

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

Public Meeting held March 14, 2024

Commissioners Present:

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

Craig Murphy

C-2023-3038940

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 Craig D. Murphy (Mr. Murphy or Complainant) filed on November 13, 2023, to the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (DCALJ) Mark A. Hoyer, which was issued October 23, 2023, in the above-captioned proceeding. On November 24, 2023, Duquesne Light Company (DLC or Company) filed Replies to the Exceptions. For the reasons discussed below, we shall deny Mr. Murphy's Exceptions, adopt the Initial Decision of DCALJ Hoyer, and dismiss the Complaint, consistent with this Opinion and Order.

I. History of the Proceeding

On March 14, 2023, Craig D. Murphy filed a Formal Complaint (Complaint) with the Commission against DLC. In his Complaint, Mr. Murphy alleged that DLC's failure to issue a termination notice to him for his past due balance in the winter of 2022-2023 violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.¹ Complaint Attachment at 1. Mr. Murphy further claimed that DLC's failure to issue a termination notice prevented him from applying for a Low-Income Home Energy Assistance Program (LIHEAP) Crisis grant. *Id.* As relief, Mr. Murphy requested the Commission ensure that DLC complies with the Equal Protection Clause of the Fourteenth Amendment. Complaint at 3.

On April 3, 2023, DLC filed an Answer and Preliminary Objections to the Complaint. In its Answer, DLC denied the material allegations of the Complaint and requested that the Complaint be dismissed with prejudice. Answer at 4. In its Preliminary Objections, DLC stated that the Commission lacks jurisdiction over the claims articulated in the Complaint because the claims raise issues relating to the United States Constitution and are beyond the Commission's subject matter jurisdiction. Preliminary Objections at 3. As relief, DLC requested that the portions of the Complaint alleging violations of the Constitution be stricken from the Complaint. *Id.* at 4.

On May 18, 2023, DCALJ Hoyer issued an Interim Order sustaining DLC's Preliminary Objections and striking portions of the Complaint that alleged violations of the Fourteenth Amendment of the United States Constitution. Interim Order at 6. The

¹ Mr. Murphy checked the following boxes on his Complaint form: "[t]he utility is threatening to shut off my service or has already shut off my service;" "[i]ncorrect charges are on my bill;" and "[o]ther," explaining, each time, that DLC refused to issue him a termination notice. Complaint at 2.

Interim Order also directed that the matter be set for hearing on the remaining service issues raised in the Complaint. *Id.*

On May 23, 2023, an Initial Call-In Telephone Hearing Notice was issued scheduling the matter for an initial call-in telephonic hearing on July 6, 2023. On May 25, 2023, DCALJ Hoyer issued a Prehearing Order informing the parties of the procedures for the hearing.

On July 6, 2023, the hearing convened as scheduled. Mr. Murphy appeared, *pro se*, and testified on his own behalf. Mr. Murphy also sponsored one exhibit, Exhibit A, that was admitted into the record. DLC appeared, represented by Counsel, and three witnesses testified on the Company's behalf. DLC witnesses sponsored three exhibits, Exhibit A, E, and F, that were admitted into the record.

The record closed on July 28, 2023.

On October 23, 2023, the Commission served DCALJ Hoyer's Initial Decision, which dismissed the Complaint.

As noted, *supra*, Mr. Murphy filed Exceptions on November 13, 2023. DLC filed Replies to Exceptions on November 24, 2023.

II. Discussion

A. Legal Standards

1. Burden of Proof

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 burden of proof has not been satisfied. 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).

2. Notification of Service Termination

Section 56.99 of our Regulations, 52 Pa. Code § 56.99, “Use of termination notice solely as collection device prohibited” provides in pertinent part:

A public utility may not threaten to terminate service when it has no present intent to terminate service or when actual termination is prohibited under this chapter. Notice of the intent to terminate shall be used only as a warning that service will in fact be terminated in accordance with the procedures under this chapter, unless the customer or occupant remedies the situation which gave rise to the enforcement efforts of the public utility.

Section 56.141(2) of our Regulations, 52 Pa. Code § 56.141(2), “Dispute procedures” provides in pertinent part:

(2) *Termination stayed.* Except as otherwise provided in this chapter, when a termination dispute or complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint. However, the disputing party shall pay undisputed portions of the bill.

Section 56.151(1) of our Regulations, 52 Pa. Code § 56.151(1), “General rule” provides in pertinent part:

Upon initiation of a dispute covered by this section, the public utility shall:

(1) Not issue a termination notice based on the disputed subject matter.

Section 56.372(2) of our Regulations, 52 Pa. Code § 56.372(2), “Dispute procedures” provides in pertinent part:

(2) *Termination stayed.* Except as otherwise provided in this chapter, when a termination dispute or complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint. However, the disputing party shall pay undisputed portions of the bill.

3. Winter Termination Procedures

Section 56.100(b) of our Regulations, 52 Pa. Code § 56.100(b), “Winter termination procedures” provides in pertinent part:

(b) *Electric distribution and natural gas distribution utilities.* Unless otherwise authorized by the Commission, during the period of December 1 through March 31, an electric distribution utility or natural gas distribution utility may not terminate service to customers with household incomes at or below 250% of the Federal poverty level except as provided in this section or in § 56.98. The Commission will not prohibit an electric distribution utility or natural gas distribution utility from terminating service in accordance with this section to customers with household incomes exceeding 250% of the Federal poverty level.

With these regulatory and statutory principles in mind, we emphasize that, 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 Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility, DLC, is responsible or accountable for the problem described in the Complaint through a violation of the Code, a Regulation, or an Order of the Commission.

B. The DCALJ's Initial Decision

In the Initial Decision, DCALJ Hoyer made ten (10) Findings of Fact and reached five (5) Conclusions of Law. I.D. at 3-4, 6-7. 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.

DCALJ Hoyer began by examining the burden of proof standard spelled out in 66 Pa. C.S. § 332(a). I.D. at 4. The DCALJ then turned to the Commission's Regulations at 52 Pa. Code §§ 56.99 and 56.141(2) regarding termination notices and termination dispute procedures. *Id.* at 5.

DCALJ Hoyer explained that Mr. Murphy's Complaint stated that DLC failed to issue him a termination notice when he requested one for the 2022-2023 winter months. I.D. at 5. DCALJ Hoyer stated that it was Mr. Murphy's position that DLC's failure to issue the termination notice caused Mr. Murphy to be ineligible for a LIHEAP Crisis grant. *Id.* DLC, as DCALJ Hoyer noted, contended that it followed the applicable law when it did not issue Mr. Murphy a termination notice. *Id.*

DCALJ Hoyer determined that DLC correctly followed the applicable regulations regarding termination notice procedure. I.D. at 5. The DCALJ stated that the Complainant failed to meet his burden of proof that DLC violated the Code or Regulation or Order of the Commission. *Id.* Furthermore, DCALJ Hoyer indicated that no evidence was presented that DLC had a present intent to terminate service to Mr. Murphy which must be present in order to issue a termination notice to a customer in accordance with 52 Pa. Code § 56.99. *Id.*

DCALJ Hoyer explained that on February 20, 2023, Mr. Murphy's account balance for electric service with DLC totaled \$216.63 and of that only \$102.36 was overdue. I.D. at 506 *citing*, Tr. at 20-21; DLC Exh. A. The DCALJ found DLC witness Alissa Thong credible when she testified that it is DLC's policy to not begin termination procedures until after a customer's delinquent balance exceeds \$300. *Id.* at 6 *citing*, Tr. at 29-30.

The DCALJ made clear that when Mr. Murphy filed his Complaint on March 14, 2023 and claimed that he had incorrect charges on his bill, DLC was precluded from issuing a termination notice for the disputed amount. I.D. at 6 *citing*, 52 Pa. Code § 56.141(2).

DCALJ Hoyer concluded by dismissing Mr. Murphy's Complaint.

C. Exceptions² and Reply Exceptions

The Complainant's Exceptions consisted of two (2) typewritten paragraphs in which the Complainant takes Exception to the DCALJ's Initial Decision.

First, Mr. Murphy claims that the proper course for DLC to take can be found in 66 Pa. C.S. § 1406(a)-(e). Exc. at 1. Mr. Murphy explains that 52 Pa. Code § 56.100 prohibits termination of utility service for low-income customers during winter months but that his income was never disclosed to DLC. *Id.* He then contends that

² We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will overlook the formatting issue and accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), and consider the merits.

52 Pa. Code § 59.66 prohibits termination notice from being issued for the sole purpose of obtaining a security deposit which is not present in the present matter. *Id.*

Next, Mr. Murphy contends that DLC relied on information from 2014 in violation of 52 Pa. Code § 56.100. Exc. at 1. He states that if the termination notice was properly issued it would have called for a disclosure of current income to determine eligibility of certain assistance programs. *Id.*

In its Replies to Exceptions, DLC asserts that the Complainant was ineligible for termination in February 2023 because his account balance on February 20, 2023 was \$102.36. R. Exc. at 2. DLC explains that Company witness Thong testified that it is DLC's policy to begin the termination process only when a customer is \$300 or more past due on their electric service account. *Id.* Furthermore, DLC witness Thong confirmed, through testimony, that it was not Mr. Murphy's income from 2014 that prevented his service from being terminated. *Id.* DLC concludes that the DCALJ correctly found that Mr. Murphy was ineligible for termination in February 2023 due to his account balance not meeting DLC's \$300 threshold for termination procedures. *Id.*

III. Disposition

We advise the parties that any issue or argument that we do not specifically address 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, Univ. of PA v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).³

On consideration of the record evidence in this proceeding, we shall deny the Complainant's Exceptions and adopt the Initial Decision of DCALJ Hoyer, consistent with the following discussion.

In his first Exception, the Complainant contends that the proper procedure for termination, that DLC should have followed, is set forth at 66 Pa. C.S. § 1406(a)-(e). Exc. at 1. According to DLC, it is the Company's policy to only issue termination notices to customers whose accounts are at or exceed \$300 in arrears. Tr. at 29-30; R. Exc. at 2. At the evidentiary hearing in this matter, DLC witness Thong testified to such policy and explained that its purpose is to assist with the workload in DLC's contact center and to allow the customers to remedy a missed payment before beginning termination procedures. Tr. at 30.

Section 1406 of the Code, 66 Pa. C.S. § 1406,⁴ *permits* a public utility to terminate service under certain conditions and outlines the procedure that the utility must

³ *See also, Metropolitan Edison Co. v. Pa. PUC*, 22 A.3d 353 (Pa. Cmwlth. 2011), *appeal denied*, 615 Pa. 760, 22 A.3d 353 (2012), citing *Wheeling & Lake Erie Railway Company v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001) for the proposition that the Commission is not required to expressly consider all of the arguments set forth by the parties in its Order.

⁴ The Chapter 14 provisions are implemented in the Commission's Chapter 56 Regulations. *See*, 52 Pa. Code § 56.1 (Statement of purpose and policy of Chapter 56 regulations), note 5, *infra*; *see also*, 52 Pa. Code § 56.81 (authorizing a termination of service only for the following four actions by the customer: (1) nonpayment of an undisputed delinquent account; (2) failure to complete payment of a deposit, provide a guarantee of payment or establish credit; (3) failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading; or (4) failure to comply with the material terms of a payment arrangement).

follow in order to terminate service, including the issuance of a termination notice. Section 56.99 of our Regulations, 52 Pa. Code § 56.99, a section not superseded by Chapter 14 of the Code, prohibits a public utility from threatening to terminate service when it does not have the present intent to terminate service.⁵

Accordingly, Section 1406 of the Code and Section 56.99 of our Regulations, when read in conjunction, preclude a public utility from issuing a termination notice to a customer when the utility does not have the present intent to terminate that customer's service. Here, at the time the Complainant requested a termination notice on February 28, 2023, DLC did not have the present intent to terminate service, as the Complainant's delinquent account balance was \$216.63 and therefore, below DLC's \$300 threshold for initiating a termination. *See*, Complaint Attachment at 1; DLC Exh. A at 5.

In addition to not meeting the threshold, Mr. Murphy filed his Formal Complaint in this matter on March 14, 2023. Sections 56.141, 56.151, and 56.372 of our Regulations generally prohibit a utility from issuing termination notices during a pending dispute or complaint. 52 Pa. Code §§ 56.141, 56.151, and 56.372. While the Complainant's delinquent balance of \$319.46, due March 20, 2023, would have met the

⁵ We note the Commission's Statement of purpose and policy at Section 56.1, applicable to our Chapter 56 regulations, which "assures adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills" so that timely paying customers do not subsidize "other customers' delinquencies." 52 Pa. Code § 56.1(a). As such, public utilities are tasked with utilizing the procedures in Chapter 56 "to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages." *Id.* Every privilege and duty under this chapter "imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement." *Id.*

Company's \$300 threshold for issuing a termination notice, the pending Complaint precluded DLC from issuing such notice after March 20, 2023. *See*, DLC Exh. A at 5.

Next, Mr. Murphy argues that 52 Pa. Code § 56.100 prohibits termination of utility service for low-income customers during winter months but that his income was never disclosed to DLC. Exc. at 1. He argues that DLC relied on speculated income information from 2014 in its determination not to issue Mr. Murphy a termination notice. *Id.*

Section 56.100(b) of our Regulations, 52 Pa. Code § 56.100(b), presumes that the electric distribution utility or natural gas distribution utility has the present intent to terminate service and thus, prohibits such utility from terminating service during December 1 through March 31 to customers with household incomes at or below 250% of the Federal poverty level.

As previously determined, DLC did not have the present intent to terminate the Complainant's service and therefore, did not issue the Complainant a termination notice. As such, we find that there was no need for the Company to solicit information from the Complainant regarding his household income at that time.

Accordingly, on consideration of the record, we conclude that the Complainant failed to meet his burden of proof by establishing that DLC violated the Code, a Commission Regulation or Order, or a Commission-approved tariff when the Company did not issue the Complainant a termination notice for electric service.⁶ We

⁶ We note that in *Purnell v. PECO Energy Company*, Docket No. F-2015-2513799 (Opinion and Order entered April 5, 2018), we addressed a formal complaint proceeding, involving a substantially similar dispute, wherein the customer alleged an inability to qualify for energy assistance crisis grants because she was not in active termination status despite an outstanding utility balance. *See also*, *Enigwe v. Philadelphia Gas Works*, Docket No. F-2016-2551964 (Opinion and Order entered

find that DLC exercised good faith, honesty, and fair dealing with the Complainant, consistent with 52 Pa. Code § 56.1(a). Additionally, we find that the DCALJ properly weighed the evidence presented and that dismissal of the Complaint was appropriate. Therefore, we shall deny the Complainant's Exceptions and adopt the DCALJ's Initial Decision, consistent with this Opinion and Order.

IV. Conclusion

Based on the foregoing discussion, we shall deny the Complainant's Exceptions, adopt DCALJ Mark A. Hoyer's Initial Decision, and dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Craig D. Murphy filed on November 13, 2023, to the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer issued at Docket No. C-2023-3038940, are denied, consistent with this Opinion and Order.

April 4, 2018). Upon review, we referred to our Bureau of Consumer Services and Law Bureau, for such further consideration as may be warranted, the issue of whether a waiver of the Commission's Regulations generally prohibiting the issuance of termination notices pending the resolution of disputes before the Commission should be pursued, or other alternatives, with the intent of enabling financially distressed ratepayers to avail themselves of all available resources and grants. *Id.* As a result of the referral, no waiver of our Regulations precluding the issuance of termination notices pending the resolution of disputes before the Commission was pursued. Nevertheless, we note that separately the Commission is proactively taking steps to help ameliorate these kinds of situations. This includes submitting recommendations to the legislature as part of its review of Chapter 14 of the Code to include consideration of factors other than termination of service or a termination notice in order for eligible customers to qualify for a LIHEAP crisis grant. The Commission also submitted comments concerning qualification standards for LIHEAP crisis grants to the Pennsylvania Department of Human Services as part of its development of the LIHEAP State Plan.

2. That the Initial Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer issued on October 23, 2023, at Docket No. C-2023-3038940 is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint of Craig D. Murphy, filed on March 14, 2023, at this docket, is dismissed, consistent with this Opinion and Order.

4. That the proceeding at Docket No. C-2023-3038940 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more stylized.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 14, 2024

ORDER ENTERED: March 14, 2024