

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank J. Cservak, Jr.	:	
	:	
v.	:	C-2022-3036252
	:	
Duquesne Light Company	:	

**INITIAL DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

**INTRODUCTION**

A Formal Complaint alleging 1) improper service termination; 2) incorrect billing charges; 3) improper deletion of solar credits from electric account; and 4) wrongful reclassification of service account from residential rate to small commercial rate is dismissed. Service termination and incorrect billing allegations ruled upon in the Commission’s prior Opinion and Order, which is pending on a Petition for Review in Commonwealth Court, cannot be relitigated before the Commission. As to the remaining allegations, Complainant failed to meet his burden of proof.

**HISTORY OF THE PROCEEDING**

**Formal Complaint**

Frank J. Cservak, Jr. (Complainant or Mr. Cservak) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne

Light Company (Respondent, Duquesne Light, Company or DLC) on October 14, 2022.  
Complainant alleges, the following:

- a) Duquesne Light is threatening to or has already shut off my service.
- b) There are incorrect charges on my bills.
- c) Incorrect and fraudulent charges were added to my (2) accounts in February 2020.
- d) “The Fraudulent charges show up as meter Read Information ESTIMATED” . . .as if I was STEALING.”
- e) “Those Billing Statements placed my account in the rears by \$3,859.18.”
- f) “**Wrong Rate:** DLCo changed my rate from Residential to Commercial Rate in September 2021 when my two Billing Accounts and two meters were reduced to one Billing Account and one Meter.”
- g) “**Deletion of Solar Credits:** When the Meter was changed in September of 2021, the Solar Credits that had accrued to Billing Accounts . . . were DELETED.

Complaint ¶ 4.

For relief, Complainant requests the following: 1) restore to my account DLC’s Residential Rider 21 Rate; 2) remove disputed charges in the amount of \$3,757.03 due by September 26, 2022; 3) set account balance to \$0.00; 3) restore -2,332.425 Solar Credits to the existing account balance of -2,366.92 Bank NET Generation as of September 8, 2022.

Complaint ¶ 5.

Answer and New Matter

On November 4, 2022, Respondent filed and served an Answer and New Matter together with a Notice to Plead to New Matter within 20 days of service. Respondent’s Answer specifically denied all material allegations of the Complaint and averred, in part, as follows:

- a) DLC admits terminating Complainant's service on March 2, 2020, for unlawful meter tampering, which was the subject of Complainant's prior Formal Complaint in *Frank J. Cservak, Jr. v. Duquesne Light Company* at Docket No. F-2020-3019005 (*Cservak I*).<sup>[1]</sup>
- b) By Opinion and Order dated June 16, 2022, the Commission concluded that DLC had a valid basis for the 2020 termination.
- c) DLC admits the Company issued a 10-day termination notice to Complainant on October 10, 2022, for failure to pay past due amounts.
- d) The current balance on Complainant's account is correct as rendered.
- e) To the extent Complainant disputes charge as of April 5, 2021, such disputes were included in *Cservak I*, and the Commission has determined Complainant's disputes were without merit.
- f) DLC admits that Complainant's account was changed from RS-Residential Service Rate, Rider 21 to GS-Small Commercial Rate Rider 21 Rate, in accordance with DLC's Commission-approved tariff, when Complainant's two accounts were combined at his request in September 2021.
- g) In September 2021 when Complainant's two accounts were combined, the Net Metering Credits on Complainant's two accounts were converted to cash and refunded to Complainant.

Answer ¶ 5.

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<sup>1</sup> As the presiding administrative law judge (ALJ) in *Cservak I*, I issued an Initial Decision on February 17, 2021, dismissing, for failure to meet the burden of proof, Mr. Cservak's Formal Complaint alleging 1) there were incorrect charges on his bills or 2) 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 on March 24, 2021. In his Exceptions Mr. Cservak claimed the amount of the disputed charges was  $\$3,859.18 - \$832.32 = \$3,026.86$ . The Exceptions are attached to the Formal Complaint in this proceeding. DLC filed Reply Exceptions to the Initial Decision on April 5, 2021.

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

On July 15, 2022, Mr. Cservak filed a Petition for Review with the Pennsylvania Commonwealth Court docketed as *Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022. Tr. 18. The petition remains pending as of the date of this decision.

In New Matter, DLC avers a) charges or balances appearing on Complainant's account prior to April 5, 2021, are barred by the doctrine of *res judicata* because the Commission has already determined those balances were correct in *Cservak I* issued on June 16, 2022; and b) for the same reason, allegations pertaining to the electric service termination on March 2, 2020, are barred. New Matter ¶¶ 11-12. Mr. Cservak did not file a reply to New Matter within twenty days of service.<sup>2</sup>

For relief, Respondent requested that the Complaint be dismissed or set for hearing.

#### Respondent's Motion for Partial Judgment on the Pleadings

On December 22, 2022, DLC filed a Motion for Partial Judgment (Motion). In pertinent part, DLC reiterated its argument that the Complaint includes two allegations litigated and addressed in *Cservak I*: (1) an 8-month service termination; and (2) charges added to Complainant's accounts in February 2020. Motion ¶¶ 5 and 8. As grounds for its argument, DLC asserted the following:

17. In this case, there is no dispute as to the facts. Complainant's allegations, to the extent they relate to (i) Duquesne Light charges or balances that appeared on his account prior to April 5, 2021; (ii) the March 2, 2020, service termination; and/or (iii) any issues that were addressed by the Commission in the Final Order issued on June 16, 2022, in the 2020 Complaint case [*Cservak I*], are barred by the doctrine of *res judicata*.

18. The doctrine of *res judicata* operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in *Frank Tomazin v. Pennsylvania-American Water Company*, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of *res judicata* are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."

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<sup>2</sup> Under the Commission's regulations a failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b).

19. The doctrine of *res judicata*, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. *Hopewell Estates, Inc. v. Kent*, 435 Pa. Superior Ct. 471. 476, 646 A.2d 1192 (1994).

20. The doctrine of *res judicata* applies to cases before the Commission. *See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc.*, 77 Pa. P.U.C. 98, 104 (1992).

21. The doctrine of *res judicata* reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

*Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

Motion ¶¶ 17-21. For relief, DLC requested that the Commission dismiss with prejudice the claims that relate to 1) DLC's charges or balances that appeared on Mr. Cservak's account prior to April 5, 2021; 2) the March 2, 2020, service termination; and/or 3) any issues that were addressed by the Commission in the Final Order issued on June 16, 2022, in *Cservak I*.

#### Complainant's Response to Respondent's Motion

On January 11, 2023, Complainant filed a Response to the Motion for Partial Judgment on the Pleadings (Response). In his Response, Mr. Cservak asserted the following:

- a) The complaint in *Cservak I* was filed before service termination on March 2, 2020.
- b) Fraudulent charges totaling \$3,800.00 were placed on my August 2022 billing statement, and DLC is again threatening service termination over non-payment of those charges.

- c) DLC “visited the property on February 13, 2020, changed the meter again (deleting the Solar Credits on the account); performed a “safety inspection” (all work was OK); and added 800 kwh by means of an “Estimated” bill (\$3800±) putting Cservak’s Billing Statement on the arrears by the amount.”
- d) “The Complainant’s service was terminated in 2020 due to non-payment of his bill. Cservak never ‘tampered’ with a meter, however at the hearing DLCo was able to obtain a Partial Judgment on the meter tampering issue. . .”
- e) The Commission’s June 16, 2022, Opinion and Order in *Cservak I* is now the subject of the Petition for Review before the Commonwealth Court.<sup>[3]</sup>
- f) “The incorrect and fraudulent charges which appeared on Cservak’s Billing Statement in August 2022 are the result of the DLCo Hit Squad who visited the property on February 13, 2020....”
- g) “DLCo again threatened to terminate Cservak’s electrical service in August 2022 by making that amount Due and after a 10-Day Shut Off Notice was served on him due to non-payment of his bill, just as DLCo had done in February 2020 which DLCo executed and kept Cservak’s power out for six months.”
- h) “DLCo’s changing the Rate from Residential Rider 21, which it had been since 2015, is in direct violation of Judge Johnson’s instructions at the 2020 Hearing when he verified with DLCo that when the service was restored it would be at the Residential rate. See Hearing Transcript, Pages 291-292.”<sup>[4]</sup>
- i) “Solar Credits were deleted from Cservak’s account starting in 2018 at least 5 times when DLCo changed the Meters and remain unaddressed, not considered and unresolved. . . .”
- j) “DLCo’s fraudulent charges and balances that appeared on Cservak’s account(s) as of April 5, 2021, remain unaddressed, not considered and unresolved by either Judge

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<sup>3</sup> See Footnote 1 above.

<sup>4</sup> Note is taken here that the transcript for *Cservak I* does not reflect any instructions or verification of the rate upon restoration of service.

Johnson’s Hearing or Gladys Brown Dutrieuille’s Opinion and Order Dtd. June 16, 2022.”

- k) “The Motion should be denied because there are multiple issues as to material facts surrounding the case....”

Response ¶¶ 1-14.

Hearing Notice, Prehearing Order and Hearing Convening

On December 8, 2022, the Commission notified the Parties that this case was scheduled before me for a telephone hearing on February 15, 2023, and on December 9, 2022, a Prehearing Order was served upon the Parties informing them about the procedural rules for the hearing.

The hearing convened as scheduled. Mr. Cservak appeared, self-represented, and testified on his own behalf. He offered Complainant’s Exhibits A through I which were admitted into the record. DLC was represented by Michael A. Gruin, Esquire, who called DLC’s Billing Department Supervisor, Roxanne Morris, and Customer Consumer Relations Supervisor, Greg Murphy to testify. DLC’s witnesses sponsored DLC’s Exhibits 1 through 13, which were admitted into the record. The hearing generated a 193-page transcript.

Argument and Ruling on Motion for Partial Judgment on the Pleadings and Closing the Record

At the commencement of the hearing the Parties were given the opportunity to argue the Motion. Tr. 22-36. DLC argued that Mr. Cservak provided four reasons for his 2022 Complaint: 1) service termination in 2020; 2) incorrect charges stemming from a meter change in 2020; 3) change from residential to commercial rate retroactive to September 2021; and 4) the handling of solar credits on his account. Tr. 23. DLC submitted that the termination of Mr. Cservak’s service on March 2, 2020, and restoration on September 2, 2020, was decided by the Commission in *Cservak I* and could not be relitigated. Tr. 23-27. DLC also claimed in *Cservak I*, the Commission had ruled upon any billing charges occurring prior to April 5, 2021. Accordingly, DLC contended those charges could not be relitigated. DLC premised its argument

on the principal of *res judicata*. Tr. 23-24. DLC requested that the scope of the hearing be limited to the remaining two issues. *Id.*

Mr. Cservak argued that DLC padded his bill with \$3,800.00 and then sent him a termination notice, and within ten days shut off his power. Tr. 29-30, 33. It took him until July (2020) to get a hearing, and his power was not turned back on until September (2020). Tr. 29-30. Mr. Cservak maintained these matters were never adjudicated. *Id.* Mr. Cservak asserted, “And all of this would have been presented in the first case, had my evidence been available.” Tr. 29. Mr. Cservak further asserted that the disputed \$3,800.00 charge from the 2020 Complaint was put back on his bill in August 2022. Tr. 32. However, during the July 2020 hearing in *Cservak I*, he did not get a chance to present evidence because no evidence was available at the time. Tr. 32-33.

From the arguments and the allegations of Mr. Cservak’s present Complaint, it was clear that he was disputing a service termination and billing charges that were the subject of *Cservak I*. More importantly, Mr. Cservak represented that he had taken an appeal of *Cservak I* to the Pennsylvania Commonwealth Court, and he was waiting for a decision from Commonwealth Court. Tr 18. *See supra* note 1. While DLC argued that the doctrine of *res judicata* prevented relitigating of the issues raised in *Cservak I*, *res judicata* applies when there is finality as to the litigation.<sup>5</sup> Here, the Commission’s Opinion and Order in *Cservak I*, was pending review in Commonwealth Court. Consequently, finality had not been reached. Instead, the application of Rule 1701(a) of the Pennsylvania Rules of Appellate Procedure controlled the outcome of the Motion. Pa.R.A.P. 1701(a). Appellate Rule 1701(a) provides as follows:

*General Rule.*—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

Pa.R.A.P. 1701(a). None of the exceptions applied to Mr. Cservak’s case.

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<sup>5</sup> During the hearing, I ruled that I had no authority to delve into the matter previously adjudicated. “In legal terms, it’s called preclusion.” Tr. 36-37. This was an error. The above discussion hereby corrects the error.



Accordingly, I explained to the Parties I have no authority to rule on matters on appeal in Commonwealth Court. Tr. 36-37. Accordingly, I ruled that presentation of evidence would be limited to matters occurring after April 5, 2021.<sup>6</sup> Consequently, in the order paragraphs below, DLC's Summary Motion will be granted.

The record was closed by an interim order entered on April 6, 2023. This case is procedurally ready for ruling.

### FINDINGS OF FACT

#### The Parties and Service Location

1. Complainant Frank J. Cservak, Jr. resides at 174 Barberry Road, Sewickley Heights, Pennsylvania 15143 (the Service Location). Tr. 9.
2. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.
3. At the Service Location there is a residence, the House or Home, and a commercial building, the Barn. Tr. 31, 68-69, 79.

#### The Billing Accounts and Disputed Charges

4. Previously there were two billing accounts and two meters for the Service Location: Account No. 7796-XXX-XXX and Meter No. F74217262 for electric service provided to Mr. Cservak's Home and Account No. 8796-XXX-XXX and Meter No. F82141469 for electric service provided to Mr. Cservak's Barn. Tr. 79; DLC Exhibits 5 and 3.

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<sup>6</sup> Initially, I informed the Parties that the relevant issues concerned the (commercial rate) billing and solar credits. Tr. 40-41. As the hearing progressed, testimony and evidence were received concerning Mr. Cservak's allegation that he was under threat of service termination. Tr. 47-52, 60-63, 76, 138-139, 173.

5. On August 5, 2021, Complainant's two billing accounts had disputed charges totaling \$3,218.68: \$2,395.36 for the Home and \$823.32 for the Barn. Tr. 139; DLC Exhibits 3 and 5.

6. Mr. Cservak's disputed charges totaling \$3,218.68 were at issue in his prior complaint against Duquesne Light. *Cservak I*, Opinion and Order at 10, 16.

#### Commercial Classification of the Service Account

7. On August 5, 2021, at his request, Mr. Cservak's service for his Home and Barn was combined through one meter and billing under Account No. 7796-XXX-XXX and Meter No. F74217262 starting in September 2021. Tr. 70, 79, 129; DLC Exhibits 11, 2 and 13.

8. Under DLC's tariff, residential rates are available to properties with one or more dwelling units for general household purposes or for commercial or professional activity where the associated consumption represents less than 25% of the total monthly usage of the premises. Tr. 93; DLC Exhibits 13 and 8.

9. Mr. Cservak operates a non-profit corporation, under the fictitious name, Service Never Ends, at the service location. Tr. 144-145, 149-150; DLC Exhibit 12.

10. When Mr. Cservak's service for his Home and Barn was combined through one meter in August 2021, his service was converted from a residential rate to a small commercial rate. Tr. 92, 161; DLC Exhibit 13.

#### Solar Credits and Duquesne Light's Tariff

11. Mr. Cservak has solar panels installed at the service address, and he receives solar credits on his monthly bills. Tr. 42; DLC Exhibits 3 and 5.

12. A solar credit is the excess kilowatt hours that a customer's solar panels generate in a monthly period. Tr. 80.

13. During any billing period when a customer's solar panels generate more kilowatt hours than those delivered by DLC to the customer, the customer's account is credited for each excess customer-generated kilowatt hour. Tr. 80; Exhibit 9.

14. DLC's Net Metering Service Tariff provides as follows:

Any excess kilowatt hours shall continue to accumulate for the 12 month period ending May 31. On an annual basis, the Company will compensate the customer-generator for kilowatt-hours received from the customer-generator in excess of the kilowatt hours delivered by the Company to the customer-generator during the preceding year at the Company's Price to Compare consistent with the Commission regulations.

Tr. 80; Exhibit 9.

15. On May 31st of each year, DLC conducts a true-up of a customer's solar generation and credits the customer's account for excess solar generation or upon request issues a check to the customer for the excess. When a customer stops service or moves to a new rate, a check is also issued to a customer for excess solar generation. Tr. 81, 118.

16. On September 22, 2021, DLC issued Mr. Cservak a check for excess solar generation associated with the House in the amount of \$47.49; and he cashed the check. Tr. 87-88, 92; DLC Exhibits 1 and 13.

17. On September 22, 2021, DLC issued Mr. Cservak a check for excess solar generation associated with the Barn in the amount of \$67.09; and he cashed the check. Tr. 89-92; DLC Exhibit 6.

### Cservak I and Petition for Review

18. On June 16, 2022, the Commission found that Mr. Cservak's dispute of his charges totaling \$3,218.68 was meritless and dismissed his prior complaint, thereby converting the \$3,218.68 charges into undisputed charges. *Cservak I*, Opinion and Order at 17, 23.

19. On June 8, 2022, DLC converted Mr. Cservak's solar credits at the service address into cash on his account balance in the amount of \$54.62 (\$44.98 associated with transmission, plus \$9.64 associated with generation). DLC Exhibit 1.

20. On July 15, 2022, Mr. Cservak filed a Petition for Review of the Commission's Opinion and Order in *Cservak I. Frank J. Cservak, Jr. v. Pa. Pub. Util. Comm'n*, No. 768 CD 2022.

21. Mr. Cservak did not file the appropriate security with the Commonwealth Court to stay the effects of the Commission's Opinion and Order in *Cservak I*.

22. On August 3, 2022, Mr. Cservak would not permit DLC access to his Barn to determine/verify 1) any dwelling units within the Barn or 2) equipment and electrical use attributable to nonresidential purposes. Tr. 68-69, 119-120; DLC Exhibit 13.

### Shut-Off Notice and Solar Credit Refund Checks

23. On October 10, 2022, DLC issued Mr. Cservak a 10-Day Shut-Off Notice for a past due balance of \$3,797.26, which included the \$3,218.68 undisputed charges. Complainant's Exhibit E.

24. On January 25, 2023, DLC issued a \$32.23 refund check to Mr. Cservak for the payment he had made on his inactive Barn account. Tr. 142; Cservak Exhibit 1. Mr. Cservak does not intend to cash the check. Tr. 174.

25. Mr. Cservak's electricity at the service address is still active. Tr. 92; DLC Exhibit 1.

## DISCUSSION

### Legal Standards

#### Complaints and Burden of Proof

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

As the proponent of a rule or order, Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainant must show that Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of

Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. Complainant now must provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlt. 1982).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlt. 2001).

### Reasonable Service

Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Section 102 of the Code defines “service” as:

Used in its broadest and most inclusive sense, includes *any and all acts done, rendered, or performed*, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities[.]

66 Pa.C.S. § 102 (emphasis added). A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 578 A.2d 75 (Pa. Cmwlt. 1990). Accordingly, a utility’s solar credit and rate classification practices are included within the scope of reasonable service.

### Notification of Service Termination

Section 1406 of the Code permits a utility company to notify a customer of service termination under certain conditions and outlines the procedure the company must follow

in order to terminate service. 66 Pa.C.S. § 1406. Section 1406, in relevant part, states:

(a) **Authorized termination.** — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

(1) Nonpayment of an undisputed delinquent account.

....

(b) **Notice of terminations of service.** —

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination.

66 Pa.C.S. § 1406(a)(1), (b)(1)(i).

## Analysis

### The Parties' Positions

In his Complaint, Mr. Cservak raised three issues alleging: 1) threat of service termination; 2) deletion of solar credits from his service account; and 3) change of account from a residential rate to a commercial rate. As a relief for his Complaint, Mr. Cservak wants 1) his solar credits for the electricity generated by his solar panels placed back on his account and 2) change of his service account back to a residential rate.

Duquesne Light admits sending a 10-day termination to Mr. Cservak for a past due balance that was the subject of his prior complaint in *Cservak I*. DLC asserts that Mr. Cservak's account has been properly credited for the electricity generated by his solar panels, and his account rate is correctly categorized as small commercial.

### Threat of Service Termination Issue

As noted in the above History of the Proceeding, Duquesne Light's Motion for Partial Judgment on the Pleadings was granted on the March 2, 2020, service termination issue that was addressed in *Cservak I*, which is now pending in Commonwealth Court and cannot be readdressed here. However, Duquesne Light admitted that on October 10, 2022, it sent Mr. Cservak a 10-day service termination for a past due bill. This past due amount included charges in the amount of \$3,218.68 that became undisputed upon the issuance of the Commission's Opinion and Order in *Cservak I*. Although *Cservak I* is pending before the Commonwealth Court, there is nothing in the record in the present proceeding evidencing that Mr. Cservak obtained a stay of the Commission's June 16, 2022, Opinion and Order as provided for under the appellate rules of procedure. *See generally Pa. Pub. Util. Comm'n v. Process Gas Consumers Grp.*, 467 A.2d 805 (Pa. 1983) (requiring certain criteria for the issuance of a stay pending appeal). Consequently, under the Commission's statute governing termination notices, cited above, Duquesne Light was authorized to issue Mr. Cservak a 10-day shut off notice on an undisputed amount. Therefore, Mr. Cservak's allegation that he is improperly under threat of service termination is without merit.

### Solar Credit Issue

Mr. Cservak is very particular about his solar credits. Tr. 118-119. His testimony suggests that he wants his solar credits to accumulate on his account rather than being converted to cash. *Id.* However, DLC's Witness Murphy explained during the hearing on May 31<sup>st</sup> a true-up credit is converted to dollars at the current price to compare for the rate at which the customer is being billed. Tr. 80-81. After the true-up or reconciliation is performed, the customer's next billing will reflect generation credits in cash, and in the alternative, a refund check will be issued to the customer upon request. Tr. 81, 118; DLC Exhibits 1 and 2. Moreover, DLC's tariff requires the Company to follow this process. Furthermore, a public utility's Commission-approved tariff has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlt. 1997).



Here, the evidence demonstrates that after each true-up completed on Mr. Cservak's Home and Barn accounts in 2021 and 2022, he was issued refund checks. Tr. 87; DLC Exhibits 1, 4 and 6. Therefore, Mr. Cservak's allegation that solar credits were improperly deleted from his service account is without merit.

#### Rate Classification Issue

Mr. Cservak claims his rate was improperly switched from residential to commercial. DLC's Witness Murphy explained that under DLC's tariff, residential rates are only available to properties with one or more dwelling units for general household purposes or for commercial or professional activity where the associated consumption represents less than 25% of the total monthly usage of the premises. Tr. 92-94; DLC Exhibit and 8. Witness Murphy further explained that the Company was never able to gain access to the premises to substantiate that less than 25% of the premises' electrical consumption was attributable to commercial. Tr. 92. So electric service was placed on the commercial rate.

Notably the service location has a house and barn for which Mr. Cservak receives solar credits. By definition, a barn is not a dwelling. Mr. Cservak also operates a non-profit corporation, Service Never Ends, at the service location. Tr. 144-145, 149-150; DLC Exhibit 12. A non-profit is a commercial or business enterprise. These factors would operate against classifying Mr. Cservak's rate as residential. Importantly, Mr. Cservak admitted that he would not permit DLC access to his barn to determine/verify 1) any dwelling units within the barn or 2) equipment and electrical use attributable to nonresidential purposes. Tr. 68-69, 119-120; DLC Exhibit 13. Consequently, his request to order DLC to change his service rate from commercial to residential must be denied.

## Ruling

Weighing the testimony and analyzing the exhibits presented in this proceeding, a ruling is required that Mr. Cservak failed to carry his burden to demonstrate that Duquesne Light violated the Code or a Commission order or regulation or that he is entitled to the relief that he requested. Accordingly, the Complaint will be dismissed in the ordering paragraphs below.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant carries the burden of proving Respondent has in some manner violated the provisions of the Public Utility Code, or the regulations of the Commission or a Commission order in providing him with electric service. 66 Pa.C.S. § 332(a).
3. The Public Utility Code requires a public utility to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons and the public. 66 Pa.C.S. § 1501.
4. A utility may issue a customer a service termination notice for nonpayment of an undisputed delinquent account. 66 Pa.C.S. § 1406.
5. A public utility's Commission-approved tariff has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997).
6. Complainant has not met his burden of proof as required under the Public Utility Code. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Duquesne Light Company's Motion for Partial Judgment on the Pleadings at Docket No. C-2022-3036252 is granted and the claims regarding service termination and incorrect billing charges are dismissed.

2. That the Complaint of Frank J. Cservak, Jr. in Frank J. Cservak, Jr. v. Duquesne Light Company at Docket No. C-2022-3036252 is dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3036252 closed.

Date: July 5, 2023

\_\_\_\_\_/s/  
Conrad A. Johnson  
Administrative Law Judge