

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

January 25, 1995

IN REPLY PLEASE  
REFER TO OUR FILE

STEPHEN R PELCHER ESQ  
DUQUESNE LIGHT COMPANY  
ONE OXFORD CENTRE  
301 GRANT STREET  
PITTSBURGH PA 15279

DAVID P BOYCE  
VS  
DUQUESNE LIGHT COMPANY

Z-00223698  
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TO WHOM IT MAY CONCERN:

TAF

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

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

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

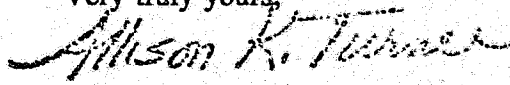
Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

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

las

DAVID P BOYCE  
5608 ELLSWORTH  
AVENUE SEVEN APT 7  
PITTSBURGH PA 15232

Very truly yours,



Allison K. Turner  
Chief Administrative Law Judge

Encls.

Certified Mail

Receipt Requested

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

David P. Boyce

v.

Duquesne Light Company

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Docket No.  
Z-00223698

INITIAL DECISION UPON REMAND

DOCKETED  
FEB 2 1995

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Before  
Michael A. Nemeo  
Administrative Law Judge

History of the Proceeding

The complaint of David Boyce, filed on November 29, 1993, asserted that he had been responsible for high summer electric bills because his meter was connected to an air conditioning unit that served two other apartments as well as his own. Duquesne Light filed a timely answer and a motion to dismiss for failure to join an indispensable party, the landlord. The initial hearing was held in Pittsburgh on February 7, 1994, and an initial decision issued on March 22, 1994. Mr. Boyce filed exceptions which were late and were dismissed. He then filed a document that in essence requested a review of the dismissal of the exceptions, a request this Commission granted.

Following its review, this Commission adopted an opinion and order that had the effect of adopting the findings of fact in the initial decision but remanding the matter " . . . solely for a determination of the responsibility for the arrearage, if

any; . . ." Slip op. p. 4, Opinion and Order adopted June 30, 1994, entered September 1, 1994.

The initial hearing following remand was held on October 14, 1994, in Pittsburgh. Present were Mr. Boyce and counsel for Duquesne Light. Notice of the hearing was not given to the landlord. Counsel for Duquesne contended that the purpose of the remand was broader than simply determining the responsibility for the arrearage on Mr. Boyce's account; that in fact the issues were much broader given the language of the second ordering paragraph that provides for the placing of all of the services in the apartment building where Mr. Boyce resides into the name of the landlord until such time as each tenant is individually metered and is responsible only for electric service to their individual apartment.

As a result of the further hearing, an interim order dated October 17, 1994, was filed and served on the parties, the landlord and all other tenants. The ordering paragraphs provided that:

1. That Duquesne Light Company shall place all electric service for 5608 Ellsworth Avenue, Pittsburgh, PA 15232, in the name of Harold Haffner effective October 4, 1994, in accordance with paragraph 2 of this Commission's Order entered September 1, 1994, at Z-00223698, until such time as he shall comply with this Commission's Order and the provisions of Section 1529.1 of the Public Utility Code, 66 Pa. C.S.A. §1529.1.

2. That any person desiring an in-person hearing on the conclusions

reached in this Interim Order may request a hearing by writing to the undersigned presiding officer within 20 days of the date of this Interim Order.

Service of the interim order resulted in Duquesne's placing all of the accounts in Mr. Haffner's name. He then contacted me for information and to request a further hearing. The further hearing was held on November 15, 1994. Duquesne appeared by counsel, Mr. Boyce was present in person and Mr. Haffner appeared by telephone. The addition to the record after the remand consists of 79 pages of transcript and four additional exhibits. The record is summarized in the findings of fact that follow. The parties reached a resolution of all issues at the final hearing which is reflected in the order at the end. No briefs were filed.

#### Findings of Fact

A: Findings of Fact from the Initial Decision:

1. Complainant David P. Boyce resides at 5608 Ellsworth Avenue, Apartment 7, Pittsburgh, PA 15232, where he receives electric utility service from Duquesne Light Company. Tr. 4-5.
2. Mr. Boyce has resided in the same apartment since December 31, 1990. Tr. 5.
3. Three apartments, including that rented to Mr. Boyce, are served by the same air conditioning unit. Tr. 5-6.
4. The electrical service for the compressor for the air conditioning unit is connected to the meter that registers

electric service to Mr. Boyce's apartment. Tr. 5-7; Duquesne Exhibit 3.

5. The thermostat for controlling the air conditioner is located in an apartment other than the one rented by Mr. Boyce. Tr. 5-6.

6. Mr. Boyce has been unsuccessful in obtaining the cooperation of other tenants in paying in full their respective shares of the electric bill. Tr. 7-8; Complainant Exhibits 1, 2, 3.

7. Mr. Boyce has also been unsuccessful in obtaining the cooperation of his landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, in either helping with the electric bill or in rewiring the electrical system to take the compressor off his meter. Tr. 10-11; Complainant Exhibits 1, 2, 3.

8. Mr. Boyce's sole source of income is Supplemental Security Income in the amount of \$612 per month. He also receives food stamps in a value of about \$63. Tr. 13, 17.

9. Mr. Boyce's monthly expenses include rent of \$350 (which includes heat); telephone of about \$20; cable tv of about \$30; a monthly bus pass of \$40; food expense is covered by food stamps. Tr. 13-17.

10. Mr. Boyce is a full-time student at the University of Pittsburgh where he has a double major in media communications and political science; he is required by his classes to have access to both a telephone and cable tv. Tr. 15.

11. As of the hearing, the balance on Mr. Boyce's account for electric service was \$556.98. His budget amount was \$74 per month and Duquesne was willing to accept a payment plan of the budget plus \$5 per month on the arrearage. Tr. 22-23; Duquesne Exhibit 1.

12. Duquesne's account records confirm Mr. Boyce's testimony regarding high cooling season bills. Tr. 24-25; Duquesne Exhibit 2.

B: Findings of Fact following remand:

13. The connection between Mr. Boyce's meter and the air conditioning unit has been removed, a fact verified by a Duquesne inspection conducted on site on November 10, 1994. Tr. of 11/15/94, p. 14.

14. All bills for all tenants for the building, 5608 Ellsworth Avenue, were placed in the name of the owner, Mr. Haffner, pursuant to the interim order; Duquesne has since verified that each apartment's electrical usage is separately metered and, as a result, each tenant will be again separately billed by Duquesne. Tr. of 11/15/94, pp. 5-6, 10-11, 13-15.

15. As of the hearing the balance due to Duquesne from Mr. Boyce, and the amount to be transferred when an account is again established in his name, was \$545.06. A portion of this, as determined by Mr. Boyce, is owed to him by two other tenants. The landlord has assumed responsibility for collecting the balances owed for electric service under the terms of the leases he has with

the tenants and paying the amount due over to Duquesne. Tr. of 11/15/94, pp. 15-30.

#### Discussion

At the October 14, 1994, hearing following remand, Duquesne's request for guidance extended to asking what should be the effective date for changing the accounts over to the landlord and what action should it take with payments already made on the accounts if the date is set at some time in the past. Duquesne also asked for guidance with regard to the effective date for reviewing and adjusting the arrearage on Mr. Boyce's account.

This Commission's Order was entered on September 1, 1994, and specifically provided for the service of the Order on the landlord. The appeal period began to run on the day following the entry of the Order and expired on midnight October 3, 1994. Pennsylvania Rules of Appellate Procedure Rule 906. The effective date for Duquesne to comply with paragraph 2 of this Commission's Order, then, is October 4, 1994. All payments received on each account up to and on October 4, 1994, from whatever source should be credited to that account. From October 4, 1994 onward, all seven accounts become the responsibility of the landlord until such time as he complies with the requirements of this Commission's Order and the requirements of Section 1529.1 of the Public Utility Code, 66 Pa. C.S.A. §1529.1; the above was directed in the Interim Order dated October 17, 1994.

This Commission found in its Opinion and Order that Section 1529.1 of the Public Utility Code became effective August 31, 1993. Mr. Boyce testified both at the initial hearing and the initial hearing following remand that he had an understanding with his landlord that he was to split the electric bill for the air conditioner with the occupants of the other two apartments as of sometime in 1991. Whether that is an enforceable contract is a question beyond the jurisdiction of this Commission and is a matter between Mr. Boyce, the landlord and the other tenants. Further, some of the tenants paid all of their share and some none or only part. Some tenants have moved on and others have changed apartments since Mr. Boyce became a tenant. I concluded in the Interim Order dated October 17, 1994, that the effective date for reaching a determination on responsibility for the arrearage on Mr. Boyce's account is August 31, 1993 and forward.

Duquesne has determined the base load usage for Mr. Boyce's apartment. By comparing the base load usage to the usage for the cooling season it is possible to separate out the air conditioning usage that has appeared on his billing from 1991 onward. This was done by Mr. Boyce with Duquesne's assistance. As noted in the findings of fact, Mr. Boyce and Duquesne have agreed to the amount due and the amounts to be collected from the other two tenants who are affected. Also as noted above, the landlord has accepted responsibility for collecting the amounts due from the other tenants for electrical usage.

As noted in the findings of fact and can be seen in the transcript of the hearing of November 15, 1994, the parties have, with this Commission's guidance, resolved the matters in dispute to their mutual satisfaction. The resolution reached is in the public interest and complies with the Public Utility Code. I conclude that it is appropriate to dismiss the complaint and close this record.

#### Conclusions of Law

1. This Commission has jurisdiction over the parties to and subject matter of this case.
2. Complainant David P. Boyce has sustained his burden of proof under Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. §332(a).
3. Complainant and the other parties to this matter have resolved the issues presented in a mutually satisfactory manner that is in accordance with the Order of this Commission and the Public Utility Code and is in the public interest to approve.

#### ORDER

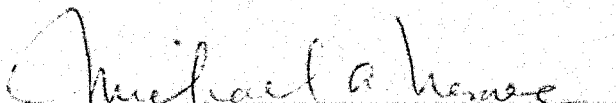
In consideration of the foregoing it is ordered:

1. That the agreements of David P. Boyce, Harold E. Haffner and Duquesne Light Company as developed in the record of this proceeding are approved and adopted.

2. That, upon reestablishing Mr. Boyce as a customer, Duquesne will transfer the balance due as of the hearing of November 15, 1994, \$545.06, to Mr. Boyce's new account, which Mr. Boyce will pay in accordance with the assistance of Mr. Haffner.

3. That, as the outstanding issues have been resolved to the parties' satisfaction and in accordance with the this Commission's Order and the Public Utility Code, the complaint of David P. Boyce against Duquesne Light Company docketed at Z-00223698 is dismissed and the record closed.

Date: January 12, 1995

  
MICHAEL A. NEMEC  
Administrative Law Judge

Act 294

FEB 8 1995

OFFICE OF SPECIAL ASSISTANTS

Case Identification:

Z-00223698; David P. Boyce vs Duquesne Light Company

Initial Decision By:

ALJ Michael A. Nemec

Deadline for Return to OSA:

February 3, 1995

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Commissioner

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David H. Rolka/jr.  
Commissioner

2-3-95  
Date

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*Joseph P. Rhodes, Jr.*  
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Commissioner

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Act 294

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Commissioner

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Initial Decision By:

ALJ Michael A. Nemeo

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February 3, 1995

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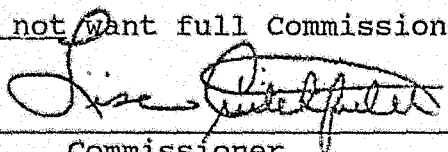
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Date

Act 294

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Initial Decision By: ALJ Michael A. Nemeo

Deadline for Return to OSA: February 3, 1995

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x John Hanger  
Commissioner

1-31-95  
Date