

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank J. Cservak, Jr.	:	
	:	
v.	:	C-2023-3041897
	:	
Duquesne Light Company	:	

**FIRST INTERIM ORDER  
STAYING PROCEEDINGS PENDING COMMONWEALTH COURT  
DECISION ON COMPLAINANT’S PETITION FOR REVIEW**

**INTRODUCTION**

For the reasons set forth below, the proceedings in *Frank J. Cservak, Jr. v. Duquesne Light Company*, Docket No. C-2023-3041897, including a ruling on Respondent’s Preliminary Objections and Complainant’s Answer to the Preliminary Objections, will be stayed pending the Pennsylvania Commonwealth Court’s decision in the matter of the Petition for Review in *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm’n*, No. 768 CD 2022 (*Cservak Petition for Review*). This order does not stay or prevent any lawful action Respondent may take relevant to suspension or termination of Complainant’s electric service, pursuant to the Commission’s *Opinion and Order* entered on October 19, 2023, in the case, *Frank J. Cservak, Jr. v. Duquesne Light Company*, Docket No. C-2022-3036252. In the ordering paragraphs below, the Parties will be directed to file with the Commission’s Secretary’s Bureau and email the presiding Administrative Law Judge (ALJ) a copy of the Commonwealth Court’s decision in the *Cservak Petition for Review* upon receipt of the decision.

**PROCEDURAL HISTORY**

**Complainant’s Third Formal Complaint (*Cservak III*)**

Frank J. Cservak, Jr. (Complainant or Mr. Cservak) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent, Duquesne Light, Company or DLC) on July 24, 2023, at Docket No. C-2023-3041897 (*Cservak III*).<sup>1, 2</sup> On the Commission’s standard form, as the reasons for his Formal Complaint, Mr. Cservak checked the following boxes:

The utility is threatening to shut off my service or has already shut off my service.  
Incorrect charges are on my bill.  
I am having a reliability, safety or quality problem with my utility service.  
Other.

*Cservak III* ¶ 4.

Under the Other section of the Formal Complaint in *Cservak III*, Mr. Cservak alleged matters occurring between September 2017 and July 10, 2023. More specifically Mr. Cservak alleged 1) improper service termination in 2020; 2) incorrect charges stemming from a meter change in 2020; 3) a change from residential to commercial rate retroactive to September 2021; 4) the handling of his solar credits in 2021 and 2022; and 4) disputed billing charges relating back to *Cservak II* in the amount of \$3,735.80, which remained on his account as of July 10, 2023 in the amount of \$3,822.12. *See Cservak III*, Formal Complaint at pp. 3-7. The following documents are attached to the Formal Complaint in *Cservak III*: February 13, 2020, 10-Day Shut-Off Notice; electric bills for January, February and March 2020; and June 8, 2023, and July 10, 2023, electric bills each including a disputed balance in the amount of \$3,822.12.

### **Initial Decision in *Cservak I* and Exceptions**

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<sup>1</sup> Mr. Cservak’s Formal Complaint at Docket No. C-2023-3041897 (*Cservak III*) is the third in a series of Formal Complaints that he has filed against Duquesne Light. The two other Formal Complainants are *Frank J. Cservak, Jr. v. Duquesne Light Company*, Docket No. F-2020-3019005 (*Cservak I*) and *Frank J. Cservak, Jr. v. Duquesne Light Company*, Docket No. C-2022-3036252 (*Cservak II*). For clarity the three proceedings are referred to as *Cservak I*, *Cservak II* and *Cservak III*.

<sup>2</sup> As noted below, also on July 24, 2024, Mr. Cservak filed exceptions to the Initial Decisions in *Cservak II*.

Earlier as the presiding ALJ in *Cservak I*, I issued an Initial Decision on February 17, 2021, dismissing the Formal Complaint at *Cervak I*, because Mr. Cservak had failed to carry his burden of proving 1) that there were incorrect charges on his bills dating back to 2020; 2) that his service account was not properly credited for the energy produced by his solar panels; or 3) that service termination, based upon his admission of tampering with the utility's facilities, violated the Commission's regulations.

Mr. Cservak filed Exceptions to the Initial Decision in *Cservak I*, on March 24, 2021. In his Exceptions, Mr. Cservak claimed the amount of the disputed charges was  $\$3,859.18 - \$832.32 = \$3,026.86$ . (The Exceptions are attached to the Formal Complaint filed in *Cservak III*.) DLC filed Reply Exceptions to the Initial Decision in *Cservak I*, on April 5, 2021.

### **Opinion and Order I in *Cservak I* and Petition for Review**

By an *Opinion and Order (Opinion and Order I)* entered in *Cservak I*, on June 16, 2022, the Commission denied Mr. Cservak's Exceptions and adopted the ALJ's Initial Decision, in its entirety consistent with *Opinion and Order I*.

On July 15, 2022, Mr. Cservak filed a Petition for Review of *Opinion and Order I* with the Pennsylvania Commonwealth Court. The Petition is docketed as *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022. See *Cservak II*, Tr. 18-19. The Petition remains pending before the appellate court as of the date of this Interim Order.

### **Complainant's Second Formal Complaint (*Cservak II*)**

On October 14, 2022, Mr. Cservak filed his second Formal Complaint against DLC at *Cservak II*. In *Cservak II*, Mr. Cservak again alleged that Duquesne Light had fraudulently added charges to his account starting in 2020 and improperly terminated his service in 2020. Additionally, in *Cservak II*, Mr. Cservak alleged that Duquesne Light 1) improperly deleted solar credits for his electric account and 2) wrongfully reclassified his service account from residential rate to small commercial rate. On December 2, 2022, Duquesne Light filed a

Motion for Partial Judgment on the Pleadings in connection with *Cservak II*. Duquesne Light argued Mr. Cservak's allegations concerning charges prior to April 5, 2021, and service termination in 2020, must be dismissed because those allegations had been litigated and dismissed in *Cservak I*.

### **Allegations at Issue, Initial Decision and Exceptions in (*Cservak II*)**

An evidentiary hearing was held on February 15, 2023, in connection with *Cservak II*. As the ALJ in *Cservak II*, I issued an Initial Decision on July 5, 2023, that granted Duquesne Light's Motion for Partial Summary Judgment to the extent that I lacked authority to rule on Mr. Cservak's allegations concerning charges prior to April 5, 2021, and service termination in 2020, which were raised and dismissed by the Commission in *Cservack I*, because those allegations were pending review by the Commonwealth Court. *See Cservak II*, Initial Decision at 7-9. Additionally, the Initial Decision dismissed Mr. Cservack's remaining allegations: 1) improper deletion of solar credits for his electric account; 2) wrongfully reclassification of his service account from residential rate to small commercial rate; and 3) as well as his allegation of the threat of service termination, which was raised during the February 15, 2023, evidentiary hearing. *See Cservak II*, Initial Decision at 9, 16-17.

On July 24, 2023, Mr. Cservak filed Exceptions to the Initial Decision in *Cservak II*. Duquesne Light filed Reply Exceptions in *Cservak II* on August 9, 2023.

### **Respondent's Answer and New Matter and Preliminary Objections to *Cservak III***

On August 10, 2023, Duquesne Light filed an Answer and New Matter and Preliminary Objections to the Formal Complaint in *Cservak III*. Duquesne Light denied the material allegations set forth in *Cservak III*, and the Company asserted that the allegations were either dismissed with prejudice by the Commission in *Cservak I* or were pending a final Commission order in *Cservak II*.

In New Matter in *Cservak III*, Duquesne Light asserted the following:

12. To the extent the Complaint makes allegations regarding Duquesne Light charges or balances that appeared on his account prior to April 5, 2021, such allegations are barred by the doctrine of res judicata and/or *lis pendens*<sup>3</sup> because the Commission has already determined that the Complainant's account balances were correct as of April 5, 2021, in the Final Order issued on June 16, 2022 in the 2020 Formal Complaint case [*Cservak I*].

13. To the extent the Complaint makes allegations regarding the March 2, 2020, service termination, such allegations are barred by doctrine of res judicata and/or *lis pendens* because the Commission has already determined that the March 2, 2020, service termination was lawful and justified in the Final Order issued on June 16, 2022, in the 2020 Formal Complaint case [*Cservak I*].

14. To the extent the Complaint makes allegations about any issues that were addressed by the Commission in the Final Order issued on June 16, 2022, in the 2020 Formal Complaint case [*Cservak I*], such allegations are barred by the doctrine of res judicata and/or *lis pendens*.

15. To the extent that the Complaint makes allegations about any issues that were raised in the Complainant's 2022 Formal Complaint at Docket No. F-2022-036252 (sic) [*Cservak II*], those allegations should be dismissed on the doctrine of *lis pendens*.

*Cservak III*, New Matter ¶¶ 12-14.

In its Preliminary Objections in *Cservak III*, Duquesne Light asserted that Mr. Cservak's 2023 Formal Complaint includes 37 sub-paragraphs in Paragraph 4 which are identical to the 37 paragraphs included in Mr. Cservak's Exceptions to the Initial Decision in the 2022 Formal Complaint case at *Cservak II*. Duquesne Light contends the Formal Complaint in *Cservak III* does not make any allegations about any actions by Duquesne Light that were not previously alleged in the 2020 or 2022 Formal Complaints and does not request any relief that was not already requested in the 2020 or 2022 Formal Complaints. Specifically, Duquesne argued the following:

2. As more fully set forth below, the Company provides Preliminary Objections to the above-captioned Complaint on the grounds that all of the

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<sup>3</sup> The Latin term *lis pendens* refers to a pending matter. Apparently, DLC is referencing Mr. Cservak's Petition for Review mentioned above which remains pending before the Pennsylvania Commonwealth Court.

allegations included in the Complaint and the relief requested by the Complaint are the subject of proceedings that are still pending final disposition, and therefore the Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(6).

25. Pursuant to 52 Pa. Code § 5.101(a)(6), a formal complaint may be dismissed due to pendency of a prior proceeding.

26. 52 Pa.Code § 5.101(a)(6) is comparable to the lis pendens doctrine.

27. The purposes of the doctrine of lis pendens are to prevent a respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action.

28. “The law is quite clear that lis pendens is a valid defense when the parties, the causes of action and the relief sought are the same in both actions *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

29. The purpose of lis pendens is to prevent a party from being forced to defend itself against the same claims twice. *Penox Technologies, Inc. v. Foster Medical Group*, 546 A.2d 114, 115 (Pa. Super. 1988).

30. In the instant case, the identity of the issues, parties and relief is the same in both the Complainant’s 2023 Formal Complaint and his still pending 2020 and 2022 Formal Complaints. In all three cases the Complainant is seeking relief against Duquesne Light for allegedly improper charges on his electric accounts in 2020.

31. Even when viewed in the light most favorable to Mr. Cservak and accepting as true all well plead averments in the complaint, as well as all reasonable inferences from those averments, it is clear that the 2023 Formal Complaint shares the same issues, the same parties and the same relief requested as the 2020 and 2022 Formal Complaints.

32. Since both the 2020 Formal Complaint and the 2022 Formal Complaint are still pending, the complaint filed by Cservak in August 2019 (sic) must be dismissed on the basis of lis pendens.

33. It is clear on the fact of the 2023 Complaint that Mr. Cservak is attempting to relitigate the same issues that are pending in the 2022 Complaint.

34. Of the 37 separate factual allegations in the 2023 Formal Complaint, only 3 take place after the evidentiary hearing from the 2022 Formal Complaint: 1) a call placed to the Duquesne Light call center, 2) the publication of the Initial

Decision and 3) the receipt of a new bill that contains the same charges that were previously the subject of the 2020 and 2022 Formal Complaints.

35. For these reasons, the Complainant's 2023 Formal Complaint should be dismissed pursuant to the doctrine of *lis pendens*.

36. Furthermore, Duquesne Light respectfully requests the Complaint (sic) be precluded from filing any more Formal Complaints regarding the Duquesne Light charges and the actions of Duquesne Light prior to the date of the evidentiary hearing in the 2022 Formal Complaint case (February 15, 2023).

37. The repeated filing of Formal Complaints making the same allegations and seeking the same relief as already pending Formal Complaints is an abuse of process that squanders scarce resources and imposes unnecessary costs on Duquesne Light and the Commission.

38. The repeated filing of Formal Complaints to dispute the exact same charges is also an improper attempt to delay regulatory action to require payment of monthly bills for electric service. *See Potora v. UGI Utilities, Inc.*, Docket No. C-2018-3002670, 2018 WL 6931964, at \*6 (Dec. 13, 2018).

39. 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. *Grimes v. Pennsylvania Electric Co.*, Docket No. C-2018-3000571, 2018 WL 2717459, at \*3 (May 31, 2018).

40. If found to be abusing the Commission's processes, a complainant may be barred from filing further complaints "in order to protect the interests of other rate payers." *Id.*, citing *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (July 28, 2009), *Thomas v. Peoples Natural Gas Co.*, Docket No. C-2009-2102194 (June 17, 2010), and *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (April 23, 2014).

41. Complainant's filing of duplicative formal complaints while previous complaints are still pending is an improper attempt to delay termination of utility services for failure to pay past due amounts and, together with the 2020 Formal Complaint and 2022 Formal Complaint constitutes an abuse of process and in the interest of protecting other ratepayers, must not continue.

*Cservak III*, Preliminary Objections ¶¶ 2, 25-41.

For relief, Duquesne Light requested dismissal of the 2022 (sic) Formal Complaint and to prohibit Complainant from filing any further complaints against Duquesne

Light Company with the Commission until his current balance owed to the Company is paid in full.

**Complainant's Answer to Preliminary Objections in *Cservak III***

On August 20, 2023, Mr. Cservak filed an Answer to Preliminary Objections of Respondent DCL (Answer to POs). Mr. Cservak asserted, in part, matters occurring between October 2017 and June 16, 2022, the date of the Commission's *Opinion and Order I* in *Cservak I*. Answer to POs ¶¶ 11-12. He also asserted that he had filed a Petition for Review of the Commission's *Opinion and Order I* in *Cservak I*. Answer to POs ¶ 13.

In part, Mr. Cservak specifically argued the following:

16. On December 2, 2022, Duquesne Light filed a Motion for Partial Judgment on the Pleadings in connection with the 2022 Formal Complaint (Cservak2 Shut-Off/Rate), asserting that the allegations in the 2020 Formal Complaint (Cservak1 Service Restoration) relating to Duquesne Light's charges to Cservak prior to April 5, 2021, must be dismissed because they were already litigated and resolved in Cservak1 Service Restoration.

Response: The allegations were neither litigated nor resolved in Cservak 1 Service Restoration prompting the Complainant to file a Petition for Review of the Commission's Opinion and Order with the Commonwealth Court on July 15, 2022, which petition remains pending with the Commonwealth Court.

18. By his Initial Decision issued on July 5, 2023, Administrative Law Judge Conrad Johnson granted Duquesne Light's Motion for Partial Summary Judgment and held that the 2022 Formal Complainant's Hearing (Cservak 2 Shut-Off. Rate) will be limited to matters occurring after April 5, 2021. This maneuver is nothing, but legal sleight of hand exhibited by the Duquesne Light and the Court to prevent the pro se Complainant from presenting his evidence and claim.

20. Also on July 24, 2023, the Complainant filed Formal Complaint 2023 (Cservak 3 Billing Errors) docketed at Docket No. C-2023-3041897 which alleges a malicious prosecution by Duquesne Light company over Cservak's solar panel installation. From October 2017 through March 2020, which his service was terminated for non-payment of his bill,

Duquesne Light engaged in fraudulent billing practices alleging that Duquesne Light had overbilled his account by charging the incorrect rate; that the Company changed the meters at least 6 times leading to the deletion of solar credits each time; and that the Company created “Estimated Meter Readings that added kwh to the billing statement; and for that the Complainants service was terminated on the very day the Formal Complaint Cservak1 Service Restoration, was filed, at the outset of the pandemic, for a period of 8 months while the Complainant endeavored to have his service restored.

24. The 2023 Formal Complaint (Cservak3 Billing Errors) makes numerous allegations about actions taken by Duquesne Light that were not previously alleged nor considered by the Commission in Cservak 1 Service Restoration or Cservak 2 Shut-off/Rate. Relief requested in Cservak 3 Billing Errors is (1) reimbursement of \$5,451.71 for Duquesne Light’s fraudulent over billing to the Complainant’s account occurring before March 2020 the day his service was terminated and (2) removal of the “disputed Charges” of \$3,822.12 that were fraudulently place on Cservak’s Billing Statement prior to March 4, 2020, when service was terminated for non-payment of his bill and remain on his bill today.

35. For these reasons, the Complainant’s 2023 Formal Complaint (Cservak3 Billing Errors) should **not** be dismissed pursuant to the doctrine of *lis pendens*.

Answer to POs ¶¶ 16, 18, 20, 24, 35.

### **Complainant’s Reply to New Matter in Cservak III**

On August 30, 2023, Mr. Cservak filed a Response to Answer and New Matter of Respondent DCLo (Complainant’s Reply to New Matter). Mr. Cservak asserted that the Commission’s *Opinion and Order I* in *Cservak I* is currently the subject of his Petition for Review before the Commonwealth Court.<sup>4</sup> Complainant’s Reply to New Matter ¶ 5. Mr. Cservak further asserted that ALJ’s July 5, 2023, Initial Decision in *Cservak II* would be appealed once the Commission has issued a Final Order.<sup>5</sup> *Id.*

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<sup>4</sup> As noted above, the Petition is docketed as *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm’n*, No. 768 CD 2022.

<sup>5</sup> As discussed below, appellate review of *Cservak II* was not sought by either party.

Mr. Cservak specifically asserted the following:

Duquesne Light Company and the Commission are reminded that the Complainant's 2023 Formal Complaint (Cservak3 Billing Errors) Docket No. C-2023-3041897 makes numerous allegations about actions taken by Duquesne Light that were not previously alleged nor considered by the Commission in Formal Complaint Cservak1 Service Restoration or Formal Complaint Cservak2 Shut-off/Rate. Relief requested in Formal Complaint Cservak3 Billing errors which has not been sought before is (1) reimbursement of \$5,451.71 for Duquesne Light's fraudulent charges "over billings:" to Complainant's account occurring before March 4, 2020 that day his service was terminated and (2) removal of the "Disputed Charges" of \$3,822.12 that were fraudulently placed on Cservak's Billing Statement prior to March 4, 2020 when service was terminated for non-payment of his bill which remain on his bill today.

Complainant's Reply to New Matter ¶ 6.

For relief, Mr. Cservak requested that the Preliminary Objections be denied.

### **Opinion and Order II in Cservak II**

On October 19, 2023, the Commission issued an *Opinion and Order (Opinion and Order II)* which denied Complainant exceptions and dismissed the Complaint in *Cservak II*. Specifically, the Commission held as follows:

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.

*Opinion and Order II* at 18-19.

A reading of *Opinion and Order II* clarifies the rationale for dismissal of the Complaint in *Cservak II* as follows.

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

*Opinion and Order II* at 9.

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 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))

*Id.* at 15-16 (footnote omitted).

In its *Opinion and Order II*, the Commission upheld each of the ALJ's findings:

1) There was nothing in the record that in seeking appellate review Mr. Cservak had obtained a stay of the \$3,218.68 found to be past due in *Cservak I*. Thus, past due service charges in the amount of \$3,218.68 became undisputed upon the issuance of the Commission decision in *Cservak I* on June 16, 2022. Therefore, Complainant's allegation that threat of service termination on October 10, 2022, was without merit because Section 1406 of the Code, 66 Pa. C.S. § 1406, permits a utility to issue a 10-day service termination notice for an undisputed past due balance.

*Id.* at 16.

2) 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.

*Id.* at 17 (footnote omitted).

3) 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.

*Id.* at 18.

As to the ALJ's third finding, the Commission noted the rate reclassification issue had become moot as follows.

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). 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.

*Id.* at 22-23.

## FINALITY OF CSERVAK II

Notably the Commission's *Opinion and Order II* in *Cservak II* was issued and served upon the Parties on October 19, 2023. There is nothing in the record to indicate that either party within 30 days of the entry of *Opinion and Order II* filed a petition with the Commonwealth Court seeking appellate review of *Opinion and Order II*. Accordingly, under the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 341, 42 Pa.C.S.A., *Opinion and Order II* is final. Therefore, the issues raised in *Cservak II* cannot be relitigated. Specifically, this means that the following matters cannot be relitigated: (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. See *Cservak II*, Tr. at 36-37.

Additionally, In *Cservak II*, the Commission held as follows:

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).

*Cservak II* at 19-20.

### **CAUTIONARY REMINDER**

Here it is important to repeat the Commission's reminder to Mr. Cservak.

As a final observation, we note that, on the same date the Exceptions were filed in the instant case [*Cservak II*], 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).

*Id.* at 23.

### **DOCTRINE OF CLAIM PRECLUSION AND RULE AGAINST CLAIM SPLITTING**

As noted above, in its Preliminary Objections, DLC argues that Mr. Cservak allegations in *Cservak III*, were previously litigated in *Cservak I* and *Cservak II*. *Cservak III*, Preliminary Objections ¶¶ 30, 33, 34. Mr. Cservak counter argues that his Formal Complaint in *Cservak III* raises "numerous allegations about actions taken by Duquesne Light that were not previously alleged nor considered by the Commission" in *Cservak I* nor *Cservak II*. *Cservak III*, Answer to POs ¶ 24. Mr. Cservak specifically argues he is requesting reimbursement from DLC

for fraudulent billings occurring before March 2020 in the amount \$5,451.71 and disputed charges in the amount of \$3,822.12 placed on his account prior to March 4, 2020. *Id.*

The Parties are reminded that there is a doctrine in the law known as “claim preclusion.”

Claim preclusion, formerly technical or strict *res judicata*, is the term used to describe the effects of merger and bar a prior judgment will have in a later action. Matters which were actually litigated and *also matters which should have been litigated in prior actions as part of the same cause of action* will not be allowed to be re-litigated in a subsequent action.

*Albert Buoncristiano; v. Philadelphia Gas Works*, Docket No. C-2015-2466853 (Initial Decision issued March 9, 2016); 2016 Pa. PUC LEXIS 115, citing *Pa. Pub. Util. Comm’n Schuylkill Twp. Borough of Phoenixville*, Docket Numbers R-00932770; R-00932770C0001 (Order entered October 1, 1993); 1993 Pa. PUC Lexis 78. (italics added).

In federal proceedings there is a provision like claim preclusion known as claim-splitting.

The rule against claim-splitting requires a plaintiff to assert all of its causes of action arising from a common set of facts in one lawsuit. By spreading claims around in multiple lawsuits in other courts or before other judges, parties waste scarce judicial resources and undermine the efficient and comprehensive disposition of cases. Plaintiffs may not file duplicative complaints in order to expand their legal rights. The claim-splitting doctrine thereby ensures that a plaintiff may not split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which relief is sought and leave the rest to be presented in a second suit, if the first fails. The claim-splitting doctrine thus ensures fairness to litigants and conserves judicial resources. Claim-splitting has been analyzed as an aspect of *res judicata* or claim preclusion. While claim-splitting and *res judicata* both promote judicial economy and shield parties from vexatious and duplicative litigation, claim splitting is more concerned with the district court's comprehensive management of its docket, whereas *res judicata* focuses on protecting the finality of judgments. Accordingly, the test for claim-splitting is not whether there is finality of judgment, but whether the first suit, assuming it were final, would preclude the second suit.

*Vanover v. NCO Fin. Servs.*, 857 F.3d 833 (11<sup>th</sup> Cir. 2017).

## LEGAL BASIS FOR STAY

Section 5.483 of the Commissions Regulations 52 Pa. Code § 5.483, sets forth the authority of the presiding ALJ, which includes the power “to otherwise regulate the course of the proceeding.” A stay is appropriate when it will not adversely affect the public interest or substantially harm the parties to the proceedings.

Here, DLC has filed Preliminary Objections to Mr. Cservak’s third Formal Complaint on the grounds that all the allegations included in *Cservak III*, and the relief requested are the subject of proceedings that are still pending final disposition. Preliminary Objections 2. More specifically, DLC argued, “Complainant filed a Petition for Review of the Commission’s Opinion and Order denying Complainant’s exceptions and dismissing Complainant’s 2020 Formal Complaint with the Commonwealth Court of July 15, 2022, which petition remains pending with the Commonwealth Court.” Preliminary Objections 2.

In his Answer to the Preliminary Objections, Mr. Cservak also argued that his Petition for Review of the Commission’s *Opinion and Order I* in *Cservak I* remains pending with the Commonwealth Court.

In the event the Court rules in favor of Mr. Cservak the issues raised in *Cservak I* may be remanded back to the Commission for further litigation and adjudication. In the event the Court affirms the Commission’s ruling *Cservak I*, DLC may prevail on its Preliminary Objections, which may warrant dismissal of the Formal Complaint in *Cservak III*.

Consequently, judicial efficiency and economy weigh in favor of staying the proceedings until such time as the Commonwealth Court has ruled on the Petition for Review.

However, it is important to note here that I do not have any authority to stay any lawful action that DLC may take to terminate Mr. Cservak’s electric service based upon past due charges in the amount of \$3,218.68. As discussed above, the Commission has ruled in *Cservak II*, that these charges are undisputed, and a public utility may terminate service for undisputed

charges, whether or not a dispute is pending. *Cservak II* at 19-20. Neither party sought appellate review of the Commission's *Opinion and Order II* in *Cservak II*. Therefore, the Commission's rulings in *Cservak II* are final.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That a ruling on the Preliminary Objections filed by Respondent Duquesne Light Company and Respondent Frank J. Cservak, Jr.'s Answer to Preliminary Objections in the case of *Frank J. Cservak, Jr. v Duquesne Light Company*, Docket No. C-2023-3041897 is stayed pending the Pennsylvania Commonwealth Court's decision in the matter of the Petition for Review in *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022.

2. That the proceedings in *Frank J. Cservak, Jr. v Duquesne Light Company*, Docket No. C-2023-3041897 are stayed pending the Pennsylvania Commonwealth Court's decision in the matter of the Petition for Review in *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022.

3. That this Order does not stay or prevent any lawful action that Respondent Duquesne Light Company may take to suspend or terminate Complainant Frank J. Cservak's electric service based upon Complainant Frank J. Cservak's non-payment of past due service charges in the amount \$3,218.68, which the Commission has ruled in *Frank J. Cservak, Jr. v. Duquesne Light Company*, Docket No. C-2022-3036252 (*Cservak II*) that such charges are undisputed, upon Respondent Duquesne Light Company's compliance with all applicable tariff and regulatory requirements.

4. That Complainant Frank J. Cservak and Respondent Duquesne Light Company, through its counsel, shall file with the Commission's Secretary's Bureau a copy of the

Pennsylvania Commonwealth Court's decision in *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022, within five business days of receipt of the decision.

5. That Complainant Frank J. Cservak and Respondent Duquesne Light Company, through its counsel, shall email to the undersigned ALJ at [cojohnson@pa.gov](mailto:cojohnson@pa.gov) copy of the Pennsylvania Commonwealth Court's decision in *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022, within five business days of receipt of the decision.

Dated: August 16, 2024

  
Conrad A. Johnson  
Administrative Law Judge

**C-2023-3041897 - FRANK J CSERVAK JR v. DUQUESNE LIGHT COMPANY**

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