

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THIRD INTERIM ORDER
TAKING OFFICIAL NOTICE AND LIFTING STAY**

Background

By *First Interim Order* entered on August 19, 2024, the instant 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, were stayed pending the Pennsylvania Commonwealth Court’s (Court) decision on 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*).¹ The *First Interim Order* directed Complainant Frank J. Cservak (Complainant) and Respondent Duquesne Light Company (DLC), through its counsel, to file with the Commission’s Secretary’s Bureau (Secretary) and to email the undersigned Administrative Law Judge (ALJ) at cojohnson@pa.gov a copy of the Court’s decision on the *Cservak Petition for Review*, within five business days of receipt of the decision.

¹ 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 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*). On June 16, 2022, Mr. Cservak filed a Petition for Review to the Commission’s Opinion and Order dated June 16, 2022, in *Cservak I*. For clarity the three proceedings are referred to as *Cservak I*, *Cservak II* and *Cservak III*. For a more detailed procedural history in this matter the reader is directed to the *First Interim Order*.

On November 12, 2024, counsel for DLC filed with the Secretary and emailed the ALJ a copy of the Court's November 6, 2024, Memorandum Opinion, which "ORDERED that Petitioner Frank J. Cservak, Jr.'s Petition for Review is DISMISSED."

In the instant proceeding, DLC had 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 were the subject of proceedings still pending final disposition by the Court relevant to *Cservak I*. While the Court had dismissed Mr. Cservak's Petition for Review, the Pennsylvania Rules of Appellate Procedure provide for the filing of a Petition for Allowance of Appeal to the Pennsylvania Supreme Court within 30 days of the lower appellate court's order. *See* Pa. R.A.P. Rule 1113(a), 42 Pa.C.S.A.

Accordingly, on November 14, 2024, I issued a *Second Interim Order* staying a ruling on the Preliminary Objections and the Answer thereto, pending any further appellate litigation relevant to *Cservak I*. The *Second Interim Order* directed the Parties to file a status report with the Commission's Secretary's Bureau on or before December 13, 2024, concerning any further appellate litigation occurring after November 6, 2024, relevant to *Cservak I*.

On December 12, 2024, Frank Cservak filed a Response to Second Interim Order Staying Proceedings and Directing Parties to File Status Report (Cservak Status Report), which consists of 28 unnumbered pages. Concerning the status of any further *Cservak I* appellate litigation, Mr. Cservak stated, "While the Court has recently dismissed the Complainant's Petition for Review, the Complainant does not anticipate an appeal to the PA Supreme Court of *Cservak I*." (Cservak Status Report at unnumbered p. 5).

On December 13, 2024, DLC filed a one-page letter (DLC Status Report) stating the following:

A search of the Pennsylvania Supreme Court docket identified no Petition for Allowance of Appeal to the Pennsylvania Supreme Court with respect to the Pennsylvania Commonwealth Court's decision in *Frank J. Cservak, Jr. v. Pennsylvania Public*

Utility Commission, Docket No. 768 CD 2022, which was issued on November 6, 2024. Additionally, Respondent Duquesne Light Company has not received service of any such Petition and is not aware of any further appellate litigation relevant to *Cservak I*.

(DLC Status Report at 1).

Official Notice

The Commission's regulations authorize a presiding officer to take official notice of facts not appearing in the record. The regulations, in relevant part, provide as follows:

§ 5.408. Official and judicial notice of fact.

- (a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer.
- (b) When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, the parties will be so notified.
- (c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

52 Pa.Code § 5.408.

Accordingly, pursuant to Section 5.408 of the Commission's regulations, I will take official notice of 1) Mr. Cservak does not anticipate taking an appeal to the Pennsylvania Supreme Court's from the Pennsylvania Commonwealth Court's November 12, 2024 decision, dismissing his Petition for Review in *Cservack I* (Cservak Status Report at unnumbered p. 5); and 2) a search of the Pennsylvania Supreme Court docket identified no Petition for Allowance of Appeal to the Pennsylvania Supreme Court with respect to the Pennsylvania Commonwealth Court's decision in *Frank J. Cservak, Jr. v. Pennsylvania Public Utility Commission*, Docket No. 768 CD 2022, issued on November 6, 2024 (DLC Status Report at 1); and 3) Duquesne Light Company has not received service of any such Petition and is not aware of any further appellate

litigation relevant to *Cservak I* (DLC Status Report at 1). Any party may file objections to the official notice of the above facts by January 3, 2025.

Therefore, in the ordering paragraphs below, I will take official notice that a Petition for Allowance of Appeal was not taken to the Pennsylvania Supreme Court from the Pennsylvania Commonwealth Court's Memorandum Opinion in *Frank J. Cservak, Jr. v. Pennsylvania Public Utility Commission*, Docket No. 768 CD 2022 and the Memorandum Opinion is now final.

Lifting Stay

Considering that Court's Memorandum Opinion in *Frank J. Cservak, Jr. v. Pennsylvania Public Utility Commission*, Docket No. 768 CD 2022 dismissing Mr. Cservak's Petition for Review of *Cservak I* is now final, the stay of the proceeding in *Cservak III* will be lifted in the ordering paragraph below. Consequently, a ruling on the Preliminary Objections and the Answer thereto in *Cservak III* will be prepared and issued.

ORDER

THEREFORE,

IT IS ORDERED:

1. That official notice is taken that a Petition for Allowance of Appeal of the Pennsylvania Commonwealth Court's Memorandum Opinion in *Frank J. Cservak, Jr. v. Pennsylvania Public Utility Commission*, Docket No. 768 CD 2022 was not taken to the Pennsylvania Supreme Court, pursuant to Pa. R.A.P. Rule 1113(a), 42 Pa.C.S.A.

2. That official notice is taken that the Pennsylvania Commonwealth Court's Memorandum Opinion in *Frank J. Cservak, Jr. v. Pennsylvania Public Utility Commission*, Docket No. 768 CD 2022 is final.

3. That any objection to the official notice set forth in Ordering Paragraphs 1 and 2 above may be filed by January 3, 2025.

4. That the stay of the proceedings in this case issued on November 14, 2024, is hereby lifted.

5. That a ruling on the Preliminary Objections filed by Respondent Duquesne Light Company and Complainant 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 (*Cservak III*) will be prepared and issued.

Dated: December 23, 2024


Conrad A. Johnson
Administrative Law Judge

C-2022-3036252 - FRANK J CSERVAK JR v. DUQUESNE LIGHT COMPANY

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