

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

Public Meeting held June 16, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Frank J. Cservak, Jr.

F-2020-3019005

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 Frank J. Cservak, Jr. (the Complainant or Mr. Cservak) filed on March 24, 2021, to the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on March 2, 2021, in the above-captioned proceeding. Replies to Exceptions were filed by Duquesne Light Company (Duquesne Light, DLC or the Company) on April 5, 2021.¹

¹ Citing the Commission's Regulation at 52 Pa. Code §5.533(d) and the Secretarial Letter serving the Initial Decision, Duquesne Light points out that the Complainant failed to timely file his Exceptions with the Commission. As a result, the Company asks that we decline to consider the Exceptions. Duquesne Light Transmittal Letter dated April 5, 2021. In the alternative, Duquesne Light argues that, should the

For the reasons stated below, we shall deny the Complainant's Exceptions and dismiss the Complaint.

By way of background and to aid understanding, the Complainant's property at 174 Barberry Road, Sewickley Heights, PA 15143 (the Property) contained two separate structures: a residential dwelling (the Home) and a commercial rentable barn venue (the Barn). As detailed more particularly below, both the Home and the Barn had solar array panels and net electric service meters with separate account numbers at the time the instant dispute arose. The Complainant sought relief regarding both accounts with the Commission's Bureau of Consumer Services (BCS) and BCS rendered decisions on each informal complaint in January 2020. This Formal Complaint (Complaint) in the form of an appeal of BCS Decision No. 3691697 followed and was adjudicated after hearing.²

Commission decide to rule upon the Exceptions, that Duquesne Light's Replies to Exceptions be considered as well. *Id.* We shall apply our rules of procedure liberally to Mr. Cservak's submission of Exceptions and consider them timely filed, because he sent them to Duquesne Light and the Commission, but erred in the formal manner of filing, because he is proceeding *pro se* in this matter. 52 Pa. Code § § 1.2(a) and (d). We also exercise our discretion to waive the timeframe for the filing of Replies to Exceptions by Duquesne Light, deem the Replies timely filed in response to the Exceptions, and duly consider them herein.

² This matter involves the Complainant's appeal of BCS Decision No. 3691697 issued on January 14, 2020, which addresses the Home account. As detailed in footnote 1 of the Initial Decision, the Complainant's Complaint lists this decision as the one appealed in two separate places. No mention of the BCS Decision No. 3691576 regarding the Barn account is made in the formal complaint form, and, thus, that decision became final 20 days after its January 11, 2020 issue date, pursuant to 52 Pa. Code §§ 56.163(3) and 56.172(a). I.D. at 2, n.1. The record in this matter involved extensive discussion and the receipt of evidence related to both the Home and the Barn meters and accounts. We do not, however, disturb here the final BCS Decision No. 3691576 relevant to the Barn meter and account. We observe that the Complainant's claim in his Exceptions that he appealed both BCS decisions is belied by his own testimony on the record regarding how the informal complaint cases proceeded before BCS and his filing of a formal complaint on the Home account. Tr. at 35-36. For this reason, and as discussed in more detail, below, we uphold the ALJ's ruling that only BCS

I. History of the Proceeding

On March 2, 2020, the Complainant submitted the instant Complaint with the Commission alleging incorrect charges appeared on the Complainant's Duquesne Light bills and that the Company improperly threatened to terminate his electric service. The Complainant also checked the "Other" box on the formal complaint form, indicating that the Complainant removed one of the two meters servicing the Property and alleging a meter twist.³ On the same day, without knowledge of the Complainant's filing and pursuant to a 10-day termination notice that had been posted on the Complainant's property, Duquesne Light terminated electric service to the Complainant due to alleged meter tampering, irregular wiring, and a potentially unsafe condition. The 10-day notice indicated that the Company would not turn off service if the Complainant paid a \$300 tampering fee and obtained a wiring inspection.

On March 3, 2020, Duquesne Light was served with Mr. Cservak's Complaint.⁴

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 Complaint.

On April 24, 2020, the 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

Decision No. 3691697 was appealed and we deny the Complainant's Exception in this regard.

³ The Complainant, who resides near Pittsburgh, Pennsylvania, hand-delivered his Complaint to the Commission at its offices in Harrisburg, Pennsylvania. Exc. at 1.

come to a resolution of the Complaint during mediation, and the matter was scheduled for a telephonic hearing before the ALJ.⁵

On June 12, 2020, Duquesne Light filed a Motion for Partial Judgment on the Pleadings (Motion for Partial Judgment) 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 the Complainant's service because of the tampering. No Answer to the Motion for Partial Judgment was filed.

At the hearing on July 9, 2020, the ALJ granted Duquesne Light's Partial Motion for Judgment regarding the meter tampering and related account termination issue. The hearing proceeded on all of the other issues raised in the Complaint. Tr. at 28-29. The ALJ also took official notice of the pleadings in the case. Tr. at 17-18.

The Initial Decision was served on the Parties on March 2, 2021. The Complainant filed Exceptions to the Initial Decision on March 24, 2021 and Duquesne Light filed Replies to Exceptions on April 5, 2021.

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

⁵ 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.

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 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 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*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). 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*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (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 (Initial Decision issued May 11, 2015; 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*, 501 Pa. 433, 461 A.2d 1234 (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 ultimate factfinder 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*, 489 Pa. 109, 413 A.2d 1037 (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, 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, 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. PUC*, 578 A.2d 75 (Pa.Cmwlth. 1990). Accordingly, a utility’s billing practices are included within the scope of reasonable service.

In addition, Section 1406 of the Code, 66 Pa. C.S. § 1406, 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.

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.

• • • •

Id.

Electric service standards also are embodied in the Commission's Regulations. *See generally* 52 Pa. Code Chapters 56 and 57. This includes an electric utility's obligation to test meters for billing accuracy and periodically

confirm meter accuracy via actual meter reads in particular circumstances. *See* 52 Pa. Code §§ 57.20(c), 56.12(5)(i), and 57.255(e). Specifically, 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).

With these statutory principles in mind, we emphasize that, as the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility, Duquesne Light, is responsible or accountable for the problem described in the Complaint through a violation of the Code, a Regulation, or an Order of the Commission.

B. Initial Decision

The ALJ made thirty-two Findings of Fact and five Conclusions of Law. I.D. at 6-11 and 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.

In the Initial Decision, the ALJ detailed at length the pertinent statutory provisions in play, the competing positions of the parties and associated evidence presented in support of their respective stances.

The ALJ determined that the Complainant failed to meet his burden of proving that he was billed incorrect charges. I.D. at 1 and 16-19. The Complainant's improper billing claims were rooted in his use of a monitor, called The Energy Detective (TED) Pro Home Electricity, that tracks kilowatts produced by the solar panels and kilowatts used by the House and Barn. I.D. at 16-17, Tr. at 59-60.

The ALJ concluded that Mr. Cservak's contention was at its foundation, his belief that his solar panels produced more energy than he has been credited by Duquesne Light. To support this argument, Mr. Cservak relies solely upon his TED monitor and his lay testimony about the veracity of the TED monitor's data. I.D. at 16, Tr. at 59.

The ALJ also discussed, for purposes of clarity in the Initial Decision, the fact that he had granted Duquesne Light's Motion for Partial Judgment during the hearing. The Motion for Partial Judgment had asserted that the Complainant admitted to removing the Home meter and reconfiguring the wiring, thus constituting meter tampering, irregular wiring and a potentially unsafe condition. I.D. at 5-6, 13-14, and 15-16. The ALJ ruled that the Complainant failed to prove that Duquesne Light's termination of his service on the basis of meter tampering was invalid. The ALJ noted the Complainant's admission of tampering with the utility's facilities and that Section 1406 of the Code⁶ permits service termination in such circumstances. I.D. at 1-2, 15-16 and 19.

⁶ 66 Pa. C.S. § 1406.

Finally, the ALJ concluded that, while the Complainant asserted a meter switch or “twist”, the Complainant did not present any evidence as to how he determined that the Home and Barn meters had been switched or when. I.D. at 18. The ALJ concluded that this lack of evidence reduced Mr. Cservak’s claim to an opinion. *Id.* The ALJ noted the credible testimony of Duquesne Light’s witness regarding the history of account assignments for the Home and the Barn accounts on the Property, with supporting billing evidence of record. *Id.*

The ALJ weighed the testimony and exhibits⁷ presented by both Parties on all of the issues raised in the Complaint and ruled that the Complainant failed to carry his burden to demonstrate that Duquesne Light violated the Code, a Commission order or regulation. I.D. at 19. Thus, the ALJ dismissed the Complaint.

C. Exceptions, Replies and Disposition

Before addressing the Exceptions, we note that any issue 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. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A. 2d 1217 (Pa. Cmwlth. 1984).

The Exceptions raise four basic issues and we address them in turn, below, along with Duquesne Light’s Replies.

⁷ The Complainant asserts at various points in his Exceptions his belief that the ALJ did not consider or have available to him the exhibits the Complainant had submitted prior to the hearing. This claim is denied, as the record indicates and the Initial Decision notes that the ALJ considered the Complainant’s exhibits in rendering his ruling. Tr. at 41, 70-73; I.D. at 6.

1. Wrongful Termination of Service

a. The Complainant's Exceptions

The Complainant admits in his Exceptions that he removed his electric meter without the Company's authorization and that the meter was rewired. He disagrees that these activities constitute meter tampering or a fire hazard. Exc. at 2. He asserts that he returned the meter to the Company when his service was restored.⁸ Exc. at 3. The Complainant debates whether he needs the Company's permission to remove his meter from service, whether his removal of it constitutes tampering, how and by whom the meter socket was sealed for safety, and whether Duquesne Light's engineering staff is incompetent. Exc. at 4-7.

b. Duquesne Light's Replies to Exceptions

Duquesne Light replies that the Complainant's removal of the meter and rewiring constituted tampering in accordance with the Commission's Regulations and the Company was justified in terminating service on that basis. R. Exc. at 6. Citing 52 Pa. Code 56.2, the Company noted that meter tampering is defined as "any act which affects the proper registration of service through a meter." The Company also cited to the publication addressed to customers entitled: 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](http://www.puc.state.pa.us/consumer%20info/electricity/consumer%20information%20energy%20efficiency%20conservation)

⁸ While the Initial Decision correctly notes that the Complainant's service had not been restored at the time of the hearing, both the Complainant in his Exceptions and the Company in its Replies indicate that the Complainant's service was restored on September 1, 2020. Duquesne Light notes that it restored the Complainant's service after having received a wiring approval from a certified electrical inspector and the \$300 tampering fee from the Complainant. Exc. at 3-4; R. Exc. at 3.

[shopping.aspx](#), which notes that “is illegal for [a consumer] to remove the meter or tamper with it.” *Id.* at 5.

Duquesne Light emphasizes that the Complainant did not dispute that one of the meters was removed by him or under his direction or supervision and that the meters at the Property were rewired without prior Company authorization. *See* 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. In addition, the Company also observes that at the hearing, the 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 (“[t]hat’s why I took off the meter, because they needed to go through one meter to my service here.”). The Company argues that the removal and rewiring of a utility meter constitutes tampering under Commission Regulation at 52 Pa. Code § 56.2. *Lawrence Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984 (Opinion and Order entered July 16, 2020), 2020 WL 4207498, at *11. According to Duquesne Light, it is of no moment that the Complainant claims the work was conducted by someone else under the 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[.]”). The Company submits that, 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, the Complainant’s actions constitute tampering in accordance with 52 Pa. Code § 56.2.

On this basis, the Company submits that 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. Thus, the Company submits that the ALJ correctly discerned that the 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.

The Company also submits that the Complainant's tampering with Duquesne Light's electric 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.

The Company points out that in this case, it followed the proscribed termination procedures by posting 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. Tr. at 140-141; Motion for Partial Judgment ¶ 41.

c. Disposition

We dispose of this issue by agreeing with the Initial Decision that the Complainant's removal of his electric meter and rewiring of it constituted meter tampering and a fire hazard. I.D. at 15-16; Tr. 140 and 282; DLC Exhibit 11. We conclude that Duquesne Light had a valid basis to terminate his service until a rewiring inspection was performed and the associated tampering fee was paid.

The definition of meter tampering in the Commission's Regulation at 52 Pa. Code § 56.2 clearly includes meter removal, as such an action undoubtedly "affects the proper registration of service through a meter." The removal of one meter and rewiring of the remaining meter without the Company's authorization are not disputed by

the Complainant. The burden of proof rests with the Complainant and, in this case, his own admissions prove the opposite of his assertions.

2. Inaccurate Billing

a. The Complainant's Exceptions

The Complainant requests that both of his accounts be reduced to a \$0.00 balance and that credits be issued. Exc. at 2. He claims that his TED device accurately records his solar panel electric output and is essentially fail-safe. He submits that it, standing alone, is adequate proof of inaccurate billing by Duquesne Light. He also makes various references to Duquesne Light's alleged engineering ineptitude and prior problems with the two meters on the Property as additional evidence of billing inaccuracies. *See e.g.*, Exc. at 3 referring to Finding of Fact (F.F.) No. 4 and F.F. No. 5; Exc. at 4 referring to F.F. No. 28; Exc. at 5 and Exc. at 7-9.

b. Duquesne Light's Replies to Exceptions

Duquesne Light replies that the Initial Decision rightfully denied that portion of the Complaint that alleged incorrect charges on the Complainant's bills because the Complainant failed to carry his burden of proof on this issue. R. Exc. at 8-9. The Company asserts that, at the hearing, the Complainant simply alleged that Duquesne Light meters were "bogus," and provided information from his TED device. Tr. at 65, 70. Duquesne Light emphasized that the Complainant is not an agent or representative of TED. Tr. at 70. Further, in response to the Complainant's claim, Duquesne Light presented the testimony of a Company billing analyst, who sponsored exhibits and meter data information that was used to bill the Complainant at the Property. Tr. at 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. at 115-122. Thus, the Company asserts that the Complainant was billed in accordance with the Company’s net metering billing practices, “meaning that the Complainant was billed on the net consumption or generation that the Complainant contributed for each billing period.” R. Exc. at 9; Tr. at 170. Simply put, in some months, the Complainant generated more energy than he consumed, but in other months, however, the Complainant consumed more energy than he generated. Tr. at 175, 178. The Company notes that the bills admitted into evidence during the hearing reflect the net energy at the Property. R. Exc. at 9, n. 2. While the Company admits that it issued some bills based on estimated reads, it observes that estimated bills may be necessary where the Company is unable to obtain an actual meter reading – such as here, for example, where its meters have been tampered with. *Id.* Duquesne Light denies that its issuances of bills based on estimated meter readings was thus improper. R. Exc. at 9-10; Tr. at 192, 245-46.

The Company argues that the Complainant’s 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). Based on the evidence of record, the Company contends that the Initial Decision was correct in concluding that the 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 the Barn. R. Exc. at 9. The Company points out that the Complainant did not request a payment arrangement as a part of this Complaint. Complaint ¶ 4. In addition, the Company asserts that the Complainant has not had any Commission-issued or Company-issued payment arrangements on either account associated with the Property. R. Exc. at 9, n. 3; Tr. at 87-88.

c. Disposition

Based upon our careful review of the record, the Initial Decision, and the Exceptions and Replies, we agree with the ALJ that the Complainant failed to carry his burden of proving that there were incorrect charges on his bills. As noted by the ALJ, the Complainant did not seriously question his electric usage, but instead, he contends that his solar panels produce more energy than he is being credited. He relied entirely on the alleged accuracy of his TED device. I.D. at 16-17. The flaw in the Complainant's case on this point is that he presented no evidence to establish the accuracy of the TED monitor. *Id.* Furthermore, the Complainant did not refute the testimony of the Company's witness regarding the accuracy of the Home and the Barn meters when tested and the related accuracy of the Complainant's billings. *Id.*

The Complainant's mere layman's assertion of his TED device's recording accuracy without additional proof to support such a conclusion, does not alone carry his burden of proving with substantial evidence that his bills are inaccurate as rendered. Moreover, Duquesne Light's responsive testimony sufficiently rebutted the Complainant's assertions of billing error. Our decisions must be supported by substantial evidence of record and more than a scintilla of evidence is required. In addition, courts have held that the mere suspicion of a fact is not enough to support a conclusion; more is required. Thus, in this case, we agree with the ALJ that, without more evidence from the Complainant, we are unable to find error in the Company's bill calculations.

3. Meter Twist

a. The Complainant's Exceptions

The Complainant argues that the testimony of Duquesne Light's witness demonstrates that the Home and the Barn accounts were at some undefined point

switched. Exc. at 3 referring to FF. 4 and FF. 5. Mr. Cservak also discusses his perceived difficulties with the presentation of his evidence at hearing in the “Meter and Account Switching Issue” section of his Exceptions, but he does not substantively assert in that portion of his Exceptions that Duquesne Light switched his Home and Barn meters. Exc. at 9-11.

b. Duquesne Light’s Replies to Exceptions

Duquesne Light submits that the Complainant’s Exceptions under the heading “Meter and Account Switching Issue,” largely address the Complainant’s dissatisfaction with the confidential nature of settlement discussions and expresses a distrust in the ALJ’s ability to review the hearing exhibits presented by both parties prior to hearing. Duquesne Light notes that, substantively, the Complainant takes issue with the portion of the Initial Decision that indicates the Complainant did not present any evidence to support his claim of a meter or account twist. R. Exc. at 9-10.

Citing its own evidence, Duquesne Light emphasizes that, on February 12, 2019, the Complainant contacted the Company and suggested the meter assignments between the Home and the Barn were switched. Additionally, on February 15, 2019, the Company visited the Property to investigate for a possible meter twist, but the Complainant refused access to the Property. R. Exc. at 9-10, Tr. at 138-39.

The Company explains that it approved the interconnection for the Complainant’s 7.6 kW photovoltaic solar panel arrays for the Home and 5kW photovoltaic solar panel arrays for the Barn on or around November 2017. R. Exc. at 1. 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. The Company further noted that, on or about February 19, 2018,

Duquesne Light exchanged the Barn's existing digital meter with a net meter, which was tested before installation and yielded meter readings within the Commission Regulations.

Duquesne Light explains that approximately one year after the installation of the net meter for the Barn, on February 12, 2019, the Complainant contacted the Company and suggested the meter assignments between the Home and the Barn were switched. R. Exc. at 2. On February 15, 2019, the Company visited the Property to investigate for a possible meter twist, but the Complainant refused access to the Property. *Id.*

Thereafter, on October 25, 2019, the Company discovered it was not receiving meter reads for the Barn net meter and 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. R. Exc. at 2. On site, the technician observed that the Home meter had been removed from its socket, and the Home wiring had been reconfigured without Company prior authorization. *Id.*

As a result of its findings, 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. R. Exc. at 3. The 10-day notice further indicated the Company would not terminate service if the Complainant paid a \$300 tampering fee and obtained a wiring inspection. Because the Company did not receive payment of the tampering fee or evidence of a wiring inspection, the Company terminated the Complainant's electric service on Monday, March 2, 2020, and left a post-termination notice at the Property. R. Exc. at 3-4. According to the Company (and the Complainant), 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 at the time of filing of the Reply Exceptions were \$2,395.36 for the Home and \$823.32 for the Barn.

Duquesne Light submits that 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, the Company contends that the 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. R. Exc. at 10, Tr. at 28. Duquesne Light argues that the 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). R. Exc. at 9-10.

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

c. Disposition

We concur with the ALJ's observation that Mr. Cservak did not present any evidence as to how he determined the Home and the Barn meters had been switched or when. I.D. at 18. This lack of evidence reduces the Complainant's assertion to an opinion and does not form the basis for a finding of fact favoring his claim. *Pa. Bureau of Corr. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

The ALJ gave appropriate weight to the Company's testimony regarding account assignments on the Home and the Barn meters at the Property. I.D. at 18; Tr. at 76- 77, 82; DLC Exhs. 1A and 1B. In addition, the ALJ noted that the history of account assignments to the respective Home and Barn locations were supported by the

bills admitted into evidence. DLC Exhs. 37A and 37B. Therefore, we determine that the ALJ correctly concluded that Mr. Cservak failed to carry his burden of proof on his meter and account switching issue and that Duquesne Light's responsive testimony more than sufficiently rebutted the Complainant's case.

4. Lack of Due Process

a. The Complainant's Exceptions

As noted immediately above, the Complainant essentially claims in several parts of his Exceptions that the presiding officer did not have the Complainant's Exhibits and/or the ability to review materials that the Complainant had submitted during the BCS informal complaint process. Exc. at 3 and 9-10. In addition, the Complainant appears to argue that settlement discussions between the Parties should have been a part of the evidentiary record. Exc. at 10.

b. Duquesne Light's Replies to Exceptions

Duquesne Light replies that the Complainant expresses dissatisfaction with the confidential nature of settlement discussions and distrust in the ALJ's ability to review the hearing exhibits presented by both Parties prior to the hearing. R. Exc. at 9-10.

c. Disposition

To the extent that the Complainant argues that the formal processes of the Commission for the handling of confidential settlement discussions and the adjudication

of complaints is inadequate, his Exceptions are denied.⁹ The Commission's rules guarding confidentiality of settlement discussions are validly based and the ALJ appropriately protected the development of the record to exclude such matters. As for the Complainant's allegation that the ALJ allegedly did not have the Complainant's exhibits or materials he submitted prior to hearing, the Complainant's Exceptions also are denied. The record is clear that the ALJ painstakingly proceeded in seeking to understand fully the Complainant's position throughout the hearing and rendered his Initial Decision with reference to the Complainant's testimony and exhibits. I.D. at 5-6 and 19.

III. Conclusion

Based on the foregoing discussion, we shall deny the Complainant's Exceptions and dismiss the Complaint, consistent with this Opinion and Order;
THEREFORE,

IT IS ORDERED:

1. That the Exceptions filed by Frank J. Cservak, Jr. on March 24, 2021, to the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on March 1, 2021, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on March 2, 2021, is adopted in its entirety, consistent with this Opinion and Order.

⁹ Exc. at 1, 2-3, 5-6, and 9-11.

3. That Duquesne Light Company's Motion for Partial Judgment on the Pleadings, filed on June 12, 2020, is granted and the claims regarding termination are dismissed.

4. That the Formal Complaint filed on February 29, 2020, by Frank J. Cservak, Jr. against Duquesne Light Company, is dismissed.

5. That the proceeding at this docket be marked closed.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2022

ORDER ENTERED: June 16, 2022