8/30/18	Bill - Actual	4384620527	9/20/18	8/29/18	30	75,164.32	1,245.45	\$188.82	\$416.78	\$188.82	\$1,315.00
9/26/18	Late Payment Charge							\$5.18	\$421.96	\$5.18	\$1,320.18
10/1/18	Bill - Actual	4384620527	10/22/18	9/30/18	32	76,475.81	1,311.48	\$198.05	\$620.01	\$198.05	\$1,518.23
10/7/18	Billing - Cancel Transaction	4384620527	10/22/18	9/30/18	32	76,475.81	1,311.48	-\$198.05	\$421.96	-\$198.05	\$1,320.18
10/7/18	Bill - Actual	4384620527	10/29/18	9/27/18	29	76,403.89	1,239.57	\$188.00	\$609.96	\$188.00	\$1,508.18
10/26/18	Dispute							-\$609.96	\$0.00	\$0.00	\$1,508.18
10/31/18	Bill - Actual	4384620527	11/21/18	10/29/18	32	77,414.59	1,011.59	\$152.92	\$152.92	\$152.92	\$1,661.10
11/27/18	Late Payment Charge							\$1.92	\$154.84	\$1.92	\$1,663.02
11/29/18	Bill - Actual	4384620527	12/20/18	11/28/18	30	80,173.91	2,759.32	\$390.02	\$544.86	\$390.02	\$2,053.04
12/26/18	Late Payment Charge							\$6.79	\$551.65	\$6.79	\$2,059.83
1/1/19	Bill - Actual	4384620527	1/22/19	12/31/18	33	84,084.94	3,911.03	\$536.52	\$1,088.17	\$536.52	\$2,596.35
1/8/19	2018 Tax Refund - Residential							-\$25.49	\$1,062.68	-\$25.49	\$2,570.86

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
1/28/19	Late Payment Charge							\$13.18	\$1,075.86	\$13.18	\$2,584.04
1/29/19	Dispute							-\$1,075.86	\$0.00	\$0.00	\$2,584.04
1/30/19	Bill - Actual	4384620527	2/20/19	1/29/19	29	87,939.11	3,854.17	\$567.80	\$567.80	\$567.80	\$3,151.84
2/26/19	Late Payment Charge							\$7.10	\$574.90	\$7.10	\$3,158.94
3/3/19	Bill - Actual	4384620527	3/25/19	3/2/19	32	90,817.04	2,877.93	\$427.11	\$1,002.01	\$427.11	\$3,586.05
4/1/19	Late Payment Charge							\$12.43	\$1,014.44	\$12.43	\$3,598.48
4/1/19	Bill - Actual	4384620527	4/22/19	3/31/19	29	92,946.89	2,129.85	\$319.29	\$1,333.73	\$319.29	\$3,917.77
4/10/19	Dispute							-\$3,917.77	\$0.00	\$0.00	\$3,917.77
4/10/19	Current w/payoff balance							\$2,584.04	\$0.00	\$0.00	\$3,917.77
5/1/19	Bill - Actual	4384620527	5/22/19	4/30/19	30	94,723.85	1,776.96	\$267.76	\$267.76	\$267.76	\$4,185.53
5/28/19	Late Payment Charge							\$3.34	\$271.10	\$3.34	\$4,188.87
6/2/19	Bill - Actual	4384620527	6/24/19	6/1/19	32	96,027.90	1,304.05	\$199.76	\$470.86	\$199.76	\$4,388.63
6/13/19	Current w/payoff balance							\$3,917.77	\$4,388.63	\$0.00	\$4,388.63
7/1/19	Bill - Actual	4384620527	7/22/19	6/30/19	29	97,397.64	1,369.74	\$209.27	\$4,597.90	\$209.27	\$4,597.90
7/29/19	Late Payment Charge							\$2.62	\$4,600.52	\$2.62	\$4,600.52
7/31/19	Bill - Actual	4384620527	8/21/19	7/30/19	30	98,717.22	1,319.57	\$207.13	\$4,807.65	\$207.13	\$4,807.65
8/21/19	Payment							-\$1,000.00	\$3,807.65	-\$1,000.00	\$3,807.65
8/27/19	Late Payment Charge							\$2.52	\$3,810.17	\$2.52	\$3,810.17
9/2/19	Bill - Actual	4384620527	9/23/19	9/1/19	33	22.08	1,304.86	\$205.01	\$4,015.18	\$205.01	\$4,015.18
9/9/19	Payment							-\$1,000.00	\$3,015.18	-\$1,000.00	\$3,015.18
9/30/19	Late Payment Charge							\$2.50	\$3,017.68	\$2.50	\$3,017.68
10/1/19	Bill - Actual	4384620527	10/22/19	9/30/19	29	1,326.86	1,304.78	\$205.00	\$3,222.68	\$205.00	\$3,222.68
10/16/19	Payment							-\$207.50	\$3,015.18	-\$207.50	\$3,015.18
10/28/19	Late Payment Charge							\$2.50	\$3,017.68	\$2.50	\$3,017.68
10/30/19	Bill - Actual	4384620527	11/20/19	10/29/19	29	2,513.83	1,186.97	\$188.15	\$3,205.83	\$188.15	\$3,205.83
11/25/19	Payment							-\$205.83	\$3,000.00	-\$205.83	\$3,000.00

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
11/26/19	Late Payment Charge							\$2.31	\$3,002.31	\$2.31	\$3,002.31
12/1/19	Bill - Actual	4384620527	12/23/19	11/30/19	32	4,266.72	1,752.89	\$269.53	\$3,271.84	\$269.53	\$3,271.84
12/9/19	Payment							-\$271.84	\$3,000.00	-\$271.84	\$3,000.00
12/12/19	Dispute - Cancel Transaction							\$6,501.81	\$9,501.81	\$0.00	\$3,000.00
12/12/19	Current w/payoff balance							-\$6,501.81	\$3,000.00	\$0.00	\$3,000.00
12/30/19	Late Payment Charge							\$37.35	\$3,037.35	\$37.35	\$3,037.35
1/1/20	Bill - Actual	4384620527	1/22/20	12/31/19	31	6,045.90	1,779.18	\$267.70	\$3,305.05	\$267.70	\$3,305.05
1/22/20	Payment							-\$305.05	\$3,000.00	-\$305.05	\$3,000.00
1/28/20	Late Payment Charge							\$21.79	\$3,021.79	\$21.79	\$3,021.79
1/30/20	Bill - Actual	4384620527	2/20/20	1/29/20	29	7,637.59	1,591.70	\$244.84	\$3,266.63	\$244.84	\$3,266.63
2/24/20	Payment							-\$266.63	\$3,000.00	-\$266.63	\$3,000.00
2/26/20	Late Payment Charge							\$36.73	\$3,036.73	\$36.73	\$3,036.73
3/2/20	Bill - Actual	4384620527	3/23/20	2/29/20	31	8,968.80	1,331.20	\$207.68	\$3,244.41	\$207.68	\$3,244.41
3/19/20	Payment							-\$244.41	\$3,000.00	-\$244.41	\$3,000.00
3/31/20	Bill - Actual	4384620527	4/20/20	3/29/20	29	10,025.17	1,056.38	\$168.46	\$3,168.46	\$168.46	\$3,168.46
4/9/20	Payment							-\$168.46	\$3,000.00	-\$168.46	\$3,000.00
5/1/20	Bill - Actual	4384620527	5/21/20	4/29/20	31	11,360.85	1,335.67	\$209.22	\$3,209.22	\$209.22	\$3,209.22
6/1/20	Bill - Actual	4384620527	6/22/20	5/31/20	32	13,994.69	2,633.84	\$395.22	\$3,604.44	\$395.22	\$3,604.44
7/1/20	Bill - Actual	4384620527	7/21/20	6/29/20	29	16,182.55	2,187.86	\$331.51	\$3,935.95	\$331.51	\$3,935.95
8/2/20	Bill - Actual	4384620527	8/24/20	8/1/20	33	19,208.61	3,026.06	\$452.38	\$4,388.33	\$452.38	\$4,388.33
8/5/20	Dispute							-\$4,368.37	\$19.96	\$0.00	\$4,388.33
9/1/20	Bill - Actual	4384620527	9/21/20	8/30/20	29	21,705.20	2,496.59	\$376.35	\$396.31	\$376.35	\$4,764.68
9/1/20	Payment							-\$300.00	\$96.31	-\$300.00	\$4,464.68
9/14/20	Payment							-\$80.00	\$16.31	-\$80.00	\$4,384.68
10/1/20	Bill - Actual	4384620527	10/21/20	9/29/20	30	23,896.04	2,190.84	\$332.45	\$348.76	\$332.45	\$4,717.13
10/16/20	Payment							-\$80.00	\$268.76	-\$80.00	\$4,637.13

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
10/29/20	Bill - Actual	4384620527	11/19/20	10/28/20	29	25,778.64	1,882.60	\$289.82	\$558.58	\$289.82	\$4,926.95
12/1/20	Bill - Actual	4384620527	12/22/20	11/30/20	33	28,307.68	2,529.04	\$383.14	\$941.72	\$383.14	\$5,310.09
12/2/20	Payment							-\$80.00	\$861.72	-\$80.00	\$5,230.09
12/18/20	Payment							-\$100.00	\$761.72	-\$100.00	\$5,130.09
1/3/21	Bill - Actual	4384620527	1/25/21	1/2/21	33	31,141.91	2,834.23	\$427.46	\$1,189.18	\$427.46	\$5,557.55
1/19/21	Payment							-\$150.00	\$1,039.18	-\$150.00	\$5,407.55
2/2/21	Bill - Actual	4384620527	2/23/21	2/2/21	31	33,469.25	2,327.34	\$348.81	\$1,387.99	\$348.81	\$5,756.36
2/26/21	Payment							-\$150.00	\$1,237.99	-\$150.00	\$5,606.36
3/3/21	Bill - Actual	4384620527	3/24/21	3/3/21	29	35,681.09	2,211.84	\$338.04	\$1,576.03	\$338.04	\$5,944.40
3/15/21	Payment							-\$150.00	\$1,426.03	-\$150.00	\$5,794.40
4/4/21	Bill - Actual	4384620527	4/26/21	4/4/21	32	37,834.72	2,153.63	\$330.72	\$1,756.75	\$330.72	\$6,125.12
4/12/21	Payment							-\$150.00	\$1,606.75	-\$150.00	\$5,975.12
5/3/21	Bill - Actual	4384620527	5/24/21	5/3/21	29	39,601.49	1,766.77	\$274.54	\$1,881.29	\$274.54	\$6,249.66
5/10/21	Payment							-\$150.00	\$1,731.29	-\$150.00	\$6,099.66
6/1/21	Late Payment Charge							\$21.32	\$1,752.61	\$21.32	\$6,120.98
6/2/21	Bill - Actual	4384620527	6/23/21	6/2/21	30	41,391.68	1,790.19	\$273.36	\$2,025.97	\$273.36	\$6,394.34
6/8/21	Dispute							-\$6,369.24	\$0.00	\$0.00	\$6,394.34
6/8/21	Current w/payoff balance							\$4,368.37	\$25.10	\$0.00	\$6,394.34
6/10/21	Payment							-\$150.00	\$0.00	-\$150.00	\$6,244.34
6/15/21	Dispute							-\$6,244.34	\$0.00	\$0.00	\$6,244.34
6/15/21	Current w/payoff balance							\$6,369.24	\$0.00	\$0.00	\$6,244.34
7/1/21	Bill - Actual	4384620527	7/22/21	7/1/21	29	43,348.06	1,956.37	\$305.37	\$305.37	\$305.37	\$6,549.71
7/28/21	Late Payment Charge							\$3.81	\$309.18	\$3.81	\$6,553.52
7/30/21	Payment							-\$150.00	\$159.18	-\$150.00	\$6,403.52
8/2/21	Bill - Actual	4384620527	8/23/21	8/2/21	32	44,274.95	926.89	\$151.58	\$310.76	\$151.58	\$6,555.10
8/3/21	Dispute							-\$6,388.62	\$0.00	\$0.00	\$6,555.10

Date	Transaction	Premise ID	Bill Due Date	Meter Read Date	Days in Billing Period	Meter Reading	KWh Usage	Bill, Payment, Adjustment Amount	Amount Due	Actual Amount	Account Balance
8/3/21	Current w/payoff balance							\$6,244.34	\$166.48	\$0.00	\$6,555.10
8/9/21	Dispute							-\$166.48	\$0.00	\$0.00	\$6,555.10
8/20/21	Payment							-\$80.00	\$0.00	-\$80.00	\$6,475.10