

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Todd Elliott Koger	:	
	:	
v.	:	C-2023-3038703
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

An electric utility customer filed a Formal Complaint alleging the utility company wrongfully terminated service, violated prior settlements, violated federal statutes, and conspired with municipal employees to withhold service termination notices, thereby resulting in the denial of grant applications to pay his past due electric bill. This decision dismisses the Formal Complaint because Complainant failed to establish his burden of proving Respondent violated a Commission statute, regulation, or order.

HISTORY OF THE PROCEEDING

Complaint and Answer

On March 2, 2023, Complainant Todd Elliott Koger (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (DLC). Complainant in pertinent part alleged that DLC 1) has an ongoing pattern of misconduct and bad faith; 2) knowingly violated agreements at Docket Nos.

C-2019-3013238 and C-2020-3020394, 3) knowingly withheld the termination notice in January and February 2023, thereby resulting in LIHEAP CRISIS repeatedly denying Complainant's grant application; 4) violated federal statutes, i.e., 42 U.S.C. 1981, 1983 and 1985; 5) terminated his electric service without cause on April 28, 2022; 6) conspired with municipal employees to withhold termination notices, resulting in the denial of his LIHEAP grant; and 7) is involved with municipal employees, who are subject to federal and state criminal and civil proceedings. Complaint ¶ 4. For relief, Complainant asked the Commission 1) to reopen Docket Nos. C-2019-3013238 and C-2020-3020394; 2) to make him whole; 3) to issue a restraining order against DLC; and 4) to award actual compensatory relief and punitive damages. Complaint ¶ 5. DLC filed and served an Answer and Preliminary Objections (PO) on March 23, 2023. DLC averred in pertinent part as follows. DLC admitted issuing termination notices to the Complainant's service address, located at 515 Kelly Avenue, Pittsburgh, PA 15221 in or around February 21, 2023, but the company denied such termination notices were improper. Duquesne Light denied withholding termination notices from the Complainant. DLC admitted terminating Complainant's electric service on April 28, 2022, for an unpaid balance of \$439.33 and denied that such termination was improper. DLC alleged Complainant's account balance is \$324.53, all of which was overdue. DLC alleged Complainant previously filed four other formal complaints in the last 5 years, and each complaint was closed with the filing of a Certificate of Satisfaction. DLC denied that the Company had violated the terms of any settlement with the Complainant. DLC denied the remaining material allegations of the Complaint. For relief, DLC requested dismissal of the Complaint with prejudice.

On June 5, 2023, a *First Interim Order* was issued sustaining DLC's preliminary objections that 1) the Commission lacked jurisdiction over claims rooted in federal statutes; 2) the Commission lacked jurisdiction to award compensatory or punitive damages; and 3) allegations of conspiracy or misconduct involving municipal employees and federal criminal and state civil proceedings constituted scandalous or impertinent matter. Therefore, these allegations were stricken from the Complaint.

On August 16, 2023, the evidentiary hearing convened in this matter. Mr. Koger appeared self-represented, testified on his own behalf, but he did not sponsor any exhibits. Emily M. Farah, Esquire, appeared on behalf of DLC and called two witnesses: Roxanne Morris, a supervisor of regulatory consumer relations, and Jennifer Ervin a universal services analyst. DLC's witnesses sponsored the company's Exhibits A, B, F, H, and I, which were admitted into the record.

During the hearing, I clarified Complainant's allegations at issue: 1) DLC's ongoing pattern of misconduct and bad faith; 2) DLC's termination of electric service without cause; and 3) DLC's involvement with municipal employees to withhold termination notice resulting in the denial of a LIHEAP grant. Tr. 12-13. Matters relating to Complainant's previously settled formal complaints¹ would not be considered because those prior complaints had been resolved with the filing of a Certificate of Satisfaction.² Tr. 12-14. However, Complainant would be permitted to present testimony and evidence relevant to his allegation that DLC had not honored certain matters pursuant to the Certificate of Satisfaction. Tr. 13-14. Accordingly, the parties were directed to present their testimony and evidence relevant to matters occurring after September 21, 2022, the date of the most recent Certificate of Satisfaction. *Id.* Additionally, Complainant was afforded the opportunity to submit late-filed exhibits by August 28, 2023, in support of his Complaint. Tr. 53-59. In turn, DLC would have 10 days to object to Complainant's late-filed exhibits or to file the Company's late-filed exhibits by September 7, 2023. Tr. 59. Neither party submitted any late-filed exhibits within the prescribed time.

On August 17, 2023, Complainant filed a Motion for Mistrial and New Hearing (Motion for Mistrial).

¹ See Respondent's Reply to Complainant's Motion to Open Record to Add New Claims, at page 2, referencing Docket Numbers C-2019-3013238, C-2020-3020394, C-2021-3026214, and C-2022-3032231.

² When a complainant raises issues in a previous formal complaint that are resolved with a Certificate of Satisfaction, to which no objection is taken, the matter becomes final, and complainant is prohibited from raising the same issues in a subsequent proceeding. See, *Wright v Phila. Gas Works*, Docket No. C-2013-2368462 (Opinion and Order entered Oct. 23, 2014) (*Wright*). No objection was filed to the Certificate of Satisfaction in Complainant's previous formal complaints.

On September 2, 2023, DLC filed a Reply to Complainant's Motion for Mistrial (Reply to Motion for Mistrial).

On October 11, 2023, an interim order was entered closing the record.

On October 12, 2023, Complainant filed a Motion to Open Record Add "New" Claims (Motion to Open Record).

On October 31, 2023, DLC filed a Reply to the Motion to Open Record.

On November 7, 2023, Complainant filed a Nov. 7, 2023, Supplement to Motion to Open Record Add "New" Claims (Supplemental Motion).

On November 28, 2023, DLC filed a Reply to Complainant's Supplemental Motion (Reply).

On December 18, 2023, Complainant filed a Motion to Open Record and/or filing of "New" Complaint (Second Motion to Open Record).

On December 28, 2023, DLC filed the Company's Reply to Complainant's Second Motion to Open Record.

On May 17, 2024, a Second Interim Order Reopening the Record to Rule On Post Hearing Motions And Reclosing The Record (Second Interim Order) was issued to the parties. The Second Interim Order denied Complainant's post hearing motions.³

³ The reader is directed to the Second Interim Order for a detailed description and analysis of Complainant's post hearing motions and the legal standards and reasoning applied in denying the motions.

FINDINGS OF FACT

1. Complainant Todd Elliott Koger resides at 515 Kelly Avenue, Pittsburgh, PA 15221 (Service Address). Tr. 4.

2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Complainant and Pennsylvania customers.

3. In April 2022, Complainant filed a Formal Complaint against Respondent at Docket No. C-2022-3032231. Tr. 13.

4. Complainant's Formal Complaint against Respondent at Docket No. C-2022-3032231 was resolved on September 21, 2022, with the filing of a Certificate of Satisfaction that states the parties came to an agreement that there was no wrongdoing by either party and the complaint had been satisfied. Certificate of Satisfaction at Docket No. C-2022-3032231.

5. On December 14, 2022, Complainant received a LIHEAP Cash Grant in the amount of \$1,000.00, thereby resulting in a credit of \$323.30 on his electric bill. Respondent's Exhibit A.

6. LIHEAP is a federally funded low-income home energy assistance program that aids low-income households in reducing their energy costs. LIHEAP is administered by the Pennsylvania Department of Human Services. Tr. 90.

7. LIHEAP has two main components: Cash grants and CRISIS grants. Tr. 90-91.

8. A LIHEAP Cash grant is a one-time payment that is sent directly to the utility provider as directed by the customer. Cash grants range in amount based on the

household size, income, and fuel price. Cash grants can only be applied to one utility service. The Cash grant cannot be split between utilities. Tr. 91.

9. Between September 21, 2022, and June 14, 2023, the activity on Complainant’s electric bill account was as listed below in Chart A. Tr. 64-68, 85; DLC Exhibit A.

Chart A					
Transaction Date	Transaction	Bill Due Date	Amount Due (Includes Prior Unpaid Balance)	Amount Paid	Balance
09/22/22	Actual Meter Reading	10/13/22	\$120.76	\$0.00	\$120.76
10/23/22	Actual Meter Reading	11/14/22	\$396.05	\$0.00	\$396.05
11/21/22	Actual Meter Reading	12/12/22	\$676.70	\$0.00	\$676.70
12/14/22	LIHEAP Cash Grant			\$1,000.00	-\$323.30
12/21/22	Actual Meter Reading	01/11/23	\$439.65	\$0.00	\$116.35
01/24/23	Actual Meter Reading	02/14/23	\$633.69	\$0.00	\$633.69
02/22/23	Actual Meter Reading	03/15/23	\$1,108.22	\$0.00	\$1,108.22
03/01/23	LIHEAP Supp'l Grant			\$150.00	\$958.22
03/22/23	LIHEAP CRISIS Grant			\$633.69	\$324.53
03/23/23	Customer Dispute				\$324.53
03/23/23	Actual Meter Reading	04/13/23	\$710.39	\$0.00	\$710.39
04/24/24	Actual Meter Reading	05/15/23	\$1,017.73	\$0.00	\$1,017.73
05/01/23	Payment	05/01/23		\$100.00	\$917.73
05/12/23	Cancel Customer Dispute				\$917.73
05/17/23	Dollar Energy Fund Grant		\$917.73	\$459.00	\$458.73
05/17/23	DLC Dollar Energy Match		\$458.73	\$459.00	-\$0.27
05/23/23	Actual Meter Reading	06/13/23	\$276.54	\$0.00	\$276.27
06/14/23	Payment	06/14/23	\$276.27	\$40.00	\$236.27

10. On February 21, 2023, Respondent issued Complainant a 10-Day Shut Off Notice for a delinquent account balance in the amount of \$633.69. Tr. 74, 80, 83; DLC Exhibit F.

11. On March 2, 2023, Complainant filed a Formal Complaint against Respondent alleging Respondent intentionally caused him harm and acted in bad faith when it “knowingly withheld information from the Complainant and the municipal LIHEAP provider of a pending termination notice, directly causing interruption of winter heating and extreme cold for more than 24 hours.” Tr. 17, 19-22; Complaint ¶ 3.

12. On June 22, 2023, Complainant was enrolled in Respondent’s Customer Assistance Program (CAP) with an account balance of \$236.27. Tr. 67-68; DLC Exhibit B.

13. As a result of Complainant receiving credits on his account through his enrollment in Respondent’s CAP, Complainant’s account balance at the time of the hearing was \$263.13. Tr. 64; DLC Exhibit F.

14. Respondent did not terminate Complainant’s electric service at any time between September 21, 2022, and the date of the hearing. Tr. 71, 74-76.

DISCUSSION

Legal Standards

Complaints and Burden of Proof

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

As the proponent of a rule or order, Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of Code. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainant must show that Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon 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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal value or "weight," the burden of proof has not been satisfied. Complainant must now provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Reasonable Service

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must

make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Section 102 of the Code defines “service” as:

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...

66 Pa.C.S. § 102 (emphasis added). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 578 A.2d 75 (Pa. Cmwlth. 1990). Accordingly, a utility’s service of notice of an impending service termination falls within the scope of reasonable service.

Termination of Service

Section 1406 of the Code permits a utility company to terminate service under certain conditions. Section 1406, in relevant part, states:

(a) Authorized termination. — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.

(1) Nonpayment of an undisputed delinquent account.
66 Pa.C.S. § 1406(a)(1).

Analysis

Under caselaw, Mr. Koger was precluded from relitigating any matters or events occurring before September 21, 2022.⁴ As noted above, Mr. Koger was afforded the opportunity

⁴ See n. 2 above.

to present testimony and evidence concerning his claims 1) DLC's ongoing pattern of misconduct and bad faith; 2) DLC's termination of electric service without cause; 3) DLC's involvement with municipal employees to withhold termination notice resulting in the denial of a LIHEAP grant; and 4) DLC failure to honor the terms or provisions of a Certificate of Satisfaction. Tr. 12-13.⁵

Complainant's Allegation 1 - DLC's Misconduct and Bad Faith

The crux of Mr. Koger's "pattern of misconduct and bad faith" claim against DLC in providing him electric service is as follows:

My testimony is on three occasions at the end of February 2023, LIHEAP denied three times my application based on their communications with Duquesne Light, where they were informed that there was no scheduled termination. So, I did not receive the federal entitlement based on representation of the company of no scheduled termination. Then Duquesne Light came out and terminated the service.

Tr. 24. Mr. Koger further testified:

What I'm saying is they withheld the notice, and that's the pattern that I identified. Every year, they withhold the termination notice to prevent me from getting all of the entitlements that I'm eligible for.

Tr. 47. The evidence does not support Complainant's claim that DLC has a "pattern of misconduct and bad faith."

DLC established that the company issued Complainant a 10-day termination notice on February 21, 2023, in the amount of \$633.69 and on March 1, 2023, and March 22, 2023, LIHEAP grants in the amount of \$150.00 and \$633.69, respectively, were credited to his

⁵ During the hearing, Mr. Koger made an oral motion for judgement on the pleadings, arguing that DLC terminated his service on March 2, 2023, without providing a 10-day shut off notice prior to termination. Tr. 29-30. As the hearing progressed, Mr. Koger effectively withdrew his oral motion by admitting that his service had not been terminated. Tr. 75-76.

electric account. Tr. 64-68, 74-75, 85; DLC Exhibits A, F; *also see* Chart A above. The complainant agreed that he received LIHEAP assistance. Tr. 48. Additionally, Complainant's testimony betrayed his bad faith claim as follows:

I will stipulate that after reading some information that I have here, I realized that there wasn't a termination in March or April. There was the threat of termination in March or April based on the bill that she just spoke of the February 21st bill. And that seems to be the issue of the complaint. I would stipulate that everything after again, after March, if we could just focus on what took place with that February 21st bill, the two LIHEAP payments of \$663, the bill that followed the LIHEAP payment of \$663 for \$1,108, if we could focus on that information to expedite this matter. Tr. 75.

Concerning the \$1,108.22 that became due on Complainant's electric bill on February 22, 2023, this amount did not result from any bad faith on the part of DLC. Rather Complainant's account balance resulted from a lack of any payments by Complainant. Between September 22, 2022, and February 21, 2023, Complainant did not make any payment of his electric account. The only payment of his electric bill was a \$1,000 LIHEAP grant, which was credited to his account on December 14, 2022. Tr. 64-65; DLC Exhibit A; *also see* Chart A above.

Complainant's bad faith allegation essentially is a claim that DLC failed to provide him with reasonable service by not issuing him a termination notice for the \$1,108.22, so that he would be eligible for a LIHEAP grant in that amount. Complainant's position is misplaced. First, DLC does not administer the LIHEAP program. Whether Complaint is eligible for a LIHEAP grant is determined by Pennsylvania Department of Human Services. Tr. 90-91, 99. Second, the Commission's regulations authorize utilities like DLC to issue termination notices for past due amounts. *See* 66 Pa.C.S. § 1406(a)(1). On February 21, 2023, Complainant's past due balance was \$633.69, and DLC issued a 10-day termination notice to Complainant on that date. To require DLC to issue a termination notice for an anticipated past due amount for Complainant to be eligible for a LIHEAP grant would violate the Code, as the

Code only permits a utility to issue a termination notice for an amount that is actually past due. Therefore, Complainant's bad faith claim is without merit.

Notably Complainant's bad faith claim is like the allegation in the Commission's recently decided case, *Murphy v Duquesne Light Co.*, Docket No. C-2023-3038940 (Opinion and Order entered Mar. 14, 2024 (*Murphy*)). In that case, Mr. Murphy complained that DLC refused to issue him a termination notice during the winter moratorium thereby preventing him from applying for a LIHEAP grant. The Commission held that Mr. Murphy "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." *Murphy* at 12.

Complainant's Allegation 2 - DLC's Termination of Service Without Cause

Initially, Mr. Koger maintained that DLC terminated his service in 2023 for 24 hours without any prior notice that his service would be terminated. Tr. 21-26. After DLC's witness, Roxanne Morris, testified that there was no record of Complainant's service termination in 2023, Complainant admitted that his service was not terminated. Tr. 75-76. Instead, Complainant contended the threat of service termination was the issue. *Id.*

As noted above the Commission's statute authorizes the utility to issue a service termination notice for an undisputed past due balance. Here, DLC issued Complainant a 10-day service termination on February 21, 2023, for a past due balance in the amount of \$633.69. Complainant did not dispute his account balance until March 3, 2023. Therefore, DLC's issuance of a termination notice on February 21, 2023, did not violate the Commission's statute.

Complainant's Allegation 3 – DLC's Involvement with Municipal Employees

Complainant did not present any evidence that DLC was involved with municipal employees withholding termination notices, thereby resulting in the denial of LIHEAP grants to Complainant. Accordingly, this allegation is summarily dismissed. Tr. 12-13.

Complainant's Allegation 4 – DLC Failed to Honor Terms of a Certification of Satisfaction.

While Complainant did not specifically detail the terms of any Certificate of Satisfaction which he claims DLC failed to honor, his testimony suggests he is contending that after the filing of a Certificate of Satisfaction in his prior Formal Complaints, DLC failed to issue him a termination notice so he would be eligible for a LIHEAP grant. Complainant testified as follows:

And that's the point. My bill was past due, and I didn't get one [a termination notice]. If you have a termination notice, you qualify for more with the entitlements. During the winter months. When I applied for the LIHEAP one, I applied for everything, and I had the past due balance. The LIHEAP one didn't cover the complete past due balance, so there was still reason for termination, but the moratorium prevented them from termination. March the moratorium's - but that's when Crisis concludes. So, the termination notice, normally you get a termination notice during the moratorium, but they give you the notice. They give you notice so that you can apply for the grants.

And -again, - all three of my PUC complaints provide the same ongoing allegation. That they are not providing what they provide everybody else the termination notice. So, everybody else gets the federal entitlement, but I only get the one that doesn't require the termination notice. I get - the first one is the least amount that you can get.

The Crisis is the more extensive amount that you can get. For years, I can't get the extensive grant because I can't get a termination notice from them, although they give everybody else one when it's past due during those months. They withhold bonds [sic] to prevent me from getting the Crisis grant. That has been my allegations from day one. That's the bad faith. That's what the settlements have been. That they will no longer withhold them, but again, in 2023, they withheld it again. That's why I complained. Tr. 46-49.

Complainant's argument is unavailing on several points. As noted above, whether Complainant receives a LIHEAP grant for the full amount of his account balance is not determined by DLC. Tr. 111-112. There is no evidence in the record that DLC withholds a termination notice from a customer to prevent the customer from receiving a LIHEAP grant. Tr. 92. There is no evidence in the record that DLC issues termination notices to other customers for those customers to apply for grants. Specifically, DLC's witness, Jennifer Ervin (Witness Ervin), testified that the company does not issue termination notices to customers for them to qualify for LIHEAP grants. Tr. 92. Witness Ervin explained that during the winter moratorium, which runs from December 1 to March 1, the company issues past due notices for customers with a past due balance. Tr. 112. Witness Ervin further explained that starting in February, the company may issue a 10-day service termination notice, because those notices are good for 60 days. Tr. 113. Importantly, there is no provision in the Commission's statutes or regulations requiring a utility to issue a customer a termination notice for the purpose of the customer obtaining a LIHEAP grant. Accordingly, Complainant's allegation that DLC failed to honor the terms of a Certificate of Satisfaction is without merit.

Ruling

Based upon the above analysis of the facts, exhibits and testimony in this proceeding, a ruling is required that Complainant failed to establish his burden of proof. Accordingly in the ordering paragraphs below the Complaint will be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant carries the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code, or the regulations of the Commission or a Commission order in providing him with electric service. 66 Pa.C.S. § 332(a).

3. The Public Utility Code requires a public utility to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501.

4. After due notice to a customer, a public utility may terminate service for a customer's nonpayment of an undisputed delinquent account. 66 Pa.C.S. § 1406(a)(1).

5. Complainant has not met his burden of proving Respondent violated the Public Utility Code, a Commission regulation, or a Commission order. 66 Pa.C.S. §332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Todd Elliott in the matter Todd Elliott Koger v. Duquesne Light Company at Docket No. C-2023-3038703 is hereby dismissed with prejudice.

2. That the Commission's Secretary's Bureau shall mark Docket No. C-2023-3038703 closed.

Date: August 15, 2024

_____/s/
Conrad A. Johnson
Administrative Law Judge