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September 1, 2023

Via Electronic Filing

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

Re: Cletus Cibrone Abate v. Duquesne Light Company
Docket No. F-2022-3035653

Dear Secretary Chiavetta:

Enclosed for filing is Duquesne Light Company's Exceptions to the Initial Decision in the above-referenced matter. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please contact me.

Best Regards

STEVENS & LEE



Michael A. Gruin

Enclosures

cc: Certificate of Service
Administrative Law Judge Emily I. DeVoe
Office of Special Assistants (via electronic mail)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CLETUS CIBRONE-ABATE	:	
Complainant	:	
v.	:	Docket No. F-2022-3035653
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	

DUQUESNE LIGHT COMPANY’S EXCEPTIONS TO INITIAL DECISION

Pursuant to 52 Pa. Code §5.533, Duquesne Light Company (“Duquesne Light”) hereby files exceptions to the Initial Decision (“I.D.”) of Administrative Law Judge Emily I. DeVoe (the “ALJ”) in the above-referenced matter. The I.D. incorrectly concluded that Duquesne Light failed to conspicuously post a 72-hour termination notice, that Duquesne Light’s protocols for posting such notices are unreasonable, and that the assessment of a civil penalty is warranted under the facts of the case. To the contrary, the record in this case clearly establishes that 1) Duquesne Light posted a 72-hour termination notice at the Complainant’s home, 2) the Complainant admitted that she saw and opened the termination notice about which she complains, 3) Duquesne Light’s protocols for posting termination notices are reasonable and were followed in this case, and 4) the Complainant’s electric service was never terminated. For these reasons, it was erroneous to find that Duquesne Light violated the Commission’s regulation which requires a utility to “conspicuously post” a termination notice, and there is no basis for imposing a civil penalty or requiring a modification to Duquesne Light’s notice posting protocols.

I. BACKGROUND AND PROCEDURAL HISTORY

On or about September 27, 2022, Duquesne Light was served with a Formal Complaint (“Complaint”) filed by Cletus Marie Cibrone-Abate (“Complainant”). The Complaint alleges that Duquesne Light intentionally “hid” a 72-hour termination notice on a broken door handle inside a screen door, posted a 72-hour termination notice in contravention of a “no solicitation” placard, and impermissibly interfered with an application to secure a Low Income Home Energy Assistance Program (“LIHEAP”) crisis grant and requests for Customer Assistance Program (“CAP”) benefits, all on account of a Donald J. Trump flag that hangs in Complainant’s window. ***Complaint, pp. 2-3.*** The Complainant maintains Duquesne Light discriminated against her on the basis of her political beliefs. ***Complaint, p. 3.*** In its *Answer and New Matter* (“Answer”), Duquesne Light denies all of the material allegations in the Complaint. ***Answer, pp. 1-5.***

Evidentiary hearings in this matter were held over the course of two days, on March 2, 2023, and March 20, 2023. Complainant testified on her own behalf and submitted 15 Exhibits into the record. Duquesne Light presented the testimony of two witnesses, including its Supervisor of Field Collections, and submitted 20 exhibits into the record.

The I.D. was issued on August 14, 2023, and found that Duquesne Light violated 52 Pa. Code §52.93 by failing to “conspicuously post” the 72-hour shut-off notice at the Complainant’s residence. ***I.D., Discussion, p. 17.*** The I.D. dismissed the Complaint in all other respects due to Complainant having failed to meet her burden of proof. ***I.D., Order, p. 25.*** The I.D. recommends the assessment of a civil penalty in the amount of

\$1,250.00 for the purported violation of 52 Pa. Code §52.93 and directs Duquesne Light to adopt a new policy regarding the posting of 72-hour termination notices. *I.D., Discussion, p. 23.*

II. RELEVANT LEGAL AUTHORITY

The Commission’s regulations require a utility to attempt to make personal contact with a customer prior to termination. *52 Pa Code §56.94.* 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 proposed termination at least three days prior to the scheduled shut-off. *Id. at §56.93(a).* If contact is attempted in person by a home visit, only one attempt is required. *Id. at §56.93(a)(2).* In the event of a home visit, 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. *Id.*

III. EXCEPTIONS

A. EXCEPTION NO. 1 -The I.D. incorrectly determined that DLC Duquesne Light failed to “conspicuously post” a 72-hour termination notice at the Complainant’s residence.

The I.D. found that Duquesne Light violated 52 Pa. Code §52.93(2) (**Conclusion of Law 4**) and ordered Duquesne Light to revise its policy regarding the posting of 72-hour notices. *I.D., p. 25.* The I.D.’s finding of a violation of 52 Pa. Code §52.93 was based solely on the determination that Duquesne Light failed to “conspicuously post” a 72-hour termination notice at the Complainant’s residence. Duquesne Light respectfully submits that this finding is not supported by the evidence in the record and should be overturned. In fact, this finding is expressly contradicted by the evidence in the record.

First of all, it is undisputed that Duquesne Light posted a 72-hour termination notice at the residence, after first attempting to contact her by telephone without success.¹ Indeed, the Complainant admitted that that Duquesne Light posted a 72-hour written termination notice at her home, but argued that the physical placement of the notice was somehow improper. At the hearing, Complainant testified that she found a 72-hour termination notice folded-up in a clear plastic bag, hanging in between her glass storm door and front door, due to the fact that the front door had a broken doorknob. *N.T., p. 79, 94. See also I.D., Finding of Fact 32, and Discussion, p. 14.* The door in question was the closest door to the roadway, as reflected in Complainant’s Exhibits 1-4 and 11. Notably, there is no evidence in the record that the notice was in any way difficult to see or read. The Complainant said nothing about the notice being difficult to find, but instead quibbled with the precise location of the placement of the notice at her home, and alleged it was unreasonable for Duquesne Light to place a termination notice inside her screen door. *N.T., p. 18.* Complainant simply opined that the 72-hour termination notice should have been taped to the cement next to her entrance door instead. *Id.*

Again, Complainant does not deny that she received the 72-hour notice in advance of termination. *N.T., pp. 24, 79-80.* Furthermore, service was never terminated at Complainant’s residence, because she found the notice posted at her entrance door on May 26, 2022 and took appropriate action to prevent termination. **See Complainant’s Exhibit 14** and *N.T., pp. 79-80, 137.* The simple fact is that Duquesne Light timely posted the 72-hour termination notice at the Complainant’s residence, the Complainant saw the notice and reviewed it prior to the date scheduled for termination, and took the

¹ The attempts to contact the Complainant by telephone on May 24, 2022 is reflected in Duquesne Light’s Exhibit 18. Notably, the 72-hour phone call attempt was only unsuccessful because the Complainant failed to inform the Company that she had since received a new telephone number.

necessary steps to avoid termination of service by applying for a LIHEAP Grant. *N.T., pp. 24,79-80, 137.* Under these circumstances, there is no basis for a finding that Duquesne Light’s posting was not “conspicuous” or that Duquesne Light violated §56.93(a)(2).

The I.D. took issue with Duquesne Light’s existing policy of folding termination notices and placing them in plastic bags. See *I.D., at p. 22.* However, Duquesne Light provided the credible and un rebutted testimony of its Supervisor of Field Collections, Tiffany Kennedy, who explained the rationale for placing the termination notice where it was placed. *See N.T., pp. 152-160.* This testimony regarding Duquesne Light’s notice posting protocols and the manner of posting in this instance demonstrates that the posting was not carried out in an unreasonable or improper fashion. Ms. Kennedy testified that consistent with Commission regulations, Duquesne Light makes two attempts to contact customers by phone to advise when service is scheduled to be terminated for non-payment, and if Duquesne Light is unable to reach the customer by phone, then a visit to the property is scheduled to post a 72-hour termination notice. *N.T., p. 154.* Ms. Kennedy described how postings occur as follows:

We supply the actual 72-hour notice, which is folded so that all pertinent customer information, such as name and account number are not visible. We have, since COVID, also provided a flyer, ‘*Here to Help*’ flyer, which pertains to different programs that are available for people who may need assistance with their bill. Both postings are put into a clear plastic bag. Again, no customer information is to be showing. And then at that point, we will go up to the customer’s door. If we’re able to get that front door or that screen door open, we will put it on the inside door to help keep it protected so it doesn’t blow away. So if that door is unable to be opened, we will tape it to the door, but that’s-we tend not to tape it to the door. We’ve had a lot of customer complaints about the marks of tape on their glass doors.” *N.T., pp., 153-54. I.D., Findings of Fact, 34-38, and Discussion, pp. 15-16.*

The manner of providing notice in this instance was conspicuous and followed an established posting protocol that is reasonable and based on practical considerations, as explained by Ms. Kennedy. Ms. Kennedy testified that the intent of making sure the customer's name and account number are not visible as part of the posting is not to hide that information from the customer, but to shield such sensitive information from the public. Ms. Kennedy further testified that the intent of posting between the screen and entrance doors is to protect the paperwork from blowing away. *Id.* Ms. Kennedy further testified that the intent of not taping postings to dwellings is in response to the receipt of customer complaints about tape marks. Duquesne Light submits that the process it uses to shield sensitive information from the public, to protect that termination notices from blowing away, to enclose notices in plastic to avoid weather damage, and to prevent postings from damaging dwellings, is reasonable on its face, and there is no evidence in the record to support a contrary finding.

Finally, the I.D.'s finding that the notice left at the property was not "obvious to the eye" is contradicted by the fact that the Complainant did, in fact, see and read the notice. She testified that she specifically remembered seeing it on Memorial Day weekend, which is consistent with the May 26, 2022 date on the notice. *See N.T. pp. 18, 24 and Complainant's Exhibit 14.* Duquesne Light submits that because Complainant saw, opened and read the 72-hour termination notice in advance of the proposed termination date, and because the record lacks any evidence that the notice left at Complainant's property was not obvious to the eye, the placement and delivery of the 72-hour termination notice in this instance was clearly conspicuous. The Complainant discovered the notice hanging on her entrance door, and initiated steps to forestall

termination by applying for a LIHEAP Grant. *N.T., pp. 79-80*. Her service was not terminated. *N.T., p. 137*. Duquesne Light's posting policy accomplished its objective, namely its customer received actual notice of a pending termination and used that notice to take action to stop the termination. In light of these facts, it was not proper for the Initial Decision to hold that the method of Duquesne Light's posting was unreasonable or in violation of the Commission's regulations.

B. EXCEPTION NO. 2 – There is no basis for ordering a civil penalty against Duquesne Light or for requiring modifications to Duquesne Light's notice posting procedures.

Duquesne Light's first Exception explains why there is no justification for finding that Duquesne Light violated 52 Pa. Code §52.93(2). Because there is no basis for finding a violation of the "conspicuous posting", there is no basis for ordering Duquesne Light to pay a civil penalty under the circumstances of this case, and no justification for ordering Duquesne Light to modify its notice posting protocols.

The Commission has in the past ordered civil penalties against utilities for failure to comply with notice posting requirements. But an examination of one such Commission decision illustrates why no civil penalty is warranted in this case. In *Sanchez v. PPL Electric Utilities Corporation*, Docket No. C-2015-2472600 (Order entered July 21, 2016), the Commission found that PPL terminated service to its customer without attempting personal contact in compliance with 66 Pa. Code § 1406(b)(1)(iv). In that case – in which no personal contact was attempted and service was actually terminated, the Commission determined that a \$500 civil penalty was appropriate.

By contrast, in the current case, there is no dispute that 1) the customer did receive a 72-hour termination notice and 2) the customer's electric service was never

terminated, yet the I.D. recommends a civil penalty of \$1,250 on the basis that the terminated notice was not posted “conspicuously” enough. This recommended civil penalty is 250% greater than the civil penalty order in *Sanchez*, in which it was determined that no personal contact was made and service actually was terminated. Because the finding that Duquesne Light’s notice was not conspicuously posted is not supported by the record and is contradicted by the fact that the customer did in fact see the notice in time to take action on it, there is no basis for finding a violation of the Commission’s notice posting regulations. And even if it is determined that there was a justifiable basis for finding a violation, then the recommended civil penalty certainly is not appropriate under the ninth *Rosi* factor (52 Pa. Code § 69.1201(c)(9)), when compared to the result in the *Sanchez* case which involved a clear-cut violation and an actual termination of service.

Similarly, Duquesne Light respectfully submits that no modification to its notice posting policies is justified under the facts of this case because the I.D.’s finding of DLC’s notice not being conspicuous is not supported by the record, and Duquesne Light provided un rebutted, credible evidence to support the reasonableness of its notice posting policies.

CONCLUSION

For the reasons set forth above, DLC respectfully requests that the Commission issue an Order which:

- 1) rejects the finding in the I.D. that Duquesne Light’s 72-hour termination notice was not conspicuous;
- 2) rejects the finding that Duquesne Light’s posting policy is unreasonable;

- 3) rejects the I.D.'s proposed civil penalty; and
- 4) dismisses the Complaint in its entirety.

Respectfully submitted,



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Dated: September 1, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing *Exceptions of Duquesne Light Company to Initial Decision* upon the Complainant, via Federal Express, in accordance with the requirements of 52 Pa.Code §1.54 relating to service by a party.

Cletus Marie Cibrone-Abate
29 Briggs St.
Pittsburgh, PA 15234



Michael Gruin

DATED: September 1, 2023