

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cletus Cibrone Abate	:	
	:	
v.	:	F-2022-3035653
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Decision dismisses in part and sustains in part the Formal Complaint filed by Cletus Cibrone Abate against Duquesne Light Company. Complainant met her burden to prove that the Company failed to provide “conspicuous” 72-hour notice, but her Complaint is dismissed in all other respects due to Complainant failing to meet her burden of proof.

HISTORY OF THE PROCEEDINGS

On September 26, 2022, Cletus Cibrone Abate (Complainant or Ms. Abate) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light, DLC, Company, Respondent), alleging she was having reliability, safety, or quality problems with her electric service and that the utility was threatening to shut off or had already shut off her service. Specifically, she alleged that DLC has threatened to shut off her service numerous times over the last year, improperly denied her eligibility for a crisis grant from the Low-Income Energy Assistance Program (LIHEAP), hid a shut off notice on her door, and improperly denied her eligibility for enrollment in their Customer Assistance Program (CAP). Complainant alleged

Duquesne Light marked her as a “target” due to her politics and the flag she has in her yard. As relief, complainant wants Duquesne Light to honor her request for the crisis grant and to be instructed not to “hide” shutoff notices. Complainant requests she receive any future shutoff notices by email.

On October 17, 2022, Duquesne Light filed an Answer to the Complaint. Duquesne Light denies all material allegations in the Complaint and denies violating the Public Utility Code. According to Duquesne Light, Complainant established service in her name on July 1, 2002. On September 4, 2020, Complainant filed for Chapter 13 bankruptcy (bankruptcy case). At that time, the outstanding balance on Complainant’s account of \$3,813.93 was transferred to a bankruptcy account. On August 26, 2022, Complainant enrolled in the Company’s CAP. As of one week prior to the second day of hearing, which was held on March 20, 2023, the bankruptcy case remains active.

Duquesne Light admits that, since Complainant’s filing of the bankruptcy case, it has, in accordance with its Commission-approved tariff and applicable Commission regulations, issued Complainant nine termination notices for past due account balances that accrued after Complainant filed the bankruptcy case and denies hiding any notices. Duquesne Light avers these termination notices were appropriate because Complainant fails to pay her electric bill on time and in full.

This case was initially sent to the Office of Administrative Law Judge’s Mediation Unit. On January 9, 2023, the Commission issued a Hearing Notice assigning this case to me and scheduling an evidentiary hearing for March 2, 2023. I issued a Prehearing Order on January 9, 2023.

The hearing convened as scheduled on March 2, 2023. Complainant appeared and represented herself. Mr. David Beane, Esq., appeared on behalf of the Company. Ms. Abate began, but did not finish, her testimony. Ms. Abate wanted an opportunity to submit proposed

exhibits, plus she had a job she needed to get to in the afternoon.¹ I adjourned the hearing to allow Complainant the opportunity to submit proposed exhibits.

On March 2, 2023, the Commission issued a Hearing Notice, scheduling a further hearing for March 20, 2023.

On March 6, 2023, and March 8, 2023, Complainant served her proposed exhibits upon DLC's counsel and me by email.

The hearing resumed as scheduled on March 20, 2023. Ms. Abate appeared and again represented herself. Ms. Abate testified on her own behalf, and Complainant's Exhibits 1-15 were admitted into the record. Mr. Beane appeared again on behalf of DLC and presented the testimony of Roxanne Morris, Supervisor of Regulatory Consumer Relations, and Tiffany Kennedy, Supervisor, Field Collections. DLC's Exhibits 1-14 were admitted into the record. At the conclusion of the hearing, Ms. Abate indicated she wanted an opportunity to collect her thoughts and submit a written brief in lieu of oral closing arguments.²

The transcript from the first day of hearing was filed March 24, 2023, and the transcript from the second day was filed April 11, 2023. On April 11, 2023, I issued an Interim Order, establishing a briefing schedule, due to Complainant indicating a preference to have an opportunity to file a brief. Main briefs were due to be filed on April 25, 2023, and reply briefs, if any were due to be filed on May 9, 2023. DLC filed a main brief on April 25, 2023. After multiple email communications between my legal assistants and Ms. Abate regarding the filing of Ms. Abate's brief, Complainant ultimately did not file a brief.³

¹ Tr. 40.

² Tr. 163.

³ Ms. Abate first expressed difficulties with and unfamiliarity with Microsoft Word in an email dated April 13, 2023. My legal assistant repeatedly called Complainant on April 17, 2023, but got a busy signal each time. My legal assistant again called Complainant on April 18, 2023, but reported the phone number on the Complaint was not going through. On April 19, 2023, my other legal assistant called Complainant, but reported that the number listed on her Complaint went through to a travel airline center. He then emailed Complainant to get a good number to reach her and provided information on how she could obtain a copy of the transcript. Ms. Abate provided a good number by email on April 19, 2023. On April 20, 2023, my legal assistant emailed Complainant advising her she could hand-write her brief and mail it to my office. He provided the mailing address to my office to Complainant on April 25, 2023. He also sent the mailing address to Complainant by email on April 24, 2023.

On April 25, 2023, Ms. Abate forwarded an email from her to DLC’s counsel requesting neither he nor anyone from his law firm contact her again. I responded to counsel, copying Complainant, explaining that he may serve her with DLC’s reply brief, exceptions, and reply exceptions, if any, as well as any other filings he may make with the Commission in this case, since he is required to do so per the Commission’s rules. I also advised Ms. Abate that she should let counsel know whether she wanted the Company to serve her by some means other than email. On April 26, 2023, Ms. Abate emailed replying that she preferred service by US mail because she would be shutting down her email. On April 27, 2023, I advised Ms. Abate that I would have her information updated with the Commission so that she would receive all future service by first class mail.

This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Cletus Cibrone Abate who resides at 29 Briggs Street, Pittsburgh, Pennsylvania.⁴
2. Duquesne Light Company, the Respondent, is a jurisdictional public utility.
3. DLC issued a 10 day shut-off notice to Complainant dated July 10, 2018.⁵
4. DLC issued a 10 day shut-off notice to Complainant dated August 14, 2018.⁶
5. Complainant filed for bankruptcy in September 2020.⁷

⁴ Tr. 20, 21, 78.

⁵ DLC Exhibit 1.

⁶ DLC Exhibit 2.

⁷ Tr. 18.

6. Duquesne Light received notice of Complainant's bankruptcy filing on September 16, 2020, and Complainant's account balance at that time was \$3,813.93.⁸

7. DLC transferred Complainant's account balance to a bankruptcy account pending resolution of the bankruptcy case, and Complainant's account balance reset at \$0.00.⁹

8. As of one week prior to the second day of hearing, the bankruptcy case was still pending.¹⁰

9. DLC issued a 10-day shut-off notice to Complainant dated March 11, 2021.¹¹

10. DLC issued a 10-day shut-off notice to Complainant dated April 19, 2021.¹²

11. DLC issued a 10-day shut-off notice to Complainant dated May 11, 2021.¹³

12. DLC issued a 10-day shut-off notice to Complainant dated August 10, 2021.¹⁴

⁸ Tr. 131.

⁹ Tr. 132.

¹⁰ *Id.*

¹¹ DLC Exhibit 3.

¹² DLC Exhibit 4.

¹³ DLC Exhibit 5.

¹⁴ DLC Exhibit 6.

13. DLC issued a 10-day shut-off notice to Complainant dated November 8, 2021.¹⁵
14. DLC issued a 10-day shut-off notice to Complainant dated March 10, 2022.¹⁶
15. DLC issued a 10-day shut-off notice to Complainant dated May 9, 2022.¹⁷
16. On May 26, 2022, DLC issued a 72-hour termination notice to Complainant.¹⁸
17. After finding the May 26, 2022, notice on her door, Complainant submitted an application for a LIHEAP grant through the Department of Human Services.¹⁹
18. DLC issued a 10-day shut-off notice to Complainant dated June 8, 2022.²⁰
19. On June 10, 2022, Complainant filed an informal complaint with the Commission's Bureau of Consumer Services at Case No. 3843758.
20. When Complainant filed the informal Complaint, her outstanding balance was suspended from collections.²¹

¹⁵ DLC Exhibit 7.

¹⁶ DLC Exhibit 8.

¹⁷ DLC Exhibit 9.

¹⁸ Complainant Exhibit 14.

¹⁹ Tr. 80, 110.

²⁰ DLC Exhibit 10.

²¹ Tr. 136-137.

21. Because Ms. Abate’s outstanding balance was suspended from collections, her account was not under threat of termination, so DHS found her ineligible for a LIHEAP crisis grant.²²

22. On July 21, 2022, BCS issued a decision dismissing the informal complaint.

23. DLC issued a 10-day shut-off notice to Complainant dated August 11, 2022.²³

24. Complainant enrolled in DLC’s CAP on August 26, 2022.²⁴

25. Customers must provide documentation as part of a CAP application, and DLC cannot “force” any customer to apply for CAP.²⁵

26. On September 26, 2022, Ms. Abate filed a Formal Complaint with the Commission against DLC alleging that DLC had threatened to shut off her service numerous times over the last year, improperly denied her eligibility for a crisis grant from LIHEAP, hid a shut off notice on her door, and improperly denied her eligibility for enrollment in its Customer Assistance Program (CAP).

27. DLC issued a 10-day shut-off notice to Complainant dated November 8, 2022.²⁶

²² Tr. 137; Complainant Exhibit 12.

²³ DLC Exhibit 11.

²⁴ Tr. 140.

²⁵ *Id.*

²⁶ DLC Exhibit 12.

28. Complainant does not consistently pay her bill on time or in full.²⁷

29. There have been twenty-three payments, not counting LIHEAP grants, posted to Complainant's account in the twenty-nine months since Complainant filed for bankruptcy in 2020.

30. Complainant's account balance as of February 12, 2023, the most recent account balance listed in DLC's records prior to the second day of hearing, is \$925.80.²⁸

31. Complainant has a "no solicitation" sign posted on her front door.²⁹

32. Complainant found the May 26, 2022, 72-hour notice folded up in a clear plastic bag, hanging in between her glass door and front door.³⁰

33. Ms. Abate mistook the bag hanging on her door for a pizza delivery menu.³¹

34. When DLC serves a 72-hour notice at a customer residence, it is DLC's policy to fold the 72-hour termination notice so that all pertinent customer information, such as name and account number, are not visible,³² and include a "Here to Help" flyer which includes information to customers regarding different programs that may be able to help customers.³³

²⁷ DLC Exhibit 13; Tr. 83.

²⁸ DLC Exhibit 13.

²⁹ Tr. 17.

³⁰ Tr. 79.

³¹ Tr. 86.

³² Tr. 153.

³³ *Id.*

35. Since COVID, DLC has been providing the notice and flyer in a clear plastic bag.³⁴

36. When DLC attempts to serve the bag containing the 72-hour notice and flyer, it attempts to hand it directly to the customer, but if they do not answer the door, it is DLC's policy that the field operator will leave the bag at the door.³⁵

37. It is DLC's policy that if there is a screen door or storm door in front of the front door, and the operator is able to open that door, the operator will place the bag inside the screen door or storm door so the bag is protected and does not blow away.³⁶

38. If the operator cannot open the screen door or storm door, it is DLC's policy to not tape notices to glass doors because it may leave tape marks on the glass doors.³⁷

39. The 72-hour notice was served upon Complainant consistent with current DLC policy.³⁸

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the

³⁴ Tr. 153.

³⁵ Tr. 154.

³⁶ Tr. 153.

³⁷ Tr. 154.

³⁸ Tr. 156.

Commission.³⁹ A person who wants the Commission to do something to resolve their complaint has the burden of proof.⁴⁰

In this matter, Ms. Abate is the party asking for relief from the Commission; therefore, she has the burden of proof. This means, that Ms. Abate must present facts which support her claims and prove facts that show that Duquesne Light violated the Public Utility Code, regulation or Commission order by a preponderance of the evidence.⁴¹ The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁴²

In her Complaint, Ms. Abate makes multiple claims against DLC: (1) DLC threatened to shut off her service numerous times over the last year, (2) improperly denied her eligibility for a crisis grant from LIHEAP, (3) hid a shut off notice on her door, and (4) improperly denied her eligibility for enrollment in its Customer Assistance Program (CAP). She testified she does not believe DLC follows many protocols and acts arbitrarily.⁴³

DLC’s Multiple Termination Notices

Complainant alleges she has received multiple shut-off notices from DLC. Ms. Morris admitted Duquesne Light sent ten shut-off notices to Complainant after she filed her

³⁹ 66 Pa.C.S. § 701.

⁴⁰ 66 Pa.C.S. § 332(a).

⁴¹ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁴² *Id.*

⁴³ Tr. 14, 15. Ms. Abate also testified at the hearing that DLC improperly attached itself to her bankruptcy case and interfered with her efforts to obtain an alternate energy supplier. DLC objected to this testimony, arguing these claims were not properly pled in the Complaint. I sustained the objection, explaining that I would not adjudicate these allegations in my Initial Decision, but I would allow Ms. Abate to continue her testimony so as to not interfere with her narrative flow. Tr. 29-30.

bankruptcy petition in 2020,⁴⁴ but explained that customers only receive termination notices when their bills are delinquent.⁴⁵

Ms. Morris testified Duquesne Light received notice of Complainant's bankruptcy filing on September 16, 2020, and Complainant's account balance at that time was \$3,813.93.⁴⁶ Ms. Morris testified that the outstanding balance was transferred to a bankruptcy account until the bankruptcy proceeding was resolved.⁴⁷ Ms. Morris explained that after a customer files a bankruptcy petition, the customer starts their account balance at zero, and any billed amounts after filing for bankruptcy are not only due and payable, but they are also eligible for assistance programs.⁴⁸

DLC's records show that Complainant does not consistently pay her bill on time or in full,⁴⁹ and Ms. Abate admits she "may have fallen behind on [her post-bankruptcy petition] bill."⁵⁰ There have been twenty-three payments, not counting LIHEAP grants, posted to Complainant's account in the twenty-nine months since Complainant filed for bankruptcy in 2020. Complainant's account balance as of February 12, 2023, the most recent account balance listed in DLC's records, is \$925.80.⁵¹

The Commission's regulations provide that utilities may terminate service for nonpayment of a delinquent account.⁵² The utility must first provide notice to the customer

⁴⁴ Tr. 135; DLC Exhibits 3-12.

⁴⁵ Tr. 144.

⁴⁶ Tr. 131.

⁴⁷ Tr. 132.

⁴⁸ Tr. 135.

⁴⁹ DLC Exhibit 13.

⁵⁰ Tr. 83.

⁵¹ DLC Exhibit 13.

⁵² 52 Pa Code § 56.81 (a).

consistent with the Commission’s regulations, which require a 10-day termination notice⁵³ and a 72-hour termination notice.⁵⁴ Ms. Abate provided no evidence to support a finding that the issuance of any of the termination notices violated the Commission’s regulations. Therefore, this claim must be dismissed.

Complainant’s Eligibility for a LIHEAP Crisis Grant

After finding the termination notice at her door in May 2022, Complainant testified she applied for a LIHEAP crisis grant, and she was told she qualified for a grant in the amount of \$1,500.00.⁵⁵ Ms. Abate testified she continued to receive shut-off notices from DLC, so “out of desperation” she filed a complaint with the Commission, not realizing it would make her ineligible to receive the LIHEAP crisis grant.⁵⁶

On direct examination, Ms. Abate alleged DLC “denied her crisis grant”⁵⁷ and “prevented her from receiving it.”⁵⁸ She testified on cross examination that she understands now, after the fact, that filing a complaint with the Commission will automatically stay termination proceedings, which renders a customer ineligible for a LIHEAP crisis grant.⁵⁹ She said that had she received the LIHEAP crisis grant, it would have kept her “out of this mess.”⁶⁰ As relief, Ms. Abate testified she wants \$1,500.00, the amount she was told she would get in a LIHEAP crisis grant, applied to her account.⁶¹

⁵³ 52 Pa. Code § 56.91.

⁵⁴ 52 Pa. Code § 56.93.

⁵⁵ Tr. 25, 80-89. Ms. Abate did not specify who told her she was eligible.

⁵⁶ Tr. 80.

⁵⁷ Tr. 13.

⁵⁸ Tr. 25, 89.

⁵⁹ Tr. 119-120.

⁶⁰ Tr. 80.

⁶¹ Tr. 82.

Ms. Abate testified she applied for the LIHEAP crisis grant through the Department of Human Services (DHS)⁶² and appealed to their administrative court system when she was denied.⁶³

Ms. Morris explained the process for when a customer applies for a LIHEAP crisis grant. She testified that when a customer files a complaint with the Commission, the outstanding account balance is suspended from collections.⁶⁴ Ms. Morris explained that if a customer applies for a LIHEAP crisis grant while collection is suspended, the customer is not technically under threat of termination so they do not qualify for the crisis grant.⁶⁵

The record in this case demonstrates that Ms. Abate understands that it is DHS who determines eligibility for LIHEAP crisis grants, not DLC or the Commission.⁶⁶ As a creature of legislation, the Commission possesses only the authority that the General Assembly has specifically granted to it in the Public Utility Code. That is, the Commission has only the powers expressly conferred or necessarily implied by its enabling statute.⁶⁷ Although it has general jurisdiction over the rates and services of public utilities operating in Pennsylvania, the Public Utility Code simply does not grant the Commission the authority determine eligibility for LIHEAP crisis grants.⁶⁸ Therefore, this claim is dismissed.

⁶² Tr. 80.

⁶³ Tr. 110.

⁶⁴ Tr. 136-137.

⁶⁵ Tr. 137.

⁶⁶ The Notice issued by DHS to Ms. Abate regarding her ineligibility for the LIHEAP grant was entered into evidence by Ms. Abate as Complainant Exhibit 12. This Notice is clearly identified as a notice issued by DHS.

⁶⁷ *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny Cnty. Port Auth. v. Pa. Pub. Util. Comm'n*, 237 A.2d 602 (Pa. 1967). See also *Dep't of Env't Res. v. Butler Cnty. Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982), and *Pequea Twp. v. Dep't of Env't Prot.*, 716 A.2d 678, 686 (Pa. Cmwlth. 1998).

⁶⁸ *Terminato v. Pa. Nat'l Ins. Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995). See also *Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012).

DLC's Posting of The 72-Hour Notice on Complainant's Door

Ms. Abate testified she believed DLC was not following proper procedures regarding how it was supposed to provide shut-off notices to customers. She alleged DLC field operators “hid” a shut-off notice on her broken door that had a “no solicitation” sign posted.⁶⁹ She testified she found a 72-hour shut-off notice between her glass door and front door, tied to the glass door⁷⁰ and wrapped in a white piece of paper.⁷¹ She testified the front door was broken and had no doorknob in either the inside or outside.⁷² Ms. Abate attached pictures depicting how she found the notice on her front door.

Ms. Abate argues DLC sends emails to customers regarding Kwanza and Pride month, but puts shut-off notices on customer doors.⁷³ She further testified she has experience in door-to-door solicitation for religious and political purposes, and she was always instructed that one was never to touch a door with a “no solicitation” sign posted.⁷⁴ She testified it was her belief that the proper protocol is for DLC to tape the shut-off notice to the cement right in front of the door, which is what other utilities and DLC have done in the past.⁷⁵ She testified she believes DLC was trying to hide her shut-off notice⁷⁶ because “somebody has a problem” with her.⁷⁷ She opined that DLC field agents have a different protocol for interacting with customers who display political or religious symbols with which they disagree.⁷⁸

⁶⁹ Tr. 17.

⁷⁰ Tr. 79.

⁷¹ *Id.*

⁷² Tr. 18, 79.

⁷³ Tr. 15.

⁷⁴ Tr. 18.

⁷⁵ *Id.*

⁷⁶ Tr. 19.

⁷⁷ Tr. 45.

⁷⁸ Tr. 87-88.

Ms. Morris testified to DLC’s policies regarding the posting of termination notices. She testified the Commission’s regulations require DLC to provide notice either through phone or by a visit to the property.⁷⁹ Ms. Morris denied that DLC treats customers differently based on their political affiliation.⁸⁰ Ms. Morris clarified that customers only receive termination notices when their bills are delinquent.⁸¹

DLC also presented the testimony of Tiffany Kennedy, Field Supervisor of Field Collections. Ms. Kennedy testified she is responsible for training employees.⁸² She testified that in training, employees are taught how to fill out postings correctly and accurately, what to do once on site, how to package the notice, and where they are and are not allowed to leave the notice.⁸³ She explained that DLC employees are trained to follow the steps provided in training.⁸⁴

Ms. Kennedy testified her team receives the posting for a 72-hour notice after a customer receives a 10-day notice in the mail. She explained that DLC makes two attempts to contact the customer by phone, and if that is not successful, they send a field operator into the field to go to the customer’s residence and try to make contact with the customer.⁸⁵ She testified it is DLC’s policy to fold the 72-hour termination notice so that all pertinent customer information, such as name and account number, are not visible,⁸⁶ and include a “Here to Help” flyer which includes information to customers regarding different programs that may be able to

⁷⁹ Tr. 143.

⁸⁰ Tr. 143-144.

⁸¹ Tr. 144.

⁸² Tr. 153.

⁸³ Tr. 155.

⁸⁴ *Id.*

⁸⁵ Tr. 154.

⁸⁶ Tr. 153.

help customers.⁸⁷ Ms. Kennedy testified that since COVID, DLC has been providing the notice and flyer in a clear plastic bag.⁸⁸

She testified the goal is to hand the bag containing the 72-hour notice and flyer to the customer, but in the event they do not answer the door, the field operator will leave the bag at the door.⁸⁹ Ms. Kennedy explained that field operators are trained that if there is a screen door or storm door in front of the front door, and the operator is able to open that door, the operator will place the bag inside the screen door or storm door so the bag is protected and does not blow away.⁹⁰ If the operator cannot open the screen door or storm door, DLC tends not to tape notices to glass doors because it has received “a lot of customer complaints” about marks on the glass doors.⁹¹ Ms. Kennedy denied that DLC “hides” notices in customer’s doors.⁹²

Upon reviewing the photographs of the notice left at Complainant’s front door, Ms. Kennedy testified she has no reason to doubt that DLC’s policies were followed.⁹³

Ms. Kennedy also testified that it is DLC’s policy to disregard any “no solicitation” or “no trespassing” signs a customer may have posted at her door.⁹⁴ Ms. Kennedy testified that DLC is not selling anything when an operator leaves a notice, they are providing information to the customer, consistent with the Commission’s regulations.⁹⁵ Ms. Kennedy also denied that DLC treats customers differently based on their political affiliation.⁹⁶

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Tr. 154.

⁹⁰ Tr. 153.

⁹¹ Tr. 154.

⁹² *Id.*

⁹³ Tr. 156.

⁹⁴ Tr. 156, 159.

⁹⁵ Tr. 156, 161.

⁹⁶ Tr. 156.

The Commission’s regulations require a utility to attempt to make personal contact with a customer prior to termination.⁹⁷ The utility must attempt to contact the customer or responsible adult occupant, either in person, by telephone or electronically with the customer’s consent, to provide notice of the proposed termination at least three days prior to the scheduled termination.⁹⁸ If contact is attempted in person by a home visit, only one attempt is required.⁹⁹ The public utility shall conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit.¹⁰⁰

Merriam-Webster defines “conspicuous” as “obvious to the eye.”¹⁰¹ In this case, a DLC field operator hung the plastic bag containing the notice on the inside of the glass door.¹⁰² The notice is folded up with only white paper showing. Looking from the outside, it is not clear what the plastic bag contains. Ms. Abate testified she initially thought it was a “pizza” menu.¹⁰³

It is imperative that a customer recognize that a 72-hour shut-off notice has been posted on their property if one has been posted. The notice left at Ms. Abate’s property is not “obvious to the eye,” and does not comply with the regulation requiring that 72-hour notices be “conspicuously posted.” Not only is the plastic bag difficult to see behind the glass door, but it is not reasonable that a customer would recognize that the bag contains something so important as a 72-hour shut-off notice. I find DLC violated the 52 Pa Code § 52.93(2) by failing to “conspicuously post” the written notice at Ms. Abate’s residence.

⁹⁷ 52 § 56.94.

⁹⁸ 52 Pa. Code § 56.93(a).

⁹⁹ 52 Pa. Code § 56.93(a)(2).

¹⁰⁰ *Id.*

¹⁰¹ See Merriam-Webster, “Conspicuous,” at <https://www.merriam-webster.com/dictionary/conspicuous>.

¹⁰² Complainant Exhibit C-1.

¹⁰³ Tr. 123-124.

As for Ms. Abate’s allegation that DLC “hid” her notice because it disagreed with her political views, Ms. Kennedy explained in her testimony that the notice left at the door was left consistent with DLC’s practices and it appeared to her that the field operator who left the notice did so consistent with his or her training. Ms. Abate provided no evidence to support her discrimination allegation other than her own speculation. Assertions, personal opinions or perceptions do not constitute evidence.¹⁰⁴

Therefore, I find that DLC violated a Commission regulation, but did not do so due to discrimination against Ms. Abate’s political views.

Complainant’s Enrollment in DLC’s CAP

Complainant alleges DLC “did not give her the opportunity to participate in CAP.”¹⁰⁵ Complainant testified she had been trying to get enrolled in CAP since 2017, and she eventually gave up.¹⁰⁶ She argues DLC finally “forced” her to enroll after she filed the instant Complaint in 2022.¹⁰⁷

Ms. Morris explained that CAP is a program intended to help low-income families or households with a affordable payment plan, and give them an opportunity to receive arrearage forgiveness each time the customer makes a CAP payment.¹⁰⁸ Ms. Morris testified Complainant enrolled in DLC’s CAP in August 26, 2022, but denied that DLC forced Complainant to enroll.¹⁰⁹ Ms. Morris explained that customers must provide documentation as part of a CAP application, and DLC cannot “force” any customer to apply for CAP.¹¹⁰

¹⁰⁴ *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

¹⁰⁵ Tr. 14.

¹⁰⁶ Tr. 21.

¹⁰⁷ *Id.*

¹⁰⁸ Tr. 138.

¹⁰⁹ Tr. 138.

¹¹⁰ Tr. 140.

Complainant, during both days of hearing, indicated her desire to be removed from CAP.¹¹¹ She explained she would rather be on payment plan than remain on CAP.¹¹²

Ms. Morris explained that if Ms. Abate wants to be unenrolled from CAP, DLC will require her to pay her full account balance, including the amount currently eligible for arrearage forgiveness through CAP.¹¹³

When I questioned Complainant about her desire to be on a payment arrangement, she testified she does not want to be on a payment arrangement. I also note she did not check the box on the Formal Complaint form indicating she wanted a payment arrangement, and she did not present any evidence to support her eligibility for a payment arrangement.¹¹⁴ Complainant testified that the only relief she wants is to receive the crisis grant to which she believes she is entitled.¹¹⁵

Ms. Abate failed to present any detailed testimony to support her claim that DLC failed to enroll her in CAP. All she provided was a conclusory statement based on her personal opinion, which does not constitute evidence.¹¹⁶ Ms. Abate is currently enrolled in CAP, and DLC has provided her with the resources and information on how to disenroll if she still desires to do so. Therefore, this claim is dismissed.

Civil Penalty

¹¹¹ Tr. 22, 82.

¹¹² Tr. 23. Mr. Beane provided Ms. Abate Ms. Morris's contact information on the first day of hearing so she could discuss getting off of DLC's CAP if she chose to do so. Mr. Beane advised during the second day of hearing that Ms. Abate did not reach out, but he had called her prior to the second day of hearing and discussed what would happen to her account if she chose to be removed from CAP and reminded her to call Ms. Morris if she wanted to discuss further. Tr. 118.

¹¹³ Tr. 143.

¹¹⁴ I note that Complainant's current enrollment in CAP may affect her eligibility for a payment arrangement.

¹¹⁵ Tr. 29. Complainant also explained she wants DLC to "remove whatever restrictions it placed on her account so she can partner with Green Mountain Energy as her supplier, as she no longer wants DLC as her supplier. *Id.* As previously discussed, I will not be adjudicating this claim in this Initial Decision.

¹¹⁶ *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Having concluded that Duquesne Light failed to post “conspicuous” notice at Complainant’s residence in violation of the Commission’s regulation,¹¹⁷ it is appropriate to consider whether the Commission should assess a civil penalty for this violation.

Section 3301 of the Public Utility Code provides that if any public utility fails to comply with any Commission regulation it shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.00 per day of violation.¹¹⁸ To implement this section, the Commission has adopted certain standards that it will consider when imposing a civil penalty for violations of Commission directives and regulations.¹¹⁹ Section 69.1201(a) of the Commission’s regulations states:

The Commission will consider specific factors and standards in evaluating litigated ... cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.^[120]

These factors and standards to be considered are enumerated in subsection (c):

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing, or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

¹¹⁷ See 52 Pa. Code § 56.93.

¹¹⁸ 66 Pa.C.S. § 3301.

¹¹⁹ See 52 Pa. Code § 69.1201; see also, *Rosi v. Bell Atl.-Pa., Inc. & Sprint Commc’ns Co.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000) (*Rosi*).

¹²⁰ 52 Pa. Code § 69.1201(a).

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.^[121]

Even where the Commission concludes that there has been a violation of the Public Utility Code, the Commission may exercise its discretion and decline to assess a penalty.

As explained above, Duquesne Light failed to post "conspicuous" notice at Complainant's residence in violation of the Commission's regulations. It is indeed a serious

¹²¹ 52 Pa. Code § 69.1201(c).

violation of the Public Utility Code and Commission regulations to fail to comply with termination notice requirements.¹²² From Ms. Kennedy's testimony it seems that it is DLC policy to fold up the notices and place them in plastic bags behind closed doors. DLC folds up the notices in attempt to protect customer privacy, and places them behind glass doors to protect them from the elements, but these concerns do not outweigh DLC's obligation to post "conspicuous" notice. It is concerning to me that this is the official, taught policy of DLC. DLC intentionally and knowingly adopted this as its policy. There is no evidence, however, that DLC knew that its policy was violating Commission regulations. This factor suggests a lower penalty be imposed.

The resulting consequences of the conduct are of an extremely serious nature. Although the behavior did not result in personal injury or property damage, it resulted in a customer not receiving "conspicuous" notice of a proposed 72-hour termination. Notice is a central, integral part of the Commission's regulations regarding service termination. Proper notice is *absolutely necessary* so customers become aware of an impending service termination and can take proper steps such as make a payment on their account, reach out to the company or other resources for assistance, or prepare for a termination of electric service, which customers may rely upon for life-sustaining medical devices. This factor warrants a higher penalty.

Another factor the Commission considers is the number of customers affected by the violation. In this case, there is no evidence in the record that other customers were affected, but it is extremely concerning that this is the official, taught policy of DLC. It is unclear how long this has been the policy of DLC, but Ms. Kennedy testified they have been folding up notices and putting them in plastic bags "since Covid." It is unlikely that Ms. Abate was the only customer to receive a 72-hour notice from DLC like this. Since this is the official policy of DLC, this warrants a higher penalty.

¹²² 52 Pa. Code § 69.1201(c)(1).

Other factors require consideration of the utility’s efforts to modify its internal practices and procedures and the utility’s compliance history.¹²³ There is no evidence in the record on either of these points, therefore these factors play no role in my determination of a reasonable civil penalty here. Similarly, there was no Commission investigation at issue, therefore this factor is irrelevant in this case and plays no role in my determination.

The final and arguable most pivotal factor is the amount of penalty necessary to deter future violations.¹²⁴ Duquesne Light is a large public utility. The violation here involves DLC’s policy for providing 72-hour notices to customers. DLC must understand that their current policy is not consistent with the Commission’s regulations. DLC must alter their policy and retrain their field operators to post “conspicuous” notice in compliance with the Commission’s regulations.

The May 26, 2022, 72-hour notice indicated Ms. Abate would not have her service terminated before May 31, 2022, as long as she made the required payment. It is possible the notice would have hung in Ms. Abate’s door for five days before Ms. Abate’s service was terminated on May 31, 2022. In weighing the above factors, I determine that a civil penalty totaling \$ 250 per day (\$1,250 total) is appropriate. This amount is considerably less than \$1,000 per day which the statute authorizes, but is sufficient to deter Duquesne Light from repeating the same course of conduct and understanding the seriousness of the violation.

More importantly, DLC must alter their policy and retrain their field operators to post “conspicuous” notice in compliance with the Commission’s regulations. The current policy does not put customers on notice that the plastic bag is from DLC or that it contains important information. It could reasonably be mistaken as an advertisement from a pizza delivery company, as is what happened to Ms. Abate. While it is not for the Commission to dictate DLC’s business practices, might I suggest that DLC consider using a brightly colored bag, with the text “Duquesne Light Company, Important Notice Enclosed” clearly and boldly printed on

¹²³ 52 Pa. Code § 69.1201(c)(4), (6).

¹²⁴ 52 Pa. Code § 69.1201(c)(8).

the bag. However DLC alters its policy, it must be obvious to customers standing from a distance that the bag is from Duquesne Light and that it contains an important notice.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. As a creature of legislation, the Commission possesses only the authority that the General Assembly has specifically granted to it in the Public Utility Code. That is, the Commission has only the powers expressly conferred or necessarily implied by its enabling statute. *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Authority v. Pa. Pub.Util.Comm'n*, 237 A.2d 602 (Pa. 1967). *See also Dep't of Env. Res. v. Butler Cnty. Mushroom Farm*, 454 A.2d 1, 4 (Pa. 1982), and *Pequea Twp. v. Dep't of Env't Protection*, 716 A.2d 678, 686 (Pa. Cmwlth. 1998).

4. Duquesne Light failed to post “conspicuous” 72-hour notice as required by the Commission’s regulations. 52 Pa.Code § 56.93.

5. The Commission has the authority to direct Duquesne Light to alter its policies to become consistent with the Commission’s regulations. 66 Pa.C.S. § 1505.

6. Section 3301(a) and (b) of the Public Utility Code authorizes the Commission to impose a maximum civil penalty of \$1,000.00 per day for violations of the statute, regulations and orders. 66 Pa.C.S. § 3301(a) and (b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Cletus Cibrone Abate in Cletus Cibrone Abate v. Duquesne Light Company at Docket F-2022-3035653 is sustained in part and denied in part.

2. That the Complaint is sustained in that Duquesne Light Company must revise its policy regarding the posting of 72-hour notices.

3. That the Complaint is otherwise dismissed.

4. That within 30 days of the Commission's final order in this proceeding Duquesne Light shall adopt a new policy regarding the posting of 72-hour notices, and perform any necessary retraining, such that the new policy ensures customers receive "conspicuous" notice, as is required by 52 Pa.Code § 56.93.

5. That within 30 days of entry of the final order of the Commission, Duquesne Light Company shall remit a civil penalty in the amount of \$1,250 in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

6. That, if Duquesne Light Company fails to make the civil penalty payment required by Ordering Paragraph No. 5 above, within thirty (30) days of the entry date of the final order of the Commission in this matter, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

7. That upon payment of the penalty, and adoption of a new 72-hour notice policy, this docket shall be marked closed.

Date: August 14, 2023

/s/
Emily I. DeVoe
Administrative Law Judge