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May 16, 2024

## VIA ELECTRONIC FILING

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

Re: Justin Lewis v. Duquesne Light Company  
Docket No. F-2023-3043317

Dear Secretary Chiavetta:

Enclosed for filing please find the Exceptions of Duquesne Light Company to the Initial Decision in the above-captioned matter. Copies have been served in accordance with the attached Certificate of Service.

Thank you, and if you have any questions, please feel free to contact me.

Very truly yours,  
STEVENS & LEE



Michael A. Gruin

Enclosures

cc: Certificate of Service  
Office of Special Assistants (via email only)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUSTIN LEWIS	:	
Complainants	:	
	:	
v.	:	Docket No. F-2023-3037963
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

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**DUQUESNE LIGHT COMPANY’S EXCEPTIONS TO INITIAL DECISION**

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Pursuant to 52 Pa Code § 5.533, Duquesne Light Company (“Duquesne Light”) hereby files its Exceptions to the Initial Decision (“I.D.”) of the Administrative Law Judge (“ALJ”) in the above-referenced matter. Duquesne Light respectfully submits that that the I.D. errs as a matter of law by finding that Duquesne Light failed to provide adequate service in violation of the Public Utility Code when it charged sales tax to the Complainant’s second floor service account, but then quickly corrected the error with a billing adjustment the following month. Duquesne Light’s conduct was not inadequate or unreasonable as a matter of law because it acted promptly upon notice that the account was eligible for a sales tax exemption and quickly corrected the subsequent inadvertent billing errors.

**I. Background and Procedural History**

This case involves a claim by the Complainant that Duquesne Light incorrectly charged sales tax to the Complainant on his separately-metered second floor unit, and for relief requests a refund of the sales tax charges.<sup>1</sup> During the evidentiary hearing in this matter, the Complainant asserted that Duquesne Light Company should not have charged sales tax on the account for the

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<sup>1</sup> See Complaint, at paragraphs 4 and 5.

second floor unit in his building, on the grounds that he was receiving residential electric service for his own use at that unit.

The facts in this case are largely undisputed. The Complainant owns a building that has separate units on the first and second floor, each of which have their own separately-metered electric service account.<sup>2</sup> As the ALJ explained in pages 13-14 of the I.D., the Complainant has a Continuation of Service Agreement (“CSA”) in place for the second floor unit at his property. A CSA is a document that is used for rental properties, to allow the electric service for a rental unit to automatically be placed in the landlord’s name when a tenant cancels electric service at the unit.<sup>3</sup> It is undisputed that a CSA was in effect for the Complainant’s second floor unit since 2011. Based on the existence of the CSA, Duquesne Light’s understanding was that the second floor unit was a rental property, and it was coded as such for sales tax purposes.<sup>4</sup> The Pennsylvania Department of Revenue’s regulation at 61 Pa. Code 32.25(b)(2) states that utility service that is purchased by a purchaser other than for the purchaser’s own residential use is presumed to be for commercial use and subject to sales tax. Accordingly, Duquesne Light charged sales tax on the bills issued for the second floor unit’s account from September 2011 until May of 2023.<sup>5</sup>

In March of 2023, the Complainant contacted Duquesne Light and stated that he was currently residing in the second floor unit and requested that sales tax no longer be charged on the account for the second floor.<sup>6</sup> Prior to that, Duquesne Light had no record of a contact from the Complainant to provide notification that the second floor unit was no longer being used as a rental.<sup>7</sup> Duquesne Light sent the Complainant a sales tax exemption form to fill out and sign in

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<sup>2</sup> Tr., pp. 8, 45.

<sup>3</sup> Tr., p. 46

<sup>4</sup> Tr., pp 48-49.

<sup>5</sup> Tr. p. 52

<sup>6</sup> Tr. p. 13

<sup>7</sup> Tr. p. 53

order to have the second floor account coded as tax exempt.<sup>8</sup> Duquesne Light received the signed sales tax exemption back from the Complainant on March 27, 2023, the same day as the March 2023 bill for the second floor was issued.<sup>9</sup> Duquesne Light charged sales tax on that bill as well as the April 2023 bill for that second floor unit.<sup>10</sup> However, Duquesne Light then issued a credit for the full amount of the sales tax charged in both March and April. That credit appeared on the bill issued in May 2023 for the second floor unit, in the amount of \$3.80.<sup>11</sup> Due to a billing error in September 2023, sales tax was again mistakenly charged on the second floor account. But again, Duquesne Light quickly corrected the error and issued a credit for the sales tax on the very next bill, issued in October of 2023.<sup>12</sup>

The ALJ correctly concluded that Mr. Lewis did not meet his burden of proving that he was charged sales tax incorrectly for the second floor unit for periods prior to April 2023, based on the existence of the CSA. But the ALJ held that Duquesne Light had provided “inadequate service” to the Complainant when it improperly charged him sales tax for his second floor unit on his April and September 2023 bills, and recommended the imposition of a civil penalty in the amount of \$200.

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<sup>8</sup> Complainant Exhibit E.

<sup>9</sup> Complainant Exhibit F, and Duquesne Light Exhibit 7

<sup>10</sup> Duquesne Light Exhibit 7

<sup>11</sup> Duquesne Light Exhibit 4

<sup>12</sup> Duquesne Light Exhibit 6

## II. Exceptions

### Exception No. 1– The Initial Decision incorrectly determined that Duquesne Light provided inadequate service in violation of the Public Utility Code

The Initial Decision found that Duquesne Light provided “inadequate service” on two occasions, when it charged the Complainant sales tax on his bill in April 2023 and September 2023. Duquesne Light does not dispute that it initially charged the Complainant \$1.96 in sales tax on his April 2023 bill for his second floor unit, and \$4.67 in sales tax on his September 2023 bill for the second floor unit, even though the unit’s tax coding was requested to be changed to tax exempt in March of 2023.<sup>13</sup> However, it is undisputed that Duquesne immediately issued a credit for the erroneous sales tax charges on the very next bills following the mistaken bills.<sup>14</sup> In other words, as soon as Duquesne Light became aware of the issue, it issued the appropriate credits, and the Complainant was made completely whole.

While Section 1501 of the Code (66 Pa.C.S. § 1501) requires a utility company to provide customers reasonable service, the Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947, 949 (Pa.Cmwlt. 1984). The Commission has stated that a utility is not mandated to furnish perfect service:

“[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.”

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<sup>13</sup> Duquesne Light Exhibits 4,6,7

<sup>14</sup> Id. See also. Tr., p. 24

*Re Metropolitan Edison Company*, 80 Pa. PUC 662, 672 (1993). Thus, the test to determine the adequacy of a utility's service is that of reasonableness. This is also the test to determine the adequacy of a utility's billing practices. *Scherich v. Verizon Pennsylvania Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010).

The mere occurrence of a billing error does not mean that a utility committed a violation of the Public Utility Code or provided insufficient or inadequate service. To the contrary, the Commission's regulations explicitly recognize that billing errors can and do occur. See, for instance, 52 Pa. Code § 56.14, which permits utility to render make-up bills for billing errors. Duquesne Light respectfully submits that when the entirety of the circumstances are taken into consideration, there should be no finding that Duquesne Light committed a violation of the Public Utility Code. This case involves two short term, inadvertent errors which resulted in the Complainant being billed \$6.63 in sales tax on an account that was in the process of being converted from taxable to exempt after twelve years of being taxable. Upon learning of the billing errors, Duquesne Light immediately issued credits to remove the erroneous sales tax charges, without objection or undue delay. The impact to the customer was not substantial, as the inadvertent error did not result in any interruption to service, and he was not required to pursue a refund of the sales tax charges to the Department of Revenue. This was an isolated incident, and Duquesne Light quickly acknowledged its mistakes and took corrective action immediately.

The Commission has previously reviewed similar situations involving temporary billing errors that are corrected by the utility, and has determined that such situations do not justify the finding of violations or civil penalties. See, for example, the case of *Roger McCall v. Pennsylvania Electric Company*, Docket No. C-2013-2393779 (Initial Decision issued January 22, 2015, Final Order entered July 8, 2015). In that case, the utility admitted a billing mistake in

connection with a Continuation of Service Agreement, but the error was corrected after the utility became aware of it. In that case, the Commission determined that the utility's actions did not constitute a violation of the Public Utility Code or the Commission's regulations.

Finding a violation and issuing a civil penalty in the present situation would establish a new precedent for finding violations and imposing civil penalties for any billing error made by a utility, even when the utility corrects the billing error in full the very next month without any complaint being filed. That policy is not appropriate, and would be contrary to the Commission's existing regulations and past precedent which recognize that billing errors can occur and can be corrected. The facts in this case do not justify the finding of a violation against Duquesne Light or the imposition of a civil penalty, and therefore the Initial Decision should be modified in order to dismiss the Complaint in its entirety.

Exception No. 2— In the alternative, if the Commission determines that the two inadvertent sales tax billing errors constitute inadequate service in violation of the Public Utility Code billing, no civil penalties are warranted.

As set forth above, the record in this case does not justify a finding of a violation against Duquesne Light for inadequate or unreasonable service. But assuming *arguendo* that Duquesne Light provided inadequate service in connection with the two billing errors that were corrected the following month, no civil penalty is justified under the facts and circumstances of this case.

In applying the ten *Rosi* factors for evaluating proceedings involving violations of the Public Utility Code and Commission regulations from the Commission's policy statement at 52 Pa. Code § 69.1201, ALJ Coogan correctly noted that in this case, every single one of factors supported lower penalties. Specifically:

- There is no evidence that the billing error involved willful fraud or misrepresentation (§69.1201(c)1)

- There is no evidence that the billing error resulted in personal injury or property damage (§69.1201(c)2)
- There is no evidence that the billing error was intentional (§69.1201(c)3)
- Duquesne Light admitted its error and quickly took corrective action to remedy the error (§69.1201(c)4).
- The record reflects that this was an isolated incident involving only one customer (§69.1201(c)5).
- There is no basis to find that Duquesne Light has an unfavorable compliance history (§69.1201(c)6).
- There is no record that charging sales tax in error is a systematic problem at Duquesne Light (§69.1201(c)8).
- There have been no past Commission decisions in similar situations (§69.1201(c)9).
- There are no other relevant factors to consider. (§69.1201(c)10).<sup>15</sup>

Despite concluding that none of the ten factors justified the imposition of a civil penalty, the Initial Decision arbitrarily recommends a civil penalty of \$200 in connection with the two billing errors. However, it is not a requirement that every violation of the Public Utility Code must result in the imposition of a civil penalty, and it is common for the Commission to refrain from imposing civil penalties in cases involving relatively minor violations in which the ten *Rosi* factors support lower penalties. See, e.g., *Audrey McKee Orr v. Peoples Natural Gas Company*, Docket No. C-2017-2583759 (Final Order entered December 20, 2018), *Dennis Carulli v. Pennsylvania American Water Company*, Docket No. C-2010-2165581 (Final Order entered November 19, 2010), *Beth Trivelpiece v. PECO Energy Company*, Docket No. C-2015-2462644

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<sup>15</sup> The Initial Decision determined that the seventh factor was inapplicable to the case.

(Final Order entered September 22, 2016). Duquesne Light respectfully submits that in light of the isolated nature of the billing errors, the Company's quick identification and admission of the errors, the immediate correction of the issue, and the lack of harm or damage to the customer, no civil penalty is warranted in this case.

### **III. Conclusion**

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

- 1) Grants Duquesne Light's Exceptions, and
- 2) Dismisses the Complaint, in its entirety



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Dated: May 16, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUSTIN LEWIS	:	
Complainants	:	
	:	
v.	:	Docket No. F-2023-3037963
	:	
DUQUESNE LIGHT COMPANY	:	
Respondent	:	
	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Exceptions upon the party listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA U.S. ELECTRONIC MAIL

Justin Lewis  
justinlewislaw@gmail.com



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Michael Gruin

Dated: May 16, 2024