

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS - INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

ALJ Conrad A Johnson and the PAPUC have failed to provide due process to Complainant Frank J. Cservak Jr, P.E., by dismissing Cservak’s Petition for Review in *Cservak v. Pennsylvania Public Utility Commission*, No. 768 CD 2022 (Entered Nov. 6, 2024) (*Cservak Petition for Review*) without providing the opportunity to appear and be heard. ALJ Conrad A Johnson and the PAPUC through its employees, attorneys and agents operated as a cartel by colluding with Duquesne Light Company (DLCo) and its employees, contractors, agents and attorneys to violate Cservak’s rights to due process and to defame, destroy and publicly humiliate Cservak, a licensed professional engineer in the Commonwealth of Pennsylvania. ALJ Conrad A Johnson and the PAPUC failed their duty to the Public to eliminate the waste, fraud and abuse perpetrated on Cservak and the Public in general by DLCo in this matter.

HISTORY OF THE PROCEEDING

ALJ Conrad A Johnson's opening statement that the “case has a tortuous procedural history” is certainly more correct when viewed from Cservak’s perspective. In chronological order, the legal proceedings conducted by the PAPUC on this matter date back to 2019.

Complainant’s Informal Complaints (BCS Case #3691697 - BCS Case #3691576)

Frank J Cservak, Jr. P.E. filed Informal Complaints (PUC BCS Case #3691697 and PUC BCS Case #3691576) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent, Duquesne Light Company or DLC) on April 14, 2019 alleging incorrect

billing charges based on meter readings reported. The Complainant was contacted by the PUC on Dec 20, 2019 for additional information which was provided to azepp@pa.gov (Angie & Jose). Both Complaints were denied without due process on December 24, 2019. Cservak responded with his notice to appeal the PUC's decision with a Formal Complaint.

Complainant's First Formal Complaint - Docket No. F-2020-3019005 (Cservak I)

The Complainant delivered Cservak I to the PUC Offices in Harrisburg On on or about 11:30am to Ms. Bonnie Allison and voiced his desire for a Hearing. Upon Cservak's return to the Pittsburgh area four hours later, he discovered that his electric service had been terminated by DLCo for non-payment of his bill and called the PUC to which Ms.Allison responded "They shouldn't have done that". Subsequent phone calls to the PUC had to be made regarding the docketing of *Cservak I* which didn't transpire until Mar 4. 2020. Once Docketed into the e-File system Cservak uploaded at least 15 Exhibits supporting his case.

Contrary to Cservak's pleadings to go directly to a Hearing, the Case was scheduled for first, a Resolution Conference and then a Mediation held telephonically before PUC Mediator Matt Homsher on June 1, 2020. During the Mediation, none of Cservak's exhibits were addressed as if they were not present, despite Cservak's testimony. DLCo's employees , agents and attorneys portrayed Cservak as someone not paying his bills. On Friday, June 5, 2020 by means of *PA PUC E-filing # 1883879 Rejected by Wolf, Ariel <awolf@pa.gov>*, all of Cservak's exhibits/evidence were deleted from the PUC e-File system and Cservak was instructed to resubmit his exhibits/evidence directly to ALJ Conrad A Johnson.

On June 12, 2020 a Motion for Partial Judgement was filed by DLCo. When questioned about the Motion, ALJ Conrad A. Johnson's Clerk (NM) instructed Cservak to pose the question to the Judge at the Hearing. When Cservak posed the question to the ALJ at the outset of the telephonic Hearing, ALJ Conrad Johnson ruled on DLCo's Motion for Partial judgement ruling that Cservak's conduct was tantamount to tampering, thereby warranting a ruling that service termination was in conformity with the Commission's Regulations for having a meter removed from a disconnected account and having his house wiring reconfigured without giving Cservak an opportunity to respond. (*Hearing Transcript*) Tr. 1-10.

A telephonic Hearing was held on July 9, 2020 before ALJ Conrad A. Johnson at which none of Cservak's evidence/exhibits that were deleted from the PUC e-File system and forwarded to ALJ Johnson's Clerk (NM) were available to the ALJ and were subsequently not able to be addressed. (*Hearing Transcript*) Tr. 10-17; 39-40; 43-45.

After deciding the tampering and termination issue, ALJ Conrad A. Johnson cautioned Cservak "to refrain from testifying to anything that may have occurred during the settlement process." Tr. 37-38. Also explaining. "Mr Cservak, anything that you previously presented through your informal complaint is not part of the formal complaint, unless you move or offer it into evidence. and then I'll give Attorney

Farrah an opportunity to respond to any exhibits that you'd like to offer into the record. This is a new proceeding. There is nothing in the record from any prior proceeding. Tr. 19. None of Cservak's exhibits/evidence was able to be located by ALJ Conrad A. Johnson at the Hearing. Tr. 39-40.

ALJ Conrad A. Johnson advised the Parties that his decision wouldn't be out for several months and during that time he encouraged the parties to work towards amicably resolve this matter, because it is the Commission's policy to encourage settlement. Tr. 296. Cservak's power remained terminated until September 20, 2021 when DLCo restored service to Cservak's House and Barn via one meter and one billing account, that which Cservak had been seeking.

The remainder of the 6 hour telephonic Hearing provided sufficient time for DLCo to present a multitude of evidence/exhibits and erroneous testimony by their employees, agents and attorneys that wrongfully portrayed Cservak as a person who didn't pay his bill.

In his Initial Decision on March 3, 2021 nearly a year later, ALJ Conrad A. Johnson decided that Cservak had "dirty hands" for having his meter removed from a disconnected account and needed to pay his bill. The wrongful decision dismissed the Complaint "for Complainant's failure to meet his burden of proving 1) there were incorrect charges on his bills or 2) that service termination, based on Complainant's admission of tampering with the utility's facilities, violated the Commission's regulations." Cservak filed timely exceptions on March 24, 2021.

In the Opinion and Order issued by the Commission on June 16, 2022 in which it wrongfully decided "The complainant's mere layman's assertion of his TED device's recording accuracy without additional proof to support such a conclusion, does not alone carry his burden of proving with substantial evidence that his bills are inaccurate as rendered." *Opinion and Order (Cservak I)* Pg, 17.

The ALJ and Commission are reminded that all fraudulent and/or inaccurate charges to Cservak's accounts are clearly displayed on the Billing Statements that Cservak submitted as exhibits/evidence and that Cservak was a licensed Professional Engineer knowledgeable in the matters of home power generation. See CM Service's website at: <https://www.c-mservices.com/>.

On July 15, 2022, Cservak with his attorneys Richard T Haft, Esq, of Rewis & Yoder, PC filed a Petition For Review of the Pennsylvania Public Utility Commission's Opinion and Order Denying Petitioner's Exceptions and Dismissing the Petitioner's Complaint Dated June 16, 2022 which was accepted for Review In the *Commonwealth Court of Pennsylvania* No.: 768 CD 2022 on April 11, 2024.

On August 29, 2022 upon learning that Cservak hired Counsel for Cservak's Commonwealth Court Petition for Review, DLCo's Senior Counsel, Regulatory Michael Zimmerman inappropriately contacted Cservak's attorney Richard T Haft, Esq. attempting to negotiate *Cservak I*. Cservak denied repeated requests by Haft to be permitted to negotiate with Zimmerman on *Cservak I*, forcing Richard T. Haft and Rewis Yoder, PC to withdraw their representation of Cservak in the Commonwealth Petition for Review. Cservak was forced to submit his appellate brief and reproduced record prose. On November 6, 2024, The Commonwealth Court dismissed Cservak's Petition for Review, due to

Cservak's "manifest failure to comply with the Pennsylvania Rules of Appellate Procedure's dictates regarding the contents of his appellate brief and of his reproduced record." *Commonwealth Court* No. 768 C.D. 2022; Filed November 6, 2024. Cservak chose not to appeal to the Pennsylvania Supreme Court.

Complainant's Second Formal Complaint - Docket No. C-2022-3036252 (Cservak II)

On October 14, 2022, Cservak filed his second formal complaint alleging that DLCo was: 1) threatening to shut off his service for non-payment of Disputed Charges that were made due and payable by DLCo; 2) that incorrect charges were on his bill; 3) that his rate was changed from Residential to Commercial on September 20, 2021; and 4) that Solar Credits that had accrued to the account since September 20, 2021 were deleted from the billing statements submitted.

On December 2, 2022 DLCo filed a Motion for Partial Judgment on the Pleadings at Docket No. C-2022-3036252 to dismiss the claims regarding service termination and incorrect billing charges occurring prior to April 5, 2021 on the basis that the allegations asserted in *Cservak II* were the same allegations submitted in *Cservak I*, however, the two claims have entirely different timeframes.

An evidentiary hearing was held on February 15, 2023, in connection with *Cservak II*. ALJ Conrad A. Johnson granted DLCo's Motion for Partial Judgment and explained that he "lacked the 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 pg 7-9.

ALJ Conrad A. Johnson granted DLCo's Motion for Partial Judgment and refused to address the incorrect charges on Cservak's bill prior to April 5, 2021 because they were pending review by the Commonwealth Court. However, contrary to his subsequent Initial Decision in *Cservak II*, ALJ Conrad A. Johnson presided, perhaps unknowingly, over a hearing that: 1) reverted Cservak's service to Residential from Commercial; and 2) restored the Solar Credits that had accrued to the account and subsequently deleted through the switching of accounts and meters, since April 5, 2021. This was accomplished by means of DLCo performing Cservak's first annual "Tru-up" occurring at the end of May. As a result of the Tru-up, Cservak's account boasted a +\$350 balance from the solar credits accrued to his account as well as a +1,250,000 kwh running balance proving that Cservak is, and has been, a net generator of electricity, one of DLCo's "Supplier Partners".

The Initial Decision in *Cservak II*, published on July 5, 2023 wrongfully dismissed Cservak's remaining allegations concerning: 1) Improper deletion of solar credits from his electric account; 2) wrongful reclassification of his service account from residential rate to commercial rate; and 3) threat of service termination, which was raised during the February 15, 2023 hearing. See *CservakII, Initial Decision Pg 9, 16-17*.

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

Complainant's Third Formal Complaint (Cservak III)

Frank J. Cservak Jr., P.E. filed a Formal Complaint with the PAPUC against DLCo on July 24, 2023, at Docket No. C-2023-3041897 (*Cservak III*). On the standard complaint form, Cservak alleged: 1) The utility is threatening to shut off my service or has already shut off my service; 2) Incorrect charges are on my bill, copies of fraudulent bills attached; 3) I am having a reliability, safety or quality problem with my utility service; 4) Other: DLCo's fraudulent billing practices by adding kilowatt hours (kwh) to Cservak's billing statements via ESTIMATED Meter Reads and demanding payment, bills attached; and 5) DLCo continues to carry the "Disputed Charge" of \$3,822.12 generated from ESTIMATED Meter Reads, fraudulent charges contained on Bill ID: 879601741709 and Bill ID: 879609484317, that resulted in Cservak's service being terminated in March 2020 that he wants removed from his billing statement.

On August 10, 2023, DLCo Filed an Answer and New Matter and Preliminary Objections to the Formal Complaint in *Cservak III*. DLCo 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*.

Cservak asserted in his Response to Answer and New Matter of Respondent DLCo by Pro Se litigant Frank J. Cservak Jr. P.E. that DLCo took actions that were not previously alleged or considered by the commission in Formal Complaints *Cservak I* or *Cservak II*. Additionally, Cservak alleged that DLCo continued to carry \$3,822.12 of Disputed Charges on his billing statement that were generated from ESTIMATED Meter Reads, fraudulent charges contained on Bill ID: 879601741709 and Bill ID: 879609484317.

On August 19, 2024, ALJ Conrad A. Johnson issued a first Interim Order Staying Proceedings Pending Commonwealth Court Decision On Complainant's Petition For Review (*First Stay Order*). In the *First Stay Order*, ALJ Conrad A Johnson explained that he "did not have any authority to stay any lawful action that DLCo might take to terminate Mr Cservak's electric service based upon past due charges in the amount of \$3,218.68", giving DLCo the green light to charge Cservak for the fraudulent Disputed Charges without hearing or considering Cservak's allegations.

On November 14, 2024, ALJ Conrad A. Johnson issued a Second Interim Order (*Second Stay Order*) and ordered a continued stay of the proceedings pursuant to the ALJ's authority to regulate the course of the proceedings and to file a status report by December 13, 2024.

On December 23, 2024, ALJ Conrad A Johnson issued a Third Interim Order Taking Official Notice and Lifting Stay (*Third Interim Order*) lifting the stay imposed by the *First* and *Second Stay Orders* and informed the Parties that a ruling would be prepared and issued.

On March 20, 2024, ALJ Conrad A Johnson issued his Initial Decision in *Cservak III* dismissing Complainant Frank J. Cservak's Petition for Review in *Cservak v. Pennsylvania Public Utility*

Commission, No. 768 CD 2022 (entered Nov, 6, 2024). Thus, Respondent DLCo's preliminary objections asserting pendency of a prior action are deemed moot and the Formal Complaint (Cservak III) was dismissed with prejudice.

FINDINGS OF FACT

1. Complainant Frank J. Cservak Jr., P.E., a licensed professional engineer in Pennsylvania, PE 029520E, resides at 174 Barberry Road, Sewickley Heights, Pennsylvania 15143 where he operates CM Services, an internet based home energy resource for contractors and DIY.
2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.
3. On April 14, 2019, Complainant Frank J Cservak, Jr. P.E. filed Informal Complaints (PUC BCS Case #3691697 and PUC BCS Case #3691576) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent, Duquesne Light Company or DLC) alleging incorrect billing charges based on meter readings reported.
4. Both Complaints, PUC BCS Case #3691697 and PUC BCS Case #3691576 were denied without due process on December 24, 2019. Cservak responded with his notice to appeal the PUC's decision with a Formal Complaint.
5. On March 2, 2020 Cservak delivered his first Formal Complaint against Duquesne Light Company which was docketed on March 4, 2020 at Docket No. F-2020-3019005, alleging incorrect billing charges appearing as ESTIMATED Meter Reads on his billing statements, fraudulent charges contained on Bill ID: 879601741709 and Bill ID: 879609484317.
6. Cservak's electric service was terminated on March 2, 2020 by DLCo for non-payment of the fraudulent charges on his bill.
7. On July 9, 2020, a hearing was held at which Cservak was prevented from presenting any of his evidence/exhibits. ALJ Conrad A Johnson refused to delay the proceeding until Cservak's exhibits were available and made Cservak, the prose complainant, present his case without the assistance of his evidence/exhibits. Additionally the ALJ warned Cservak that "this was a new proceeding and anything that you previously presented through your informal complaint is not part of the formal complaint, unless you move or offer it into evidence". None of Cservak's exhibits were available to the ALJ and remain unaddressed by the ALJ and Commission..

8. On September 9, 2020 Cservak's electrical service was restored via one account/meter by DLCo according to Cservak's wishes after 8 months of being terminated for non-payment of his bill.
9. On February 17, 2021, ALJ Conrad A Johnson issued an Initial Decision at Docket No. F-2020-3019005 wrongfully dismissing the Formal Complaint in *Cservak I* because Cservak 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; and/or 3) that service termination, based upon his admission of tampering with the utility's facilities, violated the Commission's regulations. *Cservak I*.
10. On June 16, 2022, the Commission wrongfully denied Cservak's Exceptions to the Initial Decision in *Cservak I* and adopted the ALJ's faulty Initial Decision. *Cservak I, Opinion and Order 1*.
11. On July 15, 2022, Cservak filed a Petition for Review of the Commission's *Opinion and Order I* with the Commonwealth Court of Pennsylvania. *Cservak Petition for Review*.
12. On October 14, 2022, Cservak filed a second Formal Complaint against Duquesne Light Company at Docket No. C-2022-3036252 alleging that DLCo was: 1) threatening to shut off his service for non-payment of Disputed Charges; 2) that incorrect charges were on his bill; 3) that his rate was changed from Residential to Commercial on September 20, 2021; and 4) that Solar Credits that had accrued to the account since September 20, 2021 had been deleted from the billing statements submitted.
13. On July 5, 2023, an Initial Decision in *Cservak II* was issued in which ALJ Conrad Johnson ruled that he lacks authority to rule on Cservak's allegations concerning incorrect billing charges prior to April 5, 2021, and the service termination issues which were raised and dismissed by the Commission in *Cservak I*; because those allegations were pending review by the Commonwealth Court. Additionally, the ALJ's Initial Decision dismissed Cservak's allegations that DLCo was: 1) threatening to shut off his service for non-payment of Disputed Charges; 2) that incorrect charges were on his bill; 3) that his rate was changed from Residential to Commercial on September 20, 2021; and 4) that the Solar Credits that had accrued to the account since September 20, 2021 had been deleted from the billing statements submitted.
14. On October 19, 2023, the Commission issued a defective Opinion and Order (*Opinion and Order II*) which denied Cservak's Exceptions and wrongfully dismissed the Complaint in *Cservak II* and it became final November 18, 2023.
15. On July 24, 2023, Frank J. Cservak Jr., P.E. filed a third Formal Complaint against DLCo at Docket No. C-2023-3041897 (*Cservak III*). On the standard complaint form, Cservak

alleged: 1) The utility is threatening to shut off my service or has already shut off my service; 2) Incorrect charges are on my bill, copies of fraudulent bills attached; 3) I am having a reliability, safety or quality problem with my utility service; 4) Other: DLCo employs fraudulent billing practices by adding kilowatt hours (kwh) to customers' billing statements via ESTIMATED Meter Reads and demanding payment, bills attached; and 5) DLCo continues to carry the "Disputed Charge" of \$3,822.12 generated from fraudulent ESTIMATED Meter Reads, fraudulent charges contained on Bill ID: 879601741709 and Bill ID: 879609484317 that resulted in Cservak's service being terminated in March 2020 that he wanted removed from his billing statement.

16. On November 6, 2024, the Commonwealth Court of Pennsylvania dismissed Cservak's Petition for Review in *Frank J. Cservak, Jr. v. Pa Pub. Util. comm'n*, 2024 WL 4688747 (*Pa. Cmwlth*, 2024). Cservak's Petition for Review's dismissal was the result of the withdrawal of Richard T. Haft, Esq. and Rewis & Yoder, PC from the Case after DLCo's Senior Counsel, Regulatory, Michael Zimmerman inappropriately contacted Cservak's attorney Richard T Haft attempting to negotiate *Cservak I*.

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 of 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.

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 A2d 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. Intervenor v. Equitable Gas Co.*, Docket No. D-00935435 (*Opinion and Order* entered July 18, 1994).

DLCo's Objections and Cservak's Answer to the Objections

DLCo objected that the allegations Cservak asserted in *Cservak II* 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 2018 and service termination issues in 2020 and 2022. See DLCo's preliminary Objections ¶¶ 2, 12, 30-32, 41.

Cservak responded that the timeframes of *Cservak I* (2018-2020) and *Cservak II* (2021-2022) are entirely different. Therefore, the allegations cannot be the same, and the complaint should not have been denied by ALJ Conrad A. Johnson.

Notably in its *Opinion* in *Cservak II*, **the Commission wrongly ruled that 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 DLCo for 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.

Regarding the threat of service termination on October 10, 2022, Cservak provided documentation of the termination notice when the Disputed Charges shown on Cservak's billing statement were made due and payable. The Commission's Opinion in *Cservak II* deals with an "undisputed past balance due" and **does not apply** in the instant case; Cservak's is a Disputed Charge appearing on his billing statement, a result of fraudulent service charges that were generated from ESTIMATED Meter Reads, contained on Bill ID: 879601741709 and Bill ID: 879609484317.

Ruling on Preliminary Objections

In the instant case, there is no identity of the issues, parties and relief in that, all three Complaints, *Cservak I*, *Cservak II* and *Cservak III*. dealt with different timeframes, issues and relief. *Cservak I* (2018-2020) dealt with the restoration of Cservak's electrical service, *Cservak II* (2021-2022) dealt with restoration of the Residential rate and recovery of deleted solar credits and *Cservak III* (2023) dealing with the removal of the "Disputed Charge" of \$3,822.12 generated from fraudulent ESTIMATED Meter Reads that resulted in Cservak's service being terminated in March 2020 that he wants removed from his billing statement.

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*, 479A.2d 10, 15 (Pa. Cmnlth. 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

The Commission incorrectly decided that in all three Formal Complaints filed by Cservak (*Cservak I*, *Cservak II*, and *Cservak III*), that there was an identity of the issues, parties and relief. All three Complaints dealt with different timeframes, issues and relief. *Cservak I* (2018-2020) dealt solely with the restoration of Cservak's electrical service; *Cservak II* (2021-2022) dealt with restoration of the Residential rate and recovery of deleted solar credits and *Cservak III* (2023) dealt with the removal of the "Disputed Charge" of \$3,822.12 generated from fraudulent ESTIMATED Meter Reads that resulted in Cservak's service being terminated in March 2020 that he wants removed from his billing statement.

The Commission also wrongly decided that Cservak was afforded due process with the convening of an evidentiary hearing in *Cservak I* and *II* and he failed to carry his burden of proof and the decisions in those two cases are now final. To which Cservak responds:

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. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. In the *Cservak I* hearing, the Commission, the ALJ, its employees, agents and attorneys conspired to delete and suppress Cservak's exhibits/evidence to the extent that Cservak was prevented from presenting any of his evidence/exhibits at the hearing. ALJ Conrad A Johnson refused to delay the proceeding until Cservak's exhibits were available and made Cservak, the prose complainant was forced to present his case without the assistance of his evidence/exhibits. The evidentiary hearing *Cservak I* did not afford Cservak the opportunity to be heard at a meaningful time and in a meaningful manner.

In *Cservak III*, the ALJ contends incorrectly that the receipt of the July 10, 2023 bill contains the same disputed charges that were previously the subject of Formal Complaints in *Cservak I* and *Cservak II*. Response: As previously explained, the timeframes of *Cservak I* (2018-2020), *Cservak II* (2021-2022), and *Cservak III* (2023) are entirely different as are their issues and relief.

The ALJ writes in his *Initial Decision III*: DLC attorneys argued in its New Matter that 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 litigating matters on the same claim and between the same parties that have been previously decided which have become final. DLCo 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. Initial Decision III, Pg. 26. Response: the ALJ is reminded that *Cservak III* deals with a different timeframe, issues and relief than did *Cservak I* and *Cservak II*.

ALJ Conrad A. Johnson concluded that judicial economy dictates and the Commission's 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 litigated under the doctrine of claim preclusion. Accordingly, in the ordering paragraphs below the formal complaint in this proceeding will be dismissed.

Response to ALJ Conrad A. Johnson's dismissal of *Cservak III*:

ALJ Conrad A Johnson and the PAPUC have failed to provide due process to Complainant Frank J. Cservak Jr, P.E., by dismissing Cservak's Formal Complaint with the PAPUC against DLCo on July 24, 2023, at Docket No. C-2023-3041897 (*Cservak III*), without providing the opportunity to appear and be heard. ALJ Conrad A Johnson and the PAPUC through its employees, attorneys and agents operated as a cartel by colluding with Duquesne Light Company (DLCo) and its employees, contractors, agents and attorneys to violate Cservak's rights to due process and to defame, destroy and publicly humiliate Cservak, a licensed professional engineer in the Commonwealth of Pennsylvania. ALJ Conrad A Johnson and the PAPUC failed their duty to the Public to eliminate the waste, fraud and abuse perpetrated on Cservak and the Public in general by DLCo in this matter.

From the outset of the Informal Complaints filed by Cservak in 2019, the PUC has failed their duty to provide due process and the opportunity to appear and be heard... at a meaningful time and in a meaningful manner.

In *Cservak I*, the complainant's exhibits/evidence were deleted from the PUC's e-File system and after resubmitting the exhibits/evidence to the ALJ, as directed by the Commission, those exhibits/evidence were not available to ALJ Conrad A. Johnson at the time of the hearing in *Cservak I*.

ALJ Johnson's prejudice against the Complainant runs rampant in the CAUTIONARY REMINDER in the First Interim Order of Docket No. C-2023-3041897 (*Cservak III*), where he states: "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." The ALJ is reminded that as of December 31, 2019 all of the Complainant's bills were paid in full. See Exhibit B, Fraudulent Billing Statements Jan & Feb 2020, pg 1, 2.

In his Initial Decision in *Cservak I* on March 3, 2021, ALJ Conrad A. Johnson derided and defamed Cservak saying he had "dirty hands" for having his meter removed from a disconnected account and needed to pay his bill. The wrongful decision dismissed the Complaint "for Complainant's failure to meet his burden of proving 1) there were incorrect charges on his bills or 2) that service

termination, based on Complainant's admission of tampering with the utility's facilities, violated the Commission's regulations." ALJ Johnson refused to recognize Cservak, a professional engineer, as an expert witness.

Then again, in the Opinion and Order in *Cservak I*, the Commission wrongfully derided and defamed Cservak writing: "The complainant's mere layman's assertion... that his bills are inaccurate as rendered." *Opinion and Order (Cservak I)* Pg, 17. The Complainant, Frank J. Cservak Jr. P.E., a licenced engineer in the Commonwealth (PE 029520E) finds the Commission's opinion inaccurate, defamatory and humiliating. Cservak submitted evidence of his experience and qualifications to be considered an expert witness in the field of engineering at hand, however the ALJ and Commission chose to ignore the request.

In *Cservak III*, now before the Commission, The issues and remedies have been shown to be from a different timeframe than *Cservak I* and/or a different issue and relief than *Cservak II*, and should not be dismissed under the legal principle claim preclusion. Cservak's claims in *Cservak III* have been heard and he should be granted relief.

In *Cservak III*, the Commission failed to follow their preliminary objection practice by dismissing Cservak's pleadings where the right to relief is warranted and free from doubt.

In *Cservak I, II and III*, the Commission relied 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 and 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. Clearly, the ALJ and Commission violated their own practices in denying Cservak's three Formal Complaints.

In *Cservak III* it is evident that the ALJ has the terms "undisputed past balance due" and the Disputed Charges item on Cservak's billing statement confused, indicating that he doesn't understand the Disputed Charges issue.

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. The Commission improperly ruled on preliminary objections in the instant case. The ALJ determined that the allegations in *Cservak I, II* and *III* were the same allegations when in fact, the Complainant demonstrated beyond a reasonable doubt that the three Formal Complaints had differing timeframes, issues and relief.

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.2d10 (Pa. Cmwlth, 1984). The Complainant, Frank J. Cservak, Jr., P.E. was not granted due process in his formal Complaints Cservak I and Cservak III.
4. Under the Commission's regulations, a presiding officer has the authority to regulate the course of the proceeding. 52. PA. Code § 5483(a). In his Initial Decision III, ALJ Johnson wrongly evokes the principle of "judicial economy" to deny Cservak a proper hearing "because the allegations raised by Cservak ... have been previously litigated and dismissed and therefore cannot be litigated under the doctrine of claim preclusion." (Initial Decision III), Pg. 26
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). Cservak, in these Exceptions, has demonstrated beyond a reasonable doubt that the three Formal Complaints have differing timeframes, issues and relief.
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). The Commission is wrongfully dismissing Frank J. Cservak, Jr. P.E.'s Formal Complaint *Cservak III*, when in fact it should order DLCo to pay Cservak relief as requested in *Cservak III* and reiterated below.
7. A hearing in the matter of Frank J. Cservak, Jr. v. Duquesne Light Company at docket Number C-2023-3041897 (Cservak III) is not necessary in the public interest because the Complainant's pleadings have been properly made and the Commission should order DLCo to pay Cservak relief requested in *Cservak III* and reiterated below.

Relief and Resolution of Damages

1. ALJ Johnson and the Commission should order DLCo to remove \$3,218.68 of Disputed Charges remaining on the Complainant's Billing Statement which are in fact fraudulent charges placed on the Complainant's Billing Statement by DLCo.

2. ALJ Johnson and the Commission should order DLCo to reimburse the Complainant \$2,555.78 for Over-Billing the Complainant's account #8796 House during the period 10/7/17 - 2/12/20 as detailed on Exhibit E #8796 House and claimed therein.
3. ALJ Johnson and the Commission should order DLCo to reimburse the Complainant \$2,896.01 for Over-Billing the Complainant's account #7796 Barn during the period 11/8/17 - 2/17/20 as detailed on Exhibit F #7796 House and claimed therein.
4. ALJ Johnson and the Commission should order DLCo to reimburse the Complainant \$11,662.20 for damages related to operating an emergency generator and the lost opportunity cost of operating his solar panels for a total of 232 Days for which his electrical service was wrongfully terminated for not paying his bill.

Respectfully submitted,



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