

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Cupelli	:	
	:	
v.	:	C-2025-3056023
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Ann Quimby
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Frank Cupelli against Duquesne Light Company because he failed to prove that the public utility violated a statute, regulation, Commission order or tariff, and failed to prove the public utility’s current tariff is unreasonable.

HISTORY OF THE PROCEEDING

On June 24, 2025, Frank Cupelli (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or DLC). Complainant checked the box labeled “other” on the Commission’s standard formal complaint form. He averred he is being charged a medium commercial rate, including a monthly \$70 charge, despite only using “a few dollars” of electric a month. Complaint ¶ 4. Complainant asserted “that is not the

spirit of the rule.” *Id.* As relief, Complainant requested to be paid back the \$70 monthly charge he states he has paid for over a year.

On July 21, 2025, Respondent filed an Answer in which it admitted that Complainant is billed as a commercial service customer under the Company’s GM rate, which is for medium commercial customers with a monthly billing demand greater than 5 kilowatts. Respondent denied that Complainant was eligible for the GS rate, which is available for customers with a lower average monthly billing demand. Respondent denied Complainant is entitled to the relief requested.

On July 25, 2025, a Call-In Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on September 12, 2025, at 10:00 a.m. and the case was assigned to me.

On July 25, 2025, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing and informed the parties about the applicable procedural rules.

On September 12, 2025, I convened the hearing as scheduled. Complainant appeared on his own behalf and testified. Complainant offered no exhibits. Megan Rulli, Esquire, appeared on behalf of Respondent and presented the testimony of Genna Wittman, Supervisor of Billing and Supplier Services for Respondent, and Roxanne Morris, Supervisor of Regulatory Consumer Relations for Respondent. Respondent offered Exhibits 1-8 which were admitted into the record.

The hearing produced a transcript of 84 pages which was filed on October 3, 2025. An Order was issued closing the record on October 10, 2025.

The matter is now ripe for adjudication.

FINDINGS OF FACT

1. Complainant is Frank Cupelli.
2. Respondent is Duquesne Light Company.
3. Complainant receives electric service from Respondent at an apartment building he owns at the service address in question. Tr. 17.
4. Complainant's account is a "house account" for the common areas of the apartment building. Tr. 15.
5. Electricity is consumed in the common areas of Complainant's building by a coin-operated washer and dryer and four light fixtures with LED lightbulbs. Tr. 15-17.
6. Electricity may also be consumed periodically by the use of outlets in the hallway of the common area of Complainant's apartment building. Tr. 16-17.
7. Respondent's rates are memorialized in a Commission-approved tariff. Tr. 33, DLC Exhibit 2.
8. Respondent's tariff details rate schedules including the GS and GM rate schedules. Tr. 33, DLC Exhibit 2.
9. The GS and GM schedules are used for commercial accounts. Tr. 62-63.

10. The GS schedule is applied if the customer's average monthly usage is 1,000 kilowatt hours or less and if the customer's average monthly billing demand is 5 kilowatts or less. Tr. 35, DLC Exhibit 2.

11. The GM schedule is applied if the customer's average monthly usage is greater than 1,000 kilowatt hours or the customer's average monthly billing demand is greater than 5 kilowatts but less than 25 kilowatts. Tr. 36, DLC Exhibit 2.

12. Demand is determined by using the highest kilowatt usage measured amount of all 15-minute intervals during a billing period, and 12 months of usage history is reviewed to determine the average demand. Tr. 39, DLC Exhibit 2.

13. Accounts that are billed at the GM rate are evaluated each October and the average monthly billing usage and billing demand for the past 12 months are reviewed to determine if the accounts are eligible to move to the GS rate. Tr. 35, DLC Exhibit 2.

14. The review process to determine whether a customer is assigned to the GM or GS rate includes a manual review by DLC personnel. Tr. 37.

15. Customers billed at the GS rate are charged a customer charge of \$18 per month and an energy charge of 8.4601 cents per kilowatt hour. Tr. 38, DLC Exhibit 2.

16. Customers billed at the GS rate are considered "non-demand customers" and are not charged for demand. Tr. 38, DLC Exhibit 2.

17. Customers billed at the GM rate are charged a customer charge of \$67 per month, an energy charge of 1.7652 cents per kilowatt hour, and a demand charge of 8.06 per kilowatt after the first five kilowatts. Tr. 38, DLC Exhibit 2.

18. Customers cannot be eligible for more than one rate. Tr. 39.

19. For the account in question, Complainant was billed at the GS rate prior to April 20, 2023. Tr. 41-42.

20. Respondent moved Complainant's account from the GS to the GM rate on April 20, 2023. Tr. 41.

21. Respondent moved Complainant's account to the GM rate because his average peak billing demand for the period of April 20, 2022, through March 21, 2023, of 6.39 kilowatts exceeded 5 kilowatts. Tr. 42-43, DLC Exhibit 3.

22. Complainant's average monthly usage has historically been less than 1,000 kilowatt hours. Tr. 42-43.

23. Respondent's billing system will flag accounts with 12 months of billing history that may need moved to a different rate, then DLC personnel will review the accounts manually to see if rate changes are appropriate. Tr. 50.

24. Since being moved to the GM rate in 2023, Complainant's monthly demand has exceeded 5 kilowatts for each billing period except in January of 2025. Tr. 48, DLC Exhibit 1.

25. Complainant does not dispute that the usage recorded by his electric meter is correct. Tr. 28

26. Complainant's meter at the service address was inspected on March 24, 2025, and was determined to be registering usage correctly. Tr. 73-74.

DISCUSSION

In his Formal Complaint, Complainant stated he was being charged a medium commercial rate despite only using "a few dollars" of electric each month, and that Respondent was not following the "spirit of the rule." Complaint ¶ 4.

Section 332(a) of the Pennsylvania Public Utility Code (Code) provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. 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 established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Here, as the proponent of the request for relief, Complainant bears the burden of proof.

Section 1301 of the Code states, in pertinent part, as follows: "Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa.C.S. § 1301. The Code further specifies at Section 1302 that public utilities must file tariffs with the Commission setting forth all established rates. 66 Pa.C.S. § 1302. Section 1303 of the Code, titled "Adherence to tariffs," requires that a utility charge the applicable rate that has been set forth in its tariff and prohibits the utility

from charging differently than what is set forth in the tariff. 66 Pa.C.S. § 1303. A tariff sets forth the lawful rates of a public utility. *Id.*

The provisions of a public utility's Commission-approved tariff (including the rate provisions) are *prima facie* reasonable and are legally binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). A tariff is not a mere contract but has the full force of law. *Id.* When a complaint involves a proposed change in rates, the public utility has the burden of proof to show proposed rates are reasonable; however, for a complaint regarding an existing rate, the customer has the burden to prove the previously approved rate is no longer reasonable. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). A complainant seeking to evade the effect of a tariff provision carries a “very heavy burden” to prove a drastic change in facts and circumstances that render the application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996).

In this case, the relevant tariff provisions were entered into the record as DLC Exhibit 2, and Respondent presented testimony regarding the provisions. The tariff provisions at DLC Exhibit 2 indicate that demand (for purposes of rate calculation) is determined by using the highest kilowatt usage measured amount of all 15-minute intervals during a billing period. Complainant argued that he does not need the highest measured amount, and the method for demand determination for purposes of rate calculation, at least in his case, is against the spirit of the rule. Regardless of Complainant's assertions, the tariff provides that the highest kilowatt usage for all 15-minute intervals shall be used. In Complainant's case, this is the calculation that Respondent used to place his account in the appropriate rate class.

The tariff provisions also set forth the criteria to consider when determining which rate category is applicable. A GM schedule is to be applied if the customer's average monthly usage is greater than 1,000 kilowatt hours **or** the customer's average monthly billing demand is greater than 5 kilowatts (but less than 25 kilowatts). The average monthly usage for the account in question has consistently been less than 1,000 kilowatt hours. However, the average peak billing demand was 6.39 kilowatts in the 12 months prior to the date Respondent moved Complainant's account from the GS to GM category. As an average demand of 6.39 kilowatts is greater than the minimum 5-kilowatt average demand for the GM category, Complainant's account was correctly placed in the GM commercial rate category. Since Complainant's account was moved to the GM category in April of 2023, Complainant's peak billing demand has consistently been over 5 kilowatts (with the exception of a single monthly billing period).¹ His account has therefore been appropriately categorized as a GM commercial account.

Notably, Complainant does not dispute that the usage information provided by his meter to DLC is correct; instead, he believes based on his usage, application of the GM rate to his account conflicts with the spirit of the rule, and a customer charge of approximately \$70² is not justified. Complainant did not clearly explain what he meant by "spirit of the rule" during the instant proceedings. Comparing his usage data to the language of the Commission-approved tariff, Complainant is and has been charged the correct rate since his account was moved from the GS commercial category to the GM commercial category in April of 2023. This includes the \$67 customer service charge set forth in the tariff. There is no consideration for any undefined "spirit" of the rule; the

¹ While Complainant's billing demand was less than 5 kilowatts for a single billing period, this had no material effect on his average for rate determination purposes.

² Complainant repeatedly referred to a \$70 charge, presumably this is a reference to the \$67 monthly customer service charge GM commercial account owners are billed.

plain language of the rule is what must be followed. Respondent has properly categorized Complainant's account and has acted in accordance with the tariff.

Based on the foregoing, Complainant has failed to establish Respondent has violated the Commission-approved tariff, either by calculating Complainant's demand using highest kilowatt usage measured amount of all 15-minute intervals during a billing period, or by placing him in the GM commercial rate category and charging him a \$67 monthly customer service fee.

Complainant argues that the rate provisions in the tariff are unfair or unreasonable as applied considering his usage, so he is essentially seeking to evade the effects of the Commission-approved tariff provision. To prevail on this argument, he must establish that the facts and circumstances have changed drastically, such that the tariff is no longer reasonable as applied. Considering the totality of evidence, Complainant failed to present substantial evidence to show a change in facts and circumstances that could render the application of the tariff unreasonable. Complainant stated that the utility was skewing the rules, and that Respondent was abusing privileges provided by the Commonwealth, but did not provide sufficient evidence to support his assertions. Personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Respondent met the test of reasonableness at previous proceedings when the rates were established and is following the tariff provisions. Complainant failed to meet his heavy burden to establish the application of the tariff ceases to be reasonable, and he failed to establish he should be charged a different rate than is set forth in the Commission-approved tariff.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

4. A complainant seeking to evade the effect of a tariff provision carries a “very heavy burden” to prove a drastic change in facts and circumstances that render the application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

5. Assertions, personal opinions, or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

6. Complainant failed to present evidence to meet his burden that Respondent violated a statute, regulation, Commission order or tariff; and failed to prove the Respondent's current tariff is no longer reasonable. 66 Pa.C.S. § 332(a).

