

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Justin Lewis	:	
	:	
v.	:	F-2023-3043317
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
John M. Coogan  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision finds that Duquesne Light Company violated the Public Utility Code when it issued two separate billing statements to Complainant in April 2023 and September 2023 that included sales tax. A fine of \$200 is imposed. All other claims against Duquesne Light Company are dismissed.

**HISTORY OF THE PROCEEDING**

On September 18, 2023, Justin Lewis (Mr. Lewis or Complainant) filed a Formal Complaint against Duquesne Light Company (Duquesne Light, Company, or Respondent).<sup>1</sup> The Formal Complaint was served on Duquesne Light on October 16, 2023. Complainant alleged that there are incorrect charges on his bill. As relief, Mr. Lewis requests that Duquesne Light refund all sales tax paid with interest and penalties along with reasonable attorney's fees.

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<sup>1</sup> The Formal Complaint is a timely appeal of a decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3912810. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On November 6, 2023, Duquesne Light filed an answer to the Formal Complaint. In its answer, Duquesne Light denied or admitted the various averments in the Formal Complaint. Specifically, the Company admits that sales taxes were included in Complainant's March 2023 and April 2023 bills for electric service following receipt by the Company of a tax-exempt form from Complainant on March 27, 2023. However, the Company asserts that such sales taxes were credited to the Complainant's account. The Company also admits that sales tax was inadvertently included in Complainant's September 2023 electric bill and that upon receipt of an email from Complainant advising of the error, the Company apologized to the Complainant and promptly corrected the error by issuing a credit. The Company otherwise denies that there are any incorrect charges on Complainant's bills. The Company denies that Complainant is entitled to a refund of all sales taxes paid to Company or is entitled to interest thereon, penalties or any attorneys' fees.

On November 7, 2023, the Commission issued an interim order, directing the parties to hold a conference to determine whether the parties can resolve the Formal Complaint through settlement discussions. The parties were unable to resolve the Formal Complaint. On December 1, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing of the Formal Complaint for January 10, 2024, at 10:00 a.m. and assigning the undersigned to this proceeding. In anticipation of the January 10, 2024 hearing, I issued a prehearing order on December 1, 2023, setting forth various rules that would govern that proceeding.

The initial hearing convened on January 10, 2024, as scheduled. Mr Lewis appeared on behalf of himself. The following eight exhibits offered by Mr. Lewis were admitted into the record:

1. Lewis Exhibit A – Duquesne Light Request for Continuance of Service
2. Lewis Exhibit B – Duquesne Light Bill dated 7/15/2011
3. Lewis Exhibit C – Eviction Order for Possession, Return and Notice dated 9/8/2011
4. Lewis Exhibit D – Duquesne Light Bill dated 10/24/2011
5. Lewis Exhibit E – Letter from Duquesne Light dated 3/19/2023
6. Lewis Exhibit F – E-mail correspondence between Mr. Lewis and Duquesne Light

7. Lewis Exhibit G – Letter from Duquesne Light dated 7/18/2023
8. Lewis Exhibit H – Duquesne Light bill dated 9/25/2023

Michael A. Gruin, Esquire attended on behalf of Duquesne Light, along with two witnesses for Duquesne Light: Roxanne Morris, Supervisor of Regulatory Consumer Regulations for Duquesne Light, and Matthew Simpson, Tax Director for Duquesne Light. The following six exhibits offered by Duquesne Light were admitted into the record:

1. Duquesne Light Exhibit 3 – Internal record regarding sales tax exemption
2. Duquesne Light Exhibit 4 – Duquesne Light Bill dated 5/25/2023
3. Duquesne Light Exhibit 5 – BCD Decision on Informal Complaint
4. Duquesne Light Exhibit 6 – Duquesne Light Bill dated 10/24/2023
5. Duquesne Light Exhibit 7 – Statement of Account dated 12/21/2023
6. Duquesne Light Exhibit 8 – Internal record regarding entry of CSA

The record in this case consists of the above-referenced exhibits and a transcript of 96 pages. The record closed on February 2, 2024, when I issued an order closing the record and denying the admission of a late filed exhibit. For the reasons discussed below, the Complaint will be granted in part, finding that Duquesne Light violated the Public Utility Code when it issued two separate billing statements to Complainant in 2023 that included sales tax. A fine of \$200 is imposed. All other claims against Duquesne Light are dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is Justin Lewis.
2. The Respondent in this case is Duquesne Light Company.
3. The service address at issue in this proceeding is 50 N. Park Road, Floor 2, Pittsburgh, PA 15229.
4. The property at 50 North Park Road is a duplex property that is zoned residential (property). Tr. 7-8.

5. Each unit at the property has its own separate electric meter with separate account numbers. Tr. 45.
6. Mr. Lewis purchased the property in 2008 and moved into the first floor unit. Tr. 8.
7. When Mr. Lewis purchased the property, the second floor unit was leased. Tr. 8.
8. Electric service for the second floor unit was first placed in Mr. Lewis's name on April 4, 2011. Tr. 45.
9. After the second floor unit tenants vacated the property, Mr. Lewis faxed Duquesne Light a Continuance of Service Agreement (CSA) on April 13, 2011. Tr. 8-9; Lewis Exhibit A.
10. Duquesne Light entered Mr. Lewis's CSA into its records on April 14, 2011. Tr. 46; Duquesne Light Exhibit 8.
11. The purpose of the CSA is for a landlord to accept responsibility for payment of electric service bills during periods of vacancy. Lewis Exhibit A.
12. The CSA remains in effect until the signatory to the CSA provides written notice of an intent to cancel the CSA to Duquesne Light. Lewis Exhibit A.
13. In May of 2011, a new tenant, Gary Traub, began occupying the second floor unit. Tr. 9.
14. A condition of the lease was that Mr. Traub would put electric service in his name. Tr. 9.

15. Mr. Traub did not put electric service in his name. Tr. 9.
16. Mr. Lewis received electric bills for the second floor unit for May and June 2011. Tr. 9.
17. Mr. Lewis cancelled electric service in his name for the second floor unit in July 2011. Tr. 45.
18. From July to September 2011, electric service was in the name of William Campbell. Tr. 50-51.
19. Mr. Traub was evicted from the second floor unit in September 2011. Tr. 10-11; Lewis Exhibit C.
20. After evicting Mr. Traub, electric service for the second unit was in Mr. Lewis's name starting September 29, 2011. Tr. 11-12, 25-26, 45; Lewis Exhibit D.
21. Duquesne Light charged sales tax to the second floor unit from September 29, 2011 to May 2023. Tr. 52; Lewis Exhibit D.
22. Mr. Lewis used the second floor unit for his own residential purposes since September 29, 2011. Tr. 13.
23. Duquesne Light did not receive a cancellation of the CSA in writing. Tr. 52.
24. Duquesne Light has no record of a contact from Mr. Lewis between September 2011 and February 2023 requesting that sales tax on his account be removed or that the second floor unit is a rental. Tr. 52-53.
25. Mr. Lewis still lives at the property. Tr. 12.

26. Mr. Lewis has not rented out the second floor unit to anyone else after evicting the tenant. Tr. 12.

27. In February 2023, Mr. Lewis realized that Duquesne Light was charging him sales tax for the second floor unit, but not the first floor unit. Tr. 13.

28. On March 16, 2023, Mr. Lewis spoke with Margaret Davis from Duquesne Light, and Ms. Davis stated that residential accounts are exempt from sales tax. Tr. 13.

29. Mr. Lewis received a letter from Duquesne Light dated March 19, 2023 requesting that he execute and return a form attached to the letter (sales tax exemption attestation form) to be exempted from sales tax for his second floor unit. Lewis Exhibit E.

30. The March 19, 2023 letter from Duquesne Light stated that the sales tax exemption form could be returned to [salestax@duqlight.com](mailto:salestax@duqlight.com). Lewis Exhibit E.

31. Mr. Lewis sent Duquesne Light an e-mail to [salestax@duqlight.com](mailto:salestax@duqlight.com) on March 27, 2023, which included an executed sales tax exemption attestation form. Tr. 14-15; Lewis Exhibits E, F.

32. Mr. Lewis's March 2023 bill was prepared on March 27, 2023. Duquesne Light Exhibit 7.

33. Mr. Lewis's April 2023 bill was prepared on April 26, 2023. Duquesne Light Exhibit 7.

34. During a telephone call with a representative from Duquesne Light on May 23, 2023, Mr. Lewis was told that the sales tax exemption attestation form had not been entered into Duquesne Light's system. Tr. 16; Lewis Exhibit F.

35. On May 23, 2023, Mr. Lewis forwarded his sales tax exemption attestation by e-mail to Ms. Davis at Duquesne Light. Tr. 16; Lewis Exhibit F.

36. Ms. Davis responded to Mr. Lewis on May 24, 2023, stating that his account was updated to show that the second floor unit is exempt from sales tax effective April 26, 2023. Lewis Exhibit F; Duquesne Light Exhibit 3.

37. After updating Mr. Lewis's account for the second floor unit, the account was credited \$1.84 for the March 2023 bill and \$1.96 for the April 2023 bill. Tr. 24; Lewis Exhibit F; Duquesne Light Exhibits 4, 7.

38. Mr. Lewis received a letter from Duquesne Light dated July 18, 2023, requesting that he execute another sales tax exemption attestation form (July 2023 exemption form). Lewis Exhibit G.

39. Duquesne Light sent Mr. Lewis the July 2023 exemption form in error. Tr. 58.

40. After the July 2023 exemption form was sent to Mr. Lewis, Duquesne Light's billing system changed the account from tax exempt to taxable. Tr. 58.

41. Mr. Lewis executed the second sales tax exemption attestation form and e-mailed it to [salestax@duqlight.com](mailto:salestax@duqlight.com) and Ms. Davis on July 27, 2023. Tr. 17-18; Lewis Exhibit F.

42. Duquesne Light sent Mr. Lewis a bill dated September 25, 2023 for the second floor unit, which included sales tax charges. Tr. 18; Lewis Exhibit H.

43. Duquesne Light credited Mr. Lewis's account for the sales tax charged on the September 25, 2023 bill. Tr. 24, 59; Duquesne Light Exhibits 6, 7.

## DISCUSSION

### Burden of Proof

Section 332(a) of the Pennsylvania Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosierey v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Complainant filed a Complaint against Duquesne Light, alleging incorrect billing and seeking adjustment to his Duquesne Light bill. Complainant, therefore, bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Any decision of the Commission must be supported by substantial evidence. 66 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of*

*Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

The Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlt. 1995). The Code defines “service” as:

Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.

66 Pa.C.S. § 102.

### Remedies

Mr. Lewis’s specific allegations should first be understood in the context of what remedies he is seeking. Mr. Lewis’s Formal Complaint requested a refund of sales tax paid. Although the Public Utility Code provides for refunds under 66 Pa.C.S. § 1312, I agree with the ALJs that have previously found that refunds of state sales tax are not within the Commission’s jurisdiction. *Jones v. Phila. Gas Works*, Docket No. C-2015-2493099 (Final Order entered Apr. 5, 2016) (*Jones*); *Rossi v. Equitable Gas Co.*, Docket No. C-00970256 (Final Order entered Jan.

7, 1998) (*Rossi*). As the ALJ persuasively stated in *Rossi*, sales tax is not a “rate” as defined under 66 Pa.C.S. § 102 because it is not compensation a utility receives in exchange for a service rendered to one of its customers. *Rossi* at 6. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945). Although Duquesne Light did not raise the issue of subject matter jurisdiction, jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Therefore, the Commission cannot order a refund of sales tax under 66 Pa.C.S. § 1312.

Mr. Lewis also requested that Duquesne Light be assessed penalties as the result of his Formal Complaint. Tr. 90-91. Civil penalties brought under the Public Utility Code are subject to a three year statute of limitations. 66 Pa.C.S. § 3314. Although Duquesne Light did not raise the issue of the statute of limitations, the Commission has held that Section 3314(a) of the Code is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order. *Kovarikova v. Pa. Am. Water Co*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018). Mr. Lewis’s claims regarding his 2023 contacts with Duquesne Light clearly fall within the three year statute of limitations. Mr. Lewis’s claims that date back to 2011, i.e., when he asserts Duquesne Light first failed to adequately update the account for his second floor unit to show that it was being used by him for his own residential purposes, do not.

#### 2023 Contacts with Duquesne Light

Mr. Lewis purchased his property at 50 North Park Road in 2008. Tr. 7-8. The property is a duplex and when Mr. Lewis moved into the property, he lived on the first floor unit and the second floor unit was occupied as a rental. The second floor unit at his property was used as rental unit between when Mr. Lewis purchased the property in 2008 and September 2011. Tr. 8-12. After a tenant was evicted from the second floor unit in September 2011, Mr. Lewis used the second floor unit as part of his residence. Tr. 13.

Mr. Lewis alleges Duquesne Light improperly handled his requests during 2023 for electric service charges to his second floor unit to be exempt from sales tax. In February 2023, Mr. Lewis realized that Duquesne Light was charging him sales tax for the second floor unit, but not the first floor unit. Tr. 13. On March 16, 2023, Mr. Lewis spoke with Margaret Davis from Duquesne Light, and Ms. Davis stated that residential accounts are exempt from sales tax. Tr. 13.<sup>2</sup> Mr. Lewis thereafter received a letter from Duquesne Light dated March 19, 2023 requesting that he execute and return a form attached to the letter (sales tax exemption attestation form) to be exempted from sales tax for his second floor unit. Lewis Exhibit E. The March 19, 2023 letter from Duquesne Light stated that the sales tax exemption form could be returned to [salestax@duqlight.com](mailto:salestax@duqlight.com). Lewis Exhibit E.

Mr. Lewis sent Duquesne Light an e-mail to [salestax@duqlight.com](mailto:salestax@duqlight.com) on March 27, 2023, which included an executed sales tax exemption attestation form. Tr. 14-15; Lewis Exhibits E, F. During a telephone call with a representative from Duquesne Light on May 23, 2023, Mr. Lewis was told that the sales tax exemption attestation form had not been entered into Duquesne Light's system. Tr. 16; Lewis Exhibit F.

Mr. Lewis forwarded his sales tax exemption attestation to Ms. Davis on May 23, 2023. Tr. 16; Lewis Exhibit F. Ms. Davis responded to Mr. Lewis on May 24, 2023, stating that his account was updated to show that the second floor unit is exempt from sales tax effective April 26, 2023. Lewis Exhibit F. After updating Mr. Lewis's account for the second floor unit, the account was credited \$1.84 for the March 2023 bill and \$1.96 for the April 2023 bill. Tr. 24; Lewis Exhibit F.

Mr. Lewis received a letter from Duquesne Light dated July 18, 2023, requesting that he execute another sales tax exemption attestation form. Lewis Exhibit G. Mr. Lewis executed the second sales tax exemption attestation form and e-mailed it to [salestax@duqlight.com](mailto:salestax@duqlight.com) and Ms. Davis on July 27, 2023. Tr. 17-18; Lewis Exhibit F.

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<sup>2</sup> Duquesne Light witness Matthew Simpson cited 61 Pa. Code § 32.25(b)(2) as the basis for exempting a residential user from paying sales tax when they use electricity for their own residential use. Tr. 83-84.

Duquesne Light sent Mr. Lewis a bill dated September 25, 2023 for the second floor unit, which included a sales tax charge. Tr. 18; Lewis Exhibit H. Duquesne Light credited Mr. Lewis's account for the sales tax charged on the September 25, 2023 bill. Tr. 24.

I find that Mr. Lewis met his burden of proof that Duquesne Light provided him inadequate service when it improperly charged him for sales tax for his second floor unit with his April and September 2023 bills. Mr. Lewis sent his executed sales tax exemption attestation form on March 27, 2023 to the e-mail address provided by Duquesne Light. Lewis Exhibit E, F. However, Mr. Lewis's bill prepared by Duquesne Light approximately a month later on April 26, 2023 still contained sales tax charges. Mr. Lewis was again incorrectly charged sales tax with his bill prepared on September 25, 2023. Lewis Exhibit H. I do not find that Duquesne Light adequately rebutted Mr. Lewis's evidence that Duquesne Light failed to promptly update his account to show his second floor unit was exempt from sales tax, leading to incorrect charges included with his April and September 2023 bills. Therefore, I find that Duquesne Light provided Mr. Lewis inadequate service in these two instances in violation of 66 Pa.C.S. § 1501.

However, I find that there is insufficient evidence in the record to find Duquesne Light provided Mr. Lewis inadequate service when it charged him sales tax with his March 2023 bill. Mr. Lewis sent his executed sales tax exemption attestation form to Duquesne Light on March 27, 2023, the same date that Duquesne Light prepared Mr. Lewis's March 2023 bill. Therefore, it is plausible that Mr. Lewis's March 2023 bill had either already been issued or there was otherwise insufficient time to process Mr. Lewis's sales tax exemption attestation form.

Finally, because Duquesne Light refunded Mr. Lewis sales tax charged in 2023 after it received notice that the second floor unit was used by Mr. Lewis as his own residential unit, it is unclear what issues involving sales tax refund remain. Nonetheless, as stated above, I agree with the ALJs in *Jones* and *Rossi* that any remaining issues involving sales tax refunds are more appropriately directed to the Pennsylvania Department of Revenue.<sup>3</sup>

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<sup>3</sup> Although Duquesne Light did not contest the Commission's jurisdiction in ordering sales tax refunds, representatives for Duquesne Light did state several times that the Department of Revenue would be the appropriate venue for pursuing sales tax refunds. Tr. 16, 60, 85; Lewis Exhibit F.

### 2011 Contacts with Duquesne Light

Mr. Lewis also alleges that Duquesne Light knew since September 29, 2011 that his second floor unit was used by him for his own residential purposes and, therefore, Duquesne Light should be required to refund him for sales tax paid since that date. Tr. 32. As an initial matter, as discussed above, even if Mr. Lewis met his burden of proof, the Commission cannot provide a refund of sales tax paid to Mr. Lewis and civil penalties are limited by the three year statute of limitations. However, I find that Mr Lewis did not meet his burden of proof as relates to his allegations against Duquesne Light dating to 2011. Specifically, Mr. Lewis did not prove that he cancelled his Continuation of Service Agreement (CSA) or otherwise notified Duquesne Light that the second floor unit was not being used as a rental unit starting in September 2011.

To support his assertion that Duquesne Light knew that the second floor unit was being used by him personally, Mr. Lewis testified to the following series of events in 2011 leading up to September 29, 2011. On April 11, 2011, Mr. Lewis faxed Duquesne Light an executed CSA to avoid discontinuance of electric service if a tenant in the second floor unit either moved out or was not paying for service. Tr. 9; Lewis Exhibit A. The purpose of the CSA is for a landlord to accept responsibility for payment of electric service bills during periods of vacancy. Lewis Exhibit A. The CSA remains in effect until the signatory to the CSA provides written notice of an intent to cancel the CSA to Duquesne Light. Lewis Exhibit A. Duquesne Light witness Roxanne Morris testified that the Company understood the second floor unit was a rental unit because of the CSA. Tr. 48.

In May of 2011, a new tenant, Gary Traub, began occupying the second floor unit. Tr. 9. Mr. Lewis states that the Mr. Traub was obligated to put electric service in his name. Tr. 9. However, Mr. Traub did not put electric service in his name, and Mr. Lewis received electric bills for the second floor unit for May and June 2011. Tr. 9. Mr. Lewis asserts that he cancelled the CSA because Mr. Traub did not put electric service in his name. Tr. 9-10. Mr. Lewis explained that he canceled the CSA to prevent Mr. Traub from accruing electric service costs that would be charged to Mr. Lewis under the CSA. Tr. 27.

The CSA states: “This agreement shall remain in effect until the undersigned provides written notification notice of the undersigned’s intent to cancel this agreement to Duquesne Light Company.” Lewis Exhibit A. Mr. Lewis’s own testimony raises doubts as to whether Mr. Lewis ever cancelled the CSA in writing. Specifically, although Mr. Lewis asserts he cancelled the CSA, he did not recall whether he requested cancelation of the CSA in writing. Tr. 27. Mr. Lewis also admitted that he does not have any record of sending a request to Duquesne Light to cancel the CSA. Tr. 27. Similarly, Mr. Lewis further alleges that the bill dated July 15, 2011 (Lewis Exhibit B) shows that the CSA was cancelled because that bill states it is a final bill and, if a CSA existed, electric service would have continued. Tr. 28. However, there is no clear basis to find that the bill dated July 15, 2011 was issued as a final bill because the CSA was cancelled. To the contrary, Duquesne Light witness Morris explained the final bill was issued because electric service to the second floor unit was placed in the name of William Campbell. Tr. 61.

Mr. Lewis also asserted that Duquesne Light knew that the second floor was being used by him for his residential use only after he called Duquesne Light to get service in September 2011. Tr. 33-35. Mr. Lewis averred that, if Duquesne Light had asked him if he’d be renting out the unit again, he would have told them that he would never rent the unit again while he is living there. Tr. 12. However, Mr. Lewis also stated that he does not remember the substance of his conversation with Duquesne Light after he called to get service in September 2011, e.g., whether or not they asked him what he’d be using the unit for or whether or not he’d be renting out the unit again. Tr. 11-12. Additionally, Duquesne Light witness Morris testified that service to the second floor unit resumed in Mr. Lewis’s name on September 29, 2011 without a call or contact from Mr. Lewis pursuant to the CSA. Tr. 51, 62. For all these reasons, there is no clear basis to find that Duquesne Light knew that Mr. Lewis would not use the second floor unit as a rental unit, either through cancellation of the CSA or other notice to Duquesne Light. As the party with the burden of proof in this proceeding, I do not find that Mr. Lewis met his burden of proving that Duquesne Light provided him inadequate service by improperly charging him sales tax to his second floor unit since 2011 because there is not substantial

evidence that Mr. Lewis cancelled his CSA or otherwise notified Duquesne Light that the second floor unit was not being used as a rental unit starting in September 2011.

### Penalty

Penalties may be imposed where violations of the Code and Commission regulations or a Commission Order are found. *See* 52 Pa. Code § 69.1201; *see also* *Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000). As explained above, two acts by Duquesne Light violated the Public Utility Code. Specifically, Duquesne Light failed to update Mr. Lewis's account to reflect a tax exempt status, thereby providing inadequate service under 66 Pa. C.S. § 1501 because bills for April 2023 and September 2023 were issued containing incorrect charges.

Having found two separate violations of the Code, the Commission is authorized to impose a maximum civil penalty of \$1,000 per day. 66 Pa.C.S. § 3301. The Commission's Policy Statement 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. 52 Pa. Code § 69.1201.

These factors are: (i) whether the conduct at issue was of a serious nature; (ii) whether the resulting consequences of the conduct at issue were of a serious nature; (iii) whether the conduct at issue was deemed intentional or negligent; (iv) whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) the number of customers affected and the duration of the violation; (vi) the compliance history of the regulated entity that committed the violation; (vii) whether the regulated entity cooperated with the Commission's investigation; (viii) the amount of the civil penalty or fine necessary to deter future violations; (ix) past Commission decisions in similar situations; and (x) other relevant factors. 52 Pa. Code § 69.1201(c).

The first factor considers whether the conduct at issue was of a serious nature, and, if so, whether the conduct may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1).

"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." *Id.* There is no evidence that the violations here were willful fraud or misrepresentations and therefore a lower penalty is warranted.

The second factor considers whether the resulting consequences of the conduct in question were of a serious nature. 52 Pa. Code § 69.1201(c)(2). "When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* The violation here did not result in personal injury or property damage. This supports a lower penalty.

The third factor considers whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). There is no evidence that the violations here were intentional, as opposed to being the result of inadvertent error or internal miscommunication. This supports a lower penalty.

The fourth factor to be considered is whether Duquesne Light made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Duquesne Light did admit its error here to address the alleged conduct at issue by providing Mr. Lewis refunds for the sales tax charged on his March 2023, April 2023, and September 2023 bills. This supports a lower penalty.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Here, one customer was affected. This suggests that a lower penalty is warranted.

The sixth factor considers the compliance history of the company. 52 Pa. Code § 69.1201(c)(6). The provision provides that "[a]n isolated incident from an otherwise compliant

company may result in a lower penalty." *Id.* There is no basis to find that Duquesne Light has an unfavorable compliance history. This warrants a lower penalty.

The seventh factor to be considered is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). This factor is not applicable here.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Again, there is no record that charging unwarranted sales tax is a systemic problem at Duquesne Light and therefore this factor suggests a lower penalty.

The ninth factor examines past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). No similar situations were found.

Finally, the tenth factor considers any other relevant factor. 52 Pa. Code § 69.1201(c)(10). There are no other relevant factors to consider.

After considering the above factors, I find that a penalty of \$100 for each separate billing to Mr. Lewis that included sales tax for his second floor unit after Duquesne Light had notice that the bills should be exempt from sales tax is appropriate. Duquesne Light will be ordered to pay a total penalty of \$200.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. If a complainant establishes a prima facie case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); see also, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701

6. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961).

9. The Pennsylvania Public Utility Code requires each public utility to provide reasonable and adequate service. 66 Pa.C.S. § 1501.

10. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlt. 1995).

11. The Complainant has established by a preponderance of the evidence that Duquesne Light violated 66 Pa.C.S. § 1501 when it sent two billing statements for April 2023 and September 2023 that included improperly collected sales tax charges.

12. Actions for civil penalties brought under the Public Utility Code are subject to a three year statute of limitations. 66 Pa.C.S. § 3314.

13. Section 3314(a) of the Code is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order. *Kovarikova v. Pa. Am. Water Co*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018).

14. The Commission lacks jurisdiction over claims for refunds of improperly collected sales taxes. *Jones v. Phila. Gas Works*, Docket No. C-2015-2493099 (Final Order entered Apr. 5, 2016); *Rossi v. Equitable Gas Co.*, Docket No. C-00970256 (Final Order entered Jan. 7, 1998).

15. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

16. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

17. The Complainant did not establish by a preponderance of the evidence that Duquesne Light otherwise violated the Public Utility Code, Commission regulations, or an order of the Commission.

18. A fine is warranted because the Company violated 66 Pa.C.S. § 1501. *See* 66 Pa.C.S. § 3301.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Justin Lewis at Justin Lewis v. Duquesne Light Company, Docket No. F-2023-3043317, is granted in part and denied in part.
2. That the claim that Duquesne Light Company violated the Public Utility Code by issuing two inaccurate billing statements in April 2023 and September 2023 is granted.
3. That all other claims are denied and dismissed.
4. That, within thirty (30) days of the entry of a final Commission Order in this proceeding, Respondent Duquesne Light Company shall remit two hundred dollars (\$200.00) as a civil penalty payable by certified check or money order to “Commonwealth of Pennsylvania” with the docket number of this proceeding listed thereon, and send to:

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

5. That a copy of the final Commission Order in this proceeding shall be served upon the Financial and Assessment Chief, Office of Administrative Services.
6. That the Bureau of Administrative Services, Assessment Section shall monitor this matter for compliance.

