PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held October 19, 2023

Commissioners Present:

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

Frank J. Cservak, Jr., P.E. C-2022-3036252

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., P.E. (Complainant) filed on July 24, 2023,[1] to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on July 5, 2023, in the above-captioned

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[1] Although the Complainant filed his Exceptions with the Commission's Secretary's Bureau on July 24, 2023, the Exceptions did not contain a Certificate of Service or any other indication that the Parties of record to the case were served. Because the Complainant is not represented by an attorney, the Commission's Secretary's Bureau served a copy of the Exceptions on Duquesne Light Company (Duquesne or Company) on July 26, 2023. In order to avoid prejudice to either Party, pursuant to 52 Pa. Code § 5.535, Duquesne was given until August 11, 2023, to file Replies to Exceptions.

proceeding. The Initial Decision dismissed the Formal Complaint (Complaint) filed by the Complainant on October 14, 2022. On August 9, 2023, Duquesne filed its Reply to Exceptions. For the reasons set forth herein, we shall deny the Complainant's Exceptions, adopt the ALJ's Initial Decision, and dismiss the Complaint, consistent with this Opinion and Order.

I. Background and Procedural History

By way of background, the Complainant's property contains two separate structures: (1) a residential dwelling (the Home); and (2) a commercial building (the Barn) from which Mr. Cservak operates a non-profit corporation, both of which had solar array panels. I.D. at 9-10 (citing Tr. at 31, 42, 68-69, 79, 144-145, 149-150; Duquesne Exhs. 2, 3, 5). Previously there were two separate meters and billing accounts for electric service provided to the Complainant's Home and Barn. I.D. at 9 (citing Tr. at 79). On August 5, 2021, at his request, the Complainant's service for his Home and Barn was combined through one meter and billing account starting in September 2021. I.D. at 10 (citing Tr. at 70, 79, 129).

On October 14, 2022, the Complainant filed the instant Complaint with the Commission,[2] wherein he alleged that: (1) Duquesne is threatening to or has already shut off his utility service;[3] (2) there are incorrect charges on his bills;[4] (3) he is being charged

[2] Duquesne was served with a copy of the Complaint on October 19, 2022.

[3] The Complainant averred that Duquesne had already shut off his utility service for an eight-month period due to non-payment and is threatening termination again. Complaint at ¶ 4.

[4] The Complainant alleged that "[i]ncorrect and [f]raudulent charges were added to [his] (2) Accounts in [February] 2020..." The Complainant explained that "[t]he Fraudulent charges show up as Meter Read Information ESTIMATED…as if [he] was STEALING. Those Billing Statements placed [his] account in the rears [sic] by $3,859.18…" Complaint at ¶ 4.

a “wrong rate” since Duquesne changed his rate from Residential to Commercial rate in September 2021 when his two billing accounts and two meters were reduced to one billing account and one meter; and (4) solar credits that had accrued on his billing accounts were deleted when the meter was changed in September of 2021. Complaint at ¶ 4.

As relief, Mr. Cservak requested: (1) that his account be restored to the Company’s Residential Rider 21 Rate; (2) that disputed charges in the amount of $3,757.03 due by September 26, 2022 be removed; (3) that his account balance be set to $0.00; and (4) that -2,332.425 solar credits be restored to the existing account balance of -2,366.92 Bank NET Generation as of September 8, 2022. Complaint at ¶ 5.

On November 4, 2022, in response to the Complaint, Duquesne filed an Answer and New Matter (Answer), properly endorsed with a Notice to Plead. In its Answer, Duquesne specifically denied all material allegations of the Complaint and averred, in part, as follows:

- Duquesne admitted that it terminated the Complainant’s service on March 2, 2020, for unlawful meter tampering, which was the subject of the Complainant’s prior Formal Complaint in *Frank J. Cservak, Jr. v. Duquesne Light Company*, Docket No. F-2020-3019005 (Order entered June 16, 2022) (*Cservak I*);

- Duquesne explained that in *Cservak I*, the Commission concluded that Duquesne had a valid basis for the 2020 termination;[5]

[5] On July 15, 2022, the Complainant filed a Petition for Review of the Commission’s Opinion and Order denying the Complainant’s exceptions and dismissing the Complainant’s 2020 Formal Complaint with the Pennsylvania Commonwealth Court. *See, Frank J. Cservak, Jr. v. Pa. PUC*, No. 768 CD 2022. The petition remains pending with the Commonwealth Court. I.D. at 3.

- Duquesne admitted the Company issued a 10-day termination notice to the Complainant on October 10, 2022, for failure to pay past due amounts;[6]

- The current balance on the Complainant's account is correct as rendered;

- To the extent the Complainant disputes charges as of April 5, 2021, such disputes were included in *Cservak I*, and the Commisssion has determined the Complainant's disputes were without merit;

- Duquesne admitted that the Complainant's account was changed from RS – Residential Service Rate, Rider 21 to GS – Small Commercial Rate, Rider 21, in accordance with Duquesne's Commission-approved tariff, when the Complainant's two accounts were combined at his request in September 2021, asserting that the Complainant's account is correctly classified as a commercial account in accordance with Duquesne's Commission-approved tariff, because more than 25% of the premises' monthly electrical consumption is attributable to commercial use based on an examination of historical usage as reflected on the two prior meters at the property and the operation of a business at the property; and

- In September 2021 when the Complainant's two accounts were combined, the Net Metering Credits on the Complainant's two accounts were properly converted to cash and refunded to the Complainant.

Answer at ¶¶ 4-5.

In its New Matter, Duquesne averred that: (1) charges or balances appearing on the Complainant's account prior to April 5, 2021, are barred by the doctrine of *res judicata* because the Commission has already determined those balances to be correct in *Cservak I*; and (2) for the same reason, allegations pertaining to the electric

[6] The past due balance of $3,797.26 included charges in the amount of $3,218.68 ($2,395.36 for the Home and $823.32 for the Barn) that became undisputed upon the issuance of the Commission's Order in *Cservak I*. I.D. at 12, Findings of Fact Nos. 5, 18 and 23.

service termination on March 2, 2020, are barred. Answer at 5. Mr. Cservak did not file a response to the New Matter.[7]

Therefore, the Answer requested that the Commission dismiss the Complaint or set this matter for a hearing. Answer at 6.

By Hearing Notice dated December 8, 2022 (Hearing Notice), an Initial Telephonic Hearing was scheduled for February 15, 2023. Thereafter, the ALJ issued the Parties a Prehearing Order dated December 9, 2022, informing them about the procedural rules for the hearing.

On December 22, 2022, Duquesne filed a Motion for Partial Judgment on the Pleadings (Motion), maintaining, in pertinent part, that the Complaint includes two allegations litigated and addressed in *Cservak I*: (1) an eight-month service termination; and (2) charges added to the Complainant's accounts in February 2020. Motion at ¶¶ 5, 8-10. In support of its argument, Duquesne contended the following:

> 17. In this case, there is no dispute as to the facts. Complainant's allegations, to the extent they relate to (i) Duquesne Light charges or balances that appeared on his account prior to April 5, 2021; (ii) the March 2, 2020, service termination; and/or (iii) any issues that were addressed by the Commission in the Final Order issued on June 16, 2022, in the 2020 Complaint case [*Cservak I*], are barred by the doctrine of *res judicata*.
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> 18. The doctrine of *res judicata* operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in *Frank Tomazin v. Pennsylvania-American Water Company,* 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are

[7] Under the Commission's Regulations a failure to file a timely reply to New Matter may be deemed in default, and relevant facts stated in the New Matter may be deemed to be admitted. 52 Pa. Code § 5.63(b).

> minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."
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> 19. The doctrine of *res judicata*, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. *Hopewell Estates, Inc. v. Kent,* 435 Pa. Superior Ct. 471. 476, 646 A.2d 1192 (1994).
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> 20. The doctrine of *res judicata* applies to cases before the Commission. *See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc.,* 77 Pa. P.U.C. 98, 104 (1992).
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> 21. The doctrine of *res judicata* reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:
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> (1) Identity of issues;
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> (2) Identity of causes of action;
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> (3) Identity of persons and parties to the action; and
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> (4) Identity of the quality and capacity of the parties suing or sued.
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> *Day v. Volkswagenwerk Aktienqesellschaft*, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

Motion at ¶¶ 17-21.

For relief, Duquesne requested that the Commission dismiss, with prejudice, the claims that relate to: (1) Duquesne's charges or balances that appeared on Mr. Cservak's account prior to April 5, 2021; (2) the March 2, 2020, service termination;

and/or (3) any issues that were addressed by the Commission in *Cservak I.* Motion at 8-9.

On January 12, 2023, the Complainant filed a response to the Motion (Response). In his Response, Mr. Cservak asserted the following:

- The Complaint in *Cservak I* was filed before service termination on March 2, 2020;
- Fraudulent charges totaling $3,800 were placed on the Complainant's August 2022 billing statement, and Duquesne is again threatening service termination over non-payment of those charges;
- Duquesne "visited the property on February 13, 2020, changed the meter again (deleting the Solar Credits on the account); performed a 'safety inspection' (all work was OK); and added 800 kwh by means of an 'Estimated' bill ($3800±) putting Cservak's Billing Statement in the rears [sic] by that amount;"
- "The Complainant's service was terminated in 2020 due to non-payment of his bill. [Mr.] Cservak never 'tampered' with a meter, however [Duquesne] was able to obtain a Partial Judgement on the meter tampering issue…"
- The Commission's decision in *Cservak I* is now the subject of the Petition for Review before the Commonwealth Court;
- "The incorrect and fraudulent charges which appeared on [Mr.] Cservak's Billing Statement in August 2022 are the result of the [Duquesne] Hit Squad who visited the property on February 13, 2020…"
- "[Duquesne] again threatened to terminate [Mr.] Cservak's electrical service in August 2022 by making that amount Due and after a 10-Day Shut Off Notice was served on [the Complainant] due to non-payment of his bill, just as [Duquesne] had done in [February] 2020 which [Duquesne] executed and kept [Mr.] Cservak's power out for six months."

- "[Duquesne's]changing the Rate from Residential Rider 21, which it had been since 2015, is in direct violation of Judge Johnson's instructions at the 2020 Hearing when he verified with [Duquesne] that when the service was restored it would be at the Residential rate. See Hearing Transcript, Pages 291-292."[8]

- "Solar Credits were deleted from [Mr.] Cservak's account starting in 2018 at least 5 times when [Duquesne] changed the Meters and remain unaddressed, not considered and unresolved…"

- [Duqeusne's] fraudulent charges and balances that appeared on [Mr.] Cservak's account(s) as of April 5, 2021, remain unaddressed, not considered and unresolved by either Judge Johnson's Hearing or Gladys Brown Dutrieuille's OPINION AND ORDER Dtd. June 16, 2022."

- "The Motion should be denied because there are multiple issues as to material facts surrounding the case…"

Response at ¶¶ 1-14.

On February 15, 2023, ALJ Johnson convened the telephonic evidentiary hearing, as scheduled. The Complainant appeared *pro se*, testified on his own behalf and presented no other witnesses. Six exhibits (Complainant Exhibits A, and E-I) were admitted into the record on behalf of the Complainant. Duquesne was represented by counsel who presented the testimony of two witnesses, Roxanne Morris, Duquesne's Billing Department Supervisor and Greg Murphy, Duquesne's Customer Consumer Relations Supervisor. Duquesne presented thirteen exhibits (Respondent Exhibits 1-13), which were admitted into the record. A transcript of the proceeding consisting of 194 pages was filed on March 14, 2023. I.D. at 7.

At the commencement of the telephonic hearing, the Parties were given the opportunity to argue the Motion. Tr. at 22-36. Duquesne maintained that two of the

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[8] The ALJ noted that the transcript in *Cservak I* did not reflect any instructions or verification of the rate upon restoration of service. I.D. at 6.

reasons Mr. Cservak provided for his Complaint were litigated and addressed in *Cservak I*, and therefore, barred from being relitigated on the principal of *res judicata*: (1) the Complainant's March 2, 2020 service termination; and (2) allegations of incorrect billing charges stemming from a meter change that occurred in February 2020, prior to April 5, 2021, and thus were included in *Cservak I*. Tr. at 23-27. The Complainant maintained that these matters were never adjudicated, since he did not get a chance to present evidence that was not available during the litigation of his complaint in *Cservak I*. Tr. at 29-33.

During the hearing, ALJ Johnson granted Duquesne's Motion, confining the scope of the hearing to only those matters which occurred after April 5, 2021: (1) the allegation regarding threat of service termination (*i.e.*, the 10-day termination notice issued October 10, 2022); (2) the allegation of wrongful reclassification of service account from residential rate to small commercial rate; and (3) the allegation of improper deletion of solar credits from the Complainant's electric account. Tr. at 36-37. The ALJ reasoned that he has no authority to rule on matters on appeal in Commonwealth Court, providing the following:

> While [Duquesne] argued that the doctrine of *res judicata* prevented relitigating of the issues raised in *Cservak I, res judicata* applies when there is finality as to the litigation. Here, the Commission's Opinion and Order in *Cservak I,* was pending review in Commonwealth Court. Consequently, finality had not been reached. Instead, the application of Rule 1701(a) of the Pennsylvania Rules of Appellate Procedure controlled the outcome of the Motion. Pa. R.A.P. 1701(a). Appellate Rule 1701(a) provides as follows:
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> > *General Rule*.—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court

> or other government unit may no longer
> proceed further in the matter.

> Pa. R.A.P. 1701(a). None of the exceptions applied to Mr. Cservak's case.

I.D. at 8 (footnote omitted).

On April 6, 2023, ALJ Johnson issued an Interim Order closing the record in this matter.

On July 5, 2023, the Initial Decision of ALJ Johnson was issued by Secretarial Letter wherein he found that the Complainant failed to meet his burden of proving Duquesne violated the Public Utility Code (Code) or a Commission Order or Regulation or that he is entitled to the relief he seeks from the Commission. Consequently, ALJ Johnson recommended that the entirety of the Complaint be dismissed. I.D. at 18-19.

As noted *supra*, the Complainant filed Exceptions on July 24, 2023,[9] and Duquesne filed its Reply to Exceptions on August 9, 2023.

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

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[9] *See*, fn. 1 above.

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 Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the "preponderance of the evidence" standard. *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*); *see also North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See, Se-Ling Hosiery, Inc. v. Margulies*, 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, defines "service" as:

> Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . .

66 Pa. C.S. § 102. A utility's "service" is not merely confined to the distribution of utility service, but also includes "any and all acts" related to that function. *W. Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990). Accordingly, a utility's billing

practices, as well as solar credit and rate classification practices, are included within the scope of reasonable service.

3. Notification of Service Termination

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:
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> (1) Nonpayment of an undisputed delinquent account.
>
> * * *
>
> (b) **Notice of terminations of service.** —
>
> (1) Prior to terminating service under subsection (a), a public utility:
> (i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination.

66 Pa. C.S. § 1406(a)(1), (b)(1)(i). Electric service standards also are embodied in the Commission's Regulations. *See, generally*, 52 Pa. Code Chapters 56 and 57.

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, 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.

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

B. ALJ's Initial Decision

In his Initial Decision, ALJ Johnson made twenty-five Findings of Fact and reached six Conclusions of Law. I.D. at 9-13, 18. 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.[10]

ALJ Johnson acknowledged that he limited the receipt of evidence in the proceeding by the granting of Duquesne's Motion, as summarized above. Noting that the Complainant had raised a myriad of other issues throughout the proceeding, namely those surrounding the Complainant's March 2, 2020 service termination and allegations of incorrect billing charges prior to April 5, 2021, and that those matters are currently out of the Commission's jurisdiction due to the Complainant's own Petition for Review filed with the Commonwealth Court, the ALJ confined the scope of the issues to be examined

[10] The Complainant dedicates discussion in his Exceptions to his disagreement with several of the ALJ's Findings of Fact. Exc. at 7-8. We have addressed these arguments in the subject matter sections of this Opinion and Order.

in this proceeding to only those matters which occurred after April 5, 2021. I.D. at 8-9 (citing Pa. R.A.P. 1701(a)).[11]

Turning to the specific allegations raised and recognized for examination, the ALJ first addressed the 10-day service termination notice that Duquesne sent to the Complainant on October 10, 2022, for a past due bill, determining that Duquesne's actions were appropriate under Section 1406 of the Code, 66 Pa. C.S. § 1406, governing termination notices. I.D. at 16. The ALJ found that, since there is nothing in the record in this proceeding evidencing that Mr. Cservak obtained a stay of the Commission's decision in *Cservak I*, the past due amount appropriately included charges in the amount of $3,218.68 that became undisputed upon the issuance of the Commission's decision in *Cservak I*. I.D. at 16 (citing *Pa. PUC v. Process Gas Consumers Grp.*, 467 A.2d 805 (Pa. 1983)). The ALJ thus concluded that the Complainant's allegation that he is improperly under the threat of service termination is without merit. I.D. at 16.

The ALJ next addressed the Complainant's allegations of Duquesne's improper handling of the Complainant's solar net metering credits, determining that, pursuant to Duquesne's Commission-approved tariff, the Complainant's account has been properly credited for the electricity generated by his solar panels. I.D. at 16-17. The ALJ explained that during any billing period when a customer's solar panels generate more kilowatt hours than those delivered by Duquesne to the customer, the customer's account is credited for each excess customer-generated kilowatt hour. I.D. at 11 (citing Tr. at 80, Duquesne Exh. 9). However, on May 31st of each year, Duquesne conducts a true-up of a customer's solar generation and credits the customer's account for excess solar

[11] We shall adopt the recommendation of ALJ Johnson on this issue. As the ALJ observed, the March 2, 2020 service termination and allegations of incorrect billing charges prior to April 5, 2021 that are, in part, the subject of the instant Complaint have been previously examined by the Commission and are currently not within the Commission's jurisdiction.

generation or upon request issues a check to the customer for the excess. When a customer stops service or moves to a new rate, a check is also issued to a customer for excess solar generation.[12] I.D. at 11 (citing Tr. at 81, 118). Here, the ALJ found that the evidence demonstrates that the solar credits have been appropriately applied to the Complainant's accounts, and after each true-up completed on Mr. Cservak's Home and Barn accounts in 2021 and 2022, he was issued refund checks.[13] Tr. at 87; Duquesne Exhs. 1, 4 and 6. Noting that the Commission-approved tariff has the full force of law and is binding on the utility and the customers, the ALJ concluded that the Complainant had not demonstrated any violation of the Code or a Commission Order or Regulation by Duquesne by virtue of its handling of the Complainant's solar net metering credits. I.D. at 16-18.

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[12] Duquesne's Net Metering Service Tariff provides as follows:

> Any excess kilowatt hours shall continue to accumulate for the 12 month period ending May 31. On an annual basis, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by the Company to the customer-generator during the preceding year at the Company's Price to Compare consistent with the Commission regulations.

Duquesne Exh. 9.

[13] On August 9, 2021, the Company issued credits for excess solar generation associated with the House in the amount of $58.93 ($15.52 associated with transmission, plus $43.41 associated with generation). Duquesne Exhs. 1 and 13. On August 12, 2021, the Company issued credits for excess solar generation associated with the Barn in the amount of $59.29 ($15.62 associated with transmission, plus $43.67 associated with generation). Duquesne Exhs. 1 and 13. On September 22, 2021, Duquesne issued Mr. Cservak a check for excess solar generation associated with the House in the amount of $47.49; and he cashed the check. Tr. at 87-88, 92; Duquesne Exhs. 1 and 4. On September 22, 2021, Duquesne issued Mr. Cservak a check for excess solar generation associated with the Barn in the amount of $67.09; and he cashed the check. Tr. at 89-92; Duquesne Exh. 6. On June 8, 2022, Duquesne converted Mr. Cservak's solar credits at the service address into cash on his account balance in the amount of $54.62 ($44.98 associated with transmission, plus $9.64 associated with generation). Duquesne Exh. 1.

Lastly, the ALJ addressed the Complainant's allegation that he was improperly switched from residential to commercial service. The ALJ noted the testimony of Company witness, Mr. Murphy, which explained that under Duquesne's tariff, residential rates are only available to properties with one or more dwelling units for general household purposes or for commercial or professional activity where the associated consumption represents less than 25% of the total monthly usage of the premises. I.D. at 17 (citing Tr. at 92-94; Duquesne Exh. 8). The ALJ emphasized that Mr. Murphy testified that because the Company was never able to gain access to the premises to substantiate that less than 25% of the premises' electrical consumption was attributable to commercial, the Complainant's electric service was placed on the commercial rate. I.D. at 17 (citing Tr. at 92). The ALJ reasoned that the following factors weigh against classifying the Complainant's rate as residential: (1) the Complainant's barn, by definition, is not a dwelling; (2) the Complainant operates a non-profit corporation at the service location, which is a commercial or business enterprise; and (3) Mr. Cservak admitted that he would not permit Duquesne access to his barn to determine/verify any dwelling units within the barn or equipment and electrical use attributable to nonresidential purposes. I.D. at 17 (citing Tr. at 68-69, 119-120). The ALJ thus concluded that the Complainant's request to order Duquesne to change his service rate from commercial to residential must be denied. I.D. at 17.

For all of these reasons, the ALJ concluded that the Complainant had failed to meet his burden of proof under 66 Pa. C.S. § 332(a). I.D. at 18, Conclusion of Law No. 6. The Complaint was thus dismissed. I.D. at 19, Ordering Paragraph No. 2.

C. Exceptions, Replies, and Disposition

The majority of the Complainant's discussion of the Procedural History in his Exceptions relates to events that were litigated in *Cservak I*, which the Commission previously dismissed. Of the remaining paragraphs in the Complainant's Procedural

History that relate to the current proceeding, two of them (paragraphs 35 and 37) make allegations about events that were subsequent to the February 15, 2023 evidentiary hearing in this matter, and therefore are not part of the record in this proceeding. We will proceed by addressing the Exceptions within the context of the three following categories: (1) Threat of Service Termination; (2) Solar Net Metering Credits; and (3) Rate Classification of the Service Account. For the reasons discussed below, we find no basis for overturning the ALJ's conclusions in his Initial Decision that the Complainant failed to meet his burden of proving that Duquesne violated the Code, Commission Regulation or Order.

1. Threat of Service Termination

The Complainant's Exceptions appear to raise an issue regarding the threat of service termination, stating:

> As noted in the Court's History of the Proceeding, *Cservak I* is now pending in Commonwealth Court. The past due amount was fraudulent charges in the amount of $3,218.68, which was submitted as evidence on Billing Statements in *Cservak I* and was not available to Judge Johnson at the initial Hearing.

Exc. at 8.

In its Reply to the Exceptions, Duquesne maintains that, since the service termination issue was already reviewed and addressed in *Cservak I*, and because that case is still pending before the Commonwealth Court, the ALJ correctly concluded that the Commission has no authority to re-open the matter in this proceeding. R. Exc. at 4.

The Complainant did file an appeal of the Commission's decision in *Cservak I*. However, absent a stay, there is nothing in the Code or the Commission's

Regulations which prohibits a public utility from issuing a service termination notice when there is a pending appeal to the Commonwealth Court. To the contrary, the Commission's Regulations requires that prior to a hearing on a Formal Complaint or the issuance of a Commission Order when no hearing is held, the customer is required to pay that amount which the consumer services representative determines is not disputed. *See*, 52 Pa. Code § 56.181(2). Further, in any case alleging the customer's failure to pay undisputed bills as required under Section 56.181, a public utility may terminate service after giving proper notice, whether or not a dispute is pending. 52 Pa. Code § 56.164.

While some of the charges that were included in the October 10, 2022 service termination notice were related to the Complaint in *Cservak I*, there is nothing in the record to indicate that the Complainant was granted a stay from the Commonwealth Court regarding any potential actions by the utility. Nor is there any indication that the Court granted a stay to the Complainant that would forestall the termination process by Duquesne. Since the disputed charges in the amount of $3,218.68 became undisputed upon the issuance of the Commission's decision in *Cservak I*, Duquesne was entitled to issue a termination notice due to nonpayment. Therefore, we conclude that there is no evidence to indicate that Duquesne did not follow proper notice procedures regarding the Complainant's termination. *See,* 66 Pa. C.S. § 1406(b).

2. Solar Net Metering Credits

The Complainant's Exceptions appear to dispute the ALJ's conclusion that Duquesne properly handled Mr. Cservak's solar net metering credits. Exc. at 8. The Complainant disputes the ALJ's findings that Duquesne issued refund checks to Mr. Cservak for his solar net metering credits and alleges that May 31, 2023 was the first "true-up" that ever happened. *Id.*

In response, Duquesne contends that the evidence and credible testimony provided by its witnesses fully explain how the Complainant's net metering credits were calculated and applied to his accounts, and how they were refunded to him in the form of checks that he cashed. R. Exc. at 4 (citing Tr. at 87-92, Duquesne Exhs. 1, 2, 4, 5, 6, and 7). Therefore, Duquesne argues that the Complainant's Exceptions provide no basis for rejecting the ALJ's findings with respect to the solar net metering credits on Mr. Cservak's accounts. R. Exc. at 4.

We are not persuaded by the Complainant's contention in his Exceptions that the ALJ erred in finding that Duquesne calculated and applied his solar net metering credits accurately, specifically in regard to the Complainant's allegation of improper deletion of solar credits from the Complainant's account in September 2021. Our review of Duquesne Exhibits 1, 2, 4, 5, 6, and 7 corroborates Duquesne's assertion that it demonstrated how it calculated and applied the Complainant's net metering credits in accordance with its Commission-approved tariff. Therefore, we agree with the ALJ's conclusion that the Complainant was appropriately billed for his usage and credited for his generation.

3. Rate Classification of the Service Account

In his Exceptions, the Complainant disputes the ALJ's conclusion that Duquesne properly changed his rate from Residential to Commercial in September 2021 when the Complainant's service for his Home and Barn was combined through one meter, at his request. The Complainant maintains that he does not have a commercial

building on his residence and asserts that there is no electrical consumption related to commercial activities.[14]

Regarding Duquesne's explanation that it was never able to gain access to the premises to substantiate that less than 25% of the premises' electrical consumption was attributable to commercial, the Complainant argues that "Duquesne has always demanded entry to the Barn which [Mr.] Cservak will not grant. First, in 2018, it was [Duquesne's] Senior Metering Engineer Stoltenberg, then any number of supervisors, technicians, inspectors, or agents who had neither the authority nor the technical expertise to determine the use of a building as determined by the local statutes. Only the Borough has that authority which is handled through the Zoning and Land Use Permits and Procedures." Exc. at 8-9.

In its response, Duquesne argues that, in accordance with the Company's Commission-approved tariff, it was proper for the Barn to be classified as a commercial account because the Complainant operates a non-profit entity out of the Barn, and because Duquesne was precluded from inspecting the Barn to evaluate the percentage of commercial use. R. Exc. at 2-3 (citing Tr. at 144-145, 149-150; Duquesne Exh. 12). And, although the Company maintains that the ALJ correctly determined that Duquesne did not act improperly by classifying the Barn as a commercial account, Duquesne states that this issue is now moot because the Company stated on the record that it would convert the Barn account back to a residential classification retroactive to August 2021 based on confirmation that Mr. Cservak provided. R. Exc. at 3-4 (citing Tr. at 104, 181).

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[14] Pages 7-8 of the Complainant's Exceptions restate the ALJ's Findings of Fact Nos. 3, 8, 10, and 22. After the restatement, the Complainant indicates his reasoning for disagreeing with the findings. Consequently, the Exceptions are raised by Mr. Cservak, pertaining to the ALJ's conclusion that Duquesne properly changed his rate from Residential to Commercial in September 2021, and are argued by him in reference to the ALJ's Findings of Fact.

Mr. Cservak's Exceptions acknowledge that the reclassification has occurred. *See* Exc. at 7-9.

Given that the Complainant's service has been reclassified from commercial to residential service retroactive to August 2021, as requested by Mr. Cservak and as corroborated by his Exceptions, we consider this Exception moot.

As a final observation, we note that, on the same date the Exceptions were filed in the instant case, July 24, 2023, Mr. Cservak filed a third Formal Complaint (Docket No. C-2023-3041897), in addition to the instant Complaint and the Formal Complaint at issue in *Cservak I*, filed in 2020. In all three cases, the Complainant is seeking relief against Duquesne for alleged improper charges on his electric accounts in 2020. There appears to be a trend in the Complainant's use of the Commission's processes to avoid paying his electric bills, which results in a large outstanding account balance. Therefore, we are compelled to remind the Complainant that using the Commission's processes to avoid paying for utility service is an abuse of the Commission's administrative processes and will not be countenanced. The Commission has previously barred consumer complainants from filing further complaints with the Commission in order to protect the interests of other ratepayers. *See, Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Order entered July 28, 2009); *Thomas v The Peoples Natural Gas Co.*, Docket No. C-2009-2102194 (Order entered June 17, 2010); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Order entered April 23, 2014).

III. Conclusion

Upon review and consideration of the record of this proceeding, and in consideration of the applicable law, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

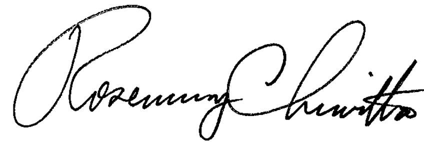
1. That the Exceptions of Frank J. Cservak, Jr., P.E., filed on July 24, 2023, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on July 5, 2023, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint of Frank J. Cservak, Jr., P.E., filed on October 14, 2022, at this docket, is dismissed.

4. That the Secretary's Bureau shall mark this docket closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 19, 2023

ORDER ENTERED: October 19, 2023