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November 19, 2021

Via Electronic Filing

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

RE: Heather Cigrand v. Duquesne Light Company
Docket No. F-2021-3028359

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings in the above-mentioned matter. A copy of this document and the enclosed filing have been served upon the Complainant and Complainant's counsel in the manner(s) indicated in the enclosed Certificate of Service.

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

Respectfully,

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

Emily M. Farah
Counsel, Regulatory
Duquesne Light Company

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER CIGRAND,	:	
	:	
Complainant,	:	
	:	
v.	:	No: F-2021-3028359
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

**MOTION FOR JUDGMENT ON
THE PLEADINGS**

Filed on behalf of Respondent
Duquesne Light Company


Counsel of Record for this Party:
Emily M. Farah, Esquire
PA I.D. No. 322559
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411 Seventh Avenue, Mail Drop 15-7
Pittsburgh, PA 15219

NOTICE TO PLEAD

TO HEATHER CIGRAND:

YOU ARE NOTIFIED TO FILE A WRITTEN RESPONSE TO RESPONDENT'S MOTION FOR JUDGMENT ON THE PLEADINGS WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE § 5.103 OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

DUQUESNE LIGHT COMPANY



Emily M. Farah, Esquire
Attorney for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER CIGRAND,	:	
	:	
Complainant,	:	
	:	
v.	:	No: F-2021-3028359
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

MOTION FOR JUDGMENT ON THE PLEADINGS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files this Motion for Judgment on the Pleadings pertaining to the above-captioned formal complaint (“Complaint” or “Formal Complaint”) filed by Heather Cigrand (“Complainant”) regarding electric service at 516 Cavitt Avenue, Trafford, PA 15085 (the “Property”), pursuant to 52 Pa. Code § 5.102(a), and states as follows:

I. OVERVIEW

1. The Complaint must be dismissed because Complainant is not entitled to the relief sought in the Complaint, namely, waiver of the electric charges that accrued at Floor #1 and Floor #2,¹ as doing so would be a direct violation of Act 54 of 1993 (“Act 54”), codified in relevant part at 66 Pa.C.S.A. § 1529.1(b).

2. Accordingly, Duquesne Light’s Motion for Judgment on the Pleadings should be granted, and the Formal Complaint should be dismissed with prejudice.

¹ As relief, the Complainant requests “the balance due transferred into tenants’ names,” and further requests the “foreign wiring issue [to be] corrected.” Complaint ¶ 5.

II. FACTUAL AND PROCEDURAL BACKGROUND

3. On September 8, 2021, the above-captioned Formal Complaint was served upon Duquesne Light.

4. The Formal Complaint was filed by Heather Cigrand regarding electric service provided to two residential units at the Property, identified as Floor #1 and Floor #2. See Complaint ¶¶1, 4.

5. On September 28, 2021, the Company filed a timely Answer and New Matter to the Formal Complaint on the Complainant and the Complainant's counsel.²

6. Duquesne Light's Answer and New Matter, included a "Notice to Plead" addressed to Complainant, which stated, "**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE WITHIN NEW MATTER WITHIN 20 DAYS OF SERVICE PURSUANT TO 52 PA. CODE §5.63 OR A JUDGEMENT MAY BE ENTERED AGAINST YOU.**" (bold in original).

7. 52 days have passed since the Answer and New Matter was filed with the Pennsylvania Public Utility Commission ("Commission") and served upon the Complainant and Complainant's counsel.³

8. Neither Complainant nor Complainant's counsel have filed a response to Duquesne Light's New Matter as of the date of this filing.

9. By failing to respond to the New Matter, the Commission can find that Complainant has admitted to the allegations contained therein. See 52 Pa. Code § 5.63(b) ("Failure to file a

² Counsel for Duquesne Light emailed an additional courtesy copy of the Company's Answer and New Matter to Complainant's counsel at his request on October 13, 2021.

³ 37 days have elapsed since the additional courtesy copy was emailed to Complainant's counsel on October 13, 2021. See fn. 2.

timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted”); Stefanowicz v. Pennsylvania-American Water Co., C-20078165, 2008 WL 8014613, at *4 (Pa. P.U.C. May 22, 2008) (“The Commission's Regulations clearly provide that failure to respond to affirmative allegations in New Matter may cause those allegations to be deemed admitted.”).

10. Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

III. LEGAL STANDARD

11. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.102 govern motions for judgment on the pleadings.

12. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

13. In ruling on a motion for judgment on the pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against only those facts specifically admitted. Whitlock v. PECO Energy Co., Docket No. F-2015-2488833, 2015 WL 7348610, at *2 (Nov. 3, 2015).

14. A party may move for judgment on the pleadings “after the pleadings are closed, but within a time so that the hearing is not delayed.” 52 Pa. Code § 5.102(a).

15. The pleadings are closed in this case, and a hearing has not yet been scheduled.

16. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing, should one be necessary.

IV. ARGUMENT

17. The Complaint must be dismissed because the Complainant, as the owner of the Property where foreign wiring was discovered, is responsible for the account balances that accrued for Floor #1 and Floor #2. See Complaint ¶¶1,4; Answer and New Matter ¶¶15-19.

18. It is well established that Act 54 and corresponding case law require a utility company to transfer one or more residential tenants' account balances to the owner of a premises when foreign load is discovered. Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (May 21, 2010).

19. "Foreign load" refers to billing a tenant for electric service not related to that tenant. Santos v. Metropolitan Edison Co., Docket No. C-00967757 (Aug. 7, 1997). Foreign load exists when a tenant's meter registers usage load from electric usage outside of that tenant's dwelling, such as hallway lighting or communal laundry room appliances. Kopf v. PECO Energy Co., Docket No. C-2012-2332993, 2013 WL 3070745, (June 13, 2013).

20. The property owner remains responsible for the tenants' arrearages associated with the address where the foreign load was discovered. McSorley v. PECO Energy Co., Docket No. C-2016-2565864, 2017 WL 4552492, at *6 (Oct. 5, 2017).

21. In other words, the property owner's responsibility for account balances transferred to the property owner's account does not cease upon the utility's verification that the foreign load has been corrected. Id.

22. Here, on or about March 31, 2021, Duquesne Light discovered foreign load registering on the meters connected to the Floor #1 and Floor #2 residential units. Answer and New Matter ¶ 14.

23. Duquesne Light discovered that the residential tenants' electric meters were registering electric usage from the communal basement area of the Property. Answer and New Matter Exhibit C.

24. Upon discovering the foreign load Duquesne Light transferred the affected tenants' account balances that accrued at the Property to the Complainant, pursuant to Act 54. Answer and New Matter ¶ 15.

25. Complainant remains responsible for the Floor #1 and Floor #2 balances that accrued at the Property prior to discovering the foreign load and remains responsible for the balances that accrue at Floor #1 and Floor #2 until the foreign load is corrected. Answer and New Matter ¶¶ 4, 18-19.

26. Duquesne Light Company is entitled to judgment as a matter of law because the Company Duquesne Light properly listed service for Floor #1 and Floor #2 in the Complainant's name and transferred the tenants' account balances that accrued at the Property to the Complainant in compliance with Act 54.

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission grant its Motion for Judgement on the Pleadings, deny the relief sought by the Complainant, and dismiss the Complaint with prejudice.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEATHER CIGRAND,	:	
	:	
Complainant,	:	
	:	
v.	:	No: F-2021-3028359
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

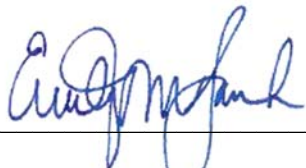
I certify that I have this day served a true copy of this Motion for Judgement on the Pleadings upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

VIA ELECTRONIC MAILING ONLY

Heather Cigrand
643 Meadowbrook Road
Trafford, PA 15085
hcigrand@steelcitydental.net

Christopher Skovira
117 N. Main Street
Greensburg, PA 15601
skovira.christopher@gmail.com
(Counsel for Complainant)

Dated this 19th day of November, 2021.



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