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April 5, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Bldg. 2nd Floor W
400 N. Street
Harrisburg, PA 17120

**RE: Frank Cservak v. Duquesne Light Company
Docket No. F-2020-3019005**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Reply Exceptions in the matter indicated above. Copies of this document and the enclosed filing have been served upon the parties listed in the Certificate of Service.

The Initial Decision in this matter was issued on March 2, 2021. No Exceptions were filed by the required date (March 22, 2021), and to date, Complainant has not filed Exceptions. Rather, after business hours on March 24, 2020, Mr. Cservak emailed Duquesne Light counsel, the ALJ's legal assistant, and the Office of Special Assistants with a document titled "Exceptions." In the body of the transmittal email, the Complainant indicated he would separately email a copy of his Exceptions to the Commission's Secretary, but would not use the Commission's e-filing system.

Because of Complainant's failure to file Exceptions, and failure to serve exceptions by the required 20-day time period as indicated in the Secretarial Letter and Commission regulation 52 Pa. Code § 5.533(d), Duquesne Light respectfully requests the Commission deny Complainant the opportunity to submit his Exceptions. In the event the Commission permits Complainant's out-of-time and non-filed Exceptions to be a part of the record in this matter, Duquesne Light provides the following Reply Exceptions out of an abundance of caution, and respectfully requests the deadline for these Reply Exceptions be tolled due to the late nature of Complainant's Exceptions.



Please do not hesitate to reach out to me with any questions, comments, or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Emily M. Farah".

Emily M. Farah
Duquesne Light Company
Counsel, Regulatory

Enclosure

cc: Certificate of Service (with enclosure)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANK J. CSERVAK, JR.

:

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Complainant,

:

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v.

:

No: F-2020-3019005

:

DUQUESNE LIGHT COMPANY,

:

:

Respondent.

:

REPLY EXCEPTIONS

Filed on behalf of Respondent
Duquesne Light Company

Counsel of Record for this Party:
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANK J. CSERVAK, JR.	:	
	:	
Complainant,	:	
	:	
vs.	:	No: F-2020-3019005
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

DUQUESNE LIGHT’S REPLY EXCEPTIONS

Respondent Duquesne Light Company (“Duquesne Light” or the “Company”) files these Reply Exceptions pertaining to the above-captioned Formal Complaint filed by Frank Cservak, Jr. (“Complainant”), pursuant to 52 Pa. Code § 5.535 and states as follows:

I. BACKGROUND

Two separate and distinct structures are erected on Complainant’s property located at 174 Barberry Road, Sewickley Heights, PA 15143 (the “Property”), namely, a dwelling (“Home”) and a rentable barn venue (“Otis’ Barn”). Duquesne Light approved the interconnection for Complainant’s 7.6kW photovoltaic solar panel arrays for the Home and 5kW photovoltaic solar panel arrays for Otis’ Barn in or around November 2017. On November 8, 2017, Duquesne Light exchanged the Home’s existing digital meter with a net meter, which was tested before installation and yielded meter readings within the Commission regulations. On or about February 19, 2018, Duquesne Light exchanged Otis’ Barn’s existing digital meter with a net meter, which was tested before installation and yielded meter readings within the Commission regulations.

Approximately one year after the installation of the net meter for Otis' Barn, on February 12, 2019, Complainant contacted the Company and suggested the meter assignments between the Home and Otis' Barn were switched. On February 15, 2019, the Company visited the Property to investigate for a possible meter twist, but the Complainant refused access to the Property.

On October 25, 2019, the Company discovered it was not receiving meter reads for Otis' Barn net meter. On December 27, 2019, the Company discovered it was not receiving meter reads for the Home net meter. On February 13, 2020, the Company visited the Property to investigate. On site, the technician observed that the Home net meter had been removed from its socket, and the Home wiring had been reconfigured without Company prior authorization.

On February 18, 2020, the Company posted a 10-day termination notice to the Property, indicating that electric service may be shut off due to meter tampering, irregular wiring, and a potentially unsafe condition. The 10-day notice further indicated the Company would not shut-off service if Complainant paid \$300 tampering fee and obtained a wiring inspection. Absent payment of the tampering fee or a wiring inspection, the Company terminated Complainant's electric service on Monday, March 2, 2020, and left a post-termination notice at the Property. Electric service is currently on and active at the Property. Duquesne Light restored electric service on September 1, 2020 after receiving a wiring approval from a certified electrical inspector and the \$300 tampering fee. The Complainant's account balances are currently \$2,395.36 for the Home and \$823.32 for Otis' Barn.

II. PROCEDURAL HISTORY

The day after service was terminated at the Property, on March 3, 2020, Duquesne Light was served with Complainant's Formal Complaint at docket number F-2020-3019005. Broadly,

the Formal Complaint filed with the Pennsylvania Public Utility Commission (“Commission”) alleged incorrect charges appeared on Complainant’s Duquesne Light bills and that the Company improperly threatened to terminate his electric service. Complainant also checked the “Other” box on the Formal Complaint form, indicating that Complainant removed one of the two meters servicing the Property and alleging a meter twist. In response to the Formal Complaint, Duquesne Light filed an Answer and New Matter, complete with a Notice to Plead, on March 20, 2020. The Answer and New Matter denied all material facts in the Complaint and requested dismissal of the Formal Complaint.

On April 24, 2020, Complainant filed his response to Duquesne Light’s Answer and New Matter. On April 28, 2020 an Interim Order was issued, which assigned the matter to the Commission’s Mediation Unit. The parties were unable to come to a resolution of the Complaint at mediation, and the matter was scheduled for a telephonic hearing.

On June 12, 2020, Duquesne Light filed a Motion for Partial Judgment on the Pleadings on the basis that there was no issue of material fact regarding the presence of meter tampering at the Property and requested a determination that Duquesne Light properly terminated Complainant’s because of the tampering.

At hearing on July 9, 2020, Administrative Law Judge (“ALJ”) granted Duquesne Light’s Partial Motion for Judgment on the Pleadings and a hearing was held on the remaining issues in the Formal Complaint. Tr. 28-29. The ALJ also took official notice of the pleadings in the case. Tr. 17-18.

The ALJ’s initial decision was served on the Parties on March 2, 2020. On the same date, the parties were served with a Secretarial Letter, which stated in part:

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) **filed** with the Secretary of the Commission, **and 2) within twenty (20) days** of the date of this letter.

(bold in original). It is important to note that, to date, Complainant has **not filed** Exceptions. Rather, after business hours on March 24, 2020, Mr. Cservak emailed Duquesne Light counsel, the ALJ's legal assistant, and the Office of Special Assistants with a document titled "Exceptions." In the body of the transmittal email, the Complainant indicated he would separately email a copy of his Exceptions to the Commission's Secretary, but would not use the Commission's e-filing system.

Because of Complainant's failure to file Exceptions, and failure to serve exceptions by the required 20-day time period as indicated in the Secretarial Letter and Commission regulation 52 Pa. Code § 5.533(d), Duquesne Light respectfully requests the Commission deny Complainant the opportunity to submit his Exceptions. In the event the Commission permits Complainant's out-of-time and non-filed Exceptions to be a part of the record in this matter, Duquesne Light provides the following Reply Exceptions in support of the ALJ's Initial Decision out of an abundance of caution, and respectfully requests the deadline for these Reply Exceptions be tolled¹ due to the late nature of Complainant's Exceptions.

¹ Duquesne Light is filing these exceptions within 10 days after the Complainant's emailed transmittal of his Exceptions according to the timing computation rule at 52 Pa. Code § 1.12.

III. LAW AND ARGUMENT

A. **The ALJ correctly dismissed the portion of the Complaint regarding improper termination of service, in light of Complainant's admission to removing and rewiring the meter(s) at the Property.**

1. Complainant's removal and rewiring of the electric meters at the Property constitute tampering in accordance with Commission regulations.

Complainant tampered with Duquesne Light facilities by removing an electric meter and further tampered with Duquesne Light facilities when the service was rewired through another meter located at the Property without prior Company authorization.

Commission regulation 52 Pa. Code § 56.2 defines meter tampering as “any act which affects the proper registration of service through a meter.” See also Pennsylvania Public Utility Commission, *Your Rights and Responsibilities as a Utility Customer*, www.puc.state.pa.us/consumer_info/electricity/consumer_information_energy_efficiency_conservation_shopping_.aspx, p. 5 (“is illegal for [a consumer] to remove the meter or tamper with it”).

Here, the Complainant does not dispute that one of the meters was removed by him or under his direction or supervision. The Complainant also does not dispute that the meters at the Property were rewired without prior Company authorization. Complaint ¶ 4 (“I have subsequently removed the second meter in which now greatly simplifies the situation.”); Complaint ¶ 4 (“I removed the second meter so that now both the house and barn are on one meter”); Reply to Answer and New Matter ¶¶ 4, 23. At hearing, Complainant maintained the position that one Duquesne Light meter at the Property was removed and rewired by him or under his direction and supervision. Tr. 26, 28-29 (“That’s why I took off the meter, because they needed to go through one meter to my service here.”).

The removal and rewiring of a utility meter constitutes tampering under Commission regulation 52 Pa. Code § 56.2. Lawrence Jones v. Philadelphia Gas Works, 2020 WL 4207498,

at *11 (Pa.P.U.C., 2020). It is insignificant whether Complainant personally removed one meter and rewired the meter(s) or whether the work was conducted by someone else under Complainant's direction or supervision. See Jones v. Philadelphia Gas Works, (“Based on the foregoing, the removal of the meter from its location at the Service Address by [complainant], or other persons acting on his behalf, creates a prima facie case of physical tampering within Commission Regulations[.]”). Because the Complainant admits that either he, or someone under his direction or supervision, removed a meter at the Property and further rewired the service through another meter at the Property, Complainant's actions constitute tampering in accordance with 52 Pa. Code § 56.2.

The undisputed facts establish that the Complainant tampered with Duquesne Light meter(s) and appurtenances attached thereto in violation of Commission regulations and the Company's Commission-approved tariff. Therefore, the ALJ correctly discerned that Complainant's actions constitute tampering in accordance with 52 Pa. Code § 56.2, and appropriately dismissed the portion of the Complaint disputing the presence of tampering at the Property.

2. The presence of tampering and an unsafe condition at the Property justifies Duquesne Light's termination of Complainant's electric service on March 2, 2020.

Complainant's tampering of Duquesne Light's electrical facilities servicing the Property is grounds for *immediate* termination pursuant to 52 Pa. Code § 56.98(a)(3), 66 Pa. C.S. § 1406(c)(1)(iii), and the Company's Tariff Rule No. 34.

Here, Duquesne Light posted a 10-day termination notice at the Property on February 18, 2020, indicating that electric service may be shut off due to meter tampering, irregular wiring, and a potentially unsafe condition. See Tr. 140-141; Duquesne Light's Motion for Partial Judgment on the Pleadings ¶ 41 (citing Duquesne Light's Answer and New Matter, Exhibit G).

Because the Company identified evidence of meter tampering, and the Complainant did not make repairs or obtain the necessary wiring inspection, Duquesne Light properly terminated Complainant's electric service on March 2, 2020. Tr. 140-141. Further, Complainant's tampering presented an unsafe condition because the rewiring of the removed meter through the remaining meter at the Property had the potential to overload the remaining meter. Tr. 282. After termination of service on March 2, 2020, Duquesne Light posted a post-termination notice at the Property pursuant to 52 Pa. Code § 56.98(b). Tr. 145-146.

In summary, the ALJ correctly granted the Company's Motion for Partial Judgment on the Pleadings on the issue of termination because the undisputed facts establish that the Complainant tampered with Duquesne Light meter(s) and appurtenances attached thereto in violation of Commission regulations and the Company's Commission-approved tariff. Duquesne Light then posted a post-termination notice at the Property consistent with 52 Pa. Code § 56.98(b).

B. The Initial Decision rightfully denied the portion of the Complaint alleging incorrect charges on Complainant's bills because the Complainant failed to meet his burden of proof.

Complainant's allegation of incorrect billing at the Property was not supported by evidence, and therefore, the ALJ correct dismissed Complainant's incorrect billing charges.

At hearing, Complainant simply alleged that Duquesne Light meters were "bogus," and provided information from "The Energy Detective," or "TED." Tr. 65, 70. Complainant is not an agent or representative of TED. Tr. 70. In response, Duquesne Light presented the testimony of a Company billing analyst, who sponsored exhibits and meter data information that was used to bill Complainant at the Property. Tr. 169-204. Duquesne Light further presented evidence that each meter installed at the Property was tested prior to installation, and tested within Commission guidelines set forth by 52 Pa. Code § 57.20. Tr. 115-122. Complainant was billed in accordance

with the Company's net metering billing practices, meaning that Complainant was billed on the net consumption or generation that Complainant contributed for each billing period. Tr. 170. Some months, Complainant generated more energy than he consumed. Tr. 175, 178. Other months, however, Complainant consumed more energy than he generated. Tr. 175, 178. The bills² admitted into evidence during the hearing reflect the net energy at the Property.

Complainant failed to meet his burden of proving that Duquesne Light incorrectly billed the Property. Complainant's mere bald assertion of "bogus" billing cannot be considered evidence in this proceeding. Tr. 65; See Pa. Bureau of Corr. v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

In summary, the Company billed the Complainant based on meter readings taken by meters that met the Commission's standards of accuracy, and the Complainant failed to meet his burden of proof on his claim of incorrect charges on his bills. As such, Complainant is obligated to pay for the utility service provided at the Property, and he is responsible for the outstanding Duquesne Light balances in the amount of \$2,395.36 for the Home and \$823.32 for Otis' Barn.³

C. The Initial Decision rightfully denied the portion of the Complaint alleging a meter or account twist because the Complainant failed to meet his burden of proof.

The portion of the Complainant's Exceptions under the heading "Meter and Account Switching Issue," largely addresses Complainant's dissatisfaction with the confidential nature of settlement discussions and expresses a distrust in the ALJ's ability to review the hearing exhibits

² The Company admits that it issued bills based on estimated reads, but observes that estimated bills may be necessary where the Company is unable to obtain an actual meter reading – such as, for example, where its meters have been tampered with. Duquesne Light denies that its issuances of bills based on estimated meter readings was improper. Tr. 192, 245-46.

³ Complainant did not request a payment arrangement as a part of this Formal Complaint. Complaint ¶ 4. Complainant has not had any Commission-issued or Company-issued payment arrangements on either account associated with the Property. Tr. 87-88.

presented by both parties prior to hearing. Substantively, the Complainant takes issue with the portion of the Initial Decision that indicates Complainant did not present any evidence to support his claim of a meter or account twist.

On February 12, 2019, Complainant contacted the Company and suggested the meter assignments between the Home and Otis' Barn were switched. On February 15, 2019, the Company visited the Property to investigate for a possible meter twist, but the Complainant refused access to the Property. Tr. 138-39.

The Initial Decision correctly stated that the Complainant failed to meet his burden of proof with regard to the meter or account switching allegation. Similar to the incorrect billing allegation, Complainant simply alleged that Duquesne Light meters were switched, and used that opinion to justify why he removed one meter and rewired the service through the remaining meter. Tr. 28. Complainant's mere bald assertions or personal opinions of a meter twist cannot be considered evidence in this proceeding. See Pa. Bureau of Corr. v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

In summary, the Complainant failed to present any evidence that the Company's meter assignments at the Property are (or were) incorrect, and Complainant's claim of a meter or account switch at the Property must be denied.

IV. CONCLUSION

Complainant has not properly filed Exceptions and as such, the above-captioned Formal Complaint matter should be marked as closed. Further, the Complainant failed to meet his burden of proof regarding allegations of improper termination of service, incorrect billing, and unreasonable utility service. Duquesne Light respectfully requests that the Commission affirm the

Initial Decision and mark the Complaint as closed. Duquesne Light further reserves the right to address any and all matters as may be necessary throughout the course of this proceeding.

WHEREFORE, Respondent Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the Complainant's Exceptions, with prejudice.

Respectfully submitted,

DUQUESNE LIGHT COMPANY



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRANK J. CSERVAK, JR.	:	
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Complainant,	:	
	:	
vs.	:	No: F-2020-3019005
	:	
DUQUESNE LIGHT COMPANY,	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

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

**VIA FIRST-CLASS MAILING &
ELECTRONIC MAILING**

Frank J. Cservak, Jr.
174 Barberry Road
Sewickley, PA 15141
FCservak@c-mservices.com

VIA ELECTRONIC MAILING ONLY

Pennsylvania Public Utility Commission
Office of Special Assistants
(Via email at: ra-OSA@pa.gov)

Dated this 5th day of April, 2021



Emily M. Farah, Esquire
PA I.D. No. 322559