

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank J. Cservak, Jr.	:	
	:	
v.	:	F-2020-3019005
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

An electric utility customer filed a Complaint alleging service termination and incorrect billing charges. For relief, Complainant requested service restoration and an adjustment to his bills. This decision dismisses the Complaint for Complainant's failure to meet his burden of proving 1) there were incorrect charges on his bills or 2) that service termination, based upon Complainant's admission of tampering with the utility's facilities, violated the Commission's regulations.

HISTORY OF THE PROCEEDING

Complaint

Frank J. Cservak, Jr. (Complainant or Mr. Cservak) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company

(Respondent, Duquesne Light, Company or DLC) on February 29, 2020.¹ The Complaint was docketed by the Commission’s Secretary’s Bureau (Secretary) on March 2, 2020. Complainant alleges, in part, the following:

- 1) Duquesne Light has already shut off my service.
- 2) There are incorrect charges on my bills.
- 3) Since 2010 there was a meter for a barn at the service address, which was affixed to the house at the service address.
- 4) Installation of a second meter was required to obtain an occupancy permit for our new house.
- 5) A second meter was installed next to the existing meter in January 2015, and I later removed the second meter.
- 6) In October 2017 solar panels were installed on the house and barn; and a monitor was installed to track kilowatt production from the solar panels and kilowatt usage by the house and barn.

¹ Complainant seeks timely review of the Commission’s Bureau of Consumer Services (BCS) Decision No. 3691697 issued on January 14, 2020, finding that 1) Complainant’s house meter was tested and verified compliant; 2) his bills for house Account 7796-070-000 were based upon actual meter readings and were considered correct as rendered; 3) he was required to allow Respondent access to the meters to verify his claim of mixed meter assignments; and 4) he had not received net metering statements because he was using more electricity than he was generating from solar panels. BCS Decision No. 3691697 is attached to Respondent’s Answer as Exhibit O.

Notably, BCS also issued BCS Decision No. 3691576 to the parties on January 11, 2020, relevant to Complainant’s barn meter and Account 8796-070-000. The two BCS decisions are similar, except that BCS Decision No. 3691576 includes the following ordering paragraph: “The Company is willing to provide estimated compensation for your generation for three months.” BCS Decision No. 3691576 is attached to Respondent’s Answer as Exhibit N. The estimated compensation was for a 3-month delay in installing a net meter for the barn. Tr. 102; DLC Exhibit 8B. In accordance with the ordering paragraph, the Company credited Complainant’s barn account \$1,050,52 on his billing for March 4, 2020. Tr. 102-103, 196; DLC Exhibits 1B and 36B.

Official notice was taken of the Complaint, Answer and New Matter filed in this proceeding. Tr. 17-18. While the record is replete with references to both BCS decisions, procedurally there is nothing in the record evidencing an appeal or a request for review of BCS Decision No. 3691576. Therefore, BCS Decision No. 3691576 became final 20 days after its January 11, 2020 issue date, under 52 Pa.Code §§ 56.163(3) and 56.172(a). *Also see, Ruskey v. Pa. Elec. Co.*, Docket No. C-2018-3003153 (Opinion and Order entered March 13, 2019), addressing the finality of BCS decisions.

Additionally, the first page of the Complaint only lists BCS Decision No. 3691697 as the decision appealed. This is the decision that Complainant lists in his attachment under the “Other” section of the Complaint. Accordingly, this decision addresses Complainant’s request for review of BCS No. 3691697.

- 7) The solar panels generate enough power to reduce my electricity usage to zero for most of the year.
- 8) In November 2018 Duquesne Light switched the billing accounts for the house and barn meters, resulting in Account No. 8796-070-000 (Account 8796) being incorrectly associated with the barn meter and Account No. 7796-070-000 (Account 7796) being incorrectly associated with the house meter.

For relief, Complainant requests the following: 1) reset house account to \$0.00 as of January 1, 2020 and reset meter reading to 0.00; 2) cancel barn account with a \$0.00 balance; 3) a \$2,709.80 credit check of the house account; 4) a \$3,696.43 credit check for the barn account; and 5) a \$796.50 credit check for the second meter charges.

Answer and New Matter

On March 20, 2020, Respondent filed an Answer and New Matter. Respondent denied there were incorrect charges on Complainant's bills. Respondent alleges there are two separately metered structures located at 174 Barberry Road, Sewickley Heights, Pennsylvania 15143 (the Service Location) — the dwelling (Home or House) and the commercial building, Otis' Barn (Barn). According to Respondent, the Company approved the interconnection for Complainant's 7.6kW photovoltaic solar panel arrays for the Home and 5kW photovoltaic solar panel arrays for the Barn in November 2017. On November 8, 2017, Respondent asserts the Company exchanged the Home's digital meter with a net meter.² On February 12, 2018, Respondent asserts the Company exchanged the Barn's digital meter with a net meter. According to Respondent, both net meters were tested prior to installation and each yielded meter readings within the Commission's regulations.

Respondent further alleges that on February 15, 2019, the Company visited the Service Location to investigate Complainant's claim that the meter assignments between the

² A net meter records solar energy production surplus. *See* 52 Pa.Code § 75.12 for a more detailed definition of net metering. *See also*, Tr. 170.

Home and Barn were switched; however, Complainant refused the Company access to the Service Location. Respondent contends on October 25, 2019 and December 27, 2019, respectively, the Company determined that it was not receiving reads for the Barn's net meter number F82092150, nor net meter number F82092154 for the Home.

According to Respondent, during a Service Location investigative visit on February 13, 2020, the Company's technician observed that the Home net meter had been removed from its socket and wiring reconfigured, apparently to connect to the meter for the Barn. Consequently, Respondent asserts that its technician removed the existing Barn's net meter number F82092150 and replaced it with net meter number F72238259, and the technician inserted a temporary shield in the Home meter's socket as an interim safety measure.

Respondent admits that on February 18, 2020, the Company posted a 10-day service termination notice at the Service Location for meter tampering, irregular wiring, and a potentially unsafe condition. Respondent asserts that the termination notice stated service would be shut off on or after February 28, 2020, unless the Service Location was rewired to direct the Home and Barn loads to their appropriate meters and a wiring inspection approval was obtained. Respondent further admits that on March 2, 2020, the Company terminated Complainant's electric service for tampering, irregular wiring, and a potentially unsafe condition; Respondent asserts a post-termination notice was left at the Service Location. Respondent generally denies there are incorrect charges on Complainant's bills.

In New Matter, Respondent alleges, in part, that under 52 Pa.Code § 56.2, a utility company is authorized to immediately terminate utility service if it discovers evidence of tampering or unauthorized use. Respondent further alleges that contrary to Complainant's claim that the Barn should be on a residential rate schedule, the Barn is not a dwelling, as defined by 52 Pa.Code § 56.2. Consequently, Respondent asserts that the Barn must be on a commercial rate schedule.

For relief, Respondent requests dismissal of the Complaint.

Reply to Answer and New Matter and Mediation

On April 24, 2020, Complainant filed a Reply to Answer and New Matter (Reply).³ In his Reply, Complainant denied the material allegations of the New Matter, and he asserted that he had a licensed electrician remove one meter for safekeeping. For relief, Complainant requests that the Commission grant him the relief sought in his Formal Complaint.

On April 28, 2020, an Interim Order Setting Conference Between Parties was electronically served upon the Parties directing the Parties to the Commission's Mediation Unit to attempt a resolution of the dispute. Mediation did not achieve resolution of the dispute.

Hearing Notice, Prehearing Order and Motion for Partial Summary Judgment

The Commission's physical offices were closed beginning on March 16, 2020, in response to the Governor's Proclamation of Disaster Emergency regarding the Covid-19 pandemic and pursuant to the Commission's *Emergency Order Re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262 (Order entered March 20, 2020) (*Emergency Order*). However, the Commission continued working remotely. Consequently, on June 2, 2020, the Commission notified the Parties that this case was scheduled before me for a telephonic hearing on July 9, 2020. On June 8, 2020, a Prehearing Order was served upon the Parties informing them about the procedural rules for the hearing.

On June 12, 2020, Respondent filed a Motion for Partial Judgment on the Pleadings (Motion) alleging Complainant admitted removing the Home meter and reconfiguring the wiring for the Home to the Barn meter. Respondent maintained that Complainant's conduct was tantamount to tampering, thereby warranting a ruling that service termination was in conformity with the Commission's regulations. Complainant did not file a response to the Motion.

³ Complainant's Reply contains "answers" which corresponds to the numbered paragraphs in Respondent's Answer. An "answer" to an Answer is not an allowed pleading under the Commission's procedural regulations. See, 52 Pa.Code § 5.1. Accordingly, Complainant's "answers" to the Answer are treated as argument.

The telephonic hearing in this proceeding convened as scheduled on July 9, 2020. Mr. Cservak appeared, self-represented, and Duquesne Light was represented by Emily Farah, Esquire. At the commencement of the hearing, the Parties presented arguments on Duquesne Light's Motion. Tr. 15-29. Upon due consideration, I made a ruling that Mr. Cservak admitted he tampered with Duquesne Light's facilities, thereby warranting termination of his electric service. Accordingly, Duquesne Light's Motion was granted, and the hearing proceeded on the remaining issues of the case. Tr. 28-29.

Ms. Cservak testified on his own behalf. He sponsored Complainant's Exhibits A, G, H, 2, 3, 4, 10A and 11 in support of his testimony. Complainant's Exhibits were admitted into the record.

Attorney Farah on behalf of Duquesne Light called five witnesses, Roxanne Morris, Ronald Dornin, Michael McClain, Gregory Murphy, and Charles Stoltenberg. The Company's witnesses sponsored DLC Exhibits 5, 6A, 6B, 8A, 8B, 9A, 9B, 11, 14, 17, 26A, 26B, 27, 28, 30, 31, 32, 37A and 37B, which were admitted into the record.

The telephonic hearing generated a 298-page transcript, which was filed with the Secretary on November 17, 2020, and the Exhibits were filed on November 26, 2020. By an interim order entered on December 22, 2020, the record was closed. This case is procedurally ready for ruling.

FINDINGS OF FACT

The Parties, Service Location and Billing Accounts

1. Complainant Frank J. Cservak, Jr. resides at 174 Barberry Road, Sewickley Heights, Pennsylvania 15143 (the Service Location).

2. Mr. Cservak is a Professional Engineer. Tr. 32, 155.

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

4. At the Service Location there is a residence, the House or Home, and a commercial building, the Barn. Tr. 275 and 280; DLC Exhibits 6A and 6B.

5. There are two billing accounts for the Service Location: Account No. 7796-070-000 (Account 7796) for electric service provided to Mr. Cservak's Home and Account No. 8796-070-000 (Account 8796) for electric service provided to Mr. Cservak's Barn. Tr. 76-77, 82; DLC Exhibits 1A and 1B.

Solar Panels and Net Meter Testing and Installations

6. In October 2017 Mr. Cservak installed solar panels on the House and the Barn. Tr. 59-60.

7. In October 2017 Mr. Cservak installed a monitor, The Energy Detective (TED) Pro Home Electricity, to track kilowatts produced by the solar panels and kilowatts used by the House and Barn. Tr. 59-60

8. A net meter records the kilowatts generated by solar panels and received by the electric utility from a customer and kilowatts consumed and delivered to a customer by the electric utility. Tr. 170 and 240.

9. Duquesne Light tested net meter number F82092154, which measured the results below listed, and Duquesne Light installed the net meter at the Service Location for the House on the date listed as follows:

Meter Number	F82092154
Test Date	8-14-2017
Full Load Result	100%

Light Load Result	100.04%
Weighted Average Result	100.01%
Installation Date	11-08-2017

Chart 1.

Tr. 89, 126; DLC Exhibit 5.

10. Duquesne Light tested the below net meters, which measured the results listed, and Duquesne Light installed and/or removed the net meters at the Service Location for the Barn on the dates listed as follows:

Meter Number	F74184522	F82092150	F77238259
Test Date	5-26-2017	8-14-2017	2-12-2020
Full Load Result	99.96%	100.01%	100.11%
Light Load Result	99.95%	99.98%	100.46%
Weighted Average Result	99.96%	100%	100.12%
Installation Date	2-19-2018	9-10-2018	2-13-2020
Removal Date	9-10-2018	2-13-2020	N/A

Chart 2.

Tr. 89-92 and 115-122, 126; DLC Exhibit 5.

11. On November 8, 2017, Duquesne Light installed net meter number F82092154 next to the existing smart meter for the Barn. Tr. 26, 233; Complainant's Exhibits G and 10A.

12. Duquesne Light provided electric service to Mr. Cservak's Home through net meter F82092154 under billing Account 7796. Tr. 184-184; DLC Exhibits 30 and 37A.

13. Duquesne Light provided electric service Mr. Cservak's Barn through the consecutive installation of net meters F74184522, F82092150 and F77238259 under billing Account 8796. DLC Exhibit 37B ; Tr. 127, 195.

Service Location Investigation

14. In early 2019 Mr. Cservak contacted Duquesne Light claiming that the meters for the House and Barn were improperly set or installed resulting in a switching of the billing accounts for the House and Barn. Tr 94-100; DLC Exhibits 8A and 8B.

15. On February 12, 2019, Duquesne Light dispatched a technician to the Service Location to investigate Mr. Cservak's claim that there was an inverted assignment of the House and Barn meters. Tr. 137-138; DLC Exhibit 9A.

16. On February 22, 2019, Mr. Cservak denied Duquesne Light's technician access to the meters. Tr. 95, 137-139; DLC Exhibit 8B.

17. On April 15, 2019, Mr. Cservak filed an informal complaint with BCS at BCS No. 3691697 concerning his meter readings. Tr. 31; DLC Answer and New Matter, Attachment O.

Complainant's Removal of the House's Net Meter

18. Sometime during the latter part of 2019, Mr. Cservak removed net meter F82092154 for the House from its socket and stored the net meter in his garage. Tr. 25, 41-42, 45, 49, 61, 263.

19. Mr. Cservak did not have permission from Duquesne Light to remove net meter F82092154 from its socket. Tr. 26, 61.

20. In late 2019, Mr. Cservak rewired the wiring for the House's net meter into the Barn's net meter. Tr. 26.

21. Rewiring the wires for two net meters into one net meter presents an unsafe condition and poses the potential for an electrical fire. Tr. 282.

22. On January 14, 2020, BCS issued a decision at BCS No. 3691697 on Mr. Cservak's informal complaint. Tr. 31; DLC Answer and New Matter, Attachment O.

Service Termination

23. On February 13, 2020, Duquesne Light conducted a Service Location investigation and discovered that the House's net meter F82092154 was missing and wiring for the House's net meter was connected to the Barn's net meter F77238259. Tr. 140; Exhibit 9A; Complainant's Exhibit G.

24. On February 13, 2020, Duquesne Light posted an Energy Diversion Department Shutoff Notice (Shutoff Notice) at the Service Location addressed to Mr. Cservak. The Shutoff Notice stated electric service may be shut off on or after February 28, 2020, for 1) irregular wiring, 2) meter tampering, and 3) unsafe condition. Tr. 140.

25. The Shutoff Notice informed Mr. Cservak to prevent service termination or to restore service 1) he was required to obtain a wiring inspection from the appropriate wiring inspecting agency and 2) he must rewire back to two meters. Tr. 140.

26. On March 2, 2020, Duquesne Light terminated Mr. Cservak's electric service for irregular wiring, meter tampering and an unsafe condition. Tr. 141.

27. On March 3, 2020, Duquesne Light posted a second Shutoff Notice which stated electricity had been terminated for 1) irregular wiring, 2) meter tampering, and 3) unsafe condition. The second Shutoff Notice also stated to restore service Mr. Cservak was required to pay a \$300 investigative fee and obtain a wiring inspection from the appropriate wiring inspection agency. Tr. 140; Exhibit 11.

Account Balances

28. Upon termination of his electric service, Mr. Cservak had a balance for the House Account 7796 in the amount of \$2,395.36 and a balance for the Barn Account 8796 in the amount of \$823.32. Tr. 80-81; DLC Exhibits 1A and 1B.

29. At the time of the hearing Mr. Cservak had not returned the House's net meter to Duquesne Light. Tr. 117.

30. At the time of the hearing Mr. Cservak's electric service was inactive. Tr. 80.

31. At the time of the hearing Mr. Cservak was using a generator fueled by gasoline for his electricity, and he has gas heat. Tr. 51-53, 262, 271, 291.

32. Mr. Cservak wants Duquesne Light to turn his power back on. Tr. 54, 65, 262.

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. Bell Tel. Co. of Pa.*, 72 Pa. PUC 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), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (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*, 489 Pa. 109, 413 A.2d 1037 (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 now has to provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

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, 66 Pa.C.S. § 102, 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

(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. *W. Penn Power Co. v. Pa. Pub. Util. Comm’n*, 578 A.2d 75 (Pa.Cmwlth. 1990). Accordingly, a utility’s billing practices is included within the scope of reasonable service.

Termination of Service

Section 1406 of the Code⁴ permits a utility company to terminate service under certain conditions and outlines the procedure the company must follow in order to terminate service. 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.

....

(c) **Grounds for immediate termination.** —

(1) A public utility may immediately terminate service for any of the following actions by the customer:

(i) Unauthorized use of the service delivered on or about the affected dwelling.

....

(iii) Tampering with meters or other public utility's equipment.

⁴ 66 Pa.C.S. § 1406.

(iv) Violating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the public utility's delivery system.

(2) Upon termination, the public utility shall make a good faith attempt to provide a post termination notice to the customer or a responsible person at the affected premises, and, in the case of a single meter, multiunit dwelling, the public utility shall conspicuously post the notice at the dwelling, including in common areas when possible.

....

Meter Testing

The Commission's regulations provide tolerance standards for recording electricity usage within an error variance of 2.0% or less as follows:

§ 57.20. Watthour Meter Testing.

(c) No watthour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation, period or other tests, a watthour meter is found to exceed these limits, it shall be adjusted or removed from service.

52 Pa.Code § 57.20(c).

Analysis

The Parties' Positions

In his Complaint, Mr. Cservak raised three issues alleging: 1) service termination, 2) incorrect billing charges related to the electricity generated by his solar panels and 3) the switching for the billing accounts for his House meter and Barn meter. Mr. Cservak admits he removed one of the meters from its socket and stored the meter in his garage. Tr. 25, 263. He further admits he rewired the wiring for the two meters into one meter. Tr. 26. As a relief for his

Complaint, Mr. Cservak wants credits for the electricity generated by his solar panels and his electricity restored by Duquesne Light.

Duquesne Light contends that upon learning that Mr. Cservak's House meter F-82092154 had been removed and the wiring for the meter rewired to Barn meter F-82092250, the Company was warranted in terminating electric service under the Commission's regulations. Duquesne Light submits that meter removal and rewiring constituted tampering and presented an unsafe condition. Tr. 282. Duquesne Light argues Mr. Cservak's accounts were properly credited for the electricity generated by his solar panels; however, his consumption of electricity exceeded his solar panels' generation. DLC Exhibits 26A and 26B. Duquesne Light maintains Mr. Cservak must pay a \$300.00 investigative fee and obtain a wiring inspection approval from the appropriate wiring inspection agency before service can be restored. Tr. 167; DLC Exhibit 11. Additionally, Duquesne Light asserts that Mr. Cservak has balance of \$2,395.36 for his House Account 7796 and a balance of \$823.32 for his Barn Account 8796. Tr. 294.

Each issue and the competing positions of the Parties are addressed below.

Termination Issue

As noted in the above History of the Proceeding, Duquesne Light's Motion for Partial Judgment on the Pleadings was granted on the service termination issue. For the purpose of clarity, the termination issue is again addressed. Under the Code, a utility may terminate service when a customer tampers with its facilities. *See* 66 Pa.C.S. § 1406(c)(iii), cited above. In the present case, Mr. Cservak admitted in his Complaint that he removed Duquesne Light's net meter from its socket. He further testified at the hearing that he had removed the net meter in late 2019 without Duquesne Light's authorization. Tr. 25, 41-42, 45, 49, 61, 263.

On February 13, 2020, Duquesne Light conducted a Service Location investigation and discovered that the House's net meter F82092154 was missing and wiring for the House's net meter was connected to the Barn's net meter F77238259. Tr. 140; Exhibit 9A; Complainant's Exhibit G. Duquesne Light's discovery of Mr. Cservak's tampering with the

Company's facilities warranted termination of his electric service on March 2, 2020. Tr. 140; DLC Exhibit 11.

Furthermore, Mr. Cservak's rewiring of meters for both the House and Barn into the Barn's net meter posed a fire hazard. Tr. 282. Duquesne Light's witness, Charles Stoltenberg, a senior meter engineer, explained the safety hazard. Tr. 235. The net meters are each rated for 200 amps continuously. If you wire over 200 amps from one meter into another 200 amps meter, "the meter will probably burn up and you could actually start a fire." Tr. 282. Accordingly, the presence of a safety hazard at the Service Location also warranted termination of Mr. Cservak's electric service. Tr. 22.

Incorrect Charges Issue

Generally, if a customer claims he is not consuming as much electricity for which he is being charged, the *Waldron Rule* is implicated. In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), the Commission held while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100. *See also, Bennett v. Peoples Nat. Gas Co., LLC*, Docket No. C-2009-2122979, (Opinion and Order entered September 23, 2010, at 5).

Here, Mr. Cservak is not seriously questioning his electric usage. Rather he contends his solar panels produce more energy than he is being credited. For this contention he relies upon his TED monitor. Tr. 59. Mr. Cservak explained as follows:

This is what I used in the house. I have a system. It's called the TED, The Energy Detective. Everybody needs one of these in their house. Walmart has them in every building. All commercial buildings have these right now. It's a little monitoring system. It costs \$299. It's computerized. You put it on your meter and it tells you how much solar you're generating and how much you're selling back to Duquesne Light Company and how

much - and how much you're buying off of Duquesne Light Company. And I got all the - I got - that's my data. It's perfect. There's no mistakes in it.

Tr. 59. According to Mr. Cservak, he used the readings from his TED monitor to calculate roughly \$4,000.00 in credits owed to him by Duquesne Light. Tr. 58-59; Complaint Attachments 2 and 3.

Duquesne Light countered that the net meters installed at the Service Location were tested prior to installation. According to Ronald Dornin, Duquesne Light's former manager of meter and systems team, the tests measured compliant with the Commission's regulations at 52 Pa.Code § 57.20(c). Tr. 89-92 and 114-122, 126; DLC Exhibit 5; *also see* Charts 1 and 2, above. Duquesne Light's supervisor of regulatory consumer relations, Roxanne Morris, testified that Mr. Cservak's usage was accurately billed as reflected in his service accounts. Tr. 76-77, 82; DLC Exhibits 1A and 1B. Electrical engineer, Charles Stoltenberg, stated Duquesne Light's Meter Data Management System calculates kilowatts delivered to the Service Location and kilowatts received from Mr. Cservak's solar panels. Tr. 176, 237-238; DLC Exhibit 17. While there were dates that Mr. Cservak's solar panels generated more electricity than he consumed from Duquesne Light, the documentary evidence established Mr. Cservak consumed more energy than his solar panels generated. Tr. 176; DLC Exhibit 26A and 26B.

Although Mr. Cservak claims his TED monitor is accurate, there is nothing in the record to establish the accuracy of the monitor. Mr. Cservak did not present any evidence that he ever had the TED monitor tested. Mr. Cservak did not present any additional evidence to refute the testimony of Duquesne Light's witnesses and documentary evidence relevant to the accuracy of his billing charges.

More importantly Mr. Cservak comes before the Commission with "unclean hands." He removed one of the net meters from its socket, he has not returned the net meter to Duquesne Light, nor has he reinstalled the meter into its socket. Tr. 25, 41-42, 45, 49, 61, 117, 263. The doctrine of unclean hands applies generally in a court of equity. *Mazzitti & Sullivan Counseling Servs. v. Dep't of Pub. Welfare*, 7 A.3d 875 (Pa.Cmwlth. 2010). While this is an

administrative proceeding, the doctrine nevertheless applies. Here, Mr. Cservak is a wrongdoer. He cannot now be heard to claim that his billing charges are incorrect. Equity will not aid a wrongdoer. Accordingly, Mr. Cservak's incorrect billing allegations must be denied.

Throughout his testimony Mr. Cservak repeated that he wanted Duquesne Light to turn his power back on. Tr. 53-54, 65, 263, 266, 291, 295. To have his electricity restored, Mr. Cservak is encouraged to arrange for payment of his outstanding balances with Duquesne Light and to return the net meter that he removed from its socket. As Duquesne Light's manager of meter operations, Michael McClain, explained, to have electric service restored, Mr. Cservak is required to pay a \$300 investigative fee and obtain a wiring inspection from the appropriate wiring inspection agency. Tr. 140; DLC Exhibit 11. The key to restoring his electricity is in Mr. Cservak's hands.

Meter and Account Switching Issue

Mr. Cservak asserts that at some point Duquesne Light switched his House and Barn net meters. Tr. 28 and 209. According to Mr. Cservak the switch resulted in a reassignment of the House account to his Barn net meter and vice versa. Mr. Cservak did not present any evidence as to how he determined the meters had been switched or when. Mr. Cservak's lack of evidence reduces his assertion to an opinion. "Mere bald assertions, personal opinions or perceptions do not constitute evidence." *Pa. Bureau of Corr. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

Furthermore, Duquesne Light's witness, Ms. Morris, credibly testified as to the history of the account assignments at the Service Location: Account 7796 was associated with electric service provided to Mr. Cservak's Home and Account 8796 was associated with electric service provided to Mr. Cservak's Barn. Tr. 76-77, 82; DLC Exhibits 1A and 1B. These associations are supported by the bills in evidence. DLC Exhibits 37A and 37B. Therefore, Mr. Cservak's meter and account switching issue must be dismissed.

Ruling

Weighing the testimony and analyzing exhibits presented in this proceeding, a ruling is required that Mr. Cservak failed to carry his burden to demonstrate that Duquesne Light violated the Code or a Commission order or regulation. Accordingly, the Complaint will be dismissed in the ordering paragraphs below.

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 her 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. A utility may terminate a customer's service for tampering with the utilities' meter or facilitates. 66 Pa.C.S. § 1406.
5. Complainant has not met his burden of proof as required under the Public Utility Code. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's Motion for Partial Judgment on the Pleadings at Docket No. F-2020-3019005 is granted and the claims regarding termination are dismissed.

2. That the Complaint of Frank J. Cservak, Jr. v. Duquesne Light Company at Docket No. F-2020-3019005 is dismissed.

3. That the Secretary's Bureau shall mark Docket No. F-2020-3019005 closed.

Date: March 1, 2021

/s/
Conrad A. Johnson
Administrative Law Judge