

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 21, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss, Concurring In Result Only
John F. Coleman, Jr.

Cletus Cibrone Abate

F-2022-3035653

v.

Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Duquesne Light Company (DLC or Company) filed on September 1, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Emily I. DeVoe, which was issued August 14, 2023, in the above-captioned proceeding. No Replies to the Exceptions were filed. For the reasons discussed below, we shall grant DLC's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order.

I. History of the Proceeding

On September 26, 2022, Cletus Cibrone Abate (Ms. Cibrone Abate or Complainant) filed a Formal Complaint (Complaint)¹ against DLC in which she alleged that DLC was threatening to shut off her electric service and that she was having reliability, safety, or quality problems with her service. Complaint at 2-3. Specifically, Ms. Cibrone Abate alleged that DLC: threatened to shut off her service numerous times over the past year; improperly denied her eligibility for a crisis grant from the Low-Income Energy Assistance Program (LIHEAP); obscured a termination notice on her door; and improperly denied her eligibility for enrollment in DLC's Customer Assistance Program (CAP). *Id.* The Complainant further averred that DLC treated her differently because of her political beliefs and display of a political flag at her residence. *Id.* at 3-4. As for relief, the Complainant requested that DLC honor her request for the crisis grant and that the Company be directed not to "hide" shutoff notices. *Id.* at 4.

On October 17, 2022, DLC filed an Answer denying all material allegations in the Complaint and admitting that it notified the Complainant of its intent to shut off the Complainant's electric service due to the failure to pay past due amounts in accordance with the Commission's Regulations. Answer at 1. DLC averred that Ms. Cibrone Abate established service in her name on July 1, 2002. *Id.* According to DLC, the Complainant filed for Chapter 13 bankruptcy on September 4, 2020, and the outstanding balance on the Complainant's account (\$3,813.93) was transferred to a bankruptcy account. *Id.* The Complainant then enrolled in the Company's CAP on August 26, 2022. *Id.* at 1-2. As of October 5, 2022, the bankruptcy case was active. *Id.* at 2.

¹ Ms. Cibrone Abate's Informal Complaint, filed on June 10, 2022 in this matter, was previously denied by a determination of the Commission's Bureau of Consumer Services (BCS) at Case No. 3843758. This Complaint is a timely appeal of that BCS decision. An appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

In its Answer, DLC further asserted that since the filing of Ms. Cibrone Abate's bankruptcy case, it has acted in accordance with its Commission-approved tariff and applicable Commission Regulations when it issued nine termination notices to Ms. Cibrone Abate for past due account balances that accrued after the bankruptcy case was filed. Answer at 2. DLC also denied hiding any termination notice and submitted that the termination notices were appropriate given of the Complainant's failure to pay her electric bill on time and in full. *Id.* at 4.

Initially, this case was assigned to the Office of Administrative Law Judge's Mediation Unit. I.D. at 2. On January 9, 2023, the Commission issued a Hearing Notice assigning ALJ DeVoe to the case as the presiding officer and scheduling an evidentiary hearing for March 2, 2023. *Id.* On January 9, 2023, ALJ DeVoe issued a Prehearing Order. *Id.*

On March 2, 2023, the hearing convened as scheduled. I.D. at 2. Mr. David Beane, Esquire, appeared on behalf of DLC. *Id.* The Complainant, who appeared *pro se*, requested an opportunity to submit proposed exhibits. *Id.* at 2-3. The hearing was adjourned to allow the Complainant the opportunity to submit the proposed exhibits. *Id.* at 3.

On March 2, 2023, the Commission issued a Hearing Notice, scheduling a further hearing for March 20, 2023. I.D. at 3.

On March 6, 2023 and March 8, 2023, Ms. Cibrone Abate served her proposed exhibits upon ALJ DeVoe and counsel for DLC. I.D. at 3.

On March 20, 2023, the hearing resumed as scheduled. I.D. at 3. Ms. Cibrone Abate appeared *pro se* and testified on her behalf. *Id.* The Complainant's Exhibits 1-15 were admitted into the record. *Id.* Attorney Beane appeared on behalf of

DLC and presented the testimony of Roxanne Morris, Supervisor of Regulatory Consumer Relations, and Tiffany Kennedy, Supervisor of Field Collections. *Id.* DLC Exhibits 1-14 were admitted into the record. *Id.* Ms. Cibrone Abate then requested an opportunity to submit a written brief in lieu of oral closing arguments. *Id.*

On April 11, 2023, ALJ DeVoe issued an Interim Order establishing a briefing schedule to accommodate the Complainant's request to file a written brief. I.D. at 3. The Interim Order set the due date for Main Briefs on April 25, 2023 and Reply Briefs on May 9, 2023. *Id.* DLC filed its Main Brief on April 25, 2023. *Id.* The Complainant did not file a brief. *Id.*

On August 14, 2023, the Commission served ALJ DeVoe's Initial Decision, which dismissed three of four of Ms. Cibrone Abate's allegations. ALJ DeVoe sustained Ms. Cibrone Abate's claim that DLC failed to conspicuously post the written 72-hour termination notice in violation of 52 Pa. Code § 52.93 and imposed a civil penalty of \$1,250 for this violation.

As noted, *supra*, DLC filed Exceptions on September 1, 2023. The Complainant did not file Replies to Exceptions.

II. Discussion

A. Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*,

72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Company. If the evidence presented by the Company is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Additionally, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

B. The ALJ's Initial Decision

In the Initial Decision, ALJ DeVoe made thirty-nine (39) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 4-9, 24. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Regarding Ms. Cibrone Abate's allegation that DLC sent her multiple shutoff notices, the ALJ noted the testimony of the Company's witness that after a customer files for bankruptcy, the account balance begins at zero and any billed amounts after the filing for bankruptcy are not only due and payable but the customer is also eligible for assistance programs. I.D. at 11; Tr. at 135. The ALJ considered DLC's records which indicated that the Complainant did not consistently pay her bill on time or in full and noted the most recent account balance in DLC's records from February 12, 2023, showing a balance of \$925.80. *Id.*; DLC Exhibit 13. ALJ DeVoe stated that the Commission's Regulations allow utilities to terminate service for nonpayment of a delinquent account provided that the utility provides notice in accordance with 52 Pa. Code §§ 56.91 and 56.93. I.D. at 12. Finding that DLC did not violate Commission Regulations and that the Complainant provided no evidence to support her claim, ALJ DeVoe dismissed Ms. Cibrone Abate's first claim. *Id.*

Next, ALJ DeVoe turned to the Complainant's allegation that DLC denied her eligibility for a LIHEAP crisis grant. The ALJ noted that during the hearing, Ms. Cibrone Abate testified that after finding a termination notice at her door in May of 2022, she applied for a LIHEAP crisis grant and was told that she qualified in the amount of \$1,500.00. I.D. at 12. The Complainant stated that as she continued to receive shutoff notices from DLC, she filed a Complaint with the Commission without realizing it would deem her ineligible to receive the LIHEAP grant. *Id.* The Initial Decision noted the

testimony of DLC witness Morris that when a customer files a complaint with the Commission, the outstanding account balance is suspended from collections and that if the customer then applies for a LIHEAP grant, the customer is technically not under threat of termination due to the suspended account balance, so the customer does not qualify for the crisis grant. *Id.* at 13.

The ALJ stated that while the Commission has general jurisdiction over the rates and service of public utilities operating in Pennsylvania, the Code does not grant the Commission the authority to determine eligibility for LIHEAP crisis grants. I.D. at 13, citing *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. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995). *See also, Pettko v. Pa. American Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012). The Initial Decision pointed to the fact that Ms. Cibrone Abate understood that it is the Department of Human Services that determines eligibility for the LIHEAP crisis grant and not DLC or the Commission. I.D. at 13.

As for the Complainant's claim that DLC violated the Commission's Regulations by hiding a 72-hour termination notice between the Complainant's glass door and front door on May 26, 2022, due to her political affiliation, the Initial Decision noted DLC's testimony regarding its policies for posting termination notices. I.D. at 15. DLC's witness, Ms. Morris, explained that the Commission's Regulations require a utility to provide termination notice either by phone or visit to the property of a customer with a delinquent bill. *Id.* Ms. Morris denied that DLC treats customers differently based on their political affiliation. *Id.* Additionally, DLC's witness, Ms. Kennedy, testified that it is DLC's policy to fold the 72-hour notice so that customer information is not visible. *Id.* Ms. Kennedy explained that after COVID-19, DLC has been providing the notice along with the flyer in a clear plastic bag. *Id.* at 16. Ms. Kennedy further explained that it is the objective of the DLC field operator to hand the bag, containing

both the notice and flyer, to the customer, but if the customer does not answer the door, to leave the bag at the door. *Id.* As part of the training, DLC field operators are instructed 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, to leave the bag with its contents between the doors so that it does not blow away. *Id.* Lastly, upon reviewing the photographs contained in the Complainant's Exhibits regarding the posting of the termination notice at the Service Address, Ms. Kennedy testified that DLC's policies were followed. *Id.*

The Initial Decision iterated the Commission's Regulations requiring a utility to attempt to make personal contact with a customer prior to termination noting that if the utility is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit, the utility must conspicuously post a written termination notice at the residence. I.D. at 17, citing 52 Pa. Code § 56.93(a)(2). The Initial Decision quoted the Merriam-Webster definition of "conspicuous" as "obvious to the eye." I.D. at 17. The ALJ stated that it was not clear what the plastic bag contained because it was hung inside the door and the termination notice was folded with only white paper showing. *Id.* Therefore, ALJ DeVoe determined that the notice left at Ms. Cibrone Abate's property was not "obvious to the eye," and did not comply with 52 Pa. Code § 52.93(a)(2). *Id.* ALJ DeVoe held that it is imperative that a customer recognize that a 72-hour shutoff notice has been posted on their property and that it is not reasonable that a customer would recognize that the bag contains something as important as a shutoff notice. *Id.*

The ALJ was not persuaded by the Complainant's argument that DLC "hid" her notice due to her political views and found that the Complainant provided no evidence to support that claim other than her own speculation. I.D. at 18. Thus, the ALJ concluded that while DLC violated a Commission Regulation, it was not a result of discrimination against the Complainant's political views. *Id.*

Next, ALJ DeVoe considered the Complainant's claim that DLC failed to provide her with the opportunity to enroll in CAP until she was "forced" to enroll after she filed the instant Complaint in 2022. I.D. at 18. The Initial Decision noted the testimony of DLC witness Morris that the Complainant enrolled in DLC's CAP on August 26, 2022, and that the Complainant was not forced to enroll. *Id.* During both hearings, Ms. Cibrone Abate indicated a desire to be removed from CAP and stated she would rather be on a payment plan with DLC. *Id.* at 19. Ms. Morris testified that if the Complainant desired to be unenrolled from CAP, DLC would require her to pay her full account balance, including the amount currently eligible for arrearage forgiveness through CAP. *Id.* Finding that the Complainant failed to present any evidence to support her claim that DLC failed to enroll her in CAP other than her personal opinion, ALJ DeVoe dismissed this claim. *Id.*

Lastly, the ALJ engaged in an analysis of the Commission's Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate. I.D. at 20-23, citing 52 Pa. Code § 69.1201 and *Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Opinion and Order entered March 16, 2000) (*Rosi*). Upon examination of all of the factors, the ALJ determined that DLC's action in failing to conspicuously post the May 26, 2022 termination notice, in violation of 52 Pa. Code § 56.93, was serious and warranted a civil penalty in the amount of \$1,250. *Id.* at 23. Additionally, ALJ DeVoe found that to be compliant with the Commission's Regulation, the Company must alter its policy and retrain its field operators to post "conspicuous notice." *Id.* Thus, the ALJ urged DLC to alter its policy so that it is obvious to customers standing from a distance that the bag is from DLC and that it contains an important notice. *Id.* at 24.

C. DLC's Exceptions

DLC filed two (2) Exceptions to the ALJ's Initial Decision. In its first Exception, DLC argues that the ALJ incorrectly determined that DLC failed to "conspicuously post" a 72-hour termination notice at the Complainant's residence and that such finding should be overturned. DLC Exc. at 3-7.

DLC states that it is undisputed that the Company posted a 72-hour termination notice at the residence after attempting to contact the Complainant by telephone without success. DLC Exc. at 4. It is also undisputed that DLC left the termination notice at the residence in between the storm door and front door inside a clear plastic bag. *Id.* DLC argues that there is no evidence in the record that the notice was difficult to see or read and that the Complainant did not mention that the notice was difficult to find but instead she took offense to the precise location of the placement of the notice at her home. *Id.* The Company notes that Ms. Cibrone Abate alleged that it was unreasonable for DLC to place a termination notice inside her screen door and that it should have been taped to the cement next to her entrance door instead. *Id.* Additionally, the Company argues that the Complainant's service was not terminated due to her receiving the notice and taking appropriate action to prevent termination. *Id.*

As for the ALJ's concerns regarding DLC's policy of folding termination notices and placing them in plastic bags, the Company asserts that it provided the testimony of its Supervisor of Field Collections, Ms. Kennedy, who explained that the notice is folded so that customer information is protected and not visible and that the notice along with an informational flyer is placed in a clear plastic bag. DLC Exc. at 5. She stated that it is DLC's policy to place the notice between the front door and screen door, if a screen door exists, so as to protect the notice from being blown away. *Id.* Ms. Kennedy also indicated that if the screen door cannot be opened, then the notice may

be taped to the door, but it is not typical for DLC to tape a notice to the door due to complaints received regarding the tape marks left behind. *Id.*

DLC further argues that the Initial Decision'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. DLC Exc. at 6. DLC submits that because Ms. Cibrone Abate saw, opened, and read the 72-hour termination notice in advance of the scheduled termination date, and because the record does not reflect any evidence that the notice was not "obvious to the eye" the placement and delivery of the 72-hour notice was clearly conspicuous. *Id.* The Complainant discovered the notice and initiated steps to prevent termination by applying for a LIHEAP Grant and ultimately her service was not terminated. *Id.* at 6-7. DLC claims its posting policy accomplished its objective by the customer receiving the notice of pending termination and taking action to prevent the termination. *Id.* at 7.

In its second Exception, DLC argues that there is no basis for ordering a civil penalty against DLC or for requiring modification to DLC's notice posting procedures. DLC Exc. at 7-8. DLC highlights the Commission's decision in *Sanchez v. PPL Electric Utilities Corporation*, Docket No. C-2015-2472600 (Opinion and Order entered July 21, 2016) (*Sanchez*), where the Commission found that the utility terminated service to its customer without attempting personal contact in violation of 66 Pa. C.S. § 1406(b)(1)(iv) and imposed a \$500 civil penalty.

DLC argues that the instant case differs from *Sanchez* because there is no dispute that the Complainant received the termination notice and the Complainant's electric service was never terminated. DLC Exc. at 7-8. The Company contends that the \$1,250 civil penalty imposed in the present case is 250% higher than the civil penalty ordered in *Sanchez* where there was no personal contact attempted and service was actually terminated. *Id.* at 8. Moreover, the Company avers that even if it is determined

there was a justifiable basis for finding a violation, the recommended civil penalty is inappropriate under the ninth *Rosi* factor, 52 Pa. Code § 69.1201(c)(9),² when compared to the result in *Sanchez*. *Id.*

Lastly, DLC asserts that any modification to its termination notice posting policies is not justified under the facts of the instant case because the Initial Decision's findings of DLC's notice not being conspicuous is not supported by the record, and DLC provided evidence to support the reasonableness of its notice posting policies. DLC Exc. at 8.

As stated above, no Reply Exceptions were filed.

III. Disposition

Upon review of DLC's first Exception related to the allegation of failure to conspicuously post the 72-hour termination notice, we shall grant the Exception and modify the ALJ's Initial Decision accordingly.

Preliminarily, we note that DLC's attempts to make personal contact with the Complainant predate the filing of the Complainant's Informal and Formal Complaints in this matter. Therefore, the Complainant's outstanding balance for her electric service was not in dispute at that time. Moreover, there was no active payment arrangement on Ms. Cibrone Abate's account and the full amount of her arrearage was due and payable to DLC. *See*, DLC Exh. 13. Thus, DLC was within its authority to proceed with the notice

² The ninth *Rosi* factor is “[p]ast Commission decisions in similar situations.” 52 Pa. Code § 69.1201(c)(9).

procedures prior to termination for failure to pay an undisputed delinquent account under 52 Pa. Code § 56.81.

Section 56.93 of our Regulations, pertaining to personal contact, provides the following:

(a) Except when authorized under § 56.71, § 56.72 or § 56.98 (relating to interruption of service; discontinuance of service; and immediate termination for unauthorized use, fraud, tampering or tariff violations), a public utility may not interrupt, discontinue or terminate service without attempting 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 3 days prior to the scheduled termination using one of the methods in this section. If personal contact by one method is not possible, the public utility is obligated to attempt another method.

(1) Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.

(2) If contact is attempted in person by a home visit, only one attempt is required. 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.

(3) Contact by e-mail, text message or other electronic messaging format consistent with the Commission's privacy guidelines and approved by Commission order. The electronic notification option is voluntary and shall only be used if the customer has given prior consent approving the use of a specific electronic message format for the purpose of notification of a pending termination. Electronic contact shall

be deemed complete if, after attempted transmittal, no message is received indicating that the transmittal was undeliverable or otherwise not received. If the utility receives notification that the transmittal was undeliverable or otherwise not received, the utility shall attempt to contact the customer either in person or by telephone, consistent with the requirements of this section.

52 Pa. Code § 56.93(a).

At the evidentiary hearing in this matter, DLC submitted evidence that it attempted to make a 72-hour termination call to the Service Address on May 24, 2022, pursuant to 52 Pa. Code § 56.93(a)(1). *See*, DLC Exh. 18. In its Exceptions, DLC argues that its attempt at making personal contact with the Complainant by phone was unsuccessful as the Company received a wrong number code when placing the call due to the Complainant's failure to update the Company with her new telephone number. DLC Exc. at 4, fn. 1; *See*, DLC Exh. 18. It should be noted that calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence. *See*, 52 Pa. Code § 56.93(a)(1). However, DLC did not offer evidence demonstrating that it made a phone call on two separate days, as required in 52 Pa. Code § 56.93(a)(1). At this point, DLC had not fulfilled its personal contact obligation and was required to attempt another method under 52 Pa. Code § 56.93(a).

On May 26, 2022, DLC posted a written, 72-hour termination notice along with information on other customer assistance programs at the Service Address. *See*, Answer at 4; Complainant Exh. C14; I.D. at 6. That same day, the Complainant received the 72-hour termination notice, which had been folded, placed in a clear plastic bag, and hung in between the Complainant's outer, glass storm door and front door. Tr. at 79; I.D. at 8. DLC presented the testimony of its supervisor of field collections concerning the procedures used by the Company's field representatives when leaving termination notices at a service address. DLC's witness explained that the 72-hour termination notice

“is folded so that all pertinent customer information. . .[is] not visible.” Tr. at 153. The Company’s witness further testified that the posting of the termination notice between the Complainant’s screen door and front door at the Service Address was consistent with the Company’s procedures for posting termination notices. Tr. at 155-56.

Thus, the issue to be determined is whether DLC *conspicuously* posted the termination notice at the Service Address in accordance with 52 Pa. Code § 56.93(a)(2) and in satisfaction of its personal contact obligation. Turning to the Initial Decision, we note the ALJ’s determination that DLC did not conspicuously post such notice. In making this conclusion, the ALJ relied on Merriam-Webster’s definition of “conspicuous,” but appears to have applied such definition to the termination notice itself rather than the posting or placement of such notice. *See*, I.D. at 17 (where the ALJ states that “[l]ooking from the outside, it is not clear what the plastic bag contains. . . it is not reasonable that a customer would recognize that the bag contains something so important as a 72-hour shut-off notice”); I.D. at 20 (where the ALJ concludes that DLC “failed to post ‘conspicuous’ notice”).

The Commission’s Regulations and the Code do not expressly define “conspicuously post” or their root words. The rules of statutory construction provide that words and phrases are to be construed “according to rules of grammar and according to their common and approved usage.” 1 Pa. C.S. § 1903(a). In that regard, the Pennsylvania Supreme Court has “generally used dictionaries as source material for determining the common and approved usage of a term.” *Fogle v. Malvern Courts, Inc.*, 722 A.2d 680, 683 (1999).

We disagree with the Initial Decision’s application of “conspicuous” to the termination notice. Grammatically speaking, we find that, with respect to this specific subsection, the modifier, “conspicuously,” serves to describe the act or verb, “to post,” not the termination notice. Additionally, Black’s Law Dictionary defines “conspicuous”

as “clearly visible or obvious” and “conspicuous place” as “*for purposes of posting notices*, a location that is reasonably likely to be seen.” BLACK’S LAW DICTIONARY (Eleventh Edition, 2019) (emphasis added).

Here, DLC posted the notice on the doorknob of the Complainant’s front door, behind the outer, glass storm door because the handle of the storm door was broken. *See*, Tr. at 79; I.D. at 8. The photograph in the record shows the posting of the termination notice, which is clearly visible to anyone approaching the front door of the residence. *See*, Complainant Exh. C1. Accordingly, we find the doorknob on the front door of a residence at the service address to be a location that is reasonably likely to be seen by the adult occupant(s) of such residence.

While the Initial Decision finds the Complainant’s assertion that she mistook the termination notice as a pizza menu to be reasonable, this does not establish that the notice was not properly posted. In fact, the notice was seen and retrieved by the Complainant. Moreover, it was the Complainant that introduced evidence of the posting of the notice at the evidentiary hearing in this matter. *See*, Complainant Exh. C1. As such, we find that the Complainant failed to provide credible or convincing evidence that the posting of the termination notice was not clearly obvious or conspicuous.

Additionally, we note the Initial Decision’s concern with DLC’s policy of folding termination notices. *See*, I.D. at 22. In that regard, we also note that such policy stems from the Company’s concerns related to safeguarding customer confidentiality. *See*, Tr. at 153. The 72-hour termination notice contains the Complainant’s name,

address, full account number, along with the Complainant's arrearage amount.³ *See*, Complainant Exh. C14. If DLC had not folded the notice, this information would be plainly visible to any person that approached the Complainant's residence. Therefore, we find that it is reasonable for a utility company to attempt to protect customer information from public display by folding such notice.

In summary, we wish to emphasize that the issue here is not whether the Complainant could visually determine what the contents were of the plastic bag which was on her front door without opening it, but rather whether the termination notice was posted in a location that is reasonably likely to be seen which satisfies the conspicuous posting requirements of our Regulations. For the reasons discussed above, we agree with DLC that the termination notice was conspicuously posted.

Lastly in its second Exception, DLC excepts to the Initial Decision's assessment of a civil penalty for the alleged violation of 52 Pa. Code § 56.93 and any modification to its current policy for posting termination notices. Upon consideration of the evidentiary record herein, we shall grant this Exception. We have previously determined that DLC acted appropriately and did not violate Section 56.93 of our Regulations. Therefore, there is no reason to assess a civil penalty upon DLC or to direct the Company to modify its procedures for posting termination notices.

³ DLC classifies the information given in the 72-hour termination notice as "personally identifiable information" (PII). PII is information that, when used alone or combined with other information, can be used to identify, distinguish, trace or link to a specific Customer. (<https://duquesnelight.com/customer-support/policies-forms/privacy-policy>) accessed on 11-7-23.

IV. Conclusion

Based on the foregoing discussion, we shall grant Duquesne Light Company's Exceptions and modify the ALJ's Initial Decision and dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Duquesne Light Company, filed on September 1, 2023, are granted, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Emily I. Devoe, issued on August 14, 2023, is adopted, as modified, consistent with this Opinion and Order.
3. That the Formal Complaint of Cletus Cibrone Abate, filed on September 26, 2022, against Duquesne Light at Docket No. F-2022-3035653 is dismissed, consistent with this Opinion and Order.

4. That the proceeding at this docket be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 21, 2023

ORDER ENTERED: December 21, 2023