

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held July 10, 2025

Commissioners Present:

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

Frank J. Cservak, Jr., P.E.

C-2023-3041897

v.

Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Frank J. Cservak, Jr., P.E. (Mr. Cservak or Complainant) on April 10, 2025, to the Initial Decision (Third I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on March 20, 2025, in the above-captioned proceeding. In the Initial Decision, the ALJ dismissed the Formal Complaint (Third Complaint), which was filed by the Complainant on July 24, 2023, against Duquesne Light Company (Duquesne or Company) pertaining to the Company's net-metering practices and alleging reliability, safety, or quality problems and fraudulent billing claims. The ALJ determined that Mr. Cservak had previously litigated the

allegations raised in his Third Complaint and that they cannot be relitigated under the doctrine of claim preclusion. Third I.D. at 26.¹ On April 21, 2025, Duquesne filed Reply Exceptions.² For the reasons stated below, we will deny the Exceptions and adopt the Initial Decision, consistent with this Opinion and Order.

I. Background

As background, the Complainant's property contains two structures, each of which have solar array panels. The first structure is a residential dwelling (the Home) and the second is a commercial building (the Barn) from which Mr. Cservak operates a non-profit corporation. Previously, there were two separate meters and billing accounts

¹ On February 29, 2020, Mr. Cservak filed his first Formal Complaint against Duquesne at Docket No. F-2020-3019005 (First Complaint), which ALJ Johnson dismissed by an Initial Decision issued on March 2, 2021 (First Initial Decision). By Opinion and Order entered on June 16, 2022, the Commission adopted the Initial Decision which dismissed the First Complaint (*Cservak I*). On October 14, 2022, Mr. Cservak filed his second Formal Complaint against the Company at Docket No. C-2022-3036252 (Second Complaint), which ALJ Johnson dismissed by an Initial Decision issued on July 5, 2023 (Second Initial Decision). Thereafter, by Opinion and Order entered October 19, 2023, the Commission adopted the Initial Decision which dismissed the Second Complaint (*Cservak II*).

² In its Reply Exceptions, Duquesne asserts as a threshold matter that the Exceptions were due on or before April 9, 2025, at 4:30 p.m. R. Exc. at 1-2 (citing 52 Pa. Code §§ 1.11 and 5.33(b)). However, the Company argues that Mr. Cservak did not file and serve the Exceptions until after 4:30 p.m. and thus they are deemed to be filed the next business day (*i.e.*, April 10, 2025), which makes them untimely. R. Exc. at 2. We acknowledge that the Commission's records indicate that the Exceptions were eFiled at 5:10 p.m. on April 9, 2025, and thus pursuant to Section 1.11(a)(4) of our Regulations, 52 Pa. Code § 1.11(a)(4), the Exceptions are deemed to have been filed on April 10, 2025. Given that the Exceptions were filed approximately 40 minutes after the deadline, the Complainant is not represented by legal counsel in this proceeding, and the Company was given a meaningful opportunity to file Reply Exceptions thereto via service accomplished by the Complainant, we will consider the Exceptions, as filed, to secure the just, speedy, and inexpensive determination in this proceeding. *See* 52 Pa. Code § 1.2(a); *see also Philip Alexander Carlton v. PECO Energy Company*, Docket No. C-2023-3039584 (Opinion and Order entered September 26, 2024) at 6.

for electric service provided to the Complainant's Home and Barn. On August 5, 2021, at the Complainant's request, service was combined through one meter and billing account starting in September 2021. *See Cservak II* at 2.

On February 29, 2020, Mr. Cservak filed his First Complaint against Duquesne, alleging incorrect billing charges in 2020 and the threat of service termination in 2020, and requesting a credit for his account. A hearing was held on July 9, 2020, at which Mr. Cservak was present and presented the claims raised in his First Complaint. Third I.D. at 18.

In the First Initial Decision, issued on March 2, 2021, ALJ Johnson dismissed the First Complaint, finding that Mr. Cservak had failed to carry his burden of proving that: (1) there were incorrect charges on his bills dating back to 2020; (2) his service account was not properly credited for the energy produced by his solar panels; or (3) service termination, based upon his admission of tampering with the utility's facilities, violated the Commission's Regulations. In *Cservak I*, the Commission denied the Complainant's Exceptions and adopted the First Initial Decision. Third I.D. at 18.

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

On October 14, 2022, Mr. Cservak filed his Second Complaint against Duquesne alleging: (1) improper service termination; (2) incorrect billing charges in 2020; (3) wrongful reclassification of his service account from residential rate to small commercial rate; and (4) improper deletion of accrued solar credits. A hearing was held on February 15, 2023, at which Mr. Cservak appeared. During the hearing, the ALJ confined the scope of the Second Complaint allegations to those matters which occurred after April 5, 2021, as follows: (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. *Cservak II* at 2-3, 9.

In the Second Initial Decision, issued on July 5, 2023, ALJ Johnson determined that he lacked authority to rule on Mr. Cservak's allegations concerning incorrect billing charges prior to April 5, 2021, and the service termination in 2020. The ALJ reasoned that these allegations were raised and dismissed by the Commission in *Cservak I* and were pending review by the Commonwealth Court. Additionally, in the Second Initial Decision, ALJ Johnson dismissed Mr. Cservak's remaining allegations regarding: (1) the improper deletion of solar credits for his electric account; (2) the wrongful reclassification of his service account from residential rate to small commercial rate; and (3) the threat of service termination, which was raised during February 15, 2023, evidentiary hearing. Third I.D. at 18-19.

On July 24, 2023, Mr. Cservak filed the Third Complaint claiming that, *inter alia*, Duquesne was threatening to shut off his service and there were incorrect charges on his bill. Third Complaint at 3.

By Opinion and Order entered on October 19, 2023, the Commission denied Complainant's Exceptions to the Second Initial Decision and dismissed the Second Complaint. *Cservak II* at 23. No Party filed a petition with the Commonwealth Court seeking appellate review of *Cservak II*. Third I.D. at 10.

Thereafter, on November 6, 2024, the Commonwealth Court dismissed Mr. Cservak's Petition for Review of *Cservak I*. *Frank J. Cservak, Jr. v. Pa. PUC*, 380 C.D. 2022, 2024 WL 4688747 (Pa. Cmwlth. 2024).

II. History of the Proceeding

As noted above, Mr. Cservak filed his Third Complaint on July 24, 2023. Primarily, Mr. Cservak alleged that Duquesne has been: (1) over-billing him through unwarranted rate changes; (2) tabulating his solar credit or net-metering statements incorrectly; (3) adding fraudulent estimated meter readings and charging the meters without properly applying the solar credits; and (4) fraudulently charging the previous account balances among other account irregularities. Third Complaint at 3.

On August 10, 2023, Duquesne filed Preliminary Objections to the Third Complaint. In the Preliminary Objections, Duquesne asserted that due to the Complainant's extensive history, and the outcomes of the prior proceeding with the Commission, Mr. Cservak's claims would be violating the *lis pendens* doctrine.³ Additionally, Duquesne argued that the Complainant's filing of duplicative formal complaints while previous complaints are still pending is an improper attempt to delay termination of utility services for failure to pay past due amounts and constitutes an abuse of process. The Company asserted that in the interest of protecting other ratepayers, the Commission should prohibit the Complainant from filing any further Complaints against Duquesne until his current balance owed is paid in full. Preliminary Objections at 6-9.

Also on August 10, 2023, Duquesne filed an Answer and New Matter to the Third Complaint (Answer) in which Duquesne denied the material allegations of the Third Complaint and that the Complainant is entitled to any relief. In the New Matter,

³ According to the Company, the *lis pendens* doctrine is comparable to 52 Pa. Code § 5.101(a)(6) pertaining to dismissal of a formal complaint due to the pendency of a prior proceeding. Duquesne asserted that the purpose of the doctrine is to prevent a respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. Preliminary Objections at 6.

Duquesne asserts that *res judicata* and *lis pendens* bar any allegations that have been addressed and decided by the Commission in prior opinions and orders. Answer at 3.

On August 21, 2023, Mr. Cservak filed an Answer to the Preliminary Objections. In his filing, Mr. Cservak argued, in part, that all three of his Complaints had different issues, which would nullify Duquesne's defense of a *lis pendens*. In addition, Mr. Cservak alleged errors by both Duquesne and the Commission resulting in fraudulent charges contained in his bills. Preliminary Objections at 3-11.

On August 30, 2023, Mr. Cservak filed a Reply to Duquesne's Answer reiterating prior arguments set forth in his Answer to the Preliminary Objections.

On March 20, 2025, the Commission issued the ALJ's Initial Decision in this proceeding in which the ALJ, *inter alia*: (1) deemed the Preliminary Objections as moot; (2) determined that the issues set forth in the Third Complaint were previously litigated; (3) dismissed the Third Complaint with prejudice; and (4) precluded the Complainant from filing any other complaints until the past due balance was paid. Third I.D. at 26, 28-29.

As noted above, on April 10, 2025, Mr. Cservak filed Exceptions to the Initial Decision. Duquesne filed Replies to Exceptions on April 21, 2025.

II. Discussion

A. Legal Standards

1. Preliminary Objections

Section 5.101 of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.101, provides for the filing of preliminary objections, which must include a notice to plead and state the legal and factual grounds supporting the objections. 52 Pa. Code § 5.101(a). Preliminary objections are limited to the following grounds:

- (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).

Commission preliminary objection practice is comparable to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994) (*Equitable*); *Montague v. Phila. Elec. Co.*, 66 Pa. PUC 24 (1988).

Preliminary objections seeking dismissal of a pleading for legal sufficiency will be granted only in cases where dismissal is clearly warranted by the record and free and clear of doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979) (*Interstate*); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). Any doubt must be resolved in favor of overruling a preliminary objection. *Id.*

For the purpose of disposing of preliminary objections, the Commission may not rely upon the factual assertions of the moving party but must accept as true all well-pleaded, material facts of the non-moving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). In ruling on a preliminary objection, the Commission must assume the factual allegations included in the Complaint are true and resolve any doubt in favor of the non-moving party by rejecting the preliminary objections. The Commission must view the Complaint in this case in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable*; *see also, Interstate*.

2. Motion for Judgment on the Pleadings

Motions for summary judgment and judgment on the pleadings are governed by Section 5.102 of our Regulations, 52 Pa. Code § 5.102. The Commission will grant a motion for judgment on the pleadings only if the pleadings show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter

of law. 52 Pa. Code § 5.102(d)(1). Section 5.102 of the Commission's Rules provides, in relevant part:

§ 5.102. Motions for summary judgment and judgment on the pleadings.

- (a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.
- (b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

- (d) *Decisions on motions.*
 - (1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

- (3) *Form of decision.* The presiding officer will grant, in whole or in part, the motion in the

form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

52 Pa. Code § 5.102.

Judgment on the pleadings should only be granted when the right to relief is clear and free from doubt. In determining the absence of a genuine issue of material fact, the Commission must take the view of the evidence most favorable to the non-moving party and resolve any doubts against the entry of the judgment. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983). All of the non-moving party's well-pleaded allegations must be viewed as true for purposes of deciding the motion, and only those facts specifically admitted may be considered against the non-moving party. *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. 1995). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Id.* Any doubt must be resolved in favor of the non-moving party by refusing to sustain the motion. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985).

3. Other

The Commission treats pleadings by what is reflected in their content instead of what they are labelled, including treating preliminary objections as a motion for judgment on the pleadings. *Mattu v. West Penn Power Co.*, C-2016-2547322 (Opinion and Order entered July 14, 2017). As long as the parties' rights are not negatively affected and due process has been provided, there is no bar to changing the designation of a document to more accurately reflect its content and purpose. *Id.* (citing 52 Pa. Code § 1.2).

When there are no disputed questions of fact and the case to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing. *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593 (Pa. Cmwlth. 2003); *Diamond Energy, Inc. v. Pa. PUC*, 653 A.2d 1360 (Pa. Cmwlth. 1995); *Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989). The Commission may dismiss a complaint without a hearing if it is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21(d).

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

B. Third Initial Decision

In the Third Initial Decision, ALJ Johnson made twelve (12) Findings of Fact and reached seven (7) Conclusions of Law. Third I.D. at 17-19, 26-27. The Findings of Fact and Conclusions of Law are incorporated herein by reference and adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Regarding the Preliminary Objections, the ALJ reasoned that there was an identity of the issues, parties, and relief in the First, Second, and Third Complaint cases filed by Mr. Cservak. Third I.D. at 22 (citing *Cservak II* at 23 (“In all three cases, the Complainant is seeking relief against Duquesne for alleged improper charges on his electric accounts in 2020.”)). The ALJ noted that, in this proceeding, Mr. Cservak is

again alleging service termination issues occurring prior to the February 15, 2023, evidentiary hearing in *Cservak II*. Third I.D. at 22.

Further, the ALJ explained that when Duquesne filed its Preliminary Objections asserting the *lis pendens* doctrine, Mr. Cservak's Petition for Review of the Commission's Opinion and Order in *Cservak I* remained pending before the Commonwealth Court. Additionally, at that time, Mr. Cservak's Exceptions to the Initial Decision in *Cservak II* remained pending before the Commission. Thus, the ALJ determined that the Company correctly asserted its Preliminary Objections on the basis that the pendency of prior actions warranted dismissal of the Third Complaint. Third I.D. at 22.

Since then, however, the ALJ explained that the Company's *lis pendens* arguments in its Preliminary Objections are no longer relevant. On October 19, 2023, the Commission denied Mr. Cservak's Exceptions in *Cservak II*, adopted the ALJ's Second Initial Decision, and dismissed the Second Complaint. Also, the ALJ asserted that on November 6, 2024, the Commonwealth Court dismissed Mr. Cservak's Petition for Review of the Commission's decision in *Cservak I*. Thus, the ALJ noted that neither *Cservak I* nor *Cservak II* remains pending and that the Company's Preliminary Objections are deemed moot. Third I.D. at 22-23.

Despite this determination, the ALJ analyzed whether the Third Complaint should be barred by the doctrine of *res judicata* or claim preclusion. The ALJ again emphasized the Commission's observation in *Cservak II* that all three Complaints filed by Mr. Cservak sought relief against Duquesne for alleged improper charges on his electric accounts in 2020. Specifically, the ALJ asserted that in the present proceeding, Mr. Cservak alleged the same service termination issues that he raised in *Cservak I* and *Cservak II*. Additionally, the ALJ stated that in this proceeding, 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. Third I.D. at 24 (citing Third Complaint at 5, ¶¶ 27-28).

The ALJ also found it significant that Mr. Cservak was afforded due process with the convening of an evidentiary hearing in *Cservak I* and *II*. However, the ALJ stated that the Complainant failed to carry his burden of proof and the decisions in those two cases are now final. According to the ALJ, Mr. Cservak’s Third Complaint does not raise any new issues that were not ruled upon in *Cservak I and II*. Third I.D. at 24.

In support, the ALJ reasoned that, in the Third Complaint, Mr. Cservak alleged only the following three events occurring after the February 15, 2023, evidentiary hearing in *Cservak II*: (1) his phone calls to Duquesne’s customer service on March 29, 2023, and April 4, 2023; (2) the issuance of the Second Initial Decision 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 First and Second Complaints in *Cservak I* and *Cservak II*. Third I.D. at 24-25 (citing Third Complaint at 6, ¶¶ 33-37). The ALJ found that, in viewing these allegations in the light most favorable to Mr. Cservak, none rise to the level warranting an evidentiary hearing in this proceeding. Third I.D. at 25.

In support, the ALJ emphasized three factors. First, the ALJ stated that Mr. Cservak alleged making phone calls to Duquesne’s customer service in March and April 2023 about the disputed billing charges dating back to 2020. Third I.D. at 25 (citing Third Complaint at 6, ¶¶ 33-37). The ALJ highlighted Mr. Cservak’s statement that Duquesne’s customer service informed him to file a formal complaint and he did so by filing the Third Complaint. The ALJ also reiterated that 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 ALJ determined that the Second Initial Decision, issued in *Cservak II* on July 5, 2023, is now final and cannot be

relitigated. Third, the ALJ indicated that 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 ALJ determined that the Commission's decision in *Cservak I*, which dismissed Mr. Cservak's allegation of incorrect billing charges dating back to 2020, is now final. Third I.D. at 25.

Addressing Mr. Cservak's argument in his Answer to the Preliminary Objections, that his Third Complaint raised "numerous allegations about actions taken by Duquesne ... that were not previously alleged nor considered by the Commission" in *Cservak I* or *Cservak II*, the ALJ determined that the Complainant's argument is not persuasive. Third I.D. at 25 (citing Answer to Preliminary Objections at ¶ 24). The ALJ reasoned that "[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." Third I.D. at 25 (citing *Albert Buoncristiano v. Phila. Gas Works*, Docket No. C-2015-2466853 (Initial Decision issued March 29, 2016; Final Order entered April 29, 2016) (*Buoncristiano*) I.D. at 5 (emphasis in original)). Here, the ALJ determined Mr. Cservak's allegations in the Third Complaint did not allege any violations by Duquesne of the Public Utility Code (Code) or Commission regulations occurring after the February 15, 2023, evidentiary hearing. Third I.D. at 25.

The ALJ acknowledged Duquesne's argument in its New Matter that Mr. Cservak's Third Complaint was barred by the doctrine of *res judicata*, which he described as claim preclusion. According to the ALJ, claim preclusion prevents a litigant from relitigating matters on the same claim, and between the same parties, that have been previously decided, and which have become final. Third I.D. at 26.

Although the ALJ noted that Duquesne did not file a motion for judgment on the pleadings based upon the doctrine of claim preclusion, the ALJ explained that

judicial economy dictates, and the Commissions regulations at 52 Pa. Code § 5.483, give the presiding officer the authority “to otherwise regulate the course of the proceeding.” Thus, the ALJ found that, based on the above analysis, proceeding to an evidentiary hearing in this matter would be an exercise in futility and not in the public interest. In support, the ALJ asserted that the allegations raised by Mr. Cservak in his Third Complaint were previously litigated and dismissed and therefore cannot be relitigated under the doctrine of claim preclusion. Accordingly, the ALJ dismissed the Third Complaint. Third I.D. at 26.

Furthermore, the ALJ quoted the cautionary reminder issued by the Commission to the Complainant in *Cservak II*, 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).

Third I.D. at 12 (citing *Cservak II* at 23).

Consistent with this warning, the ALJ dismissed the Third Complaint, with prejudice, and directed that Mr. Cservak is precluded from filing further Complaints against Duquesne until the past due balance, which accrued prior to February 15, 2023, is paid in full. Third I.D. at 28; Ordering Paragraph Nos. 2 and 3.

C. Exceptions and Replies

As previously noted, Mr. Cservak filed Exceptions on April 10, 2025.⁴ In his Exception No. 1, Mr. Cservak appears to contest the description of the procedural history of the Initial Decision. Exc. at 1-6. As to his Exception No. 2, the Complainant objects to the Findings of Fact, as set forth in the Initial Decision, contending that the prior Commission decisions in *Cservak I* and *II* were wrongfully dismissed and defective. Exc. at 6-8. In his Exception No. 3, Mr. Cservak argues that he was denied due process by the dismissal of the Third Complaint, without the opportunity to appear and be heard. Exc. at 12.⁵ Regarding his Exception No. 4, Mr. Cservak argues that the Conclusions of Law in the Initial Decision contain legal errors and requests specific relief, including the

⁴ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and economical determination. Moreover, in an attempt to address the various assertions contained throughout the filing, we shall consider the Exceptions according to the four groupings of arguments described as Exceptions 1 to 4, below.

⁵ In his Exception No. 3, Mr. Cservak alleges that by dismissing the Third Complaint, the ALJ and the Commission operated as a “cartel by colluding with Duquesne ... to violate [his] rights to due process and to defame, destroy, and publicly humiliate” him. Exc. at 12. Additionally, the Complainant asserts that the ALJ and the Commission “failed in their duty to the Public to eliminate the waste, fraud and abuse perpetrated on” him and the general public by Duquesne. *Id.*

removal of charges, the reimbursement of over-billed amounts, and monetary damages. Exc. at 13-15.

Regarding the requested relief, Mr. Cservak argues that the ALJ and the Commission should:

- Order Duquesne to remove \$3,218.68 of disputed charges remaining on his billing statement which he contends are fraudulent charges.
- Order Duquesne to reimburse him for \$2,555.78 for over-billing the account on the Home during the period 10/7/17 to 2/12/20.
- Order Duquesne to reimburse him for \$2,896.01 for over-billing the account on the Barn during the period 11/8/17 to 2/17/20.
- Order Duquesne to reimburse him for \$11,662.20 in 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 allegedly wrongfully terminated for not paying his bill.

Exc. at 14-15.

In its Reply to Exception No. 1, the Company argues that the Complainant does not contend that any of the procedural history summarized in the Initial Decision is incorrect or inaccurate. Rather, Duquesne submits that Mr. Cservak is merely re-hashing arguments previously heard and rejected in *Cservak I* and *Cservak II*, as well as the Petition for Review of *Cservak I* to the Commonwealth Court. According to the Company, it is unclear what the Complainant is excepting to, with respect to the procedural history, beyond a general disagreement with the outcomes and process in previously litigated proceedings. Duquesne contends that this is not a ground for an Exception and requests that it be denied as meritless. R. Exc. at 4.

Regarding Exception No. 2, Duquesne asserts that the Complainant presents an alternative recitation of facts in an attempt to relitigate issues previously rejected by the Commission and the Commonwealth Court in *Cservak I* and *II*. The Company proffers that the ALJ properly acknowledged the prior proceedings involving the First and Second Complaints and explained that the Third Complaint is barred by claim preclusion. Duquesne is of the opinion that Mr. Cservak's alternate description of the facts is a bald attempt to relitigate both the Company's net-metering practice and the billed amounts at issue in *Cservak I* and *II*. According to Duquesne, such arguments are barred by claim preclusion and Exception No. 2 should be denied. R. Exc. at 4-5.

In response to Exception No. 3, Duquesne submits that the Complainant has been afforded ample due process and that the ALJ correctly found the same in the Initial Decision. Thus, the Company argues that Exception No. 3 should be denied. For support, the Company reiterates that the present proceeding is the Third Complaint contesting Mr. Cservak's bills and Duquesne's net-metering credit practices. Duquesne asserts that *Cservak I* and *II* were fully litigated and the Complainant lost on their merits and on appeal of *Cservak I*. R. Exc. at 6.

Additionally, Duquesne highlights the procedural protections afforded by the ALJ to the Parties by the issuance of stays of the present proceeding to allow Mr. Cservak to pursue appellate relief of the Commission decisions in *Cservak I* and *II*. R. Exc. at 6-7. Moreover, the Company contends that the ALJ correctly explained that in the Third Complaint, Mr. Cservak did not allege any violations that occurred after the evidentiary hearing in *Cservak II*. According to Duquesne, the ALJ appropriately explained and applied the principle that matters which were actually litigated, or 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. R. Exc. at 8 (citing I.D. at 25 and *Buoncristiano*).

Regarding Exception No. 4, Duquesne argues that the Conclusions of Law in the Initial Decision are correct and the Complainant's requested relief is without merit. Duquesne asserts that the Complainant does not identify the reasons beyond the purported legal errors but merely argues that he has demonstrated beyond a reasonable doubt that *Cservak I* and *II* and the present proceeding have different issues, timeframes, and requested relief. According to the Company, through the Third Complaint, Mr. Cservak sought to challenge the Company's net-metering credit practices and the balance on his accounts which he believes is a result of those practices. Duquesne submits that the same issues were fully litigated in the *Cservak I* and *II* proceedings. R. Exc. at 8-9.

Additionally, the Company objects to the Complainant's requested summary relief against Duquesne. The Company contends that relief is based on the Complainant's untenable position that: (1) he has not been afforded due process; (2) he seeks to relitigate the Third Complaint on its merits, which have already been litigated twice; and (3) it would deny Duquesne due process by issuing summary relief. Additionally, the Company notes that it is well-established that the Commission does not have authority to order a public utility to pay damages, as requested by the Complainant. R. Exc. at 9 (citing *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595, 596-97 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794-95 (Pa. 1977)).

D. Disposition

We begin by addressing the ALJ's procedural review of the Third Complaint pursuant to the doctrine of claim preclusion. Although the Company did not file a motion for judgment on the pleadings based on this doctrine, the ALJ applied the principle to dismiss the Third Complaint. The ALJ noted Duquesne's argument in its New Matter that the Third Complaint was barred by the doctrine of *res judicata*, that is

claim preclusion. On the basis of judicial economy and Section 5.483 of our Regulations, 52 Pa. Code § 5.483, pertaining to authority to regulate the course of the proceeding, the ALJ determined that the principle of claim preclusion precludes re-litigation of the claims in the Third Complaint that were previously addressed in *Cservak I* and *II*. Third I.D. at 26. We agree with the ALJ.

Although there was no pending motion for a judgment on the pleadings pertaining to claim preclusion pursuant to Section 5.102 of our Regulations, the Company had preserved this affirmative defense in its New Matter pursuant to 52 Pa. Code § 5.62(b). Such an affirmative defense is designed to promote certainty, finality, and judicial economy. It reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction. *See Anthony Cannon v. Verizon Pa. LLC*, Docket No. C-2013-2353818 (Opinion and Order entered March 6, 2014) (*Cannon*) at 12. Here, the ALJ properly reasoned that he was authorized to apply claim preclusion given the circumstances of the prior final decisions in *Cservak I* and *II* and the pending allegations of the Third Complaint. Accordingly, we agree with the ALJ's resolution of this proceeding pursuant to the doctrine of claim preclusion.

Furthermore, we find no error in the ALJ's determination that, when viewing the allegations of the Third Complaint in the light most favorable to Mr. Cservak, none rise to the level warranting an evidentiary hearing in this proceeding. Plainly, this is the third Formal Complaint filed by the Complainant against Duquesne alleging incorrect billing related to the Company's net-metering practices in 2020. In *Cservak I*, the Commission dismissed the First Complaint, finding that the Complainant failed to carry his burden of proving that: (1) 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* at 14-21.

Mr. Cservak filed a Petition for Review of the Commission’s dismissal of the First Complaint in *Cservak I* with the Commonwealth Court. On November 6, 2024, the Commonwealth Court dismissed Mr. Cservak’s Petition for Review. Thereafter, no further appeal was taken and thus, the Commission’s decision in *Cservak I* remained final.

In the Second Complaint, Mr. Cservak again made similar allegations, including averments of improper service termination, incorrect billing charges in 2020, and improper crediting of his account for net-metering solar credits. The Commission dismissed the Second Complaint, finding that the Complainant failed to meet his burden of proving that Duquesne violated the Code or the Commission’s Regulations or Orders. *Cservak II* at 19. No Party appealed *Cservak II*, and the Commission’s decision therein remained final.

Regarding the Commission’s decision in *Cservak II*, the ALJ correctly explained that “under the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 341, the Opinion and Order [in *Cservak 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.” Third I.D. at 10-11.

However, it is evident that in the Third Complaint, Mr. Cservak is attempting to relitigate matters previously litigated in *Cservak I* and *II*. The ALJ properly reasoned that all three Complaints filed by Mr. Cservak have sought relief against Duquesne for alleged improper charges on his electric accounts in 2020. For example, in this proceeding, Mr. Cservak alleged the same service termination issues that he raised in *Cservak I* and *Cservak II*. Additionally, in his Third Complaint, Mr. Cservak again

requested reimbursement of charges, \$5,541.71, occurring prior to his service termination on March 4, 2020, and removal of “Disputed Charges” placed on his billing statement in 2020. *See* Third I.D. at 24.⁶

Additionally, we find that the ALJ appropriately addressed the allegations of Mr. Cservak that events occurred after the February 15, 2023, evidentiary hearing in *Cservak II*. There, the ALJ referenced the following three averments regarding: (1) the Complainant’s phone calls to Duquesne’s customer service on March 29, 2023, and April 4, 2023; (2) the issuance of the Second Initial Decision 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 First and Second Complaints in *Cservak I* and *Cservak II*. Third I.D. at 24-25 (citing Third Complaint at 6, ¶¶ 33-37).

First, the ALJ stated that Mr. Cservak alleged making phone calls to Duquesne’s customer service in March and April 2023 about the disputed billing charges dating back to 2020. The ALJ reasoned that 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 ALJ determined that the Second Initial Decision issued in *Cservak II* on July 5, 2023, is now final and cannot be relitigated. Third, the ALJ indicated that 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 ALJ determined that the Commission’s decision in *Cservak I*, which

⁶ Indeed, in his Exceptions, Mr. Cservak lists requested relief for reimbursements pertaining to allegations dating back to February 2020 and earlier. Exc. at 15. Moreover, Mr. Cservak requests the removal of \$3,218.68 in “Disputed Charges.” Exc. at 14. However, these alleged disputed charges in the amount of \$3,218.68 became undisputed upon the issuance of the Commission’s decision in *Cservak I*. *See Cservak II* at 20.

dismissed Mr. Cservak's allegation of incorrect billing charges dating back to 2020, is now final. Third I.D. at 25.

We agree with the ALJ that when viewing these allegations in the light most favorable to Mr. Cservak, none rise to the level warranting an evidentiary hearing in this proceeding. The Commission's Regulation at Section 5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. Accordingly, we find no error in the ALJ's conclusion that no factual issue pertinent to the resolution of a case exists, and that a hearing was unnecessary. *See* 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006 (Pa. Cmwlth. 1988).

Finally, we note that the Complainant has not filed an Exception to the portion of the ALJ's Initial Decision that precludes him from filing further informal and formal Complaints pertaining to issues that already have been adjudicated by the Commission. By failing to file an Exception to this portion of the ALJ's Initial Decision, the Complainant has waived any objections he may have had to the ALJ's recommendation. *See Cannon* at 13. Moreover, as we previously discussed in *Cservak II*, the Commission has previously barred consumer complainants from filing further Complaints, in order to protect the interests of other ratepayers. *See Cservak II* at 23. We agree that under the circumstances, such protections are warranted in this proceeding. Accordingly, we hereby adopt the ALJ's recommendation to prohibit the filing of further informal or formal Complaints pertaining to the past due balance or the allegations raised in *Cservak I* and *II* or in this current proceeding until the past due balances accrued prior to February 15, 2023 – the date of the evidentiary hearing in *Cservak II* – are paid in full.

In summary, consistent with our disposition above, we find that the arguments contained in the Complainant's Exceptions lack merit and are hereby denied.

IV. Conclusion

Based on the foregoing discussion and our review of the Initial Decision, the Exceptions and Reply Exceptions, and the record in this proceeding, we shall deny the Exceptions filed by Mr. Cservak and adopt the Initial Decision of ALJ Johnson, issued on March 20, 2025, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Frank J. Cservak, Jr., P.E., filed on April 10, 2025, to the Initial Decision of Administrative Law Judge Conrad A. Johnson at Docket No. C-2023-3041897, issued on March 20, 2024, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on March 20, 2025, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Frank J. Cservak, Jr., P.E., on July 24, 2023, against Duquesne Light Company, at Docket No. C-2023-3041897, is dismissed, with prejudice.

4. That Frank J. Cservak, Jr., P.E., is precluded from filing further Complaints against 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 (the date of the evidentiary hearing in the proceeding at Docket No. C-2022-3036252), is paid in full, and that, further, Frank J. Cservak's filing of any Complaint pertaining to the past due balance and/or the allegations and

issues raised in the Commission proceedings at Docket Nos. F-2020-3019005, C-2022-3036252 and C-2023-3041897 shall be dismissed without further proceedings.

5. That Duquesne Light Company may take any lawful action to suspend or terminate the electric service of Frank J. Cservak, Jr., P.E., based upon his unpaid past due balance accrued prior to February 15, 2023, upon Duquesne Light Company's compliance with all applicable tariff and regulatory requirements.

6. 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 (7) days of the date that Frank J. Cservak, Jr., P.E., pays the past due balance in full.

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

8. That the proceeding at this docket shall be marked closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: July 10, 2025

ORDER ENTERED: July 10, 2025