

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KRISTEN FLAHERTY  
Complainant

v.

DUQUESNE LIGHT COMPANY  
Respondent

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Docket No. C-2023-3039314

**NOTICE TO PLEAD**

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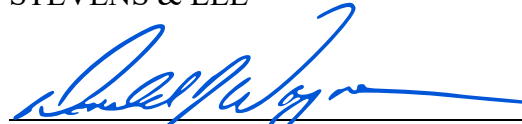
**To: *Kristen Flaherty***

You are hereby notified to file a written response to the attached Motion for Judgment on the Pleadings of Duquesne Light Company within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed New Matter within twenty (20) days of service, the facts set forth by Duquesne Light Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

You must also serve a copy of your response on the undersigned counsel for Duquesne Light Company. Failure to respond to this Answer and New Matter could result in the dismissal of your case.

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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: May 17, 2023

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KRISTEN FLAHERTY	:	
Complainant	:	
	:	
v.	:	Docket No. C-2023-3039314
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

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**MOTION FOR JUDGMENT ON THE PLEADINGS  
DUQUESNE LIGHT COMPANY**

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Pursuant to 52 Pa Code § 5.102, Duquesne Light Company (“Duquesne Light” or “Company”), by and through its attorneys Stevens & Lee, hereby files this Motion for Judgment on the Pleadings.

**I. OVERVIEW**

1. Complainant Kristen Flaherty’s Complaint should be dismissed because it is barred by the doctrine of res judicata and because it is merely an attempt to delay regulatory action to require payment of monthly bills for electric service.
2. Complainant’s allegations stem from her account balance that is a direct result of her actual electric usage and her repeated use of dilatory tactics to avoid paying her electric bill.
3. Complainant is not eligible for a payment arrangement as the Complainant is enrolled in the Company’s Customer Assistance Program (“CAP”).
4. Accordingly, Duquesne Light’s Motion for Judgment on the Pleadings should be granted, the Complaint should be dismissed with prejudice and Complainant should be prohibited from filing any further complaints against Duquesne Light Company with the Public Utility Commission (“PUC” or “Commission”) until either her current balance owed to the Company is paid in full and the current CAP arrearage is either completely forgiven by

Complainant's making timely CAP payments, or should Complainant cease to be enrolled in CAP, is paid in full.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

5. On or about March 28, 2023, Complainant filed the Complaint against Duquesne Light.

6. In the Complaint, Complainant alleges that Duquesne Light is threatening to shut off her service on her account associated with 349 Old Gilkeson Road, Pittsburgh, Pennsylvania 15228. Complaint ¶4.

7. As relief, Complainant requests a payment arrangement. Complaint ¶5.

8. Duquesne Light filed an Answer and New Matter on April 17, 2023.<sup>1</sup>

9. In its Answer and New Matter, Duquesne Light admitted that, in accordance with its Commission-approved tariff and applicable PUC regulations, the Company has notified Complainant of its intent to shut off Complainant's service for her repeated and persistent failure to pay monthly bills in full and on a timely basis. Answer and New Matter ¶4.

10. In its Answer and New Matter, Duquesne Light also admitted that Complainant requested a payment arrangement, but that Complainant was ineligible for a payment arrangement as she is enrolled in CAP. Answer and New Matter ¶4.

11. Thirty (30) days have elapsed since Duquesne Light Filed its Answer and New Matter on April 17, 2023.

12. The Complainant did not file an Answer or any response to Duquesne Light's New Matter.

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<sup>1</sup> You are hereby notified to file a written response to the attached Answer and New Matter of Duquesne Light Company within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed New Matter within twenty (20) days of service, the facts set forth by Duquesne Light Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you.

13. By failing to respond to 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 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.”). As such, Duquesne Light respectfully requests that the Commission deem the allegations in its New Matter admitted.

14. The Commission’s regulation at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that 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).

15. The pleadings are closed in this case, and a hearing has not yet been scheduled. Accordingly, this Motion for Judgment on the Pleadings will not delay the hearing.

### **III. LAW AND ARGUMENT**

16. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

17. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case

exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

18. The pleadings in this case reveal that Duquesne Light is entitled to judgment as a matter of law. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in *Frank Tomazin v. Pennsylvania-American Water Company*, 1997 Pa. PUC Lexis 52 (1997), “the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation.”

19. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. *Hopewell Estates, Inc. v. Kent*, 435 Pa. Superior Ct. 471. 476, 646 A.2d 1192 (1994).

20. The doctrine of res judicata applies to cases before the Commission. See, *O’Toole v. Bell Telephone Co. of Pennsylvania, Inc.*, 77 Pa. P.U.C. 98, 104 (1992).

21. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

*Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

22. The Commission has dismissed complaints on the grounds of res judicata, on the theory that a complaint that already has been adjudicated is not legally sufficient under 52 Pa. Code § 5.101(a)(4). See, e.g., *Anthony Cannon v. Verizon Pennsylvania, LLC*, Docket No. C-2013-2353818 (Opinion and Order entered March 6, 2014); *Sattar v. Aqua Pennsylvania, Inc.*, Docket No. C-2011-2268119 (Order entered July 19, 2012).

23. Where there is an identity of issues, identity of causes of action, identity of persons and parties to the action, and identity of the quality and capacity of persons and parties, the Commission has dismissed a subsequent complaint on the grounds of res judicata where the prior complaint was dismissed with prejudice for failure to appear and prosecute at a scheduled hearing. See, *Shymar McBride v. UGI Utilities, Inc.*, Docket No. C-2013-2391525 (Order entered March 20, 2014) (adopting initial decision of ALJ David A. Salapa, dated December 19, 2013).

24. Complainant's poor payment history shows a lack of good faith effort to pay her utility bills. The Complainant has not made any payments on the account since establishing service in her name on August 6, 2021, nor has Complainant made any of the CAP payments since enrollment in CAP on April 12, 2022. Answer and New Matter ¶4.

25. Where a utility customer shows a lack of good faith effort to pay utility bills, the Commission can refuse to issue a payment arrangement. See "The issuance of a payment arrangement is a matter within the Commission's discretion. *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 at 11 (Order entered September 12, 2013). It is Commission policy to exercise its discretion when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *George Crawford v. National Fuel Gas Distribution Corp.*, Docket

No. C-20066348 at 15-16 (Order entered December 6, 2007).” *Stephanie Maxwell v.*

*Philadelphia Gas Works*, Docket No. C-2017-2607397, 2018 WL 705075, at \*4 (Jan. 12, 2018).

26. On September 19, 2022, Complainant filed a formal complaint (the “Prior Complaint”) with the Commission against the Company, which Prior Complaint was docketed at C-2022-3035389. The Prior Complaint alleged that the Company threatened to shut off her electric service and she requested a payment arrangement.

27. On October 10, 2022, the Company filed an answer and new matter to the Prior Complaint, in which the Company admitted it was threatening to shut off Complainant’s electric service for failure to pay past due amounts and denied that Complainant was eligible for a payment arrangement because Complainant is enrolled in CAP.

28. Complainant failed to appear at a scheduled hearing convened on January 25, 2023, pursuant to a November 15, 2022 Call-In Telephone Hearing Notice (the “Hearing Notice”) and a November 21, 2022 Prehearing Order (the “Prehearing Order”). The Hearing Notice and Prehearing Order were emailed to Complainant, who accepts eService, to the email address Complainant provided to the Commission.

29. In an initial decision dated February 16, 2023, Special Agent Michael J. Mroczka dismissed the Prior Complaint with prejudice, finding that by failing to participate in the hearing and proffer any evidence to support the Prior Complaint, the Complainant failed to meet the burden of proof pursuant to 66 Pa.C.S § 332(a).

30. In accordance with Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the February 26, 2023 initial decision of Special Agent Michael J. Mroczka became final without further Commission action. The final order was entered on March 21, 2023 (the “Final Order”).

31. On March 28, 2023, **one week** after entry of the Final Order dismissing the Prior Complaint with prejudice in Docket C-2022-3035389, Complainant filed the Complaint. The

Complaint is substantively identical to the Prior Complaint – Complainant alleges the Company has threatened termination of her electric service and would like a payment arrangement.

32. The issues in the Prior Complaint and the Complaint are identical. The issues in both proceedings involve the threatened termination of electrical service for Complainant’s repeated and persistent failure to pay monthly bills in full and on a timely basis and Complainant’s request for a payment arrangement, though as Complainant is enrolled in CAP, Complainant is not eligible for a payment arrangement.

33. The causes of action are identical since both the Prior Complaint and the Complaint involve service to the same address, and the same failure to pay current and past due account balance. Likewise, the parties are identical and the quality and capacity of the parties are identical.

34. Therefore, the Complaint is legally insufficient as it is barred by the doctrine of res judicata by the Final Order dismissing with prejudice the Prior Complaint.

35. In the last three years, Complainant has filed no less than 15 formal complaints with the PUC against various jurisdictional utility companies: six against Pennsylvania American Water Company (Docket Nos. C-2020-3018721, C-2022-3031149, C-2022-3031223, C-2022-3033567, C-2022-3033697, C-2023-3037932); five against Columbia Gas of Pennsylvania, Inc. (Docket Nos. C-2022-3031205, C-2022-3033548, C-2022-3034018, C-2023-3039238, C-2023-3039291), two against West Penn Power Company (Docket No. C-2022-3031846 and C-2023-3039663) and two against Respondent (Docket Nos. C-2022-3035389 and C-2023-3039314).

36. Complainant’s recent formal complaints against Columbia Gas of Pennsylvania, Inc. (“Columbia Gas”) are substantively identical to the Complaint and the Prior Complaint and seek payment arrangements.

37. On July 5, 2022, Complainant filed a formal complaint with the Commission against Columbia Gas at Docket No. C-2022-3033548 concerning gas service rendered at 3998 Millers Run Road, McDonald, Pennsylvania 15057, alleging Columbia Gas threatened to shut off natural gas service. Complainant requested an affordable payment arrangement. See Answer and New Matter, Exhibit C.

38. On July 25, 2022, Complainant filed a formal complaint with the Commission against Columbia Gas at Docket No. C-2022-3034018 concerning gas service rendered at 349 Old Gilkeson Road, Pittsburgh, Pennsylvania, 15228; similarly alleging Columbia Gas threatened to shut off gas service. Complainant requested an affordable payment arrangement. See Answer and New Matter, Exhibit C.

39. In an initial decision dated February 3, 2023, Administrative Law Judge Katrina L. Dunderdale (the “Columbia Gas Initial Decision”) found, in relevant part, that (i) Complainant had accrued an unpaid balance, as of December 15, 2022, of \$1,217.07 for gas utility service to 349 Old Gilkeson Road in Pittsburgh and the last successful payment made by Complainant on that account was in the amount of \$128.00 on September 8, 2021; and (ii) on the natural gas service account for the property at 3998 Millers Run Road in McDonald, the unpaid balance, as of December 8, 2022, was \$2,149.18 and no successful payment was made by Complainant since the date service was established on August 6, 2021. See Answer and New Matter, Exhibit C, Findings of Fact Nos. 1 through 5.

40. The Columbia Gas Initial Decision dismissed with prejudice Complainant’s formal complaints at Docket Nos. C-2022-3033548 and C-2022-3034018 on the basis that by failing to appear for a scheduled hearing and proffer any evidence to support the formal complaints, Complainant did not meet the burden of proving she was entitled to the relief she sought from the Commission. See Answer and New Matter, Exhibit C.

41. In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa.C.S. § 332(h), the Columbia Gas Initial Decision became final without further Commission action and the final order was entered on March 7, 2023.

42. On March 27, 2023, Complainant filed two more formal complaints against Columbia Gas with the Commission at Docket Nos. C-2023-3039238 and C-2023-3039291, only **three weeks** after the March 7, 2023 final order dismissing her formal complaints at Docket Nos. C-2022-3033548 and C-2022-3034018.

43. As noted previously, the Complainant has not made any payments on her electric service account with the Company since establishing service in her name, nor has Complainant made any of the CAP payments since her enrollment in CAP on April 12, 2022. As of April 13, 2023, Complainant's total account balance is \$1,444.64, which includes \$1,184.64 of frozen arrearage. Answer and New Matter ¶4.

44. Customers are obligated to pay for utility service. The cost of the unpaid bills fall on the backs of the remaining customers as part of a utility's uncollectible expenses. *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758 (April 8, 1988).

45. The pattern of filing complaints employed by the Complainant is merely an attempt to delay regulatory action to require payment of monthly bills for electric service. See *Potora v. UGI Utilities, Inc.*, Docket No. C-2018-3002670, 2018 WL 6931964, at \*6 (Dec. 13, 2018).

46. "Using the Commission's processes to avoid termination and avoid paying for utility service is an abuse of the Commission's administrative processes and will not be countenanced." *Grimes v. Pennsylvania Electric Co.*, Docket No. C-2018-3000571, 2018 WL 2717459, at \*3 (May 31, 2018).

47. If found to be abusing the Commission’s processes, a complainant may be barred from filing further complaints “in order to protect the interests of other rate payers.” *Id.*, citing *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (July 28, 2009), *Thomas v. Peoples Natural Gas Co.*, Docket No. C-2009-2102194 (June 17, 2010), and *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (April 23, 2014).

48. Complainant’s recent formal complaints against Columbia Gas of Pennsylvania are substantively similar to the Complaint and the Prior Complaint against Respondent and collectively show a pattern of obvious attempts to delay termination of utility services for failure to pay past due amounts and, together with the Complaint and Prior Complaint, constitute an abuse of process and in the interest of protecting other ratepayers, must not continue.

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WHEREFORE, for all the reasons stated herein, Duquesne Light Company respectfully requests that your Honorable Commission grant its Motion for Judgment on the Pleadings, dismiss the Complaint with prejudice, and prohibit Complainant from filing any further complaints against Duquesne Light Company with the Commission until either her current balance owed to the Company is paid in full and the current CAP arrearage is either completely forgiven by Complainant's making timely CAP payments, or should Complainant cease to be enrolled in CAP, is paid in full.

Respectfully submitted,

STEVENS & LEE



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: May 17, 2023

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DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Motion for Judgment on the Pleadings upon the party listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA ELECTRONIC MAIL**

Kristen Flaherty  
349 Old Gilkeson Road  
Pittsburgh, PA 15228  
Email: [nflahertyk10@gmail.com](mailto:nflahertyk10@gmail.com)

  
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Donald R. Wagner

Dated: May 17, 2023