

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

Public Meeting held November 7, 2024

Commissioners Present:

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

Justin Lewis

F-2023-3043317

v.

Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Duquesne Light Company (Duquesne or the Company) filed on May 16, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on April 26, 2024, in the above-captioned proceeding. In the Initial Decision, the ALJ recommended that the Commission sustain, in part, and deny, in part, the Formal Complaint (Complaint) filed by Justin Lewis (Mr. Lewis or Complainant) on September 18, 2023. No Replies to Exceptions were filed. For the reasons set forth herein, consistent with this Opinion and Order, we shall:

(1) grant Duquesne's Exceptions, in part; (2) adopt the ALJ's Initial Decision, as modified; and (3) grant in part, and deny, in part, the Complaint.

I. Background and Procedural History

On September 18, 2023, Mr. Lewis filed a Formal Complaint against Duquesne, alleging that there are incorrect charges on his bill.¹ For relief, the Complainant requested that Duquesne refund all sales tax paid, with interest and penalties, along with reasonable attorney's fees. Complaint at 2-3.

On November 6, 2023, Duquesne filed an Answer to the Complaint. In its Answer, the Company stated it received a sales tax exemption form from Mr. Lewis on March 27, 2023. Duquesne admitted that sales taxes were erroneously included in the Complainant's March 2023, April 2023, and September 2023² electric service bills. However, the Company stated it remitted the incorrectly collected sales tax to the Complainant's account via bill credits. Prior to March 27, 2023, Duquesne asserted that Mr. Lewis was correctly charged sales tax, and he was not entitled to a refund of sales tax the Company collected before this date. Duquesne Answer at 3-4.

By Hearing Notice dated December 1, 2023, an Initial Telephonic Hearing was scheduled for January 10, 2024. Additionally, the ALJ issued the Parties a

¹ The Complaint is a timely appeal from an informal decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3912810. BCS dismissed the Informal Complaint on September 11, 2023, finding Duquesne properly billed the Complainant. *See*, Tr. at 60; Duquesne Exh. 5. The Complainant requested Formal Complaint forms on September 18, 2023, and filed his Complaint on the same day.

² Duquesne prepared the September 2023 bill on September 25, 2023, after Mr. Lewis filed the Formal Complaint. At the hearing held on January 10, 2024, neither party objected to including the September 2023 bill in the record in this proceeding. Tr. at 18, Exh. H.

Prehearing Order dated December 1, 2023, informing them about the procedural rules for the hearing.

On January 10, 2024, ALJ Coogan convened the telephonic evidentiary hearing, as scheduled. Mr. Lewis appeared on behalf of himself, testified on his own behalf and presented no other witnesses.³ The Complainant presented eight (8) exhibits (Lewis Exhibits A-F), which were admitted into the record. Duquesne was represented by counsel who presented the testimony of two (2) witnesses: Ms. Roxanne Morris, Supervisor of Regulatory Consumer Regulations for Duquesne, and Mr. Matthew Simpson, Tax Director for Duquesne. Duquesne presented six (6) exhibits (Duquesne Exhibits 3-8), which were admitted into the record. The record was closed on February 2, 2024, when a transcript of the proceeding consisting of ninety-six (96) pages was filed with the Commission. I.D. at 2-3.

On April 26, 2024, the Commission issued the Initial Decision of ALJ Coogan in which he recommended that the Commission sustain the Complaint, in part, and deny it, in part. The ALJ recommended that the Complaint be sustained to the extent that the Complainant alleged Duquesne provided inadequate service by incorrectly including sales tax on Mr. Lewis' April 2023 and September 2023 bills. However, the ALJ recommended that the Complaint be denied to the extent that it claimed, starting in September 2011, the Company provided the Complainant inadequate service by charging him sales tax for service to his second-floor unit because there is not substantial evidence that Mr. Lewis notified Duquesne that the second-floor unit was tax exempt. I.D. at 12, 14-15.

As noted *supra*, Duquesne filed Exceptions on May 16, 2024. No Replies to Exceptions were filed.

³ The Complainant is an attorney. Tr. at 5-6.

II. Discussion

A. Legal Standards

1. Burden of Proof

As a matter of law, to establish a legally sufficient claim, 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. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Pennsylvania Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the “preponderance of the evidence” standard. *Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992) (*Lansberry*); *see also, North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 855 (Pa. 1950).

The burden of proof comprises two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward

with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id.* It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie, Burleson; see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of

persuasion, the Commission, as the ultimate factfinder,⁴ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber*).

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Consolidated Edison Company of New York v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1983). 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

2. Adequate, Efficient, Safe and Reasonable Electric Service

The Code makes clear that a public utility has a duty to maintain adequate, efficient, safe, and reasonable service and facilities and to make changes, alterations, and substitutions that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part, as follows:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions,

⁴ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa.C.S. § 335(a)).

extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa.C.S. § 1501.

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. 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. *W. Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlt. 1990). Accordingly, a utility’s billing practices are included within the scope of reasonable service.

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

B. ALJ's Initial Decision

In his Initial Decision, ALJ Coogan made Forty-three (43) Findings of Fact and reached eighteen (18) Conclusions of Law. I.D. at 3-7, 17-19. 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.

As background, the ALJ first explained that the Complainant's service address is a duplex. Initially, when the Complainant purchased the property in 2008, he lived on the first floor unit of the property and used the second floor unit as a rental property. After evicting a tenant from the second floor unit in September 2011, Mr. Lewis used the second floor unit as part of his residence. I.D. at 10 (citing Tr. at 8- 13).

Next, the ALJ addressed the Complainant's allegation that Duquesne improperly handled his requests, during 2023, for electric service charges to his second floor unit to be exempt from sales tax. As previously noted, ALJ Coogan found that Mr. Lewis met his burden of proving that Duquesne provided the Complainant unreasonable service when it improperly charged him sales tax on his April and September 2023 bills. The ALJ reasoned that:

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.

I.D. at 12.

However, ALJ Coogan did not find sufficient evidence that Duquesne provided inadequate service when it charged the Complainant sales tax on his March 2023 bill. The ALJ stated the following:

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.

I.D. at 12.

ALJ Coogan noted Duquesne issued a bill credit to Mr. Lewis for sales tax charged after it received notice, in March 2023, that the Complainant was using the second-floor unit as part of his residence. Therefore, the ALJ found that any refund Mr. Lewis is claiming prior to March 2023 should be addressed by the Pennsylvania Department of Revenue consistent with the Commission's decisions in *Jones v. Phila. Gas Works*, Docket No. C-2015-2493099 (Final Order entered April 5, 2016) (*Jones*); and *Rossi v. Equitable Gas Co.*, Docket No. C-00970256 (Final Order entered January 7, 1998) (*Rossi*). I.D. at 12.

Finally, ALJ Coogan found Mr. Lewis did not meet his burden of proving Duquesne provided unreasonable service by improperly charging him sales tax since 2011. The ALJ noted the Complainant's assertion that he cancelled the Continuance of

Service Agreement (CSA), or otherwise notified the Company that the second floor unit was not being used as a rental unit starting in September 2011. However, the ALJ noted that the Complainant could not remember if he requested the cancelation of the CSA in writing, pursuant to the CSA. Therefore, the ALJ reasoned there is not substantial evidence that Mr. Lewis cancelled the CSA or otherwise notified Duquesne that the second-floor unit was not being used as a rental unit starting in September 2011.

I.D. at 13-14.

After finding two (2) violations of 66 Pa.C.S. § 1501 regarding Duquesne charging Mr. Lewis sales tax in April and September 2023, the ALJ examined whether to impose a civil penalty against Duquesne. The ALJ applied the factors in our Statement of Policy under 52 Pa. Code § 69.1201 (*Rosi* factors) and determined that a civil penalty of \$200 was appropriate. I.D. at 15-17.

Under the first factor, pertaining to whether the conduct at issue was of a serious nature, the ALJ concluded that there was no evidence that the violations were willful fraud or misrepresentations. Therefore, the ALJ found Duquesne's actions warranted a lower penalty. I.D. at 15-16.

Under the second factor, relating to the consequences of the conduct, the ALJ noted that the violation here did not result in personal injury or property damage. Therefore, the ALJ found the violations support a lower penalty. I.D. at 16.

Under the third factor, which considers whether the conduct at issue was intentional or negligent, the ALJ did not find that the violations were intentional, which supports a lower penalty. *Id.*

Under the fourth factor, which considers whether Duquesne made efforts to modify internal policies and procedures to address the alleged conduct at issue and to

prevent similar conduct in the future, the ALJ stated Duquesne admitted the error and provided Mr. Lewis bill credits for sales tax charged on his March, April, and September 2023 bills. The ALJ found this supports a lower penalty. *Id.*

In addressing the fifth factor, which considers the number of customers affected and the duration of the violation, the ALJ noted that the violation involved one (1) customer, which warranted a lower penalty. *Id.*

Under the sixth factor, regarding the Company's compliance history, the ALJ did not find that Duquesne has a poor compliance history, which warranted a lower penalty. I.D. at 16-17.

Regarding the seventh factor, concerning whether the Company cooperated with the Commission, the ALJ stated this factor was inapplicable. I.D. at 17.

The eighth factor considers the amount of the civil penalty necessary to deter future violations. The ALJ found there is no record that charging unwarranted sales tax is a systemic problem at Duquesne and therefore this factor suggests a lower penalty. *Id.*

Under the ninth factor, evaluating past Commission decisions in similar situations, the ALJ did not find any similar situations. *Id.*

The tenth factor considers other relevant factors, which the ALJ found none. *Id.*

After considering the above factors, the ALJ found that a penalty of \$100 for each separate billing to Mr. Lewis that included sales tax for his second floor unit

after Duquesne had notice that the bills should be exempt from sales tax is appropriate. Thus, the ALJ ordered Duquesne to pay a total penalty of \$200. I.D. at 17.

C. Exceptions and Dispositions

As noted, *supra*, on May 16, 2024, Duquesne filed Exceptions to limited portions of the Initial Decision, advancing several arguments against the findings of ALJ Coogan related to: (1) the inadequate service of Duquesne; and (2) the imposition of a civil penalty.

1. Duquesne Exception No. 1

In its Exception No. 1, Duquesne objects to the finding that it provided inadequate service in violation of Section 1501 of the Code. The Company states that:

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.Cmwlth. 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.” *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).

Exc. at 4-5.

Duquesne claims a billing error does not constitute a violation of the Code or that it provided inadequate service. The Company notes that the Commission's Regulations (Regulations) at 52 Pa. Code § 56.14 permit a utility to render make-up bills for billing errors. Duquesne claims it made two (2) inadvertent errors, totaling \$6.63, during the time it was in the process of changing the Complainant's account from taxable to tax exempt. The Company asserts, without objection or delay, it issued a credit to the Complainant on the next bills following the erroneous sales tax charges. Exc. at 5.

Duquesne contends that:

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.

Exc. at 5-6.

Therefore, Duquesne alleges that finding a violation and imposing a civil penalty would establish a new precedent for any billing error. The Company asserts that the facts of this case do not justify finding that it violated the Code or the Commission's

Regulations, nor does the record support imposing a civil penalty on the Company. Duquesne requests that the I.D. be modified to dismiss the Complaint. Exc. at 6.

2. Duquesne Exception No. 2

In its Exception No. 2, Duquesne objects to the imposition of a civil penalty. If the Company is found to have provided inadequate service, Duquesne claims no civil penalty is justified in this case. As previously discussed, the ALJ found that *Rosi* factor Nos. 1, 2, 3, 4, 5, 6, and 8, outlined in our Statement of Policy under 52 Pa. Code § 69.1201, supported a lower penalty. However, Duquesne contends that the ALJ erred by arbitrarily recommending a civil penalty of \$200. The Company notes that a civil penalty is not required for every violation of the Code and the Commission has not imposed civil penalties where minor violations support lower penalties. Exc. at 6-8 (citing *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 (Final Order entered September 22, 2016)).

Therefore, Duquesne 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.

Exc. at 8.

3. Disposition of Duquesne Exception Nos. 1 and 2

At the outset, we note that 66 Pa.C.S. § 1501 requires that utilities provide reasonable service, however:

66 Pa.C.S. § 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.

Metropolitan Edison Company, 80 Pa. PUC 662, 672 (1993).

Upon review of Duquesne's Exception No. 1, we shall modify the Initial Decision consistent with the following discussion. We agree with the ALJ that the Complainant has met his burden of proof that Duquesne failed to provide adequate, efficient, safe, or reasonable service, as required under 66 Pa.C.S. § 1501. However, we disagree with the ALJ in regard to the number of times Duquesne violated 66 Pa.C.S. § 1501.

With respect to whether Duquesne provided adequate, efficient, safe, or reasonable service under the circumstances in this proceeding, we note that the Complainant sent a sales tax exemption form to Duquesne on *three* (3) separate occasions: March 27, 2023; May 23, 2023; and July 27, 2023. Tr. at 21. Starting with Mr. Lewis' contact with Duquesne on March 16, 2023, he verbally communicated to the Company that his account is a residential account. Following this discussion, on March 19, 2023, Duquesne mailed the Complainant a sales tax exemption form for him to complete and return to the Company. On March 27, 2023, Mr. Lewis submitted the *first* sales tax exemption form. Tr. at 13-14. Also on March 27, 2023, Duquesne prepared the Complainant's March 2023 bill and charged the Complainant sales tax of \$1.84. After submitting the first sales tax exemption form, Duquesne charged the Complainant sales

tax of \$1.96 on his April 2023 bill. Duquesne Exh. 7. On May 23, 2023, the Complainant called Duquesne to inform the Company he was assessed sales tax on his April 2023 bill, after he had submitted a sales tax exemption form to Duquesne. At this time, Duquesne told Mr. Lewis that the sales tax exemption form had not been entered into its system and he needed to submit another sales tax exemption form. Tr. at 16.

On May 23, 2023, the Complainant submitted the *second* sales tax attestation form and Duquesne subsequently issued a bill credit to Mr. Lewis of \$1.84 for the March 2023 bill and \$1.96 for the April 2023 bill. Tr. at 24. On July 18, 2023, Duquesne sent Mr. Lewis a letter requesting that he submit another sales tax attestation form. On July 27, 2023, for the *third* time, the Complainant submitted a sales tax exemption form to Duquesne. About two (2) months later, on Mr. Lewis' September 2023 bill, Duquesne charged sales tax of \$4.67. When Mr. Lewis notified the Company that he was charged sales tax on his September 2023 bill, Duquesne issued the Complainant a bill credit for \$4.67. Tr. at 58-59.

Based on the record, we deem that Duquesne provided reasonable, but not perfect, service when it erroneously charged Mr. Lewis sales tax on his April 2023 bill. We note the April 2023 bill was the first bill the Company prepared after the Complainant submitted the first sales tax exemption form. Thus, at the time Duquesne prepared the April 2023 bill, incorrectly billing sales tax to Mr. Lewis was a singular administrative issue. Adhering to the standard set forth in *Metropolitan Edison Company*, we view Duquesne did not violate Section 1501 of the Code when it charged sales tax on the Complainant's April 2023 bill.

Conversely, we agree with the ALJ that Duquesne violated Section 1501 of the Code when it charged Mr. Lewis sales tax on his September 2023 bill. The record shows the Complainant contacted the Company several times about his bill erroneously containing sales tax. Additionally, prior to his September 2023 bill, Mr. Lewis submitted

three (3) sales tax exemption forms to Duquesne. Based on the facts of the case, we find the Company did not provide reasonable service and violated Section 1501 of the Code when the Complainant's September 2023 bill contained sales tax. Moreover, we find that the ALJ appropriately assessed Duquesne a civil penalty of \$100 for including sales tax in the Complainant's September 2023 bill. Therefore, we shall grant Duquesne's Exception No. 1, in part, and deny Duquesne's Exception No. 2. Accordingly, we shall modify the Initial Decision and reduce the ALJ's total recommended civil penalty from \$200 to \$100, applying the *Rosi* factors, *supra*.

III. Conclusion

Upon review and consideration of the record in this proceeding, and in consideration of the applicable provisions of the Commission's Regulations and the Code, we shall grant, in part, and deny, in part Duquesne's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Duquesne Light Company, filed on May 16, 2024, at Docket No. F-2023-3043317, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on April 26, 2023, at Docket No. F-2023-3043317, is adopted, as modified, consistent with this Opinion and Order.

3. That the Formal Complaint of Justin Lewis, filed on September 18, 2023, at the above docket, is sustained, in part, and dismissed, in part, consistent with this Opinion and Order.

4. That a copy of this Opinion and Order be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. That within thirty (30) days of entry of the final order of the Commission at Docket No. F-2023-3043317, Duquesne Light Company shall pay a civil penalty in the amount of \$100 in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania to:

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

6. That upon payment of the penalty, the proceeding at Docket No. F-2023-3043317 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written in a cursive style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 7, 2024

ORDER ENTERED: November 7, 2024