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October 16, 2023

VIA EFILE

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

Re: Roy Arthrell v. Duquesne Light Company
Docket No. F-2023-3042398

Dear Secretary Chiavetta:

Enclosed for filing is the Motion for Judgment on the Pleadings of Respondent, Duquesne Light Company to the above-referenced Complaint. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Donald R. Wagner

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROY ARTHRELL	:	
Complainant	:	
	:	
v.	:	Docket No. F-2023-3042398
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

NOTICE TO PLEAD

To: Roy Arthrell

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 this Motion for Judgment on the Pleadings, 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 Motion for Judgment on the Pleadings could result in the dismissal of your case.

STEVENS & LEE



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: October 16, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROY ARTHRELL	:	
Complainant	:	
	:	
v.	:	Docket No. F-2023-3042398
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

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

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 Roy Arthrell’s Complaint should be dismissed because he is not entitled to the requested relief and his formal complaint is merely an attempt to delay regulatory action to require payment of monthly bills for electric service.
2. Complainant’s allegations stem from his account balance that is a direct result of his actual electric usage and his repeated use of dilatory tactics to avoid paying his electric bill.
3. Complainant is not eligible for a payment arrangement as the Complainant’s poor payment history, failure to comply with payment arrangements and high past due account balance demonstrates a lack of good faith effort to pay his utility bills.
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 the current balance owed to the Company is paid in full.

II. FACTUAL AND PROCEDURAL BACKGROUND

5. On or about August 14, 2023, Complainant filed the Complaint against Duquesne Light.

6. In the Complaint, Complainant acknowledges that Duquesne Light shut off his electric service on his account associated with 116 Orchard Drive, Pittsburgh, Pennsylvania 15236. Complaint ¶6.

7. As relief, Complainant requests a payment arrangement. Complaint ¶6.

8. Duquesne Light filed an Answer and New Matter to the Complaint on September 12, 2023.¹

9. In its Answer and New Matter, Duquesne Light admitted that, in accordance with its Commission-approved tariff and applicable PUC regulations, the Company shut off Complainant’s electric service on August 2, 2023 for failure to pay past due amounts. Answer and New Matter ¶6.

10. In its Answer and New Matter, Duquesne Light also admitted that Complainant requested a payment arrangement, but averred that Complainant was ineligible for a payment arrangement because Complainant, in the last seven years, has had eight payment arrangements with the Company and one payment issued by the Commission, and has defaulted on each of the nine payment arrangements. Answer and New Matter ¶6.

¹ 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.

11. Thirty-four (34) days have elapsed since Duquesne Light Filed its Answer and New Matter on September 12, 2023.

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

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. 52 Pa. Code § 5.102(d)(1). 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 provisions of 52 Pa. Code §5.102 serve 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. Cmwlt. 1989).

18. The pleadings in this case reveal that Duquesne Light is entitled to judgment as a matter of law.

19. The Company is entitled to receive payment for the service it provides, and the Complainant must pay the Company for the service he consumes. *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa. P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlt. 1982). The Company has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all its remaining customers must pay. 66 Pa.C.S. § 1402(1).

20. 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 *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 at 11 (Order entered Sept. 12, 2013) ("The issuance of a payment arrangement is a matter within the Commission's discretion"). 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 Dec. 6, 2007); *Stephanie Maxwell v. Philadelphia Gas Works*, Docket No. C-2017-2607397, 2018 WL 705075, at *4 (Pa. P.U.C., Jan. 12, 2018).²

21. A payment arrangement is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, 2004 WL 1372864, at *2 (Pa. P.U.C. March 17, 2004).

22. The Commission thus “should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside of their control.” *Crawford v. Nat’l Fuel Gas Distrib. Corp.*, Docket No. C-20066348, 2007 WL 4699560, at *9.

23. The Commission has held that a customer has not demonstrated a good faith effort to pay his or her utility bills if the customer has a poor payment history, has repeatedly violated past payment arrangements, or has accumulated a large account balance. *See, Oliver, Jr. v. Pennsylvania Electric Company*, Docket No. F-2017-2595557, 2017 WL 5564159, at *6 (Pa. P.U.C. Oct. 19, 2017) (Commission declined to issue payment arrangement where customer had poor payment history, defaulted on four prior payment arrangements with the utility, and had an outstanding balance in excess of \$14,000);³ *Picket v. Phila. Gas Works*, Docket No. C-2014-2444967, 2015 WL 5915467, at *6 (Pa. P.U.C. Oct. 1, 2015) (Commission declined to issue payment arrangement on non-CAP arrears where customer had poor payment history of six payments in last 12 months, defaulted on Company payment arrangements and accrued a large balance in arrears); *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, 2013 WL 5232291, at *7 (Pa. P.U.C. Sept. 12, 2013) (Commission refused to issue payment arrangement on non-CAP arrears where customer has poor payment history and defaulted on prior payment arrangements).

² Opinion and Order entered August 23, 2018, 2018 WL 4185483 (Pa. P.U.C.)

³ Opinion and Order entered January 25, 2019.

24. Complainant is not entitled to a payment arrangement because he has not made a good faith attempt to pay for his electric service. Complainant consistently fails to pay his electric bills timely and in full each month. See Answer and New Matter Exhibit C. Complainant made no payments on his account in 2022 and as of August 31, 2023, only three payments posted to his account in calendar year 2023, two of which were grants and the remaining payment was a restoration payment to restore service for a prior service shutoff at the Service Address for failure to pay past due amounts. Answer and New Matter ¶¶14.

25. Complainant has had eight payment arrangements with the Respondent and one issued by the Commission and has defaulted on each of the nine payment arrangements by failing to make timely, in-full payments. See Answer and New Matter Exhibit A and Exhibit C.

26. As of September 12, 2023, Complainant's total account balance is in excess of \$25,000.00. Answer and New Matter ¶¶14, Answer and New Matter Exhibit C.

27. Additionally, 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).

28. The Complainant has a history of (i) filing informal complaints with the BCS; (ii) filing medical certifications with the Company but not meeting his obligation under 56 Pa. Code § 56.116 to equitably make payments on all bills; and (iii) agreeing to payment arrangements which he fails to follow-through on; in each instance, to delay, avoid termination of service for failure to pay past due amounts or to restore service. Answer and New Matter ¶¶19–56.

29. Customers are obligated to pay for utility service. The cost of the unpaid bills falls 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).

30. The pattern of filing complaints, medical certificates, and agreeing to payment arrangements without complying with such arrangements 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).

31. "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).

32. Here, Complainant's pattern of filing complaints, medical certificates, and agreeing to payment arrangements without complying with such arrangements employed by the Complainant is merely an attempt to delay regulatory action to require payment of monthly bills for electric service and, in the interest of protecting other ratepayers, must not be allowed to 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 the current balance on his account is paid in full.

Respectfully submitted,

STEVENS & LEE



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COUNSEL FOR DUQUESNE LIGHT COMPANY

Dated: October 16, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROY ARTHRELL	:	
Complainant	:	
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v.	:	Docket No. F-2023-3042398
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

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 AND FIRST CLASS U.S. MAIL

Roy Arthrell
116 Orchard Dr.
Pittsburgh, PA 15236
Email: arthrellr@yahoo.com
*Accepts eService



Donald R. Wagner

Dated: October 16, 2023