

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

A hearing in this proceeding is not necessary in the public interest because of the Pennsylvania Commonwealth Court’s Memorandum Opinion and Order dismissing Complainant Frank J. Cservak’s Petition for Review in *Cservak v. Pennsylvania Public Utility Commission*, No. 768 CD 2022 (entered Nov. 6, 2024) (*Cservak Petition for Review*). Thus, Respondent Duquesne Light Company’s preliminary objections asserting pendency of a prior action are deemed moot, and the Formal Complaint filed in the instant proceeding is dismissed with prejudice.

HISTORY OF THE PROCEEDING

This case has a tortuous procedural history dating back to 2020. Mr. Cservak’s Formal Complaint in the present proceedings 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 *Cservak v. Duquesne Light*

Co., Docket No. F-2020-3019005 (*Cservak I*) and *Cservak v. Duquesne Light Co.*, Docket No. C-2022-3036252 (*Cservak II*). For clarity and ease of reference the three proceedings are referred to as *Cservak I*, *Cservak II* and *Cservak III*. Complainant's intertwined and voluminous filings are as follows.

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*).¹ On the Commission's standard complaint form, as the reasons for filing *Cservak III*, Mr. Cservak alleged as follows:

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 reliability, safety or quality problem with my utility service.

Other (explain):

Malicious Prosecution by Duquesne Light Company over Cservak's Solar Panel Installation.

Fraudulent billing practices by DLCo from 10/7/17 to 4/7/19 on Account #8798 and Account #7798 resulted in \$5,451.79 of OVER BILLINGS generated through unwarranted Rate Changes; No tabulation of Solar Credits or Net Metering Statements; Adding kWh to the Billing Statement through fraudulent ESTIMATED METER READINGS' Changing Meters without carrying forward

¹ As noted below, also on July 24, 2023, Mr. Cservak filed exceptions to the Initial Decision in *Cservak II*.

the Solar Credits; Fraudulently Changing the Previous Account Balances; among other Account irregularities.

Cservak should be reimbursed \$5,451.71 for those OVERBILLINGS which occurred before DLCO Terminated his Service for non-payment of his bill.

Additionally, the fraudulent billing practices of: Adding kWh to the Billing Statement by using fraudulent ESTIMATED METER READINGS; Changing Meters without carrying forward the Solar Credits; Fraudulently Changing the Previous Account Balance resulting in “Charges Due” of \$3,833.12 being placed on his Bill Statement in 2020 that remain on Cservak’s current Billing Statement as “ Disputed Charges.”

A complete account of the Billing Statements for the time period considered is detailed on Attachment #1 and #2 Attachment #3 is DLCo Billing Statements 1/20 & 2/20 [January 2020 and February 2020]. Attachment #4 is DLCo Billing Statements 6/23 & 7/23. Solar generation data collection was provided by The Energy Detective (TED) and Tesla/Solar City and is determined to be accurate to within 1%.

Cservak III ¶ 4.

Mr. Cservak also alleged a “History of the Complaint” in 37 numbered paragraphs with dates ranging from 10/7/2017 to 7/10/2023. *Cservak III* at 4-6. The following documents are attached to the Formal Complaint in *Cservak III*: Mr. Cservak’s chart of electric meter readings and billings from 10/7/17 through 2/17/20; a February 13, 2020, 10-Day Shut-Off Notice; electric bills for January and February 2020; and electric bills dated June 8, 2023, and July 10, 2023, each including disputed charges in the amount of \$3,822.12. The Formal Complaint in *Cservak III* includes the 10-page standard complaint form and 14 pages of attachments.

For relief, Mr. Cservak requested the following:

1. Reimburse Cservak [\$]5,451.71 for those fraudulent OVER BILLINGS which occurred before DLCo Terminated his Service [on 3/4/2020] for non-payment of his bill.
2. Remove the “Disputed Charges” of \$3,822.12 that was fraudulently placed on Cservak’s Billing Statement in 2020 that remaining on his current Billing Statement.

Cservak III, Complaint ¶ 6.

Initial Decision in *Cservak I* and Exceptions

Earlier as the presiding Administrative Law Judge (ALJ), I issued an Initial Decision on February 17, 2021, dismissing the Formal Complaint in *Cservak 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 59-page, Formal Complaint filed in *Cservak II*.) 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, which was docketed as *Cservak v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022. See *Cservak Petition for Review*.

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 and explained 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 *Cservak 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. Cservak's remaining allegations concerning: 1) improper deletion of solar credits for his electric account; 2) wrongful reclassification of his service account from residential rate to small commercial rate; and 3) threat of service termination, which was raised during 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 allegations included charges or balance incurred prior to April 5, 2021, and the 2020 service termination which issues were as follows:

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^[2] 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 subparagraphs 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 contended 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

² The Latin term *lis pendens* refers to a pending matter. Apparently, DLC was referencing *Cservak Petition for Review* mentioned above which was pending before the Pennsylvania Commonwealth Court at the time DLC filed its New Matter in *Cservak III*.

and does not request any relief that was not already requested in the 2020 or 2022 Formal Complaints. Accordingly, Duquesne Light argued these issues are the subject of proceedings that are still pending final disposition. Therefore, the Formal Complaint in *Cservak III* should be dismissed pursuant to 52 Pa. Code § 5.101(a)(6). *Cservak III*, Preliminary Objections ¶¶ 2, 25-41.

For relief, Duquesne Light requested the Commission dismiss the *Cservak III* Formal Complaint and prohibit Complainant from filing any further complaints against Duquesne Light Company with the Commission until his current balance is paid in full.

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 DCL (Complainant's Reply to New Matter). Mr. Cservak asserted that the Commission's *Opinion and Order I* in *Cservak I* was currently on appeal before the Commonwealth Court.³ Complainant's Reply to New Matter ¶ 5. Mr. Cservak further asserted that the ALJ's July 5, 2023, Initial Decision in *Cservak II* would be appealed once the Commission had issued a Final Order.⁴ *Id.* Complainant contended *Cservak III* involved numerous allegations were not previously alleged in *Cservak I* or *Cservak II*.

³ As noted above, the Petition for Review was docketed as *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022.

⁴ Contrary to Complainant's assertions and 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.

Complainant's Answer to Preliminary Objections in Cservak III

On August 20, 2023, Mr. Cservak filed an Answer to DLC's Preliminary Objections (Answer to POs). Mr. Cservak asserted, in part, there were additional matters occurring between October 2017 and June 16, 2022, the date of the Commission's *Opinion and Order I* in *Cservak I* and he had filed a Petition for Review of the Commission's *Opinion and Order I* in *Cservak I*. Answer to POs ¶¶ 11-13. Complainant denied allegations in the prior Formal Complaints were litigated or resolved, argued that the Company and the ALJ engaged in legal slight-of-hand to prevent him from presenting evidence, and he contended some allegations in the *Cservak III* Complaint involved actions or misbehavior by Respondent that he had not listed in the two previous Formal Complaints. Answer to POs ¶¶ 16, 18, 20, 24, 35.

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's exceptions and dismissed the Complaint in *Cservak II*. Specifically, the Commission noted a majority of the Complainant's discussion in Exceptions related to events that were litigated in *Cservak I*, which the Commission previously dismissed. Of the remaining paragraphs, the Commission noted two (paragraphs 35 and 37) made allegations about events that were subsequent to the February 15, 2023, evidentiary hearing, and were not part of the record in this proceeding. The Commission addressed Complainant's Exceptions concerning: 1) Threat of Service Termination; 2) Solar Net Metering Credits; and 3) Rate Classification of the Service Account. The Commission held Complainant presented no basis for overturning the ALJ's conclusions in his Initial Decision that Complainant failed to meet his burden of proving that Duquesne violated the Code, Commission Regulation or Order. *Opinion and Order II* at 18-19.

Finality of Cservak II

The Commission's *Opinion and Order II* in *Cservak II* was issued and served upon the Parties on October 19, 2023. Neither party 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, the *Opinion and Order II* became final and the issues raised in *Cservak II* cannot be relitigated, including: 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 ruled 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 prohibit a public utility from issuing a service termination notice when there is a pending appeal to the Commonwealth Court. The Commission noted customers are required to pay undisputed amounts, pursuant 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. The Commission noted:

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).^[5]

Cservak II at 19-20.

⁵ Notably, Chapter 14 of the Code sunset on December 31, 2024. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328. However, in this proceeding, the sunset of Chapter 14 is not determinative of the outcome of the Complaint in *Cservak III*.

Commission's Cautionary Reminder in *Cservak II*

In addition, in *Cservak II*, the Commission issued a cautionary reminder to Mr. Cservak as follows.

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).

Cservak II at 23.

Interim Order Staying Proceedings in *Cservak III*

On August 19, 2024, I issued in *Cservak III* a First Interim Order Staying Proceedings Pending Commonwealth Court Decision On Complainant's Petition For Review (First Stay Order). The First Stay Order explained the legal basis for the stay as

follows: 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.

In *Cservak III*, 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 are the subject of proceedings that were still pending final disposition. Additionally, DLC objected that Mr. Cservak alleged in *Cservak III* events all of which occurred prior to the February 15, 2023 hearing in *Cservak II*, except for: 1) Mr. Cservak’s phone calls to DLC’s customer service on March 29, 2023 and April 4, 2023; 2) the issuance of the Initial Decision in *Cservak II* on July 5, 2023; and 3) the receipt of a new bill containing the same charges that were previously the subject of the Formal Complaints in *Cservak I* and *Cservak II*. See Preliminary Objections ¶¶ 2, 34; *Cservak III*, Formal Complaint ¶¶ 35-37.

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

The First Stay Order further explained that in the event the Commonwealth Court ruled in favor of Mr. Cservak, the issues raised in *Cservak I* may be remanded back to the Commission for further litigation and adjudication. However, in the event the Court affirmed the Commission’s ruling in *Cservak I*, DLC might prevail on its Preliminary Objections, which may warrant dismissal of the Formal Complaint in *Cservak III*. Consequently, judicial efficiency and economy weighed in favor of staying the proceedings until such time as the Commonwealth Court had ruled on the Petition for Review.

In the First Stay Order, I explained that I did not have any authority to stay any lawful action that DLC might 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 had ruled in *Cservak II* that these charges were undisputed, and a public utility may terminate service for undisputed charges, whether or not a dispute was pending. *Cservak II* at 19-20. Since neither party sought appellate review of the Commission's *Opinion and Order II* in *Cservak II*, the Commission's rulings in *Cservak II* were final.

Cautionary Reminder: Claim Preclusion

The First Stay Order also noted DLC's argument 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 countered that his Formal Complaint in *Cservak III* raised "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 argued he was 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.*

I reminded the Parties 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.

Buoncristiano v. Phila. Gas Works, Docket No. C-2015-2466853, Initial Decision at 5 (Final Order entered Apr. 29, 2016) (citing *Pa. Pub. Util. Comm'n v. Schuylkill Twp. Borough of Phoenixville*, 1993 Pa. PUC LEXIS 78) (emphasis added) (*Buoncristiano*).

In addition to staying the proceeding in *Cservak III*, the First Stay Order directed the parties to file a copy of the Pennsylvania Commonwealth Court's decision in *Cservak I*, within five business days of receipt of the decision and to email a copy of the same decision to the ALJ. First Stay Order ¶¶ 4-5.

Second Interim Order in *Cservak III*

On November 12, 2024, counsel for DLC filed with the Secretary's Bureau 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." As a result, on November 14, 2024, I issued a Second Interim Order Staying Proceedings and Directing Parties to File Status Report (Second Stay Order). I ordered a continued stay of the proceedings pursuant to the ALJ's authority to regulate the course of the proceedings under 52 Pa. Code § 5.483. I noted the Pennsylvania Rules of Appellate Procedure provided 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. Thus, the Second Stay Order continued to stay the proceedings pending any further appellate litigation relevant to *Cservak I*. In addition, I directed the Parties to file a status report by December 13, 2024, about any appellate litigation pending after November 6, 2024, which was relevant to *Cservak I*, with an email copy provided to the ALJ. Second Stay Order ¶¶ 3-4.

Third Interim Order

On December 23, 2024, I issued a Third Interim Order Taking Official Notice and Lifting Stay (Third Interim Order). The Third Interim Order recited as follows.

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.

Section 5.408 of the Commission’s regulations, 52 Pa. Code § 5.408, authorizes the Commission or presiding officer to take official notice or judicial notice of

a fact. Accordingly, the Third Interim Order stated that pursuant to Section 5.408 of the Commission's regulations, I would be taking 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 *Cservak I* (Cservak Status Report at unnumbered p. 5); and 2) Duquesne Light's 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 *Cservak, Jr. v. Pennsylvania Public Utility Commission*, 2024 WL 4688747 (Pa. Cmwlth. 2024); 3) Duquesne Light Company had not received service of any such Petition and is not aware of any further appellate litigation relevant to *Cservak I*; and 4) a Petition for Allowance of Appeal was not taken to the Pennsylvania Supreme Court from the Pennsylvania Commonwealth Court's Memorandum Opinion in *Cservak v. Pennsylvania Public Utility Commission*, 2024 WL 4688747 (Pa. Cmwlth. 2024) and the Memorandum Opinion is now final.

Additionally, the Third Interim Order further stated, "Any party may file objections to the official notice of the above facts by January 3, 2025."

Consequently, the Third Interim Order lifted the stay imposed by the First and Second Stay Orders and informed the Parties that a ruling on the Preliminary Objections and the Answer thereto in *Cservak III* would be prepared and issued.

Neither party filed an objection to my taking official notice.

FINDINGS OF FACT

1. Complainant Frank J. Cservak, Jr. resides at 174 Barberry Road, Sewickley Heights, Pennsylvania 15143. *Cservak III*, Complaint ¶ 1.

2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.

3. On February 29, 2020, Mr. Cservak filed his first Formal Complaint against Duquesne Light at Docket No. F-2020-3019005, alleging incorrect billing charges in 2020 and threat of service termination in 2020 and requesting a credit for his account. *Cservak I*.

4. On July 9, 2020, a hearing was held at which Mr. Cservak was present and presented the claims he raised in his first Formal Complaint. *Cservak I*.

5. On February 17, 2021, an Initial Decision was issued at Docket No. F-2020-3019005 dismissing the Formal Complaint in *Cservak 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. *Cservak I*.

6. On June 16, 2022, the Commission denied Mr. Cservak's Exceptions to the Initial Decision in *Cservak I* and adopted the ALJ's Initial Decision. *Cservak I, Opinion and Order I*.

7. On July 15, 2022, Mr. Cservak filed a Petition for Review of the Commission's *Opinion and Order I* with the Commonwealth Court of Pennsylvania. *Cservak Petition for Review*.

8. On October 14, 2022, Mr. Cservak filed a second Formal Complaint against Duquesne Light at Docket No. C-2022-3036252 alleging 1) improper service

termination in 2020; 2) incorrect billing charges in 2020; and 3) wrongful reclassification of service account from residential rate to small commercial rate. *Cservak II*.

9. On July 5, 2023, an Initial Decision was issued holding that the ALJ lacks authority to rule on Mr. Cservak's allegations concerning incorrect billing charges prior to April 5, 2021, and the service termination in 2020, which were raised and dismissed by the Commission in *Cservak 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. Cservak's remaining allegations: 1) improper deletion of solar credits for his electric account; 2) wrongful reclassification of his service account from residential rate to small commercial rate; and 3) threat of service termination, which was raised during February 15, 2023, evidentiary hearing. *See Cservak II*, Initial Decision at 9, 16-17.

10. On October 19, 2023, the Commission issued an Opinion and Order (*Opinion and Order II*) which denied Complainant's Exceptions and dismissed the Complaint in *Cservak II* and became final November 18, 2023.

11. On July 24, 2023, Mr. Cservak filed his third Formal Complaint against Duquesne Light at Docket No. C-2023-3041897, alleging 1) threat of service termination in 2020; 2) fraudulent billing practices from October 7, 2017, to April 7, 2019; and 3) incorrect billing charges in 2020. *Cservak III*.

12. On November 6, 2024, the Commonwealth Court of Pennsylvania dismissed Mr. Cservak's Petition for Review in *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, 2024 WL 4688747 (Pa. Cmwlth. 2024). *Cservak Petition for Review*.

DISCUSSION

Legal Principles

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in Section 5.101(a) of the Commission's regulations as follows:

1. Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
2. Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
3. Insufficient specificity of a pleading.
4. Legal insufficiency of a pleading.
5. Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
6. Pendency of a prior proceeding or agreement for alternative dispute resolution.
7. Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

The Commission's preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Env't Resources*, 406 A.2d 1020 (Pa.

1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. *Montague v. Phila. Elec. Co.*, 66 Pa.P.U.C. 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well-pleaded, material facts of the nonmoving party, as well as every inference from those facts. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the Complaint in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

DCL's Objections and Mr. Cservak's Answer to the Objections

Essentially, DLC objected that the allegations Mr. Cservak asserted in *Cservak III* were the same allegations he had asserted in either *Cservak I* or *Cservak II*, namely incorrect and fraudulent charges added to his account starting in 2020 and service termination issues in 2020 and 2022. *See* DLC's Preliminary Objections ¶¶ 2, 12, 30-32, 41.

Mr. Cservak responded that the allegations in *Cservak I* had not been litigated nor resolved because his Petition for Review remained pending before the Commonwealth Court. *See* Cservak's Answer to Preliminary Objections ¶ 16.

Notably in its Opinion in *Cservak II*, the Commission ruled that Mr. Cservak's allegation, that he was under threat of service termination on October 10, 2022, was without merit because he had undisputed charges in the amount of \$3,218.68, and the

Code permitted notice of service termination for an undisputed past due balance. *See Cservak II*, Opinion and Order at 16. The Commission also observed as follows:

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.

Id. at 23.

Ruling on Preliminary Objections

In the instant case, there is an identity of the issues, parties and relief in *Cservak I*, *Cservak II* and *Cservak II*. As the Commission observed, “In all three cases, the Complainant is seeking relief against Duquesne for alleged improper charges on his electric accounts in 2020.” *Cservak II*, Opinion and Order at 23. Also, Mr. Cservak is again alleging in *Cservak III* the service termination issues occurring prior to the February 15, 2023, evidentiary hearing in *Cservak II*.

When DLC filed its *lis pendens* Preliminary Objections in *Cservak III*, on August 10, 2023, Mr. Cservak’s Petition for Review of the Commission’s Opinion and Order in *Cservak I* remained pending before the appellate Court, and Mr. Cservak’s Exceptions to the Initial Decision in *Cservak II* remained pending before the Commission. Thus, DLC correctly raised the preliminary objections — pendency of prior actions to warrant dismissal of *Cservak III*.

While DLC properly raised *lis pendens* in its Preliminary Objections, the objections have become moot. On October 19, 2023, the Commission denied Mr. Cservak’s Exceptions and adopted the ALJ’s Initial Decision dismissing *Cservak II*. On

November 6, 2024, the Commonwealth Court dismissed Mr. Cservak's Petition for Review of the Commission's *Opinion and Order I in Cservak I*. Thus, neither *Cservak I* nor *Cservak II* remains pending. Accordingly, in the ordering paragraphs below, DLC's preliminary objections will be deemed moot.

As explained below, the discussion does not end here.

Dismissal of the Formal Complaint in *Cservak III*

Formal Complaints and Hearings

Filing a formal complaint generally triggers or generates the hearing process. However, both the Public Utility Code (Code) and the Commission's regulations provide for dismissal of a complaint without a hearing as follows.

Notice of hearing.—The commission shall fix the time and place of hearing, within or without this Commonwealth, if any is required, and shall serve notice thereof upon parties in interest. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

66 Pa.C.S. § 703(b). Additionally, Section 5.21 of the Commission's regulations states:

The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Motions may be filed in accordance with §§ 5.101 and 5.102 (referring to preliminary objections; and motions for summary judgment and judgment on the pleadings).

52 Pa. Code § 5.21(d).

Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *See, e.g., Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hosp. Ass'n of W. Pa. v. Pa. Pub. Util. Comm'n*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980)).

Analysis

As the Commission noted in *Cservak II*, in all three cases filed by Mr. Cservak he was seeking relief against Duquesne Light for alleged improper charges on his electric accounts in 2020. In *Cservak III*, Mr. Cservak alleged the same service termination issues that he raised in *Cservak I* and *Cservak II*. Additionally, in *Cservak III*, Mr. Cservak is again requesting reimbursement of charges, \$5,541.71, occurring prior to his service termination on March 4, 2020, and removal of “Disputed Charges,” of \$3,822.12 placed on his billing statement in 2020. *See Cservak III, Complaint p. 5 ¶¶ 27, 28*. Importantly, Mr. Cservak was afforded due process with the convening of an evidentiary hearing in *Cservak I* and *II*. However, he failed to carry his burden of proof and the decisions in those two cases are now final. In *Cservak III*, Mr. Cservak does not raise any new issues that were not ruled upon in *Cservak I and II*.

In *Cservak III*, Mr. Cservak alleges only three events occurring after the February 15, 2023, evidentiary hearing in *Cservak II*: 1) his phone calls to DLC’s customer service on March 29, 2023 and April 4, 2023; 2) the issuance of the Initial Decision in *Cservak II* on July 5, 2023; and 3) the receipt of the July 10, 2023 bill

containing the same disputed charges that were previously the subject of the Formal Complaints in *Cservak I* and *Cservak II*. See *Cservak III*, ¶¶ 33-37. Viewing these allegations in the light most favorable to Mr. Cservak, none of rise to the level warranting the convening of an evidentiary hearing in *Cservak III*.

First, Mr. Cservak alleges he made phone calls to Duquesne Light's customer service in March and April 2023, about the disputed billing charges dating back to 2020. See *Cservak III*, Formal Complaint ¶¶ 33-37. According to Mr. Cservak, customer service informed him to file a formal complaint, so he filed his third Formal Complaint. As previously discussed, Mr. Cservak's allegations of disputed billing charges dating back to 2020 have been ruled upon and dismissed by the Commission in *Cservak I* and *Cservak II*. Second, the Initial Decision issued in *Cservak II* on July 5, 2023, is now final and cannot be relitigated. Third, Mr. Cservak's receipt of a bill on July 10, 2023, listing the same charges disputed in *Cservak I* cannot be relitigated because the Commonwealth Court of Pennsylvania dismissed Mr. Cservak's Petition for Review of the Commission's ruling in *Cservak I*. Thus, the Commission's *Opinion and Order I*, which dismissed Mr. Cservak's allegation of incorrect billing charges dating back to 2020 is now final.

While Mr. Cservak argued in his Answer to the Preliminary Objections that his Formal Complaint in *Cservak III* raised "numerous allegations about actions taken by Duquesne Light that were not previously alleged nor considered by the Commission" in *Cservak I* or *Cservak II* (*Cservak III*. Answer to POs ¶ 24.), his argument is to no avail. As mentioned above "[m]atters 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." *Buoncristiano*. Thus, Mr. Cservak's allegations in *Cservak III* do not allege any violations by Duquesne Light of the Code or Commission regulations occurring after February 15, 2023, evidentiary hearing.

Duquesne Light argued in its New Matter that Mr. Cservak's Formal Complaint in *Cservak III* was barred by the doctrine of res judicata, that is, claim preclusion. Claim preclusion prevents a litigant from relitigating matters on the same claim and between the same parties that have been previously decided which have become final. Duquesne Light did not file a motion for judgment on the pleadings based upon the doctrine of claim preclusion. Such a motion would bring the issue before me.

However, judicial economy dictates and the Commissions regulations at 52 Pa. Code § 5.483, give me the authority "to otherwise regulate the course of the proceeding." Thus, I find based on the above analysis, that proceeding to an evidentiary hearing in this matter would be an exercise in futility and not in the public interest because the allegations raised by Mr. Cservak in his Formal Complaint in *Cservak III* have been previously litigated and dismissed and therefore cannot be relitigated under the doctrine of claim preclusion. Accordingly, in the ordering paragraphs below the Formal Complaint in this proceeding will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.
2. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. 52 Pa. Code § 5.101
3. As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

4. Under the Commission's regulations, a presiding officer has the authority to regulate the course of the proceeding. 52 Pa. Code § 5.483(a).

5. 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. *Buoncrisiano v. Phila. Gas Works*, Docket No. C-2015-2466853, Initial Decision at 5 (Final Order entered Apr. 29, 2016) (citing *Pa. Pub. Util. Comm'n v. Schuylkill Twp. Borough of Phoenixville*, 1993 Pa. PUC LEXIS 78) (emphasis added).

6. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

7. A hearing in the matter of Frank J. Cservak, Jr. v. Duquesne Light Company at Docket Number C-2023-3041897 is not necessary in the public interest because the Complainant's allegations and issues raised in the present proceeding have been previously litigated and dismissed. *See Cservak I, Cservak II; Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, 2024 WL 4688747 (Pa. Cmwlth. 2024).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Duquesne Light Company in the matter of Frank J. Cservak Jr. v. Duquesne Light Company, at Docket No. C-2023-3041897 are deemed moot.

2. That the Formal Complaint filed by Frank J. Cservak Jr. in the matter of Frank J. Cservak, Jr. v. Duquesne Light Company at Docket No. C-2023-3041897 is dismissed with prejudice.

3. That consistent with the Initial Decision in Frank J. Cservak , Jr. v. Duquesne Light Company at Docket No. C-2023-3041897, Complainant Frank J. Cservak, Jr. is precluded from filing further complaints against Respondent Duquesne Light Company with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, until the past due balance which accrued prior to February 15, 2023 (past due balance), is paid in full, and that, further, Complainant Frank J. Cservak's filing of any complaint or other pleading pertaining to the past due balance and/or the allegations and issues raised in Docket Nos. F-2020-3019005, C-2022-3036252 and C-2023-3041897 shall be dismissed without further proceedings.

4. That Respondent Duquesne Light Company may take any lawful action to suspend or terminate Complainant Frank J. Cservak, Jr.'s electric service based upon Complainant Frank J. Cservak, Jr.'s unpaid past due balance upon Respondent

Duquesne Light Company's compliance with all applicable tariff and regulatory requirements.

5. That Duquesne Light Company shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Nos. F-2020-3019005, C-2022-3036252 and C-2023-3041897 within seven days of the date that Frank J. Cservak pays the past due balance in full.

6. That a copy of this decision shall be served upon the Commission's Bureau of Consumer Services and Secretary's Bureau.

7. That Commission's Secretary's Bureau shall mark Docket No. C-2024-3041897 closed.

Date: March 20, 2025

/s/
Conrad A. Johnson
Administrative Law Judge