

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Kim Wilkes

Public Meeting June 16, 2022

3027702-ALJ

v.

Docket No. C-2021-3027702

Duquesne Light Company

MOTION OF VICE CHAIRMAN JOHN F. COLEMAN, JR.

Before the Commission is the Initial Decision issued on March 28, 2022 in the above captioned matter that denied in part and granted in part a formal complaint filed by Kim Wilkes (“Complainant”) against Duquesne Light Company (“Duquesne”). The formal complaint was denied in part for failure to meet the burden of proving the utility billed her incorrectly, and that the rate charged for electric service was too high in comparison to her consumption level. The formal complaint was sustained in part because the Complainant met her burden of proving that Duquesne failed to provide reasonable customer service when it did not transfer her service from its residential electric heating rate to its regular residential rate. I will be moving that we adopt the Initial Decision, as modified by this Motion.

The formal complaint was sustained to the extent that the presiding Administrative Law Judge (“ALJ”) determined that the Complainant should be served under Duquesne’s residential service rate, known as Rate RS, as opposed to its residential service heating rate, known as Rate RH. Rate RH is available to customers who use electricity as the sole, primary method of space heating their homes. Rate RS is available to those customers who use other sources of energy to heat their homes, such as natural gas or heating oil.

The Complainant testified that she had an oil furnace installed in her home in 2019 and stopped using her electric furnace.¹ This testimony was supported by a significant reduction in the Complainant’s billed electric usage starting in 2019.² Duquesne does not dispute that an oil furnace was installed or that the Complainant’s consumption of electricity subsequently declined. Duquesne’s attorney summarized its witnesses’ position on why the Complainant was not transferred to Rate RS in 2019:

The Complainant is being billed in accordance with the RH, or residential heating rate, which is the correct rate for this customer who has hard-wired electrical furnaces installed at her property, as indicated in the hearing today. But it's also the most beneficial rate for the customer. As Ms. Bloomfield testified, the RH rate, they discount the customers between the months of November and April.

Hearing Transcript, pgs. 131-132.

¹ Initial Decision, pg. 6, Hearing Transcript pg. 43.

² Initial Decision, pg. 5.

The ALJ held that Duquesne should have honored the customer's request to switch her service given her use of the oil furnace. However, the ALJ concluded that Duquesne complied with its tariff, and that no civil penalty should be imposed due to tariff compliance, and because the Complainant suffered no financial harm.³ The ALJ also held that if the Complainant changes her mind and expresses a preference for returning to Rate RH that Duquesne should honor such request.

A Commission approved tariff has the force of law and is binding on both the utility customer.⁴ Section 1303 of the Public Utility Code provides that:

No public utility shall, directly or indirectly, by any device whatsoever, or in any wise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.

66 Pa.C.S. § 1303. Accordingly, Section 1303 does not permit a utility to deviate from the tariffed rate, even when such action might appear to benefit the customer. However, Section 1303 also imposes an obligation on a public utility to compute bills under the most advantageous rate when more than one rate is available to the customer, provided the utility has actual knowledge of service conditions.⁵ Based on the testimony in the record, it appears that Duquesne believed that the Complainant's service was eligible for both Rate RH and RS, and chose to compute bills under Rate RH as using this rate was "most advantageous" to her.

However, a review of the tariff language does not support Duquesne's actions or its interpretation of its tariff. Duquesne's tariff states that Rate RH is:

Available to residential or combined residential and farm customers using the Company's standard low voltage service for lighting, appliance operation, general household purposes and for commercial or professional activity where associated consumption represents less than 25% of the total monthly usage at the premise, and as the sole primary method of space heating except that the space heating system may be supplemented with renewable energy sources such as solar, wind, wood, or hydro.

Duquesne's Rate RH (emphasis added). The un rebutted testimony before the Commission is that electricity was not the "sole primary method of space heating" as of sometime in 2019. Nor did the Complainant supplement the electric furnace with "renewable energy sources." Instead, the Complainant testified that she installed an oil furnace in 2019 and stopped using the electric furnace. The Complainant's bills support the claim that she has relied primarily, if not entirely, on oil heat since 2019.

³ Initial Decision, pg. 10.

⁴ *Brockway Glass Co. v. Pennsylvania Pub.Util. Comm'n*, 437 A.2d 1067 (Pa. Commw. Ct. 1981)

⁵ *Springfield Twp. v. Pennsylvania Pub. Util. Comm'n*, 676 A.2d 304 (Pa. Commw. Ct. 1996)


Duquesne's failure to reassign the customer to Rate RS in 2019 was therefore a violation of both its tariff and Section 1303 of the Public Utility Code. The Complainant's circumstance was not that of a customer with more than "one rate applicable to service rendered." The Complainant was no longer eligible for Rate RH, and Duquesne should have reassigned her to Rate RS when it received notice of her actual service conditions, in this case the installation of an oil furnace to heat her home. The reassignment should have been made not because, as determined in the Initial Decision, of the Complainant's *preference* for Rate RS, but because she was no longer *eligible* for service under Rate RH. The fact that a functional electric furnace remained at the service address is not identified in Duquesne's tariff as the determining factor for Rate RH eligibility. If the Complainant should return to using her electric furnace as the "sole primary method" of space heating, and gives notice to Duquesne of this change in service conditions, it would then be appropriate to return her to Rate RH.

Given that Duquesne was in violation of its tariff, and therefore Section 1303 as well, it is necessary to consider whether a civil penalty is appropriate. I find that no civil penalty should be imposed for the following reasons, including but not limited to, one, Duquesne believed it was following the tariff, two, that the error was limited to one customer, and three, that the Complainant experienced no financial harm from this mistake.⁶ The record indicates a pattern of zealous, if mistaken, behavior by Duquesne staff to assist this customer achieve a lower bill, including the encouraged use of budget billing and customer assistance programs. I encourage Duquesne to review with its staff the eligibility of customers for Rate RH under its existing tariff and the requirements of Section 1303 of the Public Utility Code. Accordingly, I will move that we adopt the Initial Decision, as modified by this Motion.

THEREFORE, I MOVE THAT:

1. The Initial Decision be adopted, as modified, by this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: June 16, 2022



JOHN F. COLEMAN, JR., VICE CHAIRMAN

⁶ *Rosi v. Bell Atl.-Pa., Inc. & Sprint Commc'ns Co.*, Docket No. C-0092409 (Final order entered February 19, 2000), 52 Pa. Code. § 69.1201.